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McDermottPlus Check-Up

McDermott+Consulting is pleased to introduce the McDermottPlus Check-Up, your regular update on health care policy from Washington, DC.

This Week's Diagnosis: The Senate continues to chug along with hearings, opioids and judicial nominees. All is quiet in DC on the House side – members are in their home districts campaigning for re-election.

CONGRESS

+ **OPIOIDS.** Finally? The Senate passed the comprehensive opioid package (HR 6) on Wednesday by a vote of 98-1and it is now headed to the President's desk for his signature. While the bill is widely lauded as a bipartisan success, stakeholders are already cautioning that the epidemic will require continued attention and focus from Congress.
    - For its part, the Medicare Payment Advisory Commission (MedPAC) got a jump start on a requirement included in HR 6 to examine whether current payment mechanisms incentivize higher opioid prescriptions and faster discharges from hospitals. This was discussed at the Commission's meeting on Thursday, and is one of a few issues lawmakers have directed MedPAC to study in the recently passed opioid package.

+ **SENATE SUBCOMMITTEE EXAMINES THE TREATMENT FOR RARE DISEASES.** The Senate Health, Education, Labor and Pension Subcommittee on Children and Families held a hearing entitled, "Rare Diseases: Expediting Treatment for Patients". The hearing had five witnesses; notably three were from Europe. They discussed the continuing challenges in discovering treatment and cures for rare diseases, as well as new tools for lawmakers to consider providing to the US Food and Drug Administration to address the unique research needs of rare disease patient populations. Look for continued Congressional examination of this issue, and in particular the impact on the pediatric population.

+ **SENATE AGING COMMITTEE HEARING ON HEALTH CARE COSTS.** The Senate Special Committee on Aging joined the growing number of lawmakers examining ways to reduce health care costs with a hearing entitled, "Patient-Focused Care: A Prescription to Reduce Health Care Costs". Of note, the former Deputy Centers for Medicare & Medicaid Services (CMS) Administrator Sean Cavanaugh testified, as well as Jeff Micklos, Executive Director of the Health Care Transformation Task Force. Discussion focused on the role of value-based models (including accountable care organizations) in reducing health care costs. Reigning in health care costs is a bipartisan area of interest for Congress and we expect that to continue after the midterms.

- **THE FUTURE OF SHORT-TERM HEALTH PLANS.** Open enrollment for the Health Insurance Marketplace begins November 1. This will be the first open enrollment offering short-term health plans. The Administration recently issued a final rule expanding short-term, limited-duration insurance by allowing insurers to sell policies that are shorter than 12 months and may be renewed for up to three years (in contrast to Obama-era rules limiting these plans to three months). A group of stakeholders has sued the federal government, arguing that the rule violates the Administrative Procedure Act in a number of ways, including exceeding the department's authority. The judge is set to hear arguments on October 26, just days before open enrollment begins. Democratic lawmakers also expressed opposition to short-term plans, with all Senate Democrats signing on to Senator Tammy Baldwin's (D-WI) joint resolution disapproving of the Administration's final rule. Critics argue that short-term offerings will undercut the individual market as healthier consumers enroll in less expensive short-term plans that do not have to comply with the Affordable Care Act's market reform provisions. The Administration has touted short-term plans as a valuable alternative offering for consumers. Expect this debate over short-term offerings to play out at both the state and federal level.

- **LAME DUCK TAKING SHAPE.** With the House gone until after the midterm elections, planning is beginning for what Congress will focus on during a likely lame duck legislative session. Even with the uncertainty of how November 6 will go, we know for sure that lawmakers already have a few items on their list, including federal funding. There are several agencies that remain under a short-term continuing resolution (CR) through December 7, 2018. This means Congress will have to either pass another CR or come to a bipartisan agreement on a funding package covering the balance of the fiscal year. The potential for a partial shutdown remains, with controversial issues around immigration and border wall funding in the mix.

Administration

- **CMS ANNOUNCES EMEDICARE INITIATIVE.** The new, multi-year initiative is intended to modernize how beneficiaries receive Medicare information and to create new ways to assist health care decision-making. The agency will release additional tools meant to help consumers calculate out-of-pocket costs and compare coverage options. This announcement comes ahead of the Medicare open enrollment period that begins October 15, 2018. Some observers criticized the move as an attempt by the agency to steer beneficiaries into Medicare Advantage plans. CMS Administrator Seema Verma countered that the information was not intended to steer beneficiaries, but rather to give them the tools they need to make the best decision. We expect these types of changes to continue as the Administration pushes forward with a broad transparency effort.

- **GAO ISSUES REPORT ON RURAL HOSPITAL CLOSURES.** The US Government Accountability Office on September 28 released a report entitled, "Rural Hospital Closures: Number and Characteristics of Affected Hospitals and Contributing Factors". The report focused on the data collection and tracking mechanisms employed by CMS for rural hospitals, as well as specific causes for the increasing number of rural hospital closures across the country. The report shed new light on the types of Medicare hospitals most impacted by closures, and specifically highlighted Medicare Dependent

Hospitals (MDHs), but also reaffirmed recent reports and data showing why rural hospitals are facing extreme financial strain. Some highlights:

- 64 rural hospitals closed from 2013 through 2017. This represents approximately three percent of all the rural hospitals in 2013 and more than twice the number of closures in the previous five-year period.
- The 42 rural hospitals closed from 2014 through 2016 exceeded the three rural hospitals opened during that time period.
- Rural hospital closures disproportionately occurred in the South, among for-profit hospitals and among hospitals that received MDH payment designation.
  - MDHs represented nine percent of the rural hospitals in 2013, but accounted for 25 percent of the rural hospital closures from 2013 through 2017.
- Increased competition for the small volume rural residents, declining rural populations and reductions in nearly all Medicare reimbursements were identified as contributing factors for financial stress.

+ **TRADE AGREEMENT IMPACTS BIOLOGICS.** The proposed trade agreement reportedly reached by the administration, Mexico and Canada includes 10 years of exclusivity for US biologics in Canada. The exclusivity measures were one of the most controversial and highly-debated parts of the Trans-Pacific Partnership negotiations. The current trade agreement protects drug patents for 12 years, but does not include data-exclusivity protections for biologics. There are mixed reactions emerging from Washington, with some hailing the proposed agreement as a way to reward American innovation and others concerned with how this may impact the rising cost of drug prices in the US.

Next Week's Dose

+ The Senate will continue to focus on judicial nominees, including a vote set for Saturday on nominating Brett Kavanaugh. Although the House is not in session, we can expect more discussion on priorities for lame duck and planning for various election outcomes.

For more information, contact Mara McDermott or Rachel Stauffer.

To subscribe to the McDermottPlus Check-Up, please contact Jennifer Randles.