



Policy Brief

December 10, 2021

The next issue of AHPA's Policy Brief will run on January 7th. AHPA wishes you and your family a safe and joyous holiday season.



Congressional Action Alert:

Potential Health Care Funding Cuts

As 2021 draws to a close, the health care industry is facing a potential fiscal cliff, with three funding cuts scheduled to take place in succession which would dramatically reduce providers' financial stability. At the end of the year, the 2% Medicare sequester cut moratorium and 3.75% Medicare Physician Fee Schedule (PFS) Conversion Factor are set to expire; the 4% statutory Pay-As-You-Go (PAYGO) sequester is also scheduled to go into effect. The House voted and approved legislation to extend funding and phase in the Medicare sequester. The Senate is planning to vote on the bill in the following days. This is a standalone bill, separate from Build Back Better, which increases the likelihood of it passing. Keep reading to learn more about the origins of these cuts and what the legislation means for the financial viability of providers.

Medicare Sequester Cuts

Medicare sequestration was [conceived](#) in the *Budget Control Act of 2011* and was designed to create savings and prevent future debt. Due to the COVID-19 emergency, Congress suspended the sequester from April 2020 through December 2021. If the moratorium is allowed to expire, providers stand to lose approximately \$4.7 billion in fee-for-service Medicare payments in 2022.

PAYGO Sequester

The statutory PAYGO sequester [requires](#) that new legislation not change taxes, fees or mandatory spending that would increase the deficit. The Congressional Budget Office has estimated that a statutory PAYGO sequester in the fiscal year 2022, resulting from the passage of *The American Rescue Plan Act of 2021*, would cause a 4% reduction in Medicare spending. If Congress fails to waive the statutory PAYGO, hospitals will be faced with a loss of \$9.4 billion in fee-for-service Medicare funding next year.

PFS Conversion Factor

Congress implemented the 3.75% Medicare PFS conversion factor to avoid payment cuts associated with budget neutrality adjustments during the public health emergency. The conversion factor is set to expire on January 1st, 2022.

Consequences and Action

If each of these cuts happened on their own, it would be a blow to providers; taken all together, it will have disastrous consequences on providers and public health. Luckily, there is support on the hill to avert these cuts. This week, the House [approved](#) the *Supporting Health Care Providers During the COVID-19 Pandemic Act*. This Act will [extend](#) the cuts and wean providers off of the funding rather than having it end abruptly. If passed by the Senate, the Act would extend the moratorium on the 2% sequester cut through the end of March and then enact a 1% cut from April through June. It also would delay the 4% PAYGO sequester until 2023. Finally, it would provide a one-year, 3% increase in the Medicare PFS rather than the 3.75% providers received this year. Additionally, a [letter](#) to Senate leadership was circulated to raise awareness of the situation.



Major Health Care Cases Heard in the Supreme Court

The Supreme Court has begun to hear arguments for major cases that affect health care, such as cases regarding [340B payment cuts](#) and [access to abortion services](#). While we will not hear the final decisions until summer of next year, the oral arguments made in the past couple of weeks can give some insight into potential future decisions. The court composition—6 conservative and 3 liberal judges—may have a large impact on how these cases are decided. Below are brief summaries of the cases.

***American Hospital Association v. Becerra* Oral Arguments Highlights**

In CY 2018, CMS cut Medicare reimbursement by 28.5% for 340B drugs. Hospital groups sued to stop this change, arguing that CMS did not have the statutory authority to make those cuts. This lawsuit has finally made it to the Supreme Court. During [oral arguments](#) this past week, Justice Steven Breyer stated that HHS can adjust rates when necessary. However, other judges questioned HHS as to why it did not perform a costs study before making the cuts, which is standard practice. Justice Brett Kavanaugh also questioned HHS' arguments that 340B hospitals are being overpaid, saying that it is a more complicated issue. Meanwhile, more companies are denying 340B drug discounts.

Abortion Cases' Oral Arguments

In this year's session, the Supreme Court is hearing two cases related to abortion. They are *Whole Women's Health v. Jackson*, a Texas bill that allows private citizens to file civil lawsuits against abortion providers, and *Dobbs v. Jackson Women's Health Organization*, a Mississippi bill that bans abortions after 15 weeks of pregnancy. While arguments for the Texas bill [focused](#) on whether the Supreme Court should block it, many experts [believe](#) that the Mississippi case will likely roll back or overturn *Roe v. Wade*.

Additional Health Care Cases Oral Arguments

The Supreme Court also heard oral arguments for *Becerra v. Empire Health Foundation* which seeks to determine the permissibility of HHS' calculation of DHS payments. The judges were [baffled](#) on how to find a solution due to the statute's lack of clarity. It is unclear which direction the court leans in this case. The other health care case, *CVS Pharmacy v. Doe*, which was over possible discrimination against HIV patients, was dropped at the urging of disability rights groups.

What's Next?

The Supreme Court, which just started its current term in October, can hear up to 24 cases in one sitting. Their current sitting will last until late June or early July, which is when we will likely [receive](#) the final decisions for these cases. AHPA will continue to monitor these cases for updates.



White House Releases COVID-19 Plan

Last week, the White House released its latest plan to protect Americans against the Delta and Omicron variants in the immediate future. With the announcement of new variants, the Biden Administration hopes that this new plan will chart a path forward for leveraging new clinical tools to fight the ongoing COVID-19 pandemic. Strategies include expanding pharmacy availability for vaccinations, new public education campaigns, targeted outreach to at-risk populations and partnering with private industry to preserve public health. To read the full White House plan, [click here](#).

The Biden Administration's latest plan focuses on nine key areas:

1. Having all adults receive a COVID-19 booster vaccine;
2. Increasing access to vaccination for children and, where clinically appropriate, to education staff to protect children and keep schools open;
3. Expanding free at-home testing;
4. Strengthening public health protocols for safe international travel;
5. Promoting protections in the workplace to keep the economy open;
6. Convening rapid response teams to help battle rising case numbers;
7. Supplying treatment pills to help prevent hospitalizations and deaths;
8. Continuing the Administration's commitment to global vaccination efforts;
9. Taking additional steps to prepare the nation for future COVID-19 scenarios.



Federal Judgement Pauses COVID-19 Vaccine Mandate

A Louisiana federal judge has [temporarily blocked](#) CMS' COVID-19 vaccine mandate for health care workers. Judge Terry Doughty has issued a preliminary injunction halting the mandate, after Republican officials from 14 states filed a lawsuit challenging the mandate. In the ruling, Judge Doughty reminded the health care community that the final fate of mandated COVID-19 vaccination will be “ultimately be decided by a higher court.”

Many health systems have issued statements in support of vaccinating health care workers, but express concern on the potential that mandated vaccination could have on a worsening staffing shortage across care delivery settings. CMS has released a [memorandum](#) announcing that it will suspend enforcement of mandated vaccination while the court-ordered injunctions are in place.



AHPA Resources

Missed AHPA'S OPPTS/PFS final rule webinar yesterday? No problem!

Visit AHPA's [YouTube channel](#), where members can stream webinars on demand at their convenience.

Below is a directory of the recent regulatory work that AHPA has conducted:

	Initial Summary	AHPA Comment	AHPA Summary
IPPS	<u>X</u>	<u>X</u>	<u>X</u>
OPPS	<u>X</u>	<u>X</u>	<u>X</u>
PFS	<u>X</u>	<u>X</u>	<u>X</u>
Surprise Billing: Part 1	<u>X</u>	<u>X</u>	<u>X</u>
Surprise Billing: Part 2	<u>X</u>	<u>X</u>	<u>X</u>
OSHA ETS		<u>X</u>	
CMS Vaccine Mandate	<u>X</u>		
Behavioral Health RFI		<u>X</u>	<u>X</u>
SDOH RFI		<u>X</u>	

WHAT WE'RE READING...

[Black and Hispanic Renters Experience Discrimination in Almost Every Major American City](#) – Vox

[Post-Pandemic, What's a Phone Call From Your Physician Worth?](#) – KHN

[How COVID Increased the Cybersecurity Threat to Health Care Companies](#) – WSJ

[Children, Coping with Loss, Are Pandemic's 'Forgotten Grievors'](#) – The NY Times