

Washington Update

November 17, 2023

This Week In Washington

Senate – The Senate confirmed several nominations and passed the Further Continuing Appropriations and Other Extensions Act ([H.R. 6363](#)).

House – The House passed the Further Continuing Appropriations and Other Extensions Act ([H.R. 6363](#)) and postponed proceedings of the Labor, Health and Human Services, Education, and Related Agencies Appropriations Act ([H.R. 5894](#)).

Biden Administration – President Biden signed the Further Continuing Appropriations and Other Extensions Act ([H.R. 6363](#)) and met with Chinese President Xi in advance of the APEC meeting in San Francisco, CA. Additionally, the White House [announced](#) a [National Spectrum Strategy](#) and a Presidential Memorandum on modernizing U.S. spectrum policy that, together, lay out a blueprint for American innovation, competition, and security in advanced wireless technologies.

Next Week In Washington

Senate – The Senate will reconvene on Monday, November 27.

House – The House will reconvene on Tuesday, November 28.

TAX

Congress Passes ‘Laddered’ Continuing Resolution, Averting Government Shutdown – Tax Package Possibility Shifted to Early 2024

Key Points:

- *CR contains no new cuts or policy riders, continuing funding levels set by the 2022 Democratic majority.*
- *Congress must now contend with two new funding deadlines – January 19 and February 2.*
- *New funding deadlines push the possibility of a tax package into the new year.*

This week, Congress overwhelmingly approved a continuing resolution (CR) funding the government into the new year. The CR, which takes a “laddered” approach to government funding, sets two funding deadlines – January 19 and February 2. Under the laddered approach, the Departments of Agriculture, Transportation, Housing and Urban Development, Energy, and Veterans Affairs will see funding expire on January 19. Remaining funding, including funding for the Department of Defense, will expire on February 2.

The legislation easily cleared the House by a vote of 336-95, with all but two no votes coming from Republicans. The measure passed the Senate by a vote of 87-11.

Due to the early 2024 funding deadline, it is very likely any tax package will not be approved by the end of 2023. Instead, it is possible a tax package could be approved alongside spending bills in the new year, since a fairly significant “legislative vehicle” is needed for a tax bill.

Despite this, amending the 1099-K rules established in the Inflation Reduction Act remain a priority for congressional Republicans and Democrats. Under the current rules, taxpayers must report transactions made using third-party payment platforms if they exceed \$600, lowered from the previous threshold of \$20,000. These rules are set to go into effect on January 1.

One tax vehicle remains that has an end-of-the-year deadline, the FAA extension which includes ticket taxes. That bill needs to be extended or reauthorized by January 1, 2024, and could carry other tax measures but does not seem likely to carry a tax bill with potentially \$75-\$110 billion of tax cuts.

House Ways and Means, Senate Finance Retirements Rise

Key Point:

- *Seven congressional lawmakers sitting on the tax committees have announced their planned retirement.*

This week, Representative Kildee (D-MI) became the latest member of the House Ways and Means Committee to announce he would not be seeking reelection in 2024. The announcement came shortly after Representatives Higgins (D-NY), Blumenauer (D-OR), and Wenstrup (R-OH) – also Ways and Means members – announced they would be stepping away from Congress.

Representative Higgins has said he plans to step down in February, teeing up a special election to fill the vacancy in the heavily Democratic Western New York district, and opening up a slot on the Committee in 2024. Democratic leaders have indicated Democratic Members who were formerly on Ways and Means, but lost their seat when Republicans took the majority, are top on the list to rejoin. That list would include Horsford (D-NV), Boyle (D-PA) and Plaskett (D-VI).

On the Senate side, Senate Finance Committee members Senators Stabenow (D-MI), Cardin (D-MD), and Carper (D-DE) have also announced their intention to retire at the end of the 118th Congress.

Leaders from both parties are not expected to announce replacements for these members until early 2025, with the exception of the Higgins' slot.

November 20

Windfall Elimination Provision and Government Pension Offset: On Monday, November 20, at 3:00 PM EST, the House Ways and Means Social Security Subcommittee will hold a field hearing entitled, "How the Windfall Elimination Provision and Government Pension Offset Mistreat Government Workers." The hearing will take place at the St. George Fire Department in Baton Rouge, Louisiana and will be broadcast on the committee's [website](#).

For more information about tax issues, you may [email](#) or call Christopher Hatcher at 202-659-8201. Logan Mazer contributed to this section.

FINANCIAL SERVICES

House and Senate Panels Hold Hearings with Federal Bank and Credit Union Regulators

Key Points:

- *Members discussed the Basel III endgame proposal, revisions to the CRA, and other regulatory actions.*
- *Questions arose regarding recent reports about alleged workplace misconduct at the FDIC.*

On November 14, the Senate Banking Committee held a [hearing](#) entitled, “Oversight of Financial Regulators: Protecting Main Street Not Wall Street.” Chairman Sherrod Brown (D-OH) expressed support for the Basel III endgame capital proposal, calling it a “long overdue plank” in the series of overhauls spurred by the global financial crisis. He said the industry has attacked the regulation but stated it would require the largest banks to redirect a small amount of their profit over multiple years. He expressed support for the revisions to the Community Reinvestment Act of 1977 (CRA) and argued that developments in technology have necessitated reforms. He expressed concern that the current regulatory system has allowed for a decreasing number of large banks to grow their influence and expressed support for the RECOUP Act ([S. 2190](#)). Senator Mike Rounds (R-SD) highlighted the number of regulations regulators have pushed in 2023, including the bank capital regulation, long-term debt resolution plan, the CRA, debit card interchange fees rule, and the climate change risk management proposal. He warned that the cost of a rulemaking onslaught will be paid by small business owners and fixed-income wage owners who rely on credit. He noted a [letter](#) issued from Ranking Member Tim Scott (R-SC) and 38 other Republican Senators expressing concerns about the Basel III endgame rule and highlighted comments from constituents concerned about the detrimental impacts it will have.

Several Senators, including Chairman Brown, inquired about the reports of alleged workplace misconduct as reported in the *Wall Street Journal*. FDIC Chairman Martin Gruenberg explained that the FDIC is conducting a comprehensive review with a third party to evaluate the allegations and address them.

On November 15, the House Financial Services Committee held a [hearing](#) entitled, “Oversight of Prudential Regulators.” Chairman Patrick McHenry (R-NC) said regulators have used recent uncertainty in the financial system to enact sweeping regulations that turn private banks and financial institutions into public utilities and argued that this would put unelected bureaucrats in charge of the financial system. He expressed concern about

the Basel III endgame capital proposal and warned about ceding U.S. regulatory authority to global governance bodies. Ranking Member Maxine Waters (D-CA) said regulators are addressing weaknesses in the financial system, such as capital requirements, to prevent future disasters and applauded regulators for finalizing the CRA rule that addresses redlining.

Today, House Financial Services Committee Chairman Patrick McHenry, Subcommittee on Oversight and Investigations Chairman Bill Huizenga (R-MI), and Subcommittee on Financial Institutions and Monetary Policy Chairman Andy Barr (R-KY) sent a [letter](#) to FDIC Chairman Gruenberg to inform him of the Committee's investigation into "not only the alleged widespread and entrenched misconduct and toxic work environment, but whether this environment impacted the safety and soundness of the banking system."

House Holds Markup of Legislation Related to National Security

Key Point:

- *The Committee favorably reported 11 bills, six of which received unanimous support.*

On November 14, the House Financial Services Committee held a [markup](#) of 11 bills, including:

[H.R. 5921](#), the "No U.S. Financing for Iran Act of 2023," which was favorably reported as amended by a vote of 34-12.

[H.R. 5923](#), the "Iran-China Energy Sanctions Act of 2023," which was favorably reported as amended by a vote of 47-0.

[H.R. 6245](#), the "Holding Iranian Leaders Accountable Act," which was favorably reported as amended by a vote of 49-0.

[H.R. 6323](#), the "Iran Counterterrorism Act of 2023," which was favorably reported as amended by a vote of 30-19.

[H.R. 6322](#), the "End Financing to Hamas and State Sponsors of Terrorism Act," which was favorably reported as amended by a vote of 36-13.

[H.R. 5945](#), the "Freezing-HAMAS Act," which was favorably reported as amended by a vote of 37-13.

[H.R. 6000](#), the "Revoke Iranian Funding Act of 2023," which was favorably reported as amended by a vote of 37-13.

[H.R. 6015](#), the "Iran Sanctions Accountability Act of 2023," which was favorably reported as amended by a vote of 50-0.

[H.R. 6367](#), the "Armed Conflict Migration Act of 2023," which was favorably reported as amended via voice vote.

[H.R. 6370](#), the “OFAC Licensure for Investigators Act,” which was favorably reported as amended by a vote of 50-0.

[H.R. 6365](#), the “Stopping Illicit Oil Shipments Act of 2023,” which was favorably reported as amended by a vote of 50-0.

House Panel Holds Hearing on Illicit Activity in Digital Assets

Key Point:

- *Members discussed the extent to which crypto may be involved in terrorist financing and other illicit activities.*

On November 15, the House Financial Services Subcommittee Digital Assets, Financial Technology and Inclusion held a [hearing](#) entitled, “Crypto Crime in Context: Breaking Down the Illicit Activity in Digital Assets.” Chairman French Hill (R-AR) stressed the need to better understand the size, scope, and duration of Hamas’ fundraising through digital assets but emphasized that crypto should not be blamed for terrorist financing. He noted that the Department of Treasury has acknowledged that “most virtual currency activity is licit, not illicit” and argued that this is in part because blockchains provide law enforcement with unique and novel insight into criminal organizations and their funding networks. Ranking Member Stephen Lynch (D-MA) stated that the crypto industry and its advocates have claimed that the amount of funding flowing through crypto channels is overestimated and is small in comparison to the amount of terrorist financing that flows through traditional finance but said he does not buy this argument. He argued that crypto is the preferred currency of organized crime and the use of crypto in illicit activity has escalated, including in ransomware attacks.

SEC Adopts Rule Establishing New Governance Requirements for Clearing Agencies

On November 16, the Securities and Exchange Commission (SEC) adopted [rules](#) establishing governance requirements for all registered clearing agencies regarding board composition, independent directors, nominating committees, and risk management committees. The rules also require new policies and procedures regarding conflicts of interest, management of risks from relationships with service providers for core services, and a board obligation to consider stakeholder viewpoints. SEC Chair Gensler expressed support for the rules and argued that they will “foster more resilient clearinghouses,” saying, “Congress has said that the Commission has an important role relating to clearinghouses. This adoption seeks to enhance standards to achieve several goals: promote board independence, consider the views of relevant stakeholders, and reduce the potential for conflicts of interest with respect to the board and senior management.

Taken together, these final rules benefit investors, issuers, and the markets connecting them.” Commissioner Hester Peirce dissented from the final rule, stating it “micromanages clearing agency governance in a way that is likely to divert board attention from key issues by focusing it instead on an amorphous set of stakeholders.”

[Final Rule](#)

- [Fact Sheet](#)
- [Press Release](#)

Upcoming Hearings and Events

November 29

CFPB Oversight: The House Financial Services Committee may hold a hearing with Consumer Financial Protection Bureau Director Rohit Chopra testifying.

Small Business Capital Formation Advisory Committee: The SEC’s Small Business Capital Formation Advisory Committee will hold a meeting.

December 6

Bank Oversight: The Senate Banking Committee will hold a hearing to conduct oversight of the nation’s largest banks. The CEOs from JP Morgan Chase, Bank of America, Citigroup, Goldman Sachs, Bank of New York Mellon, Morgan Stanley, State Street, and Wells Fargo will testify.

December 13

Insurance: The Federal Advisory Committee on Insurance (FACI) will hold its next quarterly meeting.

For more information about financial services issues you may email [Joel Oswald](#) or [Mahlet Makonnen](#). Nicholas May contributed to this section.

ENERGY & ENVIRONMENT

Biden Administration Releases Climate Report and Makes Funding Announcements

Key Points:

- *On Tuesday, the White House issued the “Fifth National Climate Assessment”.*
- *The Biden Administration also announced funding opportunities and grants related to grid resilience, environmental justice, flood resilience, and drought resilience.*

On November 14, the Biden Administration released the "[Fifth National Climate Assessment](#)", which, as described in a [fact sheet](#), "assesses changes in the climate, its national and regional impacts, and options for reducing present and future risk". In conjunction with the release of the report, the Administration also announced \$6 billion in spending intended "to make communities across the country more resilient to the impacts of climate change, including by strengthening America's aging electric grid infrastructure, reducing flood risk to communities, supporting conservation efforts, and advancing environmental justice." The funding includes:

- **Grid Resilience:** A \$3.9 billion funding opportunity through the Department of Energy's Grid Resilience and Innovation Partnerships Program, intended to support "projects that will modernize the electric grid to reduce impacts from extreme weather and natural disasters, increase capacity and unlock renewable energy resources, mitigate faults that lead to wildfires or other system disturbances, and deploy advanced technologies such as distributed energy resources and battery systems to provide essential grid services."
- **Environmental Justice:** \$2 billion in funding through the Environmental Protection Agency's (EPA) Environmental and Climate Justice Community Change Grants program intended to finance "projects that deploy clean energy, strengthen climate resilience, and build community capacity to respond to environmental and climate justice challenges."
- **Flood Resilience:** \$300 million in funding through the Federal Emergency Management Agency's (FEMA) Swift Current Initiative to assist "communities that have been impacted by catastrophic flooding during the 2022-2023 flood season" to prepare for future flooding. As described in a FEMA [press release](#), the Swift Current program: "aims to speed up the award of Flood Mitigation Assistance funding to reduce the damage-repair cycle of repetitively flooded or substantially damaged properties"; and "provides resiliency dollars for properties insured through the [National Flood Insurance Program] as quickly and equitably as possible after a flood disaster event."
- **Drought Resilience:** \$100 million in funding from the Department of the Interior to address drought resilience in western states, and "an additional \$50 million funding opportunity for water conservation projects and hydropower upgrades."
- **Landscape-Scale Conservation Projects:** \$140 million for 74 new grants through the National Fish and Wildlife Foundation (NFWF) and its partners' "America the Beautiful Challenge" for "landscape -scale conservation projects". The NFWF provided a list of the [grant award winners](#).

Court Directs BOEM to Proceed with Offshore Lease Sale

Key Point:

- *On Tuesday, the Fifth Circuit Court of Appeals issued an order that requires the Bureau of Ocean Energy Management to proceed with the delayed Gulf of Mexico oil and gas Lease Sale 261.*

On November 14, the U.S. Court of Appeals for the Fifth Circuit issued an [order](#) upholding and amending a district court injunction requiring the Bureau of Ocean Energy Management (BOEM) to proceed with Lease Sale 261 in the Gulf of Mexico. The Court of Appeals heard [oral arguments](#) in the case, *State of Louisiana v. Haaland*, a day earlier.

The Court dismissed the appeal by environmental organizations to intervene and seek an amendment to the injunction to impose restrictions on oil and gas activity to protect the Rice's whale. The Court found that the "Intervenors have failed to show that their alleged injury is 'certainly impending' or likely to be redressed by a favorable decision here, Intervenors lack standing to independently prosecute this appeal."

Last week, BOEM published the "[Notice regarding Lease Sale 261](#)", providing details on the delay in the sale, which was scheduled for November 8. The Notice stated: "To comply with an injunction sought and obtained by the State of Louisiana and other plaintiffs from the district court, as well as a subsequent order from the Fifth Circuit, BOEM had previously provided notice of its intent to hold Lease Sale 261 on November 8, 2023. On October 26, 2023, however, the Fifth Circuit stayed the relevant injunction and order pending the merits panel's decision on appeal. To avoid preempting the Fifth Circuit's decision, and avoid duplication of effort, BOEM is now deferring Lease Sale 261 pending disposition of the appeal that is before the Fifth Circuit." As described in a [Record of Decision](#) published on August 25, 2023, Lease Sale 261 is planned as a Gulf of Mexico "regionwide lease sale encompassing all three planning areas, *i.e.*, the Western Planning Area, Central Planning Area, and a small portion of the Eastern Planning Area

Senate Panel Examines Industrial Decarbonization

Key Points:

- *On Wednesday, the Senate Environment and Public Works Committee heard testimony on efforts to reduce carbon emissions from the industrial sector.*
- *Discussion in the hearing covered topics including hydrogen and carbon, capture, utilization, and storage (CCUS).*

On November 15, the Senate Committee on Environment and Public Works held a [hearing](#) entitled, “Opportunities in Industrial Decarbonization: Delivering Benefits for the Economy and the Climate.”

In his [opening statement](#), Chairman Tom Carper (D-DE) said decarbonization of the industrial sector is the “next frontier” for addressing climate change. He mentioned the Biden Administration’s [Fifth National Climate Assessment](#) released on November 14, which found that \$1 billion-disasters occur every three weeks on average, up from every four months on average in the 1980s. He said the assessment affirmed that limiting global warming to a 1.5° Celsius increase would necessitate the U.S. becoming net zero for greenhouse gas (GHG) emissions by 2050. Carper remarked that decarbonizing the industrial sector requires developing and deploying a multitude of technologies. He called for policies that support investment in innovation that boost global market share for U.S. manufacturing. He said that actions should expand beyond mitigating emissions and should extend to ensuring cleaner production overall. Carper discussed how the “Infrastructure Investment and Jobs Act” (IIJA) ([P.L. 117-58](#)) and the “Inflation Reduction” Act (IRA) ([P.L. 117-169](#)) included provisions that support clean energy solutions and noted that \$6.3 billion was allocated to programs to reduce industrial emissions. He said the IIJA also provided \$8 billion to establish regional clean hydrogen hubs, and that a reliable supply of hydrogen will create tens of thousands of jobs.

Ranking Member Shelley Moore Capito (R-WV), in her [opening statement](#), said multiple provisions addressing carbon reduction were included in the IIJA. She stated that the Appalachian Regional Clean Hydrogen Hub (ARCH2) is one of seven projects selected under the Hydrogen Hubs program. She said it plans to produce “blue hydrogen” using natural gas and carbon capture technologies to reduce emissions. She stated that carbon capture remains capital-intensive and is yet to be effectively deployed at scale. She said that the Section 45Q tax credit is essential in promoting CCUS and direct air capture (DAC). She noted the “USE-IT Act of 2020” ([P.L. 116-260](#)) required the timely permitting of all CCUS projects. Capito asserted that the Biden Administration is “not dutifully looking to expedite the permitting of these types of projects.” She explained that she supported including \$50 million in the IIJA for states to “obtain primacy” over the permitting of Class VI injection wells to store carbon dioxide underground, “as well as \$25 million for the EPA to process those permits at the federal level.” Capito added that “the EPA needs the help because it has historically only approved two of these permits, and it took an average of six years each to do this.” Capito also stated that the “ADVANCE Act of 2023” ([S. 1111](#)) would support advanced nuclear facilities.

Witnesses testifying at the hearing were:

- Dr. Abigail Regitsky, Senior Manager, U.S. Policy and Advocacy, Breakthrough Energy;
- Dr. Leah Ellis, CEO and Co-founder, Sublime Systems, Inc.; and
- Shannon Angielski, President, Clean Hydrogen Future Coalition.

Upcoming Hearings and Events

November 27-December 1

Distribution Gas Pipeline Leak Detection and Class Location Rulemakings: The Pipeline and Hazardous Materials Safety Administration's (PHMSA) Gas Pipeline Advisory Committee (GPAC) will hold a [meeting](#) to discuss the [Notice of Proposed Rulemaking \(NPRM\)](#) titled "Pipeline Safety: Gas Pipeline Leak Detection and Repair". Section 113 of the "Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020" directed PHMSA to promulgate regulations that update leak detection and repair requirements for natural gas pipelines to incorporate advanced leak detection technologies and procedures. The GPAC also plans to discuss the [NPRM](#) titled "Pipeline Safety: Class Location Change Requirements". PHMSA posted the "Pipeline Safety: Class Location Change Requirements" [presentation](#) that will be used during the meeting to guide discussion regarding the NPRM, public comments received on it, and PHMSA's proposals for developing the final rule. The GPAC will vote on recommendations that will guide the agency in drafting the final rule.

November 30-December 12

COP 28: The United Arab Emirates will host the annual [United Nations Climate Change Conference](#).

December 1

Carbon Management: The Department of Energy's (DOE) Office of Fossil Energy and Carbon Management will hold the third annual "[Carbon Management Day Webinar](#)". The event "will provide the latest news and announcements on the U.S. Department of Energy's...carbon management initiatives, feature a fireside chat with DOE carbon management leaders, and inform stakeholders on how they can get involved."

December 19

FERC Meeting: The Federal Energy Regulatory Commission (FERC) will hold its monthly [open meeting](#).

For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Noah Hawkins contributed to this report. Updates on energy and environment issues are also available on [twitter](#).

HEALTH

House Energy and Commerce Subcommittee Holds Markup of PBM Bills

Key Points:

- On November 15, the House Energy and Commerce Subcommittee on Health held a markup of 21 bills addressing the role of pharmacy benefit managers (PBMs) and Medicare Advantage (MA).
- The group of bills to address PBMs includes provisions to increase transparency in the industry, de-link PBM compensation from the list price of a drug, and ensure patients are not paying more for a drug than their insurance plan.

On November 15, the House Energy and Commerce Subcommittee on Health held a markup of 21 bills addressing the role of PBMs and MA. The Subcommittee advanced the following bills to the full Committee:

- [H.R. 5372](#), Expanding Seniors' Access to Lower Cost Medicines Act of 2023, by a voice vote.
- [H.R. 2880](#), Protecting Patients Against PBM Abuses Act, by a voice vote.
- [H.R. 5385](#), Medicare PBM Accountability Act, by a voice vote.
- [H.R. 5386](#), Cutting Copays Act, by a voice vote.
- [H.R. 4881](#), To amend title XVIII of the Social Security Act to limit cost sharing for drugs under the Medicare program, by a voice vote.
- [H.R. 133](#), Mandating Exclusive Review of Individual Treatments (MERIT) Act, by a voice vote.
- [H.R. 5380](#), To amend title XVIII of the Social Security Act to increase data transparency for supplemental benefits under Medicare Advantage, by a voice vote.
- [H.R. 6366](#), To amend title XVIII of the Social Security Act with respect to the work geographic index for physician payments under the Medicare program, and to revise the phase-in of clinical laboratory test payment changes under such program, by a voice vote.
- [H.R. 6369](#), To amend title XVIII of the Social Security Act to extend incentive payments for participation in eligible alternative payment models, by a voice vote.
- [H.R. 6371](#), Provider Reimbursement Stability Act of 2023, by a voice vote.
- [H.R. 6364](#), Medicare Telehealth Privacy Act of 2023, by a voice vote.
- [H.R. 1352](#), Increasing Access to Biosimilars Act of 2023, by a voice vote.
- [H.R. 1691](#), Ensuring Patient Access to Critical Breakthrough Products Act of 2023, by a vote of 21-6.

The group of bills to address PBMs includes provisions to increase transparency in the industry, de-link PBM compensation from the list price of a drug, and ensure patients are not paying more for a drug than their insurance plan. Many of the provisions to tackle the role of PBMs mirror provisions passed by the Senate Finance Committee in the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act last week.

The Medicare PBM Accountability Act ([H.R. 5385](#)) would empower plan sponsors to ensure savings are passed to patients, and the Protecting Patients Against PBM Abuses Act ([H.R. 2880](#)) would ban PBMs from steering patients to PBM-affiliated pharmacies. The bill also prevents PBMs from charging patients more than they reimburse pharmacies for a drug. Members of the Subcommittee expressed interest in addressing PBMs' blocking competition from generics.

The Subcommittee also considered legislation to expand access to biosimilars in the Medicare program, reform the physician fee schedule to ensure predictability and stability for providers, and reform the Medicare process for covering innovative technologies. Legislation to increase transparency about supplemental benefits in the Medicare Advantage program was also advanced.

The full list of bills considered during the markup can be found [here](#).

CMS Final Rule on Disclosures of Ownership for Skilled Nursing Facilities

Key Points:

- *On November 15, the Centers for Medicare and Medicaid Services (CMS) posted a final rule requiring the disclosure of ownership, managerial, and other information for skilled nursing facilities (SNFs).*
- *The final rule also defines private equity companies and real estate investment trusts.*

On November 15, the final rule from CMS requiring the disclosure of ownership, managerial, and other information for SNFs was released. This rule implements portions of section 6101 of the Affordable Care Act. It defines the terms private equity company and real estate investment trust as required by the Medicare enrollment application, Form CMS-855A. Section 1124(c) was added to the Social Security Act to require Medicare SNFs and Medicaid Nursing Facilities to disclose ownership, trustees, and additional disclosable parties. This rule follows a series of initiatives from the Biden Administration to improve care and accountability at these facilities.

In the [press release](#), CMS cites research that associates nursing facilities owned by private equity companies and investment firms with worse resident outcomes. According to a recent study, residents in nursing facilities owned by private equity were 11.1 percent more likely to have a preventable emergency department visit and 8.7 percent more likely to experience a preventable hospitalization. CMS cited another working paper that found private equity ownership was associated with increased excess mortality for residents by 10 percent, increased prescription of antipsychotic drugs by 50 percent, decreased hours of frontline nursing staffing by three percent, and increased taxpayer spending per resident by 11 percent.

The final rule is available [here](#).

Senate Finance Subcommittee Hearing on Telehealth

Key Points:

- *On November 14, the Senate Finance Committee's Subcommittee on Health Care on telehealth permanency.*
- *Topics discussed in the hearing included the impact of telehealth flexibilities, the impact of telehealth on the workforce, payment parity, mental and behavioral telehealth services, and regulating telehealth.*

On November 14, the Senate Finance Committee's Subcommittee on Health Care held a [hearing](#) entitled "Ensuring Medicare Beneficiary Access: A Path to Telehealth Permanency." Topics discussed in the hearing included the impact of telehealth flexibilities, the impact of telehealth on the workforce, payment parity, mental and behavioral telehealth services, and regulating telehealth.

Subcommittee Chairman Ben Cardin (D-MD) recognized the need for telehealth services, especially in rural areas. He noted telehealth services lower health care costs and expand access to care. Subcommittee Ranking Member Steve Daines (R-MT) also recognized the benefits of telehealth services and stressed the importance of ensuring telehealth visits are paid at rates similar to in-person visits.

Members of the Committee agreed on the need to ensure telehealth permanency. They also highlighted that remote monitoring programs and other telehealth flexibilities have reduced costs and expanded access to care, especially for those with difficulties traveling. The Committee recognized the need to protect patient and provider privacy.

For more information about health care issues you may [email](#) or call Nicole Ruzinski Bertsch at 202-659-8201. Chris Affambi and Windsor Warlick contributed to this section.

CYBERSECURITY, PRIVACY, AND ARTIFICIAL INTELLIGENCE

Cybersecurity and Infrastructure Security Agency (CISA) Releases Roadmap for Artificial Intelligence (AI)

Key Point:

- *CISA released its Roadmap for Artificial Intelligence following mandates in President Biden's Executive Order on AI Published in October.*

On November 14, CISA released its [Roadmap for Artificial Intelligence](#), an initiative directed by President Biden's [Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#) published on October 30. CISA's roadmap is part of a larger effort by the Department of Homeland Security (DHS) to ensure the safe and effective development and implementation of AI across government and civilian sectors. CISA Director Jen Easterly commented on the roadmap: "Our Roadmap for AI, focused at the nexus of AI, cyber defense, and critical infrastructure, sets forth an agency-wide plan to promote the beneficial uses of AI to enhance cybersecurity capabilities; ensure AI systems are protected from cyber-based threats; and deter the malicious use of AI capabilities to threaten the critical infrastructure Americans rely on every day."

CISA's plan documents five lines of effort that will be central to DHS's mission of promoting the responsible development and implementation of AI technologies which include: responsibly using AI to support CISA's mission, assessing and assuring AI systems, protecting critical infrastructure from malicious uses of AI, collaborating and communicating on key efforts with the interagency, international partners, and the public, and expanding AI expertise in the workforce. Central to each of these goals is promoting secure by design guidelines. The line of effort for assessing and assuring AI systems specifically calls for CISA to assist in the development of secure by design AI based software adoption. This complements CISA's October release of updates to its April 2023 secure by design practices guidance titled "[Shifting the Balance of Cybersecurity Risk: Principles and Approaches for secure by Design Software](#)." The agency [announced](#) plans to release a request for information (RFI) on the updated secure by design practices in the coming weeks, including soliciting comments on companies' efforts to implement secure by design principles.

The Court of Justice of the European Union Decides Individuals Have Right to Access Personal Data

Key Point:

- Court of Justice for the European Union ruled in favor of an individual's right to access a free initial copy of their personal data.

The European Court of Justice released its ruling of FT v. DW, a case where DW, a patient, requested a free copy of their medical records from their dentist, FT. DW's request was initially denied because of a German law requiring patients to cover the costs of producing that information. Germany's Federal Court of Justice decided that the case depended on the definition of the General Data Protection Regulation (GDPR). GDPR was found to mandate controllers of private information to provide a free first copy regardless of the reason for request ([IAPP](#)).

This ruling could have significant implications in the U.S. as data privacy laws and cybersecurity laws become increasingly stringent. In 2023, California, Colorado, Connecticut, Utah, and Virginia have begun implementing GDPR-like statutes. For example, On October 10, The California State Legislature passed the Delete Act ([SB-362](#)), which would allow the California Privacy Protection Agency (CPPA) to develop a system that allows California residents to make a single data deletion request encompassing over 500 registered data brokers in the state. Before the law was passed, individuals could request their data that was collected directly by individual brokers be deleted, but the law made no provision for the deletion request regarding data aggregations. The new California law clarifies the right to request for the deletion of data aggregations. Similar statutes have been considered or are being considered in other states. For more information on the Delete Act, please read the Cybersecurity, Privacy, and Artificial Intelligence section of the [Williams & Jensen Washington Update](#) published on September 26.

Upcoming Hearings and Meetings

December 19

NIST: The National Institute of Standards and Technology (NIST) will hold a listening session to discuss critical and emerging technology and seek stakeholder input on questions posed in the Request for Information (RFI) on Implementation of the United States Government National Standards Strategy for Critical and Emerging Technology

For more information on cybersecurity programs, including recent regulatory actions and guidance, please refer to the recently published Cybersecurity Update in the Reports section of

the Williams & Jensen Webpage or email [Mahlet Makonnen](#) or [Frank Vlossak](#). Joe Maalouf contributed to this section.

TRADE

IPEF Negotiations Coalesce Before Looming APEC Summit

Key Points:

- *IPEF negotiations have crystallized for the Pillars II, III, and IV objectives.*
- *In addition, the 14 member countries have agreed to establish an oversight council to guide the operation of the framework's pillars.*
- *Talks on the Trade Pillar have faced setbacks amid opposition from Senate Banking Chairman Brown (D-OH).*

On November 16, 2023, members of the Indo-Pacific Economic Framework for Prosperity (IPEF) announced that they had reached agreements for the Clean and Fair Economy pillars. According to a joint press release, the member nations reached a “substantial conclusion of the negotiations of the IPEF Clean Economy Agreement, the IPEF Fair Economy Agreement, and the Agreement on the Indo-Pacific Economic Framework for Prosperity.” The release further states that “partners will now undertake the necessary steps, including further domestic consultations and a legal review, to prepare final texts of the three proposed agreements.” Critically, the talks include an agreement to create a “formalized and durable structure for ongoing participation at the ministerial level” between member countries. The talks followed a seventh IPEF negotiating round and preceded a meeting of the Asia-Pacific Economic Cooperation (APEC) leaders.

Talks relating to the Trade Pillar of IPEF failed to coalesce during the seventh negotiation round and the IPEF ministerial. On November 9, 2023, Senate Banking Chairman Brown (D-OH) issued a [statement](#) demanding that the Trade Pillar be removed from the framework. According to a press release, Senator Brown stated that “any trade deal that does not include enforceable standards is unacceptable.”

In addition, the Supply Chains Agreement (Pillar II) was signed on November 14, 2023. The second pillar of IPEF was initially reached in May 2023 but has since undergone legal scrubbing. In their joint press release, IPEF partners stated that they “have begun cooperating on supply chain issues, including by sharing best practices on supply chain monitoring and participating in tabletop exercises related to cybersecurity and crisis response.”

Inclusivity and Sustainability Principles for APEC Trade Talks Stall

Key Points:

- *Talks on Inclusive and Sustainable Trade Principles have stalled in APEC*
- *USTR Tai noted that one nation has failed to support the principles, with the common interpretation being that the nation is China*
- *Without unanimous agreement, it is uncertain whether the principles will come into effect.*
- *In addition, the APEC Business Advisory Council has released an annual report that advocates for the liberalization of trade policies in the region.*

USTR Tai has announced that all but one member nation of APEC has agreed to sustainability and inclusivity principles for trade. The APEC leaders' summit started on November 14, 2023. USTR Tai noted on November 15, 2023, that the summit included discussions of key principles on trade to be "a force for good, to bring more people in, to better share the growing economic pie, [and] to foster greater fairness and opportunity." Notably, USTR Tai announced that the discussions held at the summit were supported by all but one country. Nonetheless, the trade representative maintained "great momentum" and urged the member nations to "continue to focus on the different and innovative ways we can implement sustainable trade and investment reforms." In a separate comment later at the summit, USTR Tai stated that the lack of support from one nation presents uncertainty as to the fulfillment of the "San Francisco Principles on Integrating Inclusivity and Sustainability into Trade and Investment Policy."

Following the comments from USTR Tai, the APEC Business Advisory Council (ABAC) briefed summit leaders on its recommendations developed within its annual report. In its [2023 Annual Report](#), ABAC calls on APEC to "accelerate its work to enhance the region's physical connectivity, including through investment in infrastructure " and the "liberalization of logistics services." It also includes comments urging APEC to promote a "sustainable energy transition" through investments in "projects that support environment sustainability and by enhancing the transparency of economy specific sustainability goals."

President Biden and President Xi Discuss Indo-Pacific, Trade Priorities

Key Points:

- *President Biden met with President Xi to discuss bilateral relations and policy goals for the U.S. and China.*
- *The talks included commitments to promote freedom and prosperity in the Indo-Pacific*
- *In addition, President Biden criticized China's trade practices and non-tariff barriers to their market.*

On November 15, 2023, President Biden met with Chinese President Xi to discuss “a range of bilateral and global issues including areas of potential cooperation and ... areas of difference,” according to a [press release](#). The talks included discussions about economic competition between the U.S. and China, fentanyl in the U.S., military-to-military communications, the Russo-Ukraine War, and AI governance models. Notably, President Biden “underscored the United States’ support for a free and open Indo-Pacific that is connected, prosperous, secure and resilient” and affirmed the country’s “commitment to defending our Indo-Pacific allies.”

President Biden further raised concerns about the “PRC’s unfair trade policies, non-market economic practices, and punitive actions against U.S. firms, which harm American workers and families.” President Biden likewise stated that the U.S. will continue to “prevent advanced U.S. technologies from being used to undermine our own national security, without unduly limiting trade and investment.”

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