

# 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:** Government reopens...for at least three weeks. Congress is full steam ahead, kicking off the 116th with health care hearings on drug pricing and pre-existing conditions. The US Department of Health and Human Services (HHS) focuses on 2019 priorities.

## CONGRESS

- + **SHUTDOWN ENDS.** The partial government shutdown officially ended on day 35 – the longest shut down in history. The continuing resolution that sailed through the House and Senate and was signed by the President funds the remaining agencies at 2018 levels for three weeks. But the potential for another shut down on February 15, 2019 is high. In a sign of some progress, members from both parties and both chambers are officially negotiating over immigration reform and border security.
  - o The [Congressional Budget Office \(CBO\) estimated](#) the effects of the five week partial federal government shutdown. According to CBO, the shutdown cost the economy \$11 billion, with \$3 billion in economic activity permanently lost. The economic impact may provide an additional incentive to avoid another shutdown on February 15.
  
- + **HOUSE COMMITTEE LEADERS PALLONE AND DEGETTE TARGET INSULIN MANUFACTURERS.** Chairman of the House Energy and Commerce Committee Frank Pallone (D-NJ) and Chairwoman of the Oversight and Investigation Subcommittee Diana DeGette (D-CO) [sent letters](#) to the three manufacturers selling insulin in the US (Novo Nordisk, Eli Lilly and Sanofi) requesting detailed information on how the companies price insulin products. DeGette also serves as the Co-Chair of the Diabetes Caucus and has a history of concern about and scrutiny of the rising cost of insulin.
  - o Persons with diabetes who faced decisions to ration insulin also were a feature of hearings on prescription drug costs this week before Senate Finance Committee and House Oversight and Reform Committee (more on those below).
  
- + **HEALTH HEARINGS.** There were four health policy-related hearings on Tuesday, with both parties using the hearings to lay out their health care agendas. Here are some takeaways from each.
  - o Senate Finance Committee [hearing](#) on prescription drug prices. Chairman Chuck Grassley (R-IA) revealed he had invited several drug manufacturers to testify. None appeared. The Chairman publicly admonished their lack of participation.

Senator Grassley also stated that he wanted to look into rebates and undertake targeted oversight on the rising cost of insulin.

- Specifically, there was a lot of discussion around how paying physicians a six percent markup over a drug's average sales price (ASP+6) in the Medicare Part B outpatient program incentivizes doctors to prescribe higher-cost drugs.
  - Senate HELP Committee [hearing](#) on the role of community health centers and teaching health centers in providing care in rural and underserved areas. This hearing is another in a series led by Chairman Lamar Alexander's (R-TN) focusing on reducing health care costs. Chairman Alexander and Ranking Committee Member Patty Murray (D-WA) have introduced a bill that reauthorizes and extends funding for these programs for five years. While much of the hearing was focused on how to more effectively support these programs, Senator Bill Cassidy (R-LA) focused his remarks on how these centers use savings generated from the 340B drug discount program. The amount of savings and how hospitals distribute the savings have been a point of contention among lawmakers, particularly those on the HELP Committee, attempting to reform 340B (Cassidy among them). The witnesses all said the 340B program helps support their care for uninsured patients.
  - House Oversight and Reform Committee [hearing](#) on prescription drug prices. This hearing was more partisan in nature than its Senate counterpart, with barbs exchanged on the partisan inquiry recently launched by Chairman Elijah Cummings (D-MD) into 12 drug companies. Issues discussed ranged from increasing generic competition, biosimilar substitution for brand-name biologic drugs and allowing the federal government to negotiate prices with drug companies through Medicare Part D.
  - House Ways and Means Committee [hearing](#) on pre-existing conditions protections. This hearing was full of political posturing. Every Republican expressed support for protecting people with pre-existing conditions. Most Democrats focused on Republican efforts to repeal and replace the Affordable Care Act and support for policies and programs that weaken the individual insurance market. This hearing may be an indication of how health care policies will be considered and debated in the House.
- + ADD House Education and Labor to the Mix.** The House Education and Labor Committee announced it will hold [a hearing](#) on February 6 on protecting workers with pre-existing conditions. The Education and Labor Committee has jurisdiction through the Employee Retirement Income Security Act, which governs employer-sponsored health plans. There are several new Democratic members of the Committee with interest in health reform: Pramila Jayapal (D-WA), leader of the Medicare for All Caucus; Lauren Underwood (D-IL), registered nurse; Kim Schrier (D-WA), pediatrician; Lucy McBath (D-GA), gun control advocate; and Donna Shalala (D-FL), former HHS secretary.
- Speaking of Representative Jayapal – she indicated that a Medicare for All bill will be coming in February, and she expects the House Budget and Rules Committees to hold hearings in the following months. The House Energy and Commerce Committee was also expected to hold hearings, but leaders recently

indicated other issues take priority. These hearings may mirror the Ways and Means hearing on pre-existing conditions, with little substance and a lot of political posturing. The fact that these issues have been relegated to the House Budget and Rules Committees, rather than the committees with greater jurisdiction over health programs, may reveal the Democratic leadership's commitment to Medicare for All legislation in 2019.

- + **CASSIDY and Warner Release Draft Bill on Drug Prices.** Senators Bill Cassidy (R-LA) and Mark Warner (D-VA) have a different approach to bring drug prices down – tie pricing to clinical effectiveness. The draft bill, [Patient Affordability Value and Efficiency Act](#), would provide for certain exemptions to existing requirements around the ability of insurers, hospitals and clinics to pay for prescription drugs or medical devices based upon their proven effectiveness. The authors believe this measure will help drive down prescription drug and medical device costs while incentivizing manufacturers to create products that effectively treat patients. Comments on the draft are due February 19, 2019.

## ADMINISTRATION

- + **CMS Releases MA Rate Notice and Call Letter.** The Centers for Medicare and Medicaid Services (CMS) released the [2020 Medicare Advantage and Part D Advance Notice Part II and Draft Call Letter](#). The agency projects an average 1.59 percent increase in plan payments. The agency also includes a number of proposals aimed at addressing the opioid crisis and offering additional flexibility for plans to provide supplemental benefits to chronically ill beneficiaries. Comments are due by March 1; the final Rate Announcement and Call Letter will be published by April 1.
- + **CMS in the App Game.** CMS launched a new app called “What’s Covered” that intends to help beneficiaries understand what Medicare covers. It is limited to traditional Medicare (i.e., not Medicare Advantage). It provides information on general cost, coverage and eligibility details for items and services covered by Medicare Part A and B.
- + **VERMA Addresses 2019 CMS Quality Conference.** CMS Administrator [Seema Verma](#) [spoke](#) about the next generation of quality measures and payment innovation efforts to better align incentives for providers. Verma stated that today, only 14 percent of Medicare providers are in value-based agreements. She indicated that the agency has spent the last year developing new models and a strategy to increase participation. The new models are intended to offer additional options and incentives for providers that take on financial risk. She specifically mentioned dual eligible and rural populations as focus areas for new demonstrations.
- + **HHS and OIG Releases Proposal Targeting PBMs.** HHS and its Office of the Inspector General released a [proposed rule](#) building on the Administration’s efforts to lower prescription drug prices. The proposal would update the discount safe harbor in the Anti-Kickback Statute to explicitly exclude reductions in price offered by drug manufacturers to pharmacy benefits managers (PBMs), Part D and Medicaid-managed care plans from the safe harbor’s definition of a “discount.” It would also create a new safe harbor designed specifically for price reductions on pharmaceutical products, but only those that are reflected in the price charged to the patient at the pharmacy counter.

PBMs have become a potential target for lawmakers and the Administration as an area for reform under the auspices of addressing the rising cost of prescription drugs. This is the first proposal from the Administration that directly challenges the role of PBMs.

## NEXT WEEK'S DOSE

More political posturing expected with two more hearings on pre-existing conditions: House [Education and Labor](#) and Energy and Commerce [Subcommittee on Health](#).

For more information, contact [Mara McDermott](#) or [Rachel Stauffer](#).

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