



## Public Policy Briefing

Troutman Pepper Strategies and Alston & Bird  
Wednesday, October 4, 2023

# Housekeeping Reminders

- This is a Zoom webinar
- All webinar participants are automatically muted, and your video is not displayed
- If you would like to ask the presenters a question, please use the **Q&A** function on the task bar
- Use the **chat** feature to introduce yourself – name, organization and location, share resources, etc.
- If you have any questions following the webinar, please reach out to [contact@civitasforhealth.org](mailto:contact@civitasforhealth.org)

# Upcoming Civitas Member Events

- Civitas will be hosting our monthly All Member Meeting Network News on Wednesday, October 18, from 1:00 – 2:00 p.m. ET.
- We are kicking off a Member Roundtable series on the Political Determinants of Health starting October 24 from 12:00 – 1:30 p.m. ET. [Register Now!](#)

# Your Civitas GR Team

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# Public Policy Briefing: Agenda

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1. FY 2024 Update
2. Congressional Activity
3. Administration Activity
4. Questions and Discussion



# The Vacant Chair

## McCarthy Ousted

- On Monday, Rep. Matt Gaetz (R-FL) introduced a motion to vacate to remove McCarthy from leadership over the CR and working with Democrats
  - The last vote on a motion to vacate was in 1910
- On Tuesday, 8 Republicans joined all Democrats to vote to remove McCarthy to become the first Speaker removed from power
- Rep. Patrick McHenry (R-NC) is now acting as speaker pro tempore until a new Speaker is elected
- First vote is scheduled for Oct. 11

## Potential Replacements

- Majority Leader Steve Scalise (R-LA)
- Whip Tom Emmer (R-MN)
- Conference Chair Elise Stefanik (R-NY)
- Rules Chair Tom Cole (R-OK)
- Judiciary Chair Jim Jordan (R-OH)
- *A Speaker does not have to be a member of the House*



# Status of Fiscal Year 2024 Funding

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## Weekend Activity

- Federal funding for fiscal year 2023 ended at midnight on Saturday, September 30
- On Saturday, the House and Senate passed a continuing resolution (CR) with a few hours to spare before the deadline
- Speaker McCarthy relied heavily on Democrats to help him pass the CR – by a vote of 335-91
- Previously, McCarthy and House leaders introduced CRs with steep spending cuts and border security legislation to win the votes of conservatives
- McCarthy suffered multiple defeats over the last few weeks, attempting to pass rules and spending bills ultimately sunk by Democrats and Freedom Caucus defections

## CR Summary (H.R. 5680)

- Government Funding
  - Extends funding at current levels through Nov. 17
- Community Health Centers
  - Extends the Community Health Center Fund through Nov. 17 and provides \$526 million
- DSH Hospitals
  - Delays the Medicaid Disproportionate Share Hospital (DSH) cuts until Nov. 18
- PAHPA
  - Extends disaster response authorities and programs under PAHPA through Nov. 17
- Additional Funding
  - Includes \$16 billion for FEMA for the Disaster Relief Fund
- Other Provisions
  - Extends FAA through Dec. 31, extends National Flood Insurance Program through Nov. 17, blocks COLA for members of Congress, some agriculture/farm programs

# What's Causing the FY2024 Funding Delays?

## Lack of Progress

- As of Oct. 4, the House passed 4 of the 12 annual spending bills on the floor
  - House scheduled to vote on the Energy and Water Development bill on Wednesday and the Legislative Branch on Thursday
  - The House Appropriations Committee has not passed the Labor-HHS bill out of committee, along with the CJS bill
- As of Oct. 4, the Senate has passed all bills out of committee but has not yet passed any on the floor

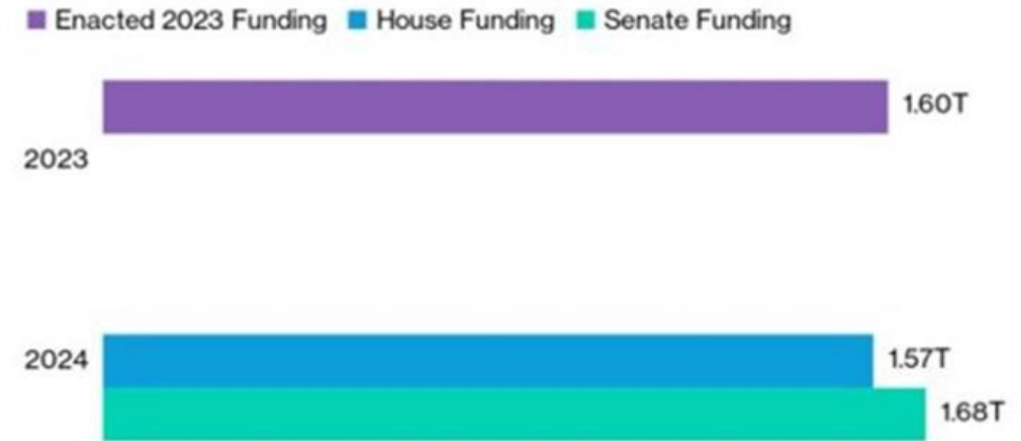
## House/Senate Funding Levels

- Large differences in spending levels are contributing to a lack of clear path forward
- House includes cuts much deeper than what the debt limit deal called for earlier this year
- Will complicate eventual bicameral negotiations

*\*\*Chart includes funding totals of the original spending bills drafted by the House Appropriations Committee and does not show cuts included in new bills to used to appease Freedom Caucus members\*\**

### House, Senate Face \$100 Billion Gap

Proposed spending in House, Senate appropriations bills for fiscal 2024



Source: House, Senate Appropriations Committee data

Bloomberg Government



# What's Causing the FY2024 Funding Delays?

## Thin House Majority (221 Rs to 212 Ds)

- Republicans' thin majority empowered a small group of lawmakers to make outsized demands that prevented passage of funding bills
- Speaker McCarthy can only lose 4 Republican votes, assuming no Democratic support
- McCarthy suffered 3 failed attempts to pass a rule to bring spending bills to the floor for debate (a rule has failed a vote only 8 other times since 1995)
- The House finally passed a rule on Sept. 29, but subsequent legislation failed (198 in favor, 232 opposed, 21 Rs joining Ds to defeat the legislation)

## House Freedom Caucus

- Members of the House Freedom Caucus demanded lower spending levels (beyond what was included in the debt limit deal earlier this year), border security legislation, a separate vote on Ukraine funding, and other items to support funding bills
- These demands are non-starters in the Senate and delayed progress in the House



# FY2024 Funding Scenarios

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- Leaders strike a bicameral, full year funding agreement by Nov. 17. This scenario is possible if McCarthy works with Democrats as he did to pass the CR
- Congress passes a clean CR to fund the government beyond Nov. 17 into early to mid-December. This scenario is likely given current circumstances
- Congress passes a CR through next year. This scenario is possible but not likely as it would trigger an across-the-board 1% cut (per debt limit legislation).
- Government shuts down Nov. 17. This scenario is still very possible, especially if there is a drawn-out battle to replace McCarthy
- In the meantime – if a new Speaker is elected in a timely manner – the House will continue to bring conservative appropriations bills to the floor and the Senate may advance their own bills (either individually or through packages)



# Federal Shutdown – Still a Possibility

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## General Info

- The severity of shutdowns depend on how long the shutdown lasts
  - If funding gaps last only a weekend or a few days, federal departments and agencies may not have time to implement shutdown measures
  - Funding gaps lasting days, weeks, or months will result in shutdowns, as well as in agencies furloughing employees and ceasing some federal services
- Federal agencies are required to develop their own shutdown plans, following guidance from the OMB, and determine which activities may not continue until appropriations are restored
- Mandatory spending and services, such as Social Security and Medicare payments, can continue during funding gaps or shutdowns
- Federal agencies and programs that depend on discretionary funding are impacted during partial or full shutdowns
- Excepted employees continue to work while others (non-excepted) will be furloughed
  - Furloughed employees are not allowed to work and do not receive paychecks, but are guaranteed back pay due to legislation passed in January 2019



# Federal Shutdowns – A Brief History

## Past Government Shutdowns

- 4 “Real” Shutdowns (Operations affected for more than one business day)
- Winter 1995 into 1996 (2 shutdowns) – 26-day total shutdown
  - President Clinton and GOP congress debate over spending levels
- Sept. 30, 2013 (FY2014) - 16-day shutdown
  - Mostly due to measures related to ACA
  - Sen. Ted Cruz (R-TX) and conservative House members
- Dec 21, 2018 (FY2019) – 35-day shutdown
  - Southern border funding dispute
  - A CR allowed the government departments and agencies to reopen – technically partial “shutdown”

## Economic Impact

- Goldman Sachs economists estimated that a shutdown would reduce growth by about 0.2 percentage points for each week it lasts
- GAO reported that the partial shutdown of 2013 cost the government \$2 billion in lost productivity
- Shutdowns may also have long-term impact on the ability to attract and retain a skilled civilian federal workforce



# Federal Shutdowns – HHS Impact

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## HHS

- 58% of HHS staff will be retained (49% of CMS employees will be retained)
- OIG expected to continue Medicare/Medicaid oversight and enforcement activities, in addition to hotline and disclosure programs

## CMS

- Medicare = mandatory spending
- Medicaid and CHIP will continue as both programs are appropriated by Congress in advance

## ONC

- Employees being furloughed could impact efficiencies and program operations

## Other Health Impacts

- Covid-19 response and research, including vaccine and therapeutic development, would carry on at HHS
- NIH might have to postpone clinical trials for diseases like cancer or Alzheimer's, according to the White House.
- Medicine-price negotiations could be sent into disarray, as some drugmakers face an Oct. 2 deadline to report data to Medicare for use in determining new prices
- Food stamps for low-income people, the disabled, and others could be delayed
- Social Security checks would be delivered, and applications for benefits processed, but people would not be able to verify benefits or replace Medicare cards

# Congressional Activity – Outlook

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## Limited Time – Unlimited To-Do's

- 41 legislative days left on the Congressional schedule in 2023 as of October 4, but days can be added/removed as needed
- High-priority items need to be completed: FY 2024 appropriations, FY 2024 NDAA, PAHPA reauthorization (Nov. 17 expiration), Community Health Centers reauthorization (Nov. 17 expiration), National Health Service Corps reauthorization, FAA reauthorization (Dec. 31 expiration), and the Farm Bill (lapsed)

**Oct. 11** – Scheduled House Speaker vote

**Nov. 20-24** – Thanksgiving recess

**Nov. 17** – CR expiration

**Dec. 14-15** – House and Senate scheduled to adjourn, respectively

# Congressional Activity

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## Congressional RFIs

- *Health Data and Privacy* – Sen. Bill Cassidy (R-LA), Senate HELP
- *Rural and Underserved Healthcare Access* – Rep. Jason Smith (R-MO), House W&M
- *Health Care Task Force* – Reps. Jodey Arrington (R-TX) and Michael Burgess (R-TX), House Budget

## PAHPA Reauthorization

- Senate HELP Committee approved its PAHPA reauthorization (S. 2333) on July 20th with strong bipartisan support
- Includes changes that would make HIEs partners in a new state-led public health data pilot program and eligible for non-federal seats on a new public health data board
- House E&C Committee passed its own party-line PAHPA reauthorization on July 19th (H.R. 4220 and H.R. 4221)
  - Markup included several other health-related bills and is the latest E&C markup of significant health bills
- *Civitas sent comments and feedback on PAHPA in spring, continue to meet with the Hill champs, and sent letter to HELP leaders urging to keep HIE language during negotiations*

## Senate Healthcare Package

- Markup held for the *Bipartisan Primary Care and Health Workforce Act* (S. 2840) and passed by 14-7 vote on September 21
- Introduced by Sens. Bernie Sanders (I-VT) and Roger Marshall (R-KS)
- Provides \$5.8 billion a year over the next three years in mandatory funding for community health centers
- Ranking Member Bill Cassidy (R-LA) opposed the bill due to lack of offsets

## House Healthcare Package

- The *Lower Costs, More Transparency Act* (H.R. 5378) was expected to receive a vote in September, but was pulled due to lack of support
- The bill largely focuses on price transparency, but it also contains a three-year extension for the community health centers program
- Bill is a bipartisan collaboration between the E&C (including Pallone), W&M, and Education Committee leaders
- Lacked support from key Democratic committee leaders like Bobby Scott (D-VA) and Richard Neal (D-MA)

# Administration Activity

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## ONC Annual Meeting

- Dec. 14-15 in-person in Washington, DC
- Main stage events are livestreamed, but no virtual option for full program

## ONC-CMS Patient Access Event

- On Oct. 18, ONC and CMS are hosting an event titled “Enabling Patient Access to Health Data for Actionable Results”
- Patients, providers, payers, and health IT developers will discuss patient access to their health data, including:
  - How HHS policies are working in practice
  - How to maximize the impact of these policies

## USCDI

- In July, ONC published new USCDI v4 standards, which include new data elements meant to advance the Biden administrations priorities of advancing equity, diversity, and access to healthcare
- ONC plans to publish draft USCDI v5 in Jan. 2024





# Administration Activity

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## CMS 2024 Medicare Physician Fee Schedule (PFS) Proposed Rule

- Civitas submitted our public comments on 9/11 focused on three areas:
  1. Making health information exchange, health data management, and social care referrals an explicit part of the proposed community health integration (CHI) and principal illness navigation (PIN) service descriptors;
  2. Making the proposed CHI, PIN, and SDOH Risk Assessment services more effective and flexible by allowing CHWs to perform them as “initiating visits” without billing practitioners;
  3. Using new SDOH Risk Assessment Z-codes as a starting point for additional SDOH coding frameworks now being tested around the country (e.g., Gravity Project standards)
- Final rule expected in Nov. (although there may be a delay due to the government shutdown)

## OIG Final Rule

- In early July, the Office of Inspector General (OIG), published a final rule entitled, *Grants, Contracts, and Other Agreements: Fraud and Abuse; Information Blocking; Office of Inspector General’s Civil Money Penalty Rules*
- Rule authorizes OIG to investigate claims of information blocking and provides HHS authority to impose CMPs for information blocking

**Questions?**