

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: Congress is back and busy. The Affordable Care Act (ACA) dominates the headlines.

CONGRESS

- + **DEMOCRATS RELEASE HEALTH PACKAGE.** Leaders from three committees of jurisdiction in the House (Energy and Commerce, Ways and Means, and Education and Labor) announced a package of bills ([HR 1884](#)) supporting the ACA by, among other things, expanding tax credits, increasing education and outreach funding and re-establishing reinsurance funding, and by rolling back several Trump Administration insurance regulations allowing short-term limited duration and association health plans. This comes on the heels of the ninth anniversary of the ACA and the US Department of Justice's (DOJ) decision to change course in *Texas v Azar* (see more on this below). Democratic leaders in the House introduced these measures to both make a statement of support for the ACA and distinction from President Trump, but also to provide a health care message other than Medicare for All. Here is the [press release](#), [summary](#), [section-by-section](#) and [full text](#).
- + **E&C HEALTH MARKS UP 12 BILLS.** The Energy and Commerce Health Subcommittee held a mark-up on six bills on prescription drug pricing and six bills related to the ACA. The mark-up was rather contentious at times, with the Subcommittee having to recess to give Members a break. All of the bills ultimately were approved by the Subcommittee, nine on voice vote. The bills re-establishing reinsurance ([HR 1425](#)), rolling back short-term limited duration plans ([HR 1010](#)), and rescinding the administration's guidance that loosened the 1332 waiver requirements for insurance requirements ([HR 986](#)) advanced by party line vote. Read the full break down [here](#). Democrats included three of these bills (HR 1425, HR 1010 and the bill funding enrollment education and outreach) as part of [HR 1884](#). Let's see how the Committee decides to move forward on HR 1884 given they are also moving provisions individually.
- + **SENATE HELP HEARING ON INTEROPERABILITY.** The Senate Health, Education, Labor and Pensions (HELP) Committee held a [hearing](#) on the interoperability and information blocking proposed rules from the Office of the National Coordinator for Health Information Technology (ONC) and the Centers for Medicare and Medicaid Services (CMS). Generally, Senators and all of the witnesses agreed that 21st Century Cures is crucial for improving patient care and reducing provider burden. There were still concerns raised by lawmakers on ensuring privacy of health data and increased transparency on how health information flows through personal and medical applications. Read our full write up [here](#).

- + **MEDICAID EXTENDERS GETS THROUGH SWIFTLY.** The House approved a small package of provisions extending several Medicaid programs ([HR 1839](#)) that are set to expire in the next few weeks. Among the more notable provisions are those extending the Money Follows the Person demonstration, spousal impoverishment, home-based care, and behavioral health. Other bills included in the package would allow states to establish health homes for children with medically complex conditions (ACE Kids, [HR 1226](#)) and civil monetary penalties for the misclassification of covered outpatient drugs under the Medicaid drug rebate program. Several things to note here: (1) This package has bipartisan support and moved very quickly. Congress can still be nimble when it wants to be; (2) The Chairman and Ranking Member of the Senate Finance Committee, Chuck Grassley (R-IA) and Ron Wyden (D-OR) respectively, worked together to get the last two bills into the package. This is a show of good faith given the complex issues facing their Committee this session.

ADMINISTRATION

- + **THE WHITE HOUSE CHANGES COURSE ON *TEXAS V AZAR*.** The Trump Administration argued in lower court that Title I of the ACA is unconstitutional, but that it is severable from the rest of the law, and the rest of the law can and should stand if Title I is invalidated. In a notable pivot, the DOJ filed papers making a different argument: if the individual mandate is rendered unconstitutional, the whole law should be struck down. This is a significant shift and has caused a flurry of activity in the White House, Department of Health and Human Service (HHS), and in the halls of Congress. Republicans admittedly have no plan to replace the ACA. As was the case prior to the ruling, the Administration has no plan for dismantling all of the elements of the law (think: Centers for Medicare and Medicaid Innovation; Medicaid expansion; health insurance exchanges; Accountable Care Organizations; Food and Drug Administration biologics approval pathways...you get the point). Democrats are focused on buttressing the ACA, but are still wrestling with when and if incorporated universal health (i.e. some form of Medicare for All) makes sense. Now we wait for the ruling on the appeal.
- + **CMS ANNOUNCES ARTIFICIAL INTELLIGENCE HEALTH OUTCOMES CHALLENGE.** CMS announced a new competition intended to accelerate solutions to better predict health outcomes and improve patient care. The CMS Artificial Intelligence Health Outcomes Challenge is a competition that will occur in stages. The deadline for submitting applications for the Launch Stage is June 18, 2019. Additional information is available at ai.cms.gov.
- + **CMS RELEASES MARKETPLACE OPEN ENROLLMENT DATA.** CMS published the [Health Insurance Exchanges 2019 Open Enrollment Report](#), which summarizes health plan selections made on the individual Exchanges during the 2019 Open Enrollment Period. Data show that approximately 11.4 million enrolled in an Exchange plan during the 2019 Open Enrollment Period. This is a decrease from 2018, in which 11.8 million enrolled. Most of the drop in enrollment can be attributed to lower enrollment through the federally facilitated Exchanges, in which enrollment in 2019 was 8.4 million while enrollment in 2018 was 8.7 million. State based Exchange enrollment in 2018 and 2019 was steady at 3 million. Note, these data do not include off Exchange ACA compliant and non-compliant plans.

- + **CMS EXTENDS “GRANDMOTHERED” PLANS.** CMS [issued guidance](#) this week extending “Grandmothered” plans for an additional year. Grandmothered plans comply with some of the ACA’s reforms, such as preventative service cost-sharing requirements and dependent coverage to age 26. However, these plans do not comply with most of the ACA’s reforms that went into effect on January 1, 2014, such as community rating, essential health benefits package, and preexisting condition requirements. CMS has allowed the renewal of these plans since 2014. [The Commonwealth Fund reports](#) that, as of January 2018, 36 states permit grandmothered plans.
- + **JUDGE STRIKES DOWN ASSOCIATION HEALTH PLANS.** On Thursday, a [federal judge blocked](#) the Trump Administration’s final rule to expand Association Health Plans (AHP). The judge noted that the “Final Rule exceeds the statutory authority delegated by Congress in ERISA.” This was the second legal defeat this week for the Trump Administration (see below summary for ruling on Medicaid work requirements). With *Texas vs. Azar* and an additional lawsuit challenging the legality of the Trump Administration’s short-term limited duration insurance (STLDI) plan final rule under review, we wait to see how the courts rule on other major priorities of the Administration.

STATES

- + **KENTUCKY AND ARKANSAS WORK REQUIREMENTS BLOCKED.** U.S. District Judge James Boasberg ruled that the federal government failed to justify adding work requirements to Kentucky and Arkansas’ Medicaid program. Both decisions remand the Arkansas and Kentucky waivers back to HHS. However, the decisions have a larger effect on the Trump Administration and other states pursuing work requirements as a condition for remaining enrolled in Medicaid. And we are already seeing that ripple effect. After the ruling was released, an [Idaho Senate committee](#) rejected a House bill that would have implemented work requirements.
- + **GEORGIA CLOSER TO PARTIAL MEDICAID EXPANSION.** Georgia lawmakers passed legislation that would allow the state to move forward with a partial expansion of Medicaid. The Governor is expected to sign the bill. Partial expansions are a new approach that some traditionally “red” states are pursuing. Essentially, the enhanced 90 percent match rate for expanding Medicaid provided under the ACA has only been approved for states that have sought to expand to 138 percent of the federal poverty level. In Georgia, the approach would seek that same 90 percent match rate for a partial expansion of 100 percent of the federal poverty level. After the Governor signs the bill, Georgia would then have to formally complete and submit an 1115 waiver for federal approval. CMS has yet to approve this type of approach with any other state (Utah is another state going down this path), but has indicated a willingness to work with states on this approach. Advocates for Medicaid expansion are conflicted: is some expansion better than none, or might this lead other states that expanded fully to seek to scale back their expansion?
- + **NEW JERSEY MOVES TO ESTABLISH A STATE-BASED EXCHANGE.** New Jersey currently uses healthcare.gov (the federally facilitated marketplace) to serve its individual insurance marketplace enrollment. Governor Phil Murphy (D) announced the state will transition to a state-based exchange by 2021. New Jersey will be the first state that will

transition from a fully federal platform to a state-based one and follows steps the state has already taken to stabilize and take more control over its insurance market (reinsurance and state-level insurance mandate). With 28 other states using the federal platform, it will be interesting to see if other states follow suit. Related note: One of the bipartisan bills ([HR 1385](#)) that passed the Energy and Commerce Health Subcommittee mark-up this week would provide \$200 million for states to explore exchange transition options. Think about this in light of the 2018 enrollment figures released this week by CMS, which show relative enrollment stability among the state-run Exchanges, but falling enrollment through the federal Exchange.

NEXT WEEK'S DOSE

The first hearing on surprise billing is set for April 2 in the House Education and Labor Committee. The House Energy and Commerce Oversight and Investigations Subcommittee announced two hearings on focused on insulin pricing, the first one will be next Tuesday, April 2.

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