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Preview of Lame Duck Health Package

In addition to extending government funding, Congress must act to extend several expiring health care provisions before the end of the year. It is possible they will consider a broader bipartisan health package during that lame duck session (after November election and before the beginning of the new Congress in January). Legislative action at the end of the year will inform policymaking in the new Congress. In this memo, we discuss the policy landscape for the lame duck session and highlight health policies in play for the potential end-of-year health package.

Policy Landscape

Congress is expected to pass a continuing resolution (CR) for fiscal year (FY) 2025 to keep the federal government open and avert a shutdown before the end of the fiscal year (i.e., September 30, 2024). The duration of the stopgap measure is undecided, but it will likely temporarily fund the government through early or mid-December 2024 despite the House Freedom Caucus pushing Republican leadership to pass a CR into early 2025. Congress will also need to act on a set of expiring must-do policies (e.g., extending expiring authorizations, such as COVID-19 telehealth flexibilities) and may include other health policy priorities, such as the House-passed Lower Costs, More Transparency (LCMT) Act (H.R. 5378).

The size and scope of a possible lame duck health package largely depend on the outcome of the November election and the amount of offsets that lawmakers could use to pay for the bill. If Republicans take control of Congress and the White House, they may be less willing to negotiate a lame duck package and instead wait until they gain full control in January. However, if the election results in a divided government, both parties may be more willing to negotiate a deal that is largely budget neutral to avoid adding to the federal deficit.

FY 2025 Appropriations

The discrepancy in funding between House and Senate funding will once again force the two sides of the Capitol to negotiate a topline funding amount. The Fiscal Responsibility Act of 2023 (FRA, P.L. 118-5) established discretionary spending limits and increased the federal debt limit. While the House adopted funding levels that are technically in line with the overall funding limits agreed to in the FRA, they did not include the additional "side deal" funding that then House Speaker Kevin McCarthy (R-CA) and President Joe Biden agreed to in order to make the topline funding more palatable to both parties and avoid drastic cuts. The Senate Appropriations Committee provided an additional $13.5 billion in emergency funding for nondefense programs and $21 billion for defense programs beyond the FRA levels. Senate Appropriations Committee Chair Patty Murray (D-WA) stated that additional funding is needed to "help make sure we can address serious shortfalls, tackle urgent new challenges here at home and abroad, prevent devastating layoffs and cutbacks to services and invest in families and our country's future."

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House Speaker Mike Johnson (R-LA) will likely need to take a more moderate approach rather than push for drastic cuts and "poison pill" social riders that many of the House bills have adopted. The House Appropriations Committee has marked up all 12 of their appropriations bills in Committee on party lines and was able to pass six of the bills on the floor before running into difficulty and pulling the remaining half from floor consideration. Meanwhile, the Senate Appropriations Committee was able to pass in a bipartisan manner 11 of the 12 appropriations bills through Committee (Homeland Security was pulled from Committee consideration), though none have gone to the floor.

Possible Lame Duck Health Package

The Senate and House have each worked on an array of bills containing both spending and offsets that could be included in a possible lame duck health package. A central challenge is negotiating a deal that includes provisions increasing mandatory spending to also include offsetting reductions in other mandatory spending. In practice, health care legislation should entail policies that lower Medicare and Medicaid spending in order to pay for other Medicare and Medicaid policies and programs. In this section, we briefly describe the state of play on must-do policies and other policy priorities in 2024. See **Table 1** for a rundown of the federal budget impact, including cost estimates by the Congressional Budget Office (CBO), of main legislative packages, which feature both spending and offsets, must-do policies and other policy priorities.

The bipartisan LCMT Act, passed by the House in a 320-71 vote, is the likely starting point for House Republicans. In brief, the LCMT Act includes provisions to increase transparency across the health care sector, provide site-neutral payments for drugs administration, prohibit spread pricing in Medicaid, reauthorize Community Health Centers, the Teaching Health Center GME program, National Health Service Corps; and the Special Diabetes Program; delay Disproportionate Share Hospital (DSH) reductions; and increase plan fiduciary access to health data (IHPP summary).

The Senate has not passed a comparable health package but has advanced similar multi-issue bills, including the Bipartisan Primary Care and Health Workforce Act (S. 2840) passed unanimously by the Senate Health, Education, Labor and Pensions (HELP) Committee and the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act of 2023 (S. 3430) passed unanimously by the Senate Finance Committee.

Table 1. Federal Budget Impact of Main Legislative Packages

Bill	Notes	Status	CBO Score*
Lower Costs, More Transparency (LCMT) Act (H.R. 5378)	Increases health care transparency, requires Medicare site-neutral payments for drug administration, requires unique NPI for Medicare hospital claims, and reauthorizes public health extenders	Passed House, 320-71	-$715 million

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Bipartisan Primary Care and Health Workforce Act (S. 2840)	Expands health care workforce programs; reauthorizes public health extender; bans anticompetitive contract terms and facility fees	Passed Senate HELP unanimously	+16.07 million
Better Mental Health Care, Lower-Cost Drugs, and Extenders Act of 2023 (S. 3430)	Expands mental health care workforce; imposes PBM transparency and delinking in Medicare, as well as prohibiting spread pricing in Medicaid *Provisions temporarily extending expiring Medicare and Medicaid provisions were included in the Consolidated Appropriations Act, 2024 (P.L. 118-42)*	Passed Senate Finance	-$1.025 billion

Lawmakers have a menu of potential offsets to choose from, including various reforms to pharmacy benefit manager (PBM) practices and drug patents and modest Medicare site-neutral policies. Additionally, House Republicans are pushing to prohibit CMS from implementing the Administration's minimum staffing standards for long-term care facilities rule or any other similar rule. A CBO score stated that repealing the rule would save $5.8 billion over five years and $22 billion from 2024 to 2034. Considering that the minimum staffing standards rule is currently in litigation, congressional leadership may decide that even delaying implementation of the rule could provide significant funds to pay for other priorities. See **Table 2** for a list of potential offsets.

Table 2. Federal Budget Impact of Key Offsets

Bill	Notes	Status	CBO Score*
The Affordable Prescription for Patients Act of 2023 (S. 150)	Limits the number of patents a brand manufacturer can protest	Passed Senate by unanimous consent	-$1.8 billion
Stop STALLING Act (S. 148)	Limits manufacturer ability to file "sham" citizen petitions	Passed Senate Judiciary	-$300 million
Preserve Access to Affordable Generics and Biosimilars Act (S. 142)	Limits "pay-for-delay" deals that prevent or delay the introduction of generics and biosimilars	Passed Senate Judiciary	-$1.2 billion
Protecting America's Seniors' Access to Care Act (H.R. 7513)	Repeals minimum staffing standards for long-term care facilities rule	Passed House W&M	-$22 billion

* Impact on federal deficit over a 10-year period

Below, we present additional details regarding policies that must be addressed by the end of the year, policies with bipartisan support up for inclusion in a potential package, and policies Democrats would like to include in the package. For each, we highlight key policy developments, including advanced legislation that includes such provisions.

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Must-Do Policies in 2024

- **COVID-19 Telehealth Flexibilities:** Temporary telehealth flexibilities put in place during the COVID-19 public health emergency expire on December 31, 2024. The flexibilities include access to telehealth services in any geographic area in the United States, rather than only in rural areas; access to telehealth visits from a patient's home; and audio-only telehealth visits for certain visits. The House Ways and Means Committee and Energy and Commerce Subcommittee on Health advanced two separate bipartisan bills to extend telehealth flexibilities for two years (W&M bill and E&C Health bill). An unofficial CBO score estimates a two-year extension to COVID-19 telehealth flexibilities, as proposed in the E&C Health bill, would cost the federal government $4 billion. The Senate has not advanced any legislation addressing COVID-19 telehealth flexibilities.

- **Medicare Policy Extensions:** Without Congressional intervention, Medicare providers face a 2.8 percent payment cut for CY 2025 as the 2.93 percent boost Congress applied in March as part of the omnibus spending bill is set to expire. An array of other Medicare policies affecting reimbursement also end this year, including those ensuring low-volume and Medicare-dependent hospitals receive an upward payment adjustment under the Inpatient Prospective Payment System, the Acute Hospital Care at Home waiver, and adjustments to the Medicare hospice cap. The W&M-passed telehealth bill addresses several of these expiring provisions.

- **Delay of Medicaid DSH Cuts:** The delay to Medicaid Disproportionate Share Hospital (DSH) payment cuts ends December 31, 2024. The LCMT Act and a bipartisan bill (S. 3430) passed by the Senate Finance Committee would further extend the delay through FY 2025, meaning scheduled cuts would take effect October 1, 2025.

- **Public Health Extenders:** Funding for several health care and public health programs expires December 31, 2024 – including, community health centers, the National Health Service Corps, the Teaching Health Center Graduate Medical Education Program, Special Diabetes Program, and National Health Security Extensions. The LCMT Act and a bipartisan bill (S. 2840) passed by the Senate HELP Committee provide temporary extensions. See our full analysis of public health extenders here.

- **PAHPA:** The Pandemic and All Hazards Preparedness Act (PAHPA) expired on September 30, 2023. Last year, the Senate HELP Committee unanimously passed a bipartisan bill (S. 2333), while the House has competing partisan bills – House E&C Republicans passed H.R. 4420 focused on the Centers for Disease Control and Prevention and H.R. 4421 focused on the Administration for Strategic Preparedness and Response, and House E&C Democrats introduced their own bill (H.R. 4697). A key point of debate has been whether to address FDA drug shortage issues. House Republicans prefer separate legislation. Provisions in the bipartisan Senate bill to address shortages could be a starting point for compromise.

- **SUPPORT Act:** The Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act expired on September 30, 2023. Last year, the House passed a bipartisan bill (H.R. 4531) by a 387-37 vote (IHPP summary), and the

Senate HELP Committee advanced a bipartisan bill (S. 3393) that has not yet received a floor vote (IHPP summary). The Senate version reauthorizes more existing programs than the House version. Both versions include language to improve Medicaid coverage for justice-involved individuals.

Policies With Bipartisan Support that Could Be Included in a 2024 Package

- **Price Transparency:** Increasing health care price transparency has bicameral, bipartisan support. Both the House-passed LCMT Act and a bipartisan bill (S. 3548), introduced Sen. Mike Braun (R-IN) and Chairman of the Senate HELP Committee Bernie Sanders (I-VT), would codify and build upon hospital and health plan price transparency rules. The bills have some differences in new requirements and enforcement authorities that will need to be resolved (see IHPP analysis). See our full analysis of price transparency policies here.

- **Site-Neutrality:** Incremental site-neutral reforms are possibly in play, though they have not gotten the same traction in the Senate as the House. The House-passed LCMT Act would align Medicare payments for physician-administered drugs in off-campus hospital outpatient departments with freestanding physician offices. It would also require off-campus hospital-owned outpatient departments to provide a separate, unique national provider identifier (NPI) from the main campus when filing hospital claims under Medicare. S. 2840 passed by the Senate HELP Committee would extend the unique NPI requirement to private insurers, but it did not include the site-neutral parity provision.

- **PBM Policies:** Last year, the House and the Senate both advanced several bills aimed at addressing PBMs, including legislation to increase PBM transparency, prohibit spread pricing in Medicaid, and delink PBM reimbursement from the cost and utilization of the drug, among other reforms. As PBM reform is an area that has received bipartisan support, it is likely that some combination of provisions from the bills previously advanced could be included in a potential lamed duck package, especially if they are scored by CBO to generate savings. Provisions that have received the most bipartisan support appear to be the transparency requirements and prohibiting spread pricing in Medicaid. The delinking provisions, which are featured in recent House telehealth legislation (H.R. 8261 and H.R. 7623) face less bipartisan support. See our full analysis of PBM policy here and a chart of PBM legislation here.

- **Drug Patents:** Recently, the Senate passed Affordable Prescription for Patients Act of 2023 (S. 150), which limits the number of patents a manufacturer can protest. The CBO estimates that this bill would generate $1.8 billion in savings over ten years. The Senate Judiciary has also advanced Stop STALLING Act (S. 148) and the Preserve Access to Affordable Generics and Biosimilars Act (S. 142), which are estimated to save $300 million and $1.2 billion, respectively. Such legislation could be featured in a potential lame duck package, if lawmakers seek to offset the cost of other health care priorities. See our full analysis of drug patent policy here.

- **Medicare and Medicaid Program Integrity:** Earlier this year, the House considered proposals to address improper payments in Medicaid and Medicare as well as policy solutions to improve program integrity. Republicans have been critical of CMS' leadership in managing improper

payments, calling for the agency to do more to ensure the accuracy of beneficiary address information as well as prevent fraudsters from using national provider identifiers (NPIs) of deceased providers to submit fraudulent payments. In June, the House E&C Committee unanimously passed several bills addressing these issues (H.R. 8084, H.R. 8089, H.R. 8111, H.R. 8112, and H.R. 4758). Despite the bipartisan nature of the bills advanced in the House, it remains to be seen if they will receive similar bipartisan support in the Senate, which has instead focused on proposals to modernize care delivery in Medicare and Medicaid.

Policies that Democrats Want Included in a 2024 Package

- **ACA Premium Tax Credits:** Although enhancements to premium tax credits expire at the end of 2025, health insurers need to know much earlier in 2025 whether the policy will be extended in order to develop premium rates for 2026 Marketplace plans. Congressional Democrats prefer to make the policy permanent (H.R. 1692/S. 8) but they are pushing for a one-year extension through 2026 to make it part of the debate on Trump-era tax cuts expiring in 2025. CBO and the Joint Committee on Taxation (JCT) estimate that making the enhancements permanent would increase the deficit by $335 billion over the 2025-2034 period.

Conclusion

The November election will determine who has the upper hand in negotiations during the lame duck. We anticipate that a potential lame duck package will address must-do policies – including, a two-year extension of COVID-19 telehealth flexibilities, public health extenders, a delay of Medicaid DSH cuts, and Medicare policy extensions. The extent to which the potential package includes other policy priorities, such as price transparency, will likely depend on the available offsets from PBM and drug patent reforms and possibly site-neutral provisions.