

Federal Appropriations Analysis and Update

To: State Aging and Disability Directors

From: Annie Kimbrel, Conor Callahan, Rosa Plasencia, and Adam Mosey

Re: FY2023 Omnibus Appropriations Package

Date: December 21, 2022

Background

On Tuesday, December 20, 2022, Congress unveiled a highly anticipated \$1.7 trillion omnibus appropriations package to fund the Federal government for federal fiscal year 2023 (FY2023), which began on October 1, 2022, and ends September 30, 2023. Federal funding had previously been extended by a series of continuing resolutions, or CRs, which level-funds the government at current amounts. The most recent CR was set to expire Friday December 23, 2022.

The full text of the 4155-page bill can be found at:

<https://www.appropriations.senate.gov/imo/media/doc/JRQ121922.PDF>

The bill is a result of intensive congressional negotiations that included disagreements both within and between the two houses of Congress and intra- and inter-party as well. Both parties had previously threatened the possibility of a year-long CR, an outcome which ultimately would benefit few. The Senate is expected to pass the bill by December 22, and the House will consider it next and is expected to pass it by the Friday deadline.

The package includes targeted increases to a number of aging and disability programs. In addition to key funding allocations which are detailed in our companion budget chart document, with substantive highlights included in this document, Congress also made significant policy changes in the omnibus package. In particular, we would highlight that the bill:

Takeaways and Analysis

- Creates a graduated wind down of the 6.2 percent federal medical assistance percentage (FMAP) increase established by FFCRA ¹

¹ Families First Coronavirus Response Act. See more at:

<http://www.advancingstates.org/sites/nasquad/files/u24453/COVID%20legislative%20updates%20march%2020.pdf>

- Ends the Medicaid continuous coverage requirement, also established by FFCRA, beginning April 1, 2023
- Extends the Money Follows the Person (MFP) program at \$450 million a year through September 30, 2027
- Extends HCBS Spousal Impoverishment protections through September 30, 2027
- Provides \$2 million to the Administration for Community Living (ACL) for a direct care workforce demonstration
- Funds – for the first time – the Research, Demonstration, and Evaluation Center for the Aging Network at \$5 million
- Provides \$15 million for the Adult Protective Services (APS) formula grant program
- Did not include new COVID-19 supplemental appropriations as requested by the Biden Administration

Medicare, Medicaid & Other Health Provisions

Medicare

- (S 4113) Expands telehealth flexibilities for Medicare beyond COVID19, through December 31, 2024. Requires a study and report on telehealth and Medicare program integrity.
- (S 4121) Establishes Medicare coverage for marriage and family therapy and mental health counseling under Medicare Part B, as of January 1, 2024.
- (S 4139) Extends the temporary blended payment rates provided under the CARES Act for DMEPOS in some non-competitive bid areas until December 31, 2023.
- (S 4140) Extends the Medicare hospital at home program through December 31, 2024.

Medicaid

- (S 5101) Medicaid adjustments for the territories:
 - Puerto Rico’s FMAP of 76% has been extended through FY 2027
 - Puerto Rico must implement an asset verification program by January 1, 2026
 - American Samoa, Guam, the Northern Mariana Islands, and US Virgin Islands have their FMAP set at 83% permanently
 - Territories shall receive increased funding for provider payment rates as well as data system improvements
- (S 5114) Money Follows the Person (MFP) – the MFP program is extended at \$450 million/year through September 30, 2027. MFP was currently set to expire on December 31, 2023.
- (S 5115) Spousal impoverishment – the bill extends HCBS spousal impoverishment provisions through September 30, 2027, which were set to expire December 31, 2023.

- (S 5123) As of July 1, 2025, both MLTSS and FFS programs must publish searchable and regularly updated network provider directories (inclusive of behavioral health providers and LTSS providers) that provides the following new information about each:
 - the provider’s cultural and linguistic capabilities, including languages (including American Sign Language) offered by the provider or by a skilled medical interpreter who provides interpretation services at the provider’s office;
 - whether the provider’s office or facility has accommodations for individuals with physical disabilities, including offices, exam rooms, and equipment; and
 - whether the provider offers covered services via telehealth
- (S 5124) By July 1, 2025, guidance must be issued to support access to a continuum of crisis response services under Medicaid, including: crisis call centers; 988 crisis service hotlines, mobile crisis teams, crisis response delivered in multiple settings, and coordination with follow-on mental health and SUD services. Further, a technical assistance center is to be established.
- (S 5131) Permits states to begin eligibility renewals, post-enrollment verifications, and redeterminations starting April 1, 2023 while receiving a phased-down FMAP increase (originally enacted through FFCRA) through December 31, 2023.
 - The increased FMAP received by states of 6.2% will wind down incrementally during the “transition period” of April 1, 2023 through December 31, 2023. Subject to the requirements below, the FMAP increase will:
 - Remain at current 6.2 percentage increase through March 31, 2023
 - Drop to 5 percentage points between April 1, 2023, and June 30, 2023
 - Drop again to 2.5 percentage points between July 1, 2023, and September 30, 2023
 - Drop again to 1.5 percentage points between October 1, 2023, and December 31, 2023
 - States may receive the increased FMAP during the transition period if several conditions are met, including:
 - Compliance with federal requirements around redeterminations;
 - Maintaining-to-date contact information (such as mailing address, phone numbers, and email address) for each person under redetermination;
 - Making a good faith effort to contact a beneficiary prior to disenrollment using more than one method of contact; and
 - Completing monthly public reporting between April 1, 2023, and June 30, 2024, that outlines the activities of the state related to eligibility redeterminations, comprising a number of specific factors, including but not limited to:
 - the number of eligibility renewals, number of individuals with terminated coverage; and

- Unless reported by CMS on behalf of the state, detailed information about individuals who transition from Medicaid to the PPACA² health exchanges and those who received premium tax credits; and
- Call center volume, average wait times, and abandonment rates.
- If the state does not comply with these conditions, the increased FMAP may be reduced by no more than 1 percentage point and a corrective action plan (CAP) may be required.

Other Health Provisions

- ABLE Accounts age adjustment – the bill changes eligibility for ABLE accounts to include individuals whose disability began before age 46, up from 26, beginning December 31, 2025.
- Care for aging veterans – directs the Secretary of the VA to develop a strategy for LTC for aging veterans.
- VA health care – Directs the VA to develop a report to Congress on the availability of and access to HCBS for rural veterans. Additionally, Congress encourages expansion of the Veteran-Directed Care (VDC) Program.

Older Americans Act and Related Provisions

- Research, Demonstration, and Evaluation Center for the Aging Network – provides \$5 million for the Center, which was established by the 2020 reauthorization of the Older Americans Act (OAA) but has not yet received appropriations.
- Adult Protective Services (APS) – the legislation provides \$15 million for APS formula grants, which marks the first time there is an appropriated funding level from Congress. However, the bill did not reauthorize the Elder Justice Act (EJA), nor did it include the higher APS funding level sought by the Administration and by the House in their earlier FY2023 appropriations bill.
- \$540 million for congregate nutrition, an increase of \$25 million
- A plus up of \$75 million for home-delivered meals, to \$366 million
- \$410 million for HCBS supportive services, a \$12 million increase
- \$400,000 to continue to fund the work of the RAISE Family Caregiving Advisory Council
- \$35 million for the Senior Medicare Patrol Program, up from \$20 million
- Provides an additional \$2 million to support the LTC ombudsman program
- Provides \$2 million to ACL for a direct care workforce demonstration. Additionally, the budget agreement:

² <http://housedocs.house.gov/energycommerce/ppacacon.pdf>

- Supports HRSA’s efforts to develop the workforce needed to care for a rapidly aging population.
- Urges the Employment and Training Administration (ETA), in collaboration with the DHHS, to support the expansion of the skilled care workforce to care for a rapidly aging U.S. population and provide home and community-based services to older adults and people with disabilities, including through education and training grant programs, as well as traditional and nontraditional apprenticeship programs.

Conclusion

The FY2023 omnibus package provides modest funding increases for aging & disability programs, includes a clear glidepath for Medicaid eligibility redeterminations, long-term extensions of MFP and HCBS spousal impoverishment programs, first-time funding for the aging network research center, and a substantial increase for OAA HDMs. However, the legislation also did not include other key priorities. The legislation did not reauthorize the EJA, provided only \$15 million for APS, and overall did not provide large increases in funding for OAA programs that many across the Aging Network, including ADvancing States, have pushed for as necessary.

As always, we will keep members updated on key takeaways from the legislation that impact aging, disability, and LTSS programs. Please feel free to reach out to anyone on the ADvancing States team with questions.