

LEGISLATIVE UPDATE

October 4, 2021

Liz Lyons, Director of Advocacy and Government Affairs, ext. 4139

FEDERAL

Congress

The Senate is in session this week and the House is scheduled to be in recess, but given the two-week deadline to address the government's debt ceiling, House members will be in session on Tuesday.

The debt ceiling crisis will dominate most of the conversation in the coming two weeks. Congress has until Oct. 18 to increase the nation's debt limit or risk defaulting on \$25 trillion in loans. Given the complex politics at play, Congress may have to resort to the fast-track process of Reconciliation, but negotiations continue.

Congress did find victory on one of three large packages last week - the FY 2022 budget. Congress passed a continuing resolution (CR) to extend existing FY 2021 funding levels through December 3. All government funded programs, like Children's Hospital Graduate Medical Education (CHGME), will continue to see uninterrupted funding. Congress will have to pass another CR or full budget proposal before December 3 to avoid a government shutdown.

Meanwhile, we continue to talk to staff in each of our five Nebraska delegate's offices to outline pediatric opportunities in the Reconciliation process. The price tag is expected to be pared down from the original \$3.5 trillion fiscal note, but there is deep support for the permanent extension of the Children's Health Insurance Program (CHIP), a recognition of the importance of Medicaid continuous eligibility for children and new mothers and inherent understanding of the need to boost CHGME funding by \$250 million to address the pediatric workforce pipeline concerns.

However, there are provisions in the Reconciliation package *Build Back Better Act* that are not welcomed, specifically as it relates to our 340B Drug Pricing Program. Congress is considering drug pricing bills from the previous Congress that would require Medicaid managed care organizations to pay for all retail pharmacy drugs based on actual acquisition cost. This could reduce 340B savings that hospitals use to positively serve their communities and provide medications to low-income patients. We continue to monitor the negotiations around drug pricing with budget reconciliation and advocate to protect the 340B program with our delegation.

Additionally, Congressman Fortenberry and Congressman Bacon's offices were pleased to see Children's proposals to address the pediatric mental health crisis in Nebraska. They are reaching out to Rep. Lisa Blunt-Rochester to likely support her [H.R. 4944](#), *Helping Kids Cope Act of 2021*. This legislation addresses nearly all of our pediatric mental health priorities at Children's. Among the many provisions, this legislation would fund hospital initiatives via a grant including, but not limited to:

- Training, recruitment and retention of behavioral health workforce
- Expanding the use of providing behavioral health virtually
- Establishing a pediatric mental health urgent care

Health and Human Services (HHS) Secretary Xavier Becerra and Education Secretary Dr. Miguel Cardona appeared before the Senate Health, Education, Labor, and Pensions (HELP) Committee in a hearing, "[School Reopening During COVID-19: Supporting Students, Educators, and Families](#)," to discuss best practices for a safe school year. Witnesses focused on testing, masking and vaccines as a comprehensive approach to mitigate risk from COVID-19 while ensuring kids are able to access in person learning. Secretary Becerra noted the negative impact that school closures, coupled with other pandemic stressors have had on children's mental health and well-being. He went on to emphasize that although the American Rescue Plan provided much needed funding to address these issues, there is much more that needs to be done to combat the ongoing mental health crisis.

Finally, the administration has released the third rule to implement the [No Surprises Act](#), which bans surprise and balance billing in out-of-network emergency and certain non-emergency situations. This [interim final rule](#):

- Establishes the federal independent dispute resolution process that will be used to determine out-of-network payment rates when negotiations between the provider and insurer are unsuccessful. The rule also describes the process to certify arbiters who will determine the final payment rate.
- Implements the law's requirement that providers give a good faith estimate to certain patients.
- Establishes a dispute resolution process for situations where a patient receives a good faith estimate and then is billed for an amount substantially in excess of the estimate.
- Adds plan compliance with the act's cost-sharing and surprise billing protections to the types of adverse benefit determinations that are eligible for external review.

Comments on the rule are due on Dec. 13, and most of its provisions are effective on Jan. 1, 2022.

STATE

Nebraska Department of Health and Human Services (DHHS)

Last week, the Nebraska Department of Health and Human Services (DHHS) officials announced St. Francis Ministries has a 60-day prohibition from caring for any new Omaha-area foster children and families. DHHS imposed the restriction on Sept. 30 along with granting St. Francis Ministries a probationary license as a child placing agency. In the meantime, any new child welfare cases in Douglas and Sarpy Counties will be handled by state child welfare workers, according to an HHS release. The department will deploy existing staff to manage the cases, while hiring additional workers.

The Department's CEO Dannette Smith is expected to testify on Oct. 8 before the Nebraska Legislature's St. Francis Oversight Committee and provide further indication of plans for the eastern service area. Children's testified before the committee in August, citing our concerns for youth overseen by St. Francis and offered support for gaps in the system. Children's continues to closely monitor this issue.

Nebraska Legislature

This week will be an extremely heavy lift in the Nebraska Legislature as the following interim study hearings are scheduled:

Tuesday, Oct. 5

- [LR178](#) (Sen. Wishart)- Interim study to solicit input from Nebraskans regarding funds from the federal American Rescue Plan Act (ARPA) of 2021
 - *Children's will formally submit our ARPA funding requests for [mental health urgent care](#), [telehealth](#) and [Project Austin](#).*
- [LR179](#) (Sen. Cavanaugh)- Interim study to examine funding mechanisms in the American Rescue Plan Act of 2021
- [LR213](#) (Sen. Day)- Interim study to examine the mental and behavioral health needs of Nebraska students and the role of school psychologists
- [LR149](#) (Sen. Day)- Interim study to examine the potential for statewide early childhood autism spectrum disorder screening

Wednesday, Oct. 6

- [LR209](#) (Sen. McDonnell)- Interim study to examine the appropriations necessary for creating public health crisis zones
- [LR210](#) (Sen. McKinney)- Interim study to examine poverty and incarceration and the appropriations necessary to reduce both
- [LR212](#) (Sen. McDonnell)- Interim study to examine the health care workforce shortage in Nebraska
 - Children's will submit testimony to the committee

Friday, Oct. 8

- A hearing for the Eastern Service Area Contract (St. Francis Ministries) Special Investigative and Oversight Committee and the Health and Human Services Committee
 - This hearing is for the Department only. We will be monitoring their feedback from the August hearing where the public testified.

You can livestream the public hearings and live debate at www.nebraskalegislature.gov.

Executive Branch

Governor Pete Ricketts announced his extension of the Directed Health Measure (DHM) to address hospital staffing shortages. The DHM suspends inpatient Class D and Class E elective surgeries for all Acute Care, Critical Care, and Children's Hospitals in Nebraska. The primary goal of the DHM is to hold off elective surgeries that can wait four weeks or longer without substantially changing a patient's outcome in order to maintain and preserve capacity in hospitals and address staffing shortages across the state. Initially, the DHM was set to expire on September 30, 2021. With the extension, it will remain in force through October 31, 2021, unless renewed [Read the DHM here](#)

(Sources: CHA, AHA, HELP Committee, Congress.gov, NebraskaLegislature, World Herald, Peetz & Co.)