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Sound Health Policy Objectives Achieved

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: While members of Congress are touting the passage of the opioid package on the campaign trail, the Administration continued releasing a series of significant health policy regulations.

CONGRESS

+ **DIABETES CAUCUS ISSUES REPORT ON INSULIN.** Congressional Diabetes Caucus Co-Chairs Diana DeGette (D-CO) and Tom Reed (R-NY) issued a report laying out findings and recommendations from a year-long inquiry into the rising costs of insulin. The report sheds some light on the supply chain and makes several policy recommendations, including increasing price transparency, incentivizing the use of value-based contracts, patent reform and streamlining drug approval for biosimilar insulin products. Notably, this report is bipartisan and offers some concrete policy solutions that could piggyback on larger policies already being considered in Congress (e.g. price transparency, value-based contracts).

Administration

+ **CMS FINALIZES RULE ON PHYSICIAN FEE SCHEDULE AND QUALITY PAYMENT PROGRAM.** CMS released a final rule including changes to the Physician Fee Schedule (PFS), implementing the third year of the Quality Payment Program and updating some policies governing the Medicare Shared Savings Program. Notably, CMS largely backed off a controversial proposal to overhaul payments for "evaluation and management" visits. While the agency finalized several burden reduction proposals, coding reforms will be delayed until 2021, affording stakeholders additional time to comment and engage with the agency. For more details on the final rule, register for our webinar on November 13.

+ **CMS FINALIZES RULE ON DURABLE MEDICAL EQUIPMENT AND END-STAGE RENAL DISEASE.** CMS released a final rule making reforms to Medicare's Durable Medical Equipment, Prosthetics/Orthotics and Supplies Competitive Bidding Program and expanding the Transitional Drug Add-on Payment Adjustment for new end-stage renal disease drugs and biologicals, effective January 1, 2020. The rule also modifies quality incentives and incorporates the Patients over Paperwork initiative that is intended to reduce paperwork burdens for clinicians.

+ **CMS FINALIZES RULE ON OUTPATIENT PROSPECTIVE PAYMENT SYSTEM, AMBULATORY SURGICAL CENTERS AND QUALITY REPORTING PROGRAMS.** CMS issued the final rule on Friday and is moving forward with proposals that drew mixed feedback during the comment period. This includes implementing site-neutral payments for a clinic visit service when it is provided at an off-campus provider-based department (PBD) that is paid under the Outpatient Prospective Payment System (OPPS). CMS will implement

this over two years, as opposed to one in the proposed rule. Additionally, CMS is finalizing its policy (with an additional opportunity to comment) to pay ASP minus 22.5 percent for 340B-acquired drugs furnished by non-excepted off-campus PBDs paid under PFS. The final rule also removes several measures used in quality reporting for ambulatory surgical centers (ASC) and hospital outpatient departments. As for the payment rates, CMS is updating OPPS payment rates by 1.35 percent. For ASC, CMS is moving forward with the change in how it updates ASC payments by using the hospital market basket rather than the Consumer Price Index for All Urban Consumers for CY 2019 through CY 2023. As a result, ASCs will see a 2.1 percent bump.

+ **HRSA PROPOSES 340B CEILING PRICE IMPLEMENTATION RULE.** The US Health Resources and Services Administration (HRSA) issued a proposed rule on Wednesday related to the effective date of the long-awaited ceiling price rule. Earlier this year, HRSA had proposed to delay the date to July 1, 2019. However, several weeks ago, The US Department of Health and Human Services (HHS) indicated in federal court that it intended to announce pushing up the date. (Recall that several large hospital associations, individual hospitals and advocacy groups sued HHS for unreasonable delay, which is why HHS was in federal court.) January 1, 2019 is now the proposed effective date. There is a 21-day comment period.

+ **CMS PROPOSED RULE ADDRESSES MA TELEHEALTH PAYMENT AND AUDITS**. CMS released a proposed rule containing changes to the Medicare Advantage (MA) and Part D programs. The proposal would allow MA plans additional flexibility in providing telehealth benefits for enrollees. The rule also contains significant changes to the agency's approach to audits. According to CMS, if finalized, the provision would result in an estimated $4.5 billion in savings to Medicare over 10 years from the recovery of improper payments to MA plans via Risk Adjustment Data Validation audits. The audit proposal marks a significant departure from the Administration's otherwise healthy policy support for growing and supporting the MA program. Expect continued industry pushback on this policy given the financial implications for plans.

+ **CMS FINALIZES HOME HEALTH RULE**. CMS released a rule finalizing changes to the home health prospective payment system. The final rule updates payment rates for home health agencies for 2019, finalizes case-mix methodology refinements and finalizes the methodology used to determine rural add-on payments for calendar years 2019 through 2022, as required under the Bipartisan Budget Act of 2018. The rule finalizes quality reporting changes for home health agencies. The agency also indicates it will begin to reimburse home health agencies under the Patient-Driven Groupings Model by 2020, which will pay agencies based on patient characteristics rather than number of visits. CMS projects that payments to home health agencies will increase by $420 million, or 2.2 percent.

+ **MORE MEDICAID WORK REQUIREMENTS.** Wisconsin joins the list of states that are approved to impose work requirements as part of maintaining eligibility for Medicaid. CMS approved the state's waiver application on Wednesday. CMS did not approve the state's request to drug test all Medicaid applicants, but will allow the state to ask applicants about prior drug use.

- This approval comes just a few days after Medicaid and CHIP Payment and Access Commission recommended that CMS halt approval of work requirements after analyzing impact data from Arkansas, which also has work requirements.

Other

+ **ACA OPEN ENROLLMENT BEGINS**. Open enrollment for Affordable Care Act coverage started this week for the first time since Congress removed the individual mandate penalty. Also at issue in this year's open enrollment season are new alternative coverage options, short-term plans and association health plans. Expect individual and small group market enrollment to continue to be a focus for both political parties post-election and pending the outcome of various lawsuits aimed at these coverage options.

+ **MEDPAC NOVEMBER MEETING**. The Medicare Payment Advisory Commission met this week and covered a number of topics, including:

  - Discussion of restructuring the advanced alternative payment model (APM) incentive payment in the Quality Payment Program so that the five percent bonus applies only to fee-for-service revenue through the APM (rather than applying to all fee-for-service revenue provided that certain criteria are met) ;
  - Modernizing the Medicare-Dependent Hospital (MDH) program, including changes to eligibility criteria. (Side note: The commissioners punted a recommendation until they could engage in further discussion and broaden it to include additional Medicare programs intended to support rural hospitals, such as MDH, Sole Community Hospitals, Critical Access Hospitals)
  - Potential solutions for issues with the MA quality reporting program, including a discussion of using a budget neutral approach in the future.

Next Week's Dose

+ While everyone continues to digest and analyze the thousands of pages of rules from the Administration this week, all eyes are on the ballot box — Tuesday is Election Day. Check out our infographic with an outlook for health policy post-election.

For more information, contact Mara McDermott or Rachel Stauffer.

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