



ADVI

TxSCO Update

December 14, 2023



Overview: Notable Updates

Federal

- Congressional retirements
- CRs without physician pay fix
- Medicaid redeterminations
 - KFF enrollment predictions for 2024
- No Surprises Act update

State

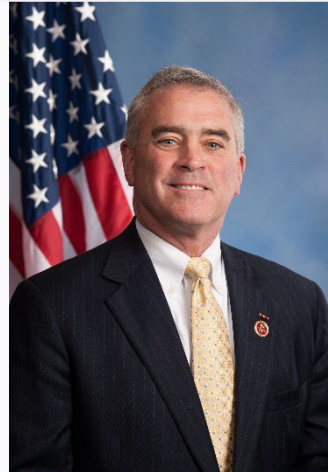
- Special Session Updates
- Primaries

Federal Updates

Notable 2024 Congressional Retirements



Rep. Michael Burgess,
M.D. (R-TX-26)



Rep. Brad Wenstrup,
D.P.M. (R-OH-02)



Rep. Anna Eshoo
(D-CA-16)

Doctors Caucus Co-chairs



Two-Step Continuing Resolution: Implications for Year End Healthcare Legislation

Continuing Resolution (CR)

- Nov. 16, 2023: President Biden signed a CR to temporarily **fund the federal government through early 2024**, avoiding a government shutdown
- The CR will extend funding for the government in two phases:
 - Jan. 19, 2024: Funding expires for several agencies, including FDA and the VA, and some Medicare and Medicaid healthcare extenders, such as:
 - Funding for community health centers
 - Delayed cuts to Medicaid disproportionate share hospitals
 - Delayed Medicare geographic payment adjustments for physicians
 - Feb. 2, 2024: Funding expires for other agencies, including HHS

Implications for Healthcare Legislation

- This will be the first December since 2012 without a critical funding deadline, **likely preventing a year-end omnibus spending package to which healthcare priorities could be added**
- Lawmakers have expressed bipartisan support for advancing several healthcare-related provisions, including PBM reform and **Medicare physician reimbursement**, but the House and Senate still need to reconcile existing bills

2023 Path Forward

- Legislation could potentially be added to other funding vehicles (e.g., Israel or Ukraine aid, National Defense Authorization Act) or lawmakers could advance a standalone healthcare package

2024 Path Forward

- More likely, healthcare legislation could be included in an early 2024 funding package before the Jan. 19 deadline

Without an Omnibus, Congressional Action for Physician Pay Unclear

For the past several years, Congress has included a rate increase to the Physician Fee Schedule in their end-of-year omnibus bill. With Congress passing the laddered continuing resolution in November, it is unclear when and where Congress will include a one-year rate increase for physicians.

Industry Reactions

- *“Once again, physicians and their patients are being asked to swallow a bitter pill: another round of Medicare cuts. Without congressional action, physicians face a 3.37 percent payment reduction on Jan. 1, 2024 -- another step in a calamitous march toward shuttered physician practices and reduced patient access.”* – Jesse Ehrenfeld, MD, President, AMA
- *“Omnibuses happen for a reason...It is not like they haven’t served an important purpose for many years.”* – Susan Dentzer, President and CEO, America’s Physician Groups
- *“If Congress does not act by the end of the year to stop this impending payment cut, many physicians will be forced to reduce available health care services, cut office hours, or even forgo treating Medicare patients altogether.”* – Letter to Congress from AMA, 100+ organizations

Possible “Homes” for Physician Pay Provisions

The Better Mental Health Care, Lower-Cost Drugs And Extenders Act

- Provisions
 - Contains a one-year 1.25% increase to PFS reimbursement (equaling to a 2.15% rate decrease)
 - Extends the advanced APM payment through 2024 at 1.75%
- On Nov. 8, Senate Finance Committee unanimously passed draft package; Sen. Stabenow (D-MI) stated the goal is to “put this in a package before the end of the year”

Retroactive coverage through a Jan./Feb. continuing resolution

Policy rider to the reauthorization of the SUPPORT Act

- SUPPORT Act expired Oct. 1; timing for reauthorization is unclear

Policy rider to the farm bill

- 2018 farm bill extended through Sept. 2024; Congress will need to pass a new farm bill

KFF Annual State Medicaid Directors Survey Findings

Estimate 8.6% Enrollment Drop in FY 2024

Enrollment Growth

- Medicaid enrollment in FY 2023 was 6.5%, down from 8.4% in FY 2022
- Medicaid officials project enrollment will decline 8.6% in FY 2024
- 2024 enrollment estimates reflect new enrollments, unwinding coverage losses, and assumes some churn (re-enrollments)
- State Medicaid directors identified unwinding as the most significant factor driving enrollment trends
 - For FY 2024, nearly 75% of respondents mentioned eligibility expansions (e.g., 12 months postpartum) as creating upward pressure on enrollment

Total (Federal and State) Medicaid Spending

- Total spending was 8.3% in FY 2023 (down from a peak of 9.9% in FY 2022)
- Projected total Medicaid spending is expected to decrease to 3.4% in FY 2024
- State Medicaid directors identified enrollment changes as the most significant driver of total expenditure changes

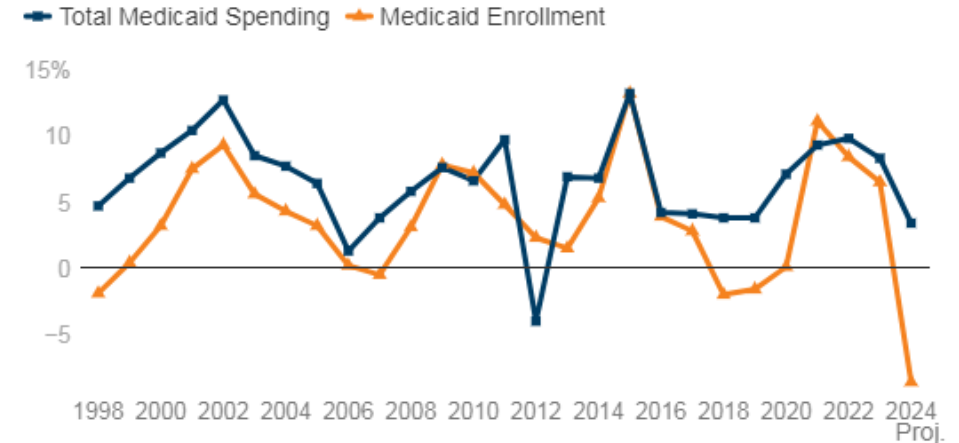
State Medicaid Spending

- State spending increased 13% in FY 2023 and is expected to rise by 17.2% in 2024
 - This growth is expected even as total spending growth slows
- State Medicaid directors identified the phase out and eventual end of the enhanced FMAP (implemented during the COVID PHE) as the primary reason more spending will shift to states

Figure 2

Percent Change in Medicaid Spending and Enrollment, 1998-2024

Annual Percentage Changes, FY 1998 - FY 2024

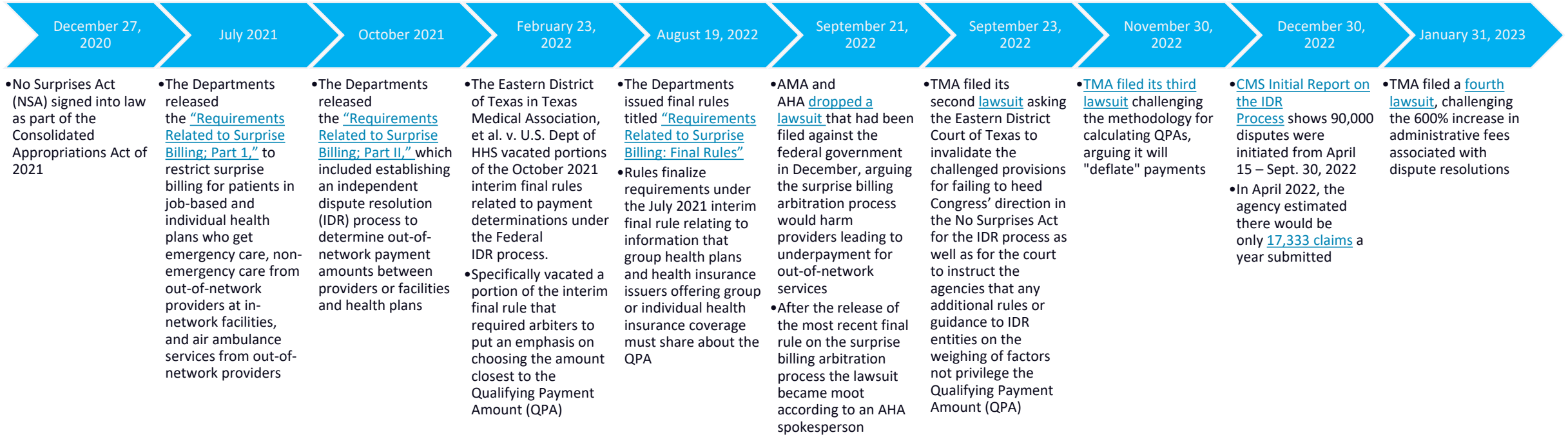


NOTE: Growth percentages refer to state fiscal year (FY). FY 2024 projections based on enacted budgets.

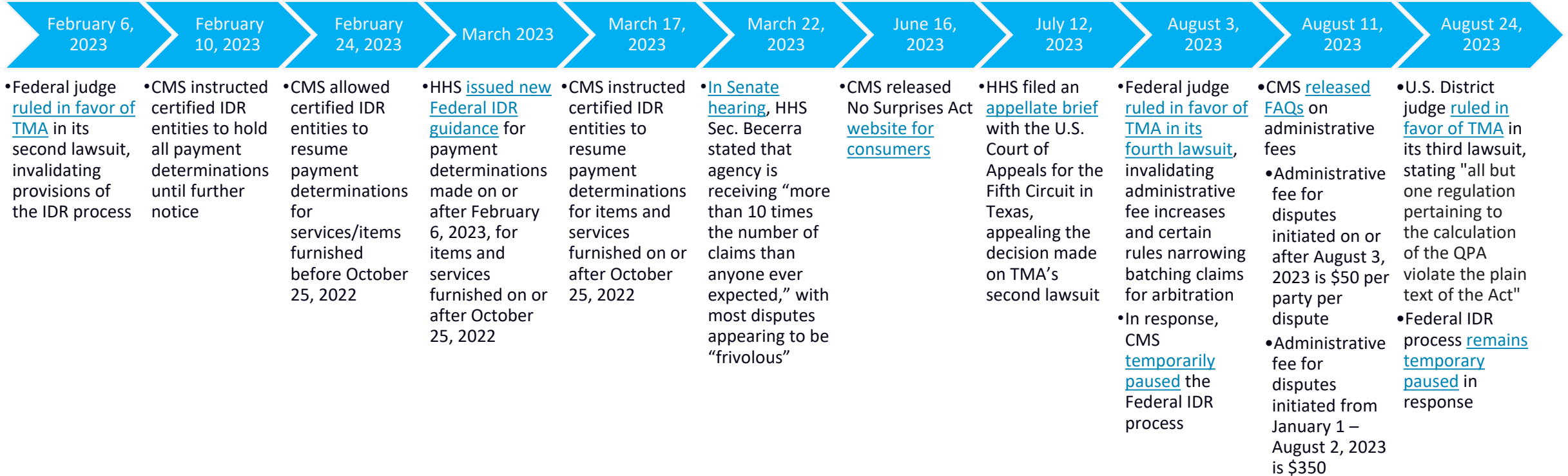
SOURCE: FY 2023-2024 spending data and FY 2024 enrollment data are derived from the annual KFF survey of state Medicaid officials conducted by Health Management Associates, November 2023. 48 states submitted survey responses by Oct. 2023; state response rates varied across questions. Historic data reflects growth across all 50 states and DC and comes from various sources. See Methods of [Medicaid Enrollment and Spending Growth Amid the Unwinding of the Continuous Enrollment Provision: FY 2023 & 2024](#) for more information. • PNG

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No Surprises Act: Timeline



No Surprises Act: Timeline



No Surprises Act: Timeline



- House Ways and Means Committee [held a hearing](#) on the "Flawed Implementation of the No Surprises Act"
- Committee members stated that the No Surprises Act "incentivizes health insurers to limit the number of physicians with whom they have contract agreements to cover their services" and faces operational challenges due to the "'stop and go' implementation of this law"

- Departments of HHS, Labor, and Treasury [released a proposed rule](#) increasing the administrative fee for the IDR process from \$50 to \$150
- The Agencies also proposed to increase the range of fees that IDR entities can charge for using their service
- CMS instructed IDR entities to resume processing all disputes submitted on or before August 3, considering the QPA already submitted

- [In an FAQ](#), HHS announced it would not take enforcement action for at least six months against payers that use the invalidated QPA
- HHS also plans on appealing the ruling
- HHS, Treasury, Labor, and OPM do not plan on releasing additional guidance
- HHS [re-opened the IDR portal](#) for new single disputes, including single disputes involving bundled payment arrangements
- Processing and initiation of batched disputes and initiation of air ambulance disputes remain temporarily suspended

- Departments of HHS, Labor, and Treasury [released a proposed rule](#) including changes to the IDR process in the following areas:
- Communication between payers and providers
- Open negotiation requirements
- Updated batching provisions
- IDR eligibility timeline
- Collection of administrative fees
- Extenuating circumstances request
- Creation of an IDR registry

- House Ways and Means Republicans [sent a letter](#) to the secretaries of HHS, Treasury, and Labor, expressing concerns around the law's implementation. Key points included:
- Some patients are still vulnerable to surprise bills
- The QPA interpretation has led to reduced rates and network cancellations
- IDR entities have been strained by the IDR portal's freezes
- The administration has not started rulemaking for the "advanced explanation of benefits," which had a January 2022 statutory deadline

- New [guidance](#) released by the Department of Labor states the standards of determining whether a claim is eligible for batching will be based on requirements that haven't been vacated by courts, including that the claims are for the same provider groups, paid by the same issuer and within a set timeframe
- CMS [shared](#) with Inside Health Policy that the IDR portal will open for batched claims by the end of the year

State Update

Special Session Updates

- The Legislature has concluded their fourth and final special session of 2023
- With a total of nearly 260 the 88th Legislature broke the record for most legislative days in a calendar year
- Most leadership priorities were addressed including banning COVID vax mandates, several border security issues and property tax reductions but education-related issues were not completed including school vouchers, school safety funding and teacher pay raises
- It is unclear yet whether the Governor will call a fifth special session sometime next year though it is rumored he may call one during primary season next spring

Primaries

- With the filing deadline behind us a total of 16 House members and 2 Senators will not be returning for the 89th Legislative Session
- Of those leaving the House
 - 9 are Republicans and 7 are Democrats; 1 D district is considered "swing"
 - 2 are running for State Senate, 2 are running for Congress and 1 is running for US Senate
- In the Senate, Drew Springer is retiring from politics, John Whitmire is the new Mayor of Houston, and Roland Gutierrez has a free run for US Senate

Primaries

- Of the 76 incumbent Republicans running for re-election, 45 or 60% of them have primary challengers, for comparative purposes, of the 57 House Democrats running for re-election, only 8 or 14% have primary challengers
- In the Senate, only half of the body seeks re-election in a given term
- Only two of the 13 Senators seeking re-election have primary challengers
 - Paul Bettencourt (R-Houston) and Nathan Johnson (D-Dallas) who is being challenged by sitting House member, Victoria Neave Criado



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