



LAME DUCK PREVIEW 2022

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With the continuing resolution (CR) passed, Congress is unlikely to consider any further health policy legislation before the election. We can now turn to considering what Congress may do on health policy after the election and how that could impact possible actions for the new Congress in early 2023. Congress is set to return post-election on November 14, 2022, for internal organizing for the new Congress and to pass an omnibus package that funds the government for the remainder of fiscal year (FY) 2023. This package will be the key piece of legislation that moves during this final stretch of calendar year 2022, and as a result, will become the vehicle for other policy priorities. Other than the omnibus, expectations are that Congress may use the lame duck session to move the National Defense Authorization Act, a marriage equality bill, and potentially attempt to address the debt limit in advance of the 118th Congress, where under all scenarios that looms as an incredibly politically difficult problem to tackle next year. It is also possible that an emergency supplemental appropriations funding bill could move separately.

There are three general buckets of policy priorities for omnibus legislation: must-do policies, other priorities and aspirational policies. Must-do policies are items that Congress must do prior to the new Congress that begins in January 2023, such as funding the government for the remainder of FY 2023. Other priorities are the remaining

policy priorities that have received bipartisan support but don't have a definitive deadline and could be taken up again in the 118th Congress. Aspirational priorities are items that, while unlikely, could potentially find their way into an omnibus bill during the lame duck. For purposes of this report, we are solely focused on these categories in the context of health policy provisions.

COVID-19 PUBLIC HEALTH EMERGENCY IMPACT ON LAME DUCK

Congress is addressing these legislative priorities against the background of COVID-19. The COVID-19 public health emergency (PHE) is currently set to expire in mid-January 2023. The COVID-19 PHE is renewed on a 90-day basis. The Biden Administration has continually promised to provide 60 days' notice prior to ending the PHE. By mid-November 2022, stakeholders will be looking for signs from the Biden Administration on whether it intends to continue the COVID-19 PHE. Should the Biden Administration signal that it will end the COVID-19 PHE in January 2023, action in Congress at the end of 2022 will be expanded to heavily focus on policies that are attached to the PHE's end date. If the PHE is extended further into 2023, its end will likely become an important health policy focus for the beginning of the 118th Congress.

This document outlines the must-do policies, other priorities and aspirational policies for omnibus legislation in the lame duck. It also highlights how these policies may

shift depending on the outcome of the election or the PHE decision.

MUST-DO POLICIES

Fund the Government

In late September 2022, Congress passed a CR to extend funding at the current FY 2022 levels through December 16, 2022. The negotiations in the lead-up to congressional action were not contentious, as neither party benefits from a government shutdown. The CR was also mostly “clean,” meaning few extraneous policies were attached to it and the funding for the government was level with the existing funding amounts. As a result, the CR passed in a largely bipartisan fashion. However, funding the government for the rest of FY 2023 will likely be more contentious. Members of the House Freedom Caucus, the most conservative Republicans in the House, may fight against any omnibus legislation if Republicans gain control of the House in the election as they would rather bump current spending into 2023 and use their control of Congress to align spending with their preferences.

Regardless of the outcome of the elections, Democrats will continue to control both the House and the Senate during the lame duck session. That puts them in the driver’s seat of negotiations, and they will be seeking to fund the government at levels they support. However, some policies that could be attached to the funding bill, such as those related to federal funding of abortions and gun control, are non-starters for many Republicans. Republicans also are likely to oppose large spending increases outside of defense. At this time, congressional staff are working on reconciling noncontroversial differences between the chambers, but it will take the return of Members of Congress after the election to see how far apart both parties are on priorities for the lame duck session.

It’s important to note that the CR could be extended beyond December 16 by a day, a week or longer as negotiators try to hash out a compromise. Completing

legislative business by Christmas is no longer the certainty it once was. Election outcomes will influence the process, but party leaders are unlikely to consider it in their interest to extend the CR into next year, especially with both leaders of the Senate Appropriations Committee retiring when lame duck concludes. It is more likely that a significant omnibus bill—including many of the policies listed in this document—will pass right before Christmas.

Extenders for Expiring Provisions

Medicare Low-Volume Payment Adjustment. The Medicare low-volume hospital program applies a payment adjustment for certain hospitals with low inpatient volumes. The program supports hospitals in small and isolated communities whose operating costs often outpace their revenue. Congress has historically reauthorized this program for limited periods, the last of which was a five-year extension that expired on October 1, 2022. The current CR provides a short-term patch, extending the low-volume adjustment through December 16, 2022, to provide Congress with time to enact a longer extension. Efforts to extend the program enjoy bipartisan support in both the House and Senate.

Medicare-Dependent Hospital (MDH) Program. The MDH program provides enhanced payment to support certain small rural hospitals for which Medicare patients comprise a significant percentage (at least 60 percent) of inpatient days or discharges. Because they primarily serve Medicare beneficiaries, MDHs rely heavily on Medicare payment to sustain hospital operations, making them more vulnerable to inadequate Medicare payments than other rural hospitals. As such, Congress acknowledged the importance of Medicare reimbursement to MDHs and established special payment provisions to buttress these hospitals. Like the low-volume payment adjustment, Congress has historically reauthorized this program for limited periods, the last of which was a five-year extension that expired on October 1, 2022. The current CR provides a short-term extension through December 16, 2022, giving Congress more time to enact a longer-term

extension. Extending the MDH program has bipartisan support in Congress.

Maternal, Infant, and Early Childhood Home Visiting Program. The Affordable Care Act established the Maternal, Infant, and Early Childhood Home Visiting Program as an evidence-based initiative that supports home visits for expectant and new parents who live in communities that are at-risk for poor maternal and child health outcomes. Funding for the program was reauthorized in the Bipartisan Budget Act of 2018 through September 30, 2022. The current CR provides a short-term extension through December 16, 2022, giving Congress more time to consider a longer-term reauthorization. The program enjoys broad bipartisan, bicameral support. In fact, the House Ways and Means Committee bill to reauthorize the program for five years was named the Jackie Walorski Maternal and Child Home Visiting Reauthorization Act of 2022, to honor former Representative Jackie Walorski (R-IN), who died in a car accident earlier this year and was a champion of the program.

Puerto Rico and Territory Medicaid Funding. The Consolidated Appropriations Act (CAA), 2022, increased the federal government’s share of Medicaid payment in Puerto Rico and the US Territories from the 55% set in statute to 76% through December 13, 2022. The current CR extended Medicaid funding for Puerto Rico and the US Territories an additional three days, until December 16, 2022. This action was taken to line up the end of all the extenders to the day that current funding for the government ends.

Unlike the states, for which federal Medicaid spending is open-ended, Puerto Rico can access federal dollars only up to an annual ceiling. In general, once Puerto Rico exhausts its annual Medicaid and Children’s Health Insurance Program (CHIP) allotments, it must fund its program with territory funds. Congress, however, has afforded time-limited supplemental federal Medicaid funds to Puerto Rico and other territories on several occasions, at times providing up to 100% of the federal

medical assistance percentage. There has not been strong bipartisan support for continuing supplemental funding to Puerto Rico, but it is unlikely that Congress will allow such a drastic decrease in Medicaid funding while the PHE is still in place and residents are recovering from the effects of Hurricane Fiona.

Medicare PAYGO 4% Cut

The Statutory Pay-As-You-Go Act of 2010 (PAYGO) requires that automatic payment cuts of 4% be put into place if a statutory action is projected to create a net increase in the deficit over either five or 10 years. The enactment of the [American Rescue Plan in 2021 triggered PAYGO cuts](#). This is a broad PAYGO policy that expands to programs beyond Medicare, but for purposes of healthcare, the pending impact is that providers would face a 4% Medicare cut beginning January 1, 2023.

Congress previously delayed the implementation of this 4% cut until January 1, 2023, in the [Protecting Medicare & American Farmers from Sequester Cuts Act, which was enacted into law in December 2021](#). In fact, the PAYGO sequester has never been implemented. In the past, Congress always has acted to waive the reductions or “wipe the PAYGO scorecard clean.” It is highly likely that this will occur again in the lame duck session, regardless of the outcome of the election, and therefore providers are unlikely to be impacted by a new 4% payment cut in Medicare.

OTHER PRIORITIES

Mental Health

In part because of the impact of the COVID-19 pandemic, national focus has turned to the vast need to address access to mental health and substance abuse services. As a result, there has been significant activity to develop comprehensive and thoughtful policies to address behavioral health in the 117th Congress. Key healthcare committees—House Energy and Commerce; House Ways and Means; Senate Finance; and Senate Health, Education, Labor and Pensions (HELP)—have each been

working throughout the year on mental health legislation, although some committees are farther along in the process than others. On June 22, 2022, the House passed legislation that advanced through the Energy and Commerce Committee. That bill, [H.R. 7666 – Restoring Hope for Mental Health and Well-Being Act](#), would reauthorize and provide funding recommendations for existing behavioral health programs. It also includes some Medicaid-specific policies such as giving state Medicaid agencies the option to provide services to justice-involved youth under the Medicaid program.

Going into the lame duck, there is continued bipartisan, bicameral interest from committee leadership in developing a consensus on mental health. The Senate Finance Committee recently released additional bill text, and the House Ways and Means Committee held a hearing and markup on its preferred legislation. Indications are that discussions are ongoing among staff and members in both the House and Senate to include consensus provisions in an omnibus bill.

However, several outstanding issues have yet to be addressed, and it's unclear if they can be resolved during lame duck. For example, there is no consensus on how comprehensive any mental health legislation should be and how much it could cost. It's also unclear which proposals from which committee would make it into the final bill, if one materializes. In sum, the prospects for passage of mental health legislation during lame duck are unclear at best and will rest upon several key factors—most importantly, the potential cost of such legislation.

Telehealth

Congress already acted to separate telehealth flexibilities from the expiration of the PHE as part of CAA, 2022. That law now provides for the extension of many—but not all—telehealth flexibilities for 151 days beyond the expiration of the PHE. Further showing the strong bipartisan support for telehealth, the House overwhelmingly passed the Advancing Telehealth Beyond COVID-19 Act (H.R. 4040) in July 2022 by a vote of 416–12. The bill extends many of the telehealth PHE

waivers and flexibilities for two years. However, the Senate has yet to act on any similar legislation.

Stakeholders are advocating for the Senate to take up legislation before the end of the year to address the policies in H.R. 4040, as well as other priorities such as ensuring continued access to clinically appropriate controlled substances without in-person requirements, increasing access to telehealth services in the commercial market, and extending protections for people with health savings accounts to continue to be eligible to receive telehealth services pre-deductible.

Given that the Senate may not have time to act on its own legislation, there are also efforts to include telehealth extensions in any omnibus legislation during the lame duck session. Congress may decide it's better to act in lame duck in order to provide a longer timeline before it must again consider telehealth extensions. However, Congress may choose to punt action on most of these policies into next year and address telehealth when timing of the COVID-19 PHE end date becomes clearer. If the PHE were to end in January 2023, it would start the 151-day clock and require fairly quick action in the new Congress, which may not be something either party would want if it controls the 118th Congress. So, action in lame duck is very much on the table.

Medicare Physician Fee Schedule Cuts

The proposed Medicare Physician Fee Schedule rule included a 4.42% cut in provider payments. The final rule will likely finalize a negative payment update, although the exact cut will not be known until we see the final rule in late October or early November 2022. Representatives Ami Bera (D-CA) and Larry Bucshon (R-IN) are leading legislation (H.R. 8800 Supporting Medicare Providers Act of 2022) to zero out the payment cuts.

This late in the session, it is unlikely Congress will take up H.R. 8800, but it is very likely that Congress will work in a bipartisan manner to mitigate the provider cuts, as it has done in previous years. This could take the form of an

offset, a delay or a phase-in that would be included in omnibus legislation.

Clinical Laboratory Fee Schedule Cuts

In 2014, Congress passed the Protecting Access to Medicare Act (PAMA). PAMA was designed to align Medicare payment for clinical laboratories with prevailing market rates across the country. Some laboratory stakeholders have said that the data collection methodology was flawed and that data collected (and the resulting payment amounts) are not representative of market rates.

The Congressional Budget Office (CBO) originally projected \$2.5 billion in cuts to reimbursement rates over 10 years if PAMA was implemented as Congress intended. However, the last three rounds of cuts have already clawed back \$4 billion in payments, and another round of cuts is scheduled for January 2023.

The Saving Access to Laboratory Services Act (S. 4449/H.R. 8188) was introduced in 2022 and would change the way market data is collected by using a statistical sampling of all major types of laboratories that provide services to seniors, including independent, hospital and physician office laboratories. Payment guardrails would also be phased in over time so that laboratories would not face drastic cuts or large payment increases.

Congress has acted multiple times in recent years on a bipartisan basis to delay reporting and payment reductions under the PAMA methodology. The Saving Access to Laboratory Services Act has broad support from Democrats and Republicans in both chambers, but it is unclear how much the proposal would cost. A substantial cost could be a deal-breaker to enactment. If this legislation is not enacted before January 2023, Congress likely will act to delay the cuts for another year as it has in the past.

Advanced Alternative Payment Model Bonus Payment

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) set up a two-track Quality Payment Program (QPP) that emphasizes value-based payment models. Under MACRA, eligible physicians choose between the following Medicare payment tracks: the Merit-based Incentive Payment System (MIPS) track or the Advanced Alternative Payment Model (A-APM) track. For the A-APM track, MACRA included a five percent incentive payment to encourage healthcare providers to transition away from fragmented, fee-for-service payment systems into value-based care models. These incentive payments are scheduled to expire at the end of 2022. The Value in Health Care Act (H.R. 4587), introduced by Representatives Peter Welch (D-VT), Suzan DelBene (D-WA), Darin LaHood (R-IL) and Brad Wenstrup (R-OH), addresses participation in A-APMs and would extend the A-APM bonus for six additional years, until 2028. The cost of extending the program for one year is approximately \$600 million. While it is unlikely that Congress will extend the A-APM bonus payments for six years, a one- or two-year extension is possible.

Hospital at Home

The Centers for Medicare & Medicaid Services (CMS) implemented the Acute Hospital Care at Home waiver program to allow Medicare beneficiaries the option to receive acute-level healthcare services in their home environment during the COVID-19 PHE. The waiver program has allowed hospitals and health systems across the country to meet increased capacity demands during the pandemic, while providing safe, high-quality care in patients' homes where they can be supported by their friends and family. Hospitals and health systems across 37 states are currently participating in this waiver program. The waiver program has demonstrated positive outcomes, experiences, and potential cost savings, and it has reinforced the need for broader adoption of advanced care at home. However, the federal regulatory flexibilities that enable this model of care delivery are tied to the duration of the PHE. Currently there is bipartisan and bicameral legislation addressing the Acute Hospital Care at Home waiver. The Hospital Inpatient Services Modernization

Act, S. 3792 and H.R. 7053, would extend the current Acute Hospital Care at Home waiver flexibilities for two years from the end of the COVID-19 PHE.

US Food and Drug Administration Policies

The current CR included a five-year reauthorization of the US Food and Drug Administration (FDA) user fee acts (UFAs). The UFAs were initially established in the Prescription Drug User Fee Act (PDUFA), which was enacted in 1992. PDUFA authorized FDA to collect various user fees from companies that submit applications for certain human drug products. In the years that followed, PDUFA resources enabled a more modern and efficient approach to FDA's review of new drug applications. The user fees need to be reauthorized every five years.

However, the CR did not include larger FDA policy riders, including the Verifying Accurate Leading-edge IVCT Development (VALID) Act, as well as dietary supplements and cosmetic reform. The VALID Act of 2021 (H.R. 4128) would create a new regulatory framework for the review and approval of diagnostic tests in an effort to accelerate the development of new technologies, while protecting public health and ensuring that Americans can rely on the test results they receive. The bill sponsors, FDA and stakeholders have sought to achieve consensus on VALID for more than four years. Advocates for VALID were pleased when it was attached to the FDA UFA legislation during consideration by the Senate HELP Committee earlier this year. Although the legislative package passed out of the HELP Committee, Ranking Member Richard Burr (R-NC) (the top Republican on the committee) unexpectedly changed his position and voted against the bill. This has now become a challenge for staff and stakeholders to overcome before the end of the year.

With VALID omitted from the CR, it is among the long list of health policies to be attached to an end-of-year package. Additional FDA policies include, but are not limited to, the following:

- Expanding the FDA's inspection authorities domestically and abroad
- Providing funding for the National Centers of Excellence in drug manufacturing
- Requiring diversity action plans for clinical trials
- Establishing a manufacturing technology pilot program at the FDA
- Requiring the FDA to publish justifications of accelerated approvals and requiring baby formula makers to notify the FDA of supply disruptions within a week
- Allowing imports of prescription drugs from Canada
- Providing the FDA with additional oversight and regulatory requirements for cosmetics, dietary supplements and clinical laboratory developed tests.

The HELP Committee and Energy & Commerce Committee leaderships have maintained that they are continuing to work on a compromise and are hopeful that they can have something done this year, but it seems unlikely given competing policies.

Continuous Eligibility in Medicaid

The Families First Coronavirus Response Act (FFCRA) provided Medicaid programs a 6.2 percentage point increase in the federal share if states' meet certain maintenance of eligibility (MOE) requirements that ensured continuous coverage for current enrollees. As a result, all Medicaid beneficiaries are continuously enrolled in Medicaid until the end of the COVID-19 PHE. In preparation for the end of the COVID-19 PHE CMS, states, health plans, and beneficiary groups have been working to ensure that beneficiaries who are no longer eligible for Medicaid have a smooth transition to new coverage, such as the Marketplace, once the COVID-19 PHE ends. **Currently**, states have the option to provide children with 12-months of continuous coverage through Medicaid and the Children's Health Insurance Program (CHIP). The Stabilize Medicaid and CHIP Coverage Act (S. 646, and H.R. 1738), introduced

by Sens. Sherrod Brown (D-OH), Tammy Baldwin (D-WI), Elizabeth Warren (D-MA) and Sheldon Whitehouse (D-RI), and Reps. Debbie Dingell (D-MI) and John Katko (R-NY), would require states to provide 12-months of continuous coverage in Medicaid. Advocates continue to push that continuous eligibility for children in Medicaid and CHIP is extremely important due to individuals churning between Medicaid, the Marketplace and becoming uninsured. Policymakers could use savings created through other pathways in the Medicaid program to fund a continuous eligibility policy. (Discussion of Medicaid savings is discussed below.)

Permanent Authorization of CHIP

The State Children's Health Insurance Program (CHIP) is a joint federal-state program established to provide coverage to uninsured children in families whose incomes are too high to qualify for Medicaid. Unlike Medicaid, CHIP has capped federal financing, which must periodically be reauthorized and funded. In February 2018, the Bipartisan Budget Act of 2018 funded CHIP through FY 2027. Although CHIP funding will not expire for several years, policymakers could use savings created through other pathways in the Medicaid program to fund the program permanently. (Discussion of Medicaid savings is discussed below.) Permanently extending CHIP removes uncertainty in the program for beneficiaries and states relying on the program to provide coverage to millions of children.

ASPIRATIONAL POLICIES

Medicare 2% Sequester Cut

The Protecting Medicare & American Farmers from Sequester Cuts Act enacted in December 2021 delayed the implementation of a 2% Medicare sequester cut to providers. Rather than provide a full year of relief, however, that law extended a moratorium on the 2% sequestration cut through March 31, 2022. The law then permitted a sequestration level of 1% from April 1, 2022, through June 30, 2022, and permitted the full 2% sequestration to go into effect starting July 1, 2022.

Since July, Congress has not addressed the 2% sequestration cut, so it remains in place. Congress created a different path for the 2% sequestration policy intentionally last year and appears to have little appetite to fix the sequestration cut for providers this year. This reluctance may be due to the perceived increase in funding that providers received during the COVID-19 pandemic and previous delays of this and other Medicare cuts. Given all of these factors, it is unlikely that reversing the 2% Medicare sequestration already in place will be addressed during lame duck.

Additional Provider Relief

In addition to the highlights noted above, myriad additional provider funding issues could find their way into omnibus legislation at the end of the year. What is unknown is how much Congress is willing to consider spending on providers given the perception that providers have received significant funding during the COVID-19 pandemic and that many states remain flush with COVID-19 relief funds and budget surpluses that could be accessed to meet their needs. This notion is in place even as Congress understands that many providers are facing workforce shortages, financial pressures and inadequate reimbursement rates. As a result, Congress is unlikely to implement additional funding for providers during the lame duck session.

COVID-19 and Monkeypox Funding

The Biden Administration requested \$22.4 billion for COVID-19 and \$4.5 billion for monkeypox relief efforts as part of the current CR. However, the CR included funding for neither COVID-19 nor monkeypox. The Biden Administration is expected to continue to ask for congressional funding to support vaccine distribution and disease prevention for both COVID-19 and monkeypox. However, Congress's appetite to continue funding these measures has diminished. In particular, Republican lawmakers have pointed to accountability and questioned the need for new funds when a significant amount of funding has already been distributed over the last two years. Given the failure to

include funding in the current CR and the potential end of the COVID-19 PHE in 2023, it is unlikely that Congress will consider additional funding for COVID-19 or monkeypox during the lame duck.

Prior Authorization Protections in Medicare

In April 2022, the US Department of Health and Human Services Office of Inspector General [released a report](#) detailing Medicare Advantage plans' denials for care that requires prior authorization. This report found that these denials often left beneficiaries without access to necessary care. In addition, legislation was introduced to reform the prior authorization processes used by Medicare Advantage plans. H.R. 3173, the Improving Seniors' Access to Timely Care Act, was introduced in the House and enjoyed widespread bipartisan support with more than 300 cosponsors. Following a successful markup in the House Ways and Means Committee and the Energy and Commerce Committee, H.R. 3173 passed the House on the suspension calendar by voice vote on September 14, 2022. Shortly after House passage, the CBO published its score of the legislation. That analysis found that the bill would increase federal spending by \$16.2 billion over the next 10 years, which is a higher cost than many anticipated. Ways and Means Ranking Member Kevin Brady (R-TX) raised a concern about not having had that information prior to consideration by the House.

In addition to the higher-than-expected CBO score, there was no clear path forward in the Senate for passage of the legislation this year. Despite strong support in the House, the Senate Finance Committee likely would want additional changes, and Medicare Advantage plans are advocating for additional flexibilities. The lack of agreement on the legislation in the Senate combined with the CBO score of \$16.2 billion over 10 years would make it challenging for the Improving Seniors' Access to Timely Care Act to be added to an end-of-the-year package.

Another prior authorization bill under consideration that is unlikely to have a high CBO score is H.R. 9019, the

Medicare Advantage Consumer Protection and Transparency Act. It was introduced by Representatives Diana DeGette (D-CO), Lloyd Doggett (D-TX), Jan Schakowsky (D-IL) and Katie Porter (D-CA). This bill focuses on transparency and data reporting for Medicare Advantage plans.

While legislative action may be challenging, regulatory action could occur. The Biden Administration recently submitted the Interoperability and Prior Authorization for MA Organizations, Medicaid and CHIP Managed Care and State Agencies, FFE QHP Issuers, MIPS Eligible Clinicians, Eligible Hospitals and CAHs proposed rule to the Office of Management and Budget. This proposed rule is expected to focus on improving interoperability of healthcare data and establishing processes for prior authorization within Medicare, Medicaid and the Marketplace.

Cures 2.0

Cures 2.0 is a legislative effort by Representatives DeGette (D-CO) and Fred Upton (R-MI) that would seek to speed up the delivery of groundbreaking new—and potentially lifesaving—cures, treatments and innovations to those who need them most. This legislation, which the sponsors and stakeholders have been working on for over a year, is a follow-up to the 21st Century Cures Act from 2017. Despite multiple updates to the text of the bill to address questions and concerns, action on Cures 2.0 is unlikely in this Congress. DeGette and Upton were hoping to get the bill through the House Energy and Commerce Committee last month with other similarly situated bills, but an agreement could not be reached. There will be very limited opportunities to advance bills in the lame duck, and this does not seem to be high on priority list for committee leadership. With Upton retiring this year, DeGette will need to find a new partner in her efforts to advance this bill next session.

WILD CARDS FOR THE LAME DUCK SESSION

Lame duck sessions are always vastly difficult to forecast because of the many circumstances that are unknown prior to the outcome of the elections. That is certainly the case this year. Key items to watch for how they will impact the productivity of the lame duck session include:

- *Status of PHE*: If the Administration announces plans in early November to end the PHE in mid-January, that throws a significant wrench into lame duck legislating in the health area. First, it could eliminate some potential pay fors that could be on the table – especially as relates to Medicaid (discussed below). It also would bring new priorities to the forefront as stakeholders and advocates urge action to protect PHE flexibilities they perceive as especially vital to maintain into the future.
- *DEBT LIMIT*: Votes on the debt limit have become highly controversial with legislation to increase it often held hostage to force action on other matters or gain political advantage. The US is expected to hit the current debt ceiling of approximately \$31.4 trillion early in 2023, though that timeline can be extended through Treasury Department use of “extraordinary measures” to continue normal operations for some time after that. However, if Republicans take one of both bodies of Congress, Democrats are going to be extremely motivated to try to address raising the debt limit during the lame duck session, while they have the votes to pass a bill, rather than allowing it to become a significant political problem in 2023. If Republicans win one or both bodies of Congress, how Democrats handle a debt limit vote could have a major impact on the willingness of Republicans to work together on

a significant omnibus bill during the lame duck session.

PAYING FOR THE END-OF-THE-YEAR PACKAGE

Another important factor determining how productive the lame duck will be is the ability to agree on paying for provisions or agree to not pay for provisions.

The Medicare Improvement Fund has \$7.3 billion dollars that can be devoted to lame duck provisions. Policymakers are likely investigating additional Medicare pay fors, but are keeping those ideas quiet so as not to instigate efforts to defeat them before they are even on the table. Funding for Medicaid policies, such as funding the territories, continuous eligibility in Medicaid, and permanent authorization of CHIP, could be found through other Medicaid policies that reduce spending. In the recent past, policymakers have explored ending the Medicaid maintenance of effort (MOE) requirement established in FFCRA. That policy provides a 6.2% bump in federal matching funds for Medicaid where states maintain continuous eligibility for all people enrolled in Medicaid during the PHE. Said more plainly, it prohibits states from kicking people off of the Medicaid program. [Research suggests](#) that approximately 15 million people may be covered by Medicaid now who will lose such eligibility once the redetermination process is back in place. In current statute, the enhanced match expires at the end of the quarter in which the PHE ends. If a policy were implemented to delink the MOE requirement from continuous eligibility and then slowly reduce the increased federal Medicaid funding, significant federal savings would accrue. In this scenario, states would be permitted to reinstate redeterminations for Medicaid prior to the end of the PHE and to disenroll individuals who are no longer eligible for the program. This change would provide a cost saving that could be used to fund these other Medicaid priorities. It could be perceived as a bipartisan compromise given that it does appear the PHE will be coming to an end at some point in the not-

to-distant future and this change would provide Medicaid funding to implement long-held Democratic priorities.

After that, finding ways to pay for policies becomes challenging. If both sides agree to move policies without paying for them—perhaps attached to an emergency supplemental appropriations bill—then more policy can be accomplished. If paying for provisions is required, including policies that cost money gets more difficult, and a limited lame duck is more likely.

CONCLUSION

Congress will return on November 14, although that is typically an organizing week. The legislative process will be in full swing when Congress returns after Thanksgiving. Again, it bears repeating that a lame duck session is notoriously difficult to predict. Ultimately, any lame duck session requires all parties to be exceedingly agreeable, with the goal of achieving as much as possible during that very short window. It takes very little disagreement to grind the entire process to a halt, leaving us with only the minimum necessary accomplished.

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