

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: Health care continues to dominate much of the attention on Capitol Hill. Lots of hearings. New coverage expansion legislation. And more state action on Medicaid.

CONGRESS

- + **CONGRESS HELD ITS FIRST HEARING ON SURPRISE BILLING.** The House Education and Labor Subcommittee on Health, Employment, Labor and Pensions held a [hearing](#) on surprise billing. Several policy proposals were discussed, including: (1) capping out-of-network rates at a percentage of Medicare reimbursement or some other reference amount; (2) bundling payments so that patients receive one bill for all services provided at a hospital; (3) requiring that physicians practicing at an in-network facility accept the in-network rate; and (4) mandating transparency about out-of-network care and costs. While there was unanimous agreement that surprise billing is an issue Congress could address, and that patients should be protected from surprise bills, there was little insight into the legislative path forward. Read our hearing summary [here](#). We expect to see surprise billing legislation introduced in the Senate within a month.
- + **ENERGY AND COMMERCE ADDRESSED THE HIGH COST OF INSULIN.** The House Energy and Commerce Oversight and Investigations Subcommittee held a [hearing](#) to examine rising costs of insulin, the role of the supply chain and high list prices. Throughout the hearing, there was bipartisan agreement on addressing the high costs of insulin. Read our hearing summary [here](#). Next week, the subcommittee will hold a follow-up [hearing](#) on the same topic with witnesses that represent different entities in the drug supply chain. This could be an area of bipartisan action since it relates to patient access and lowering prescription drug costs.
- + **SECRETARY AZAR TESTIFIED BEFORE SENATE APPROPRIATIONS.** The US Department of Health and Human Services Secretary Alex Azar [testified](#) before the Senate Appropriations Committee on the President's fiscal year 2020 budget. Read our hearing summary [here](#). This hearing was similar to Secretary Azar's other recent appearances before the [House Energy and Commerce](#), [House Appropriations](#) and [Senate Finance](#) committees. Democrats criticized proposed cuts to Medicaid and Medicare, the Administration's policy on family separation at the border and the Justice Department's decision not to defend the ACA in court. Republicans focused on other areas of the budget, primarily the proposals to reduce prescription drug costs. Overall, Azar emerged from his hill appearances unscathed, and the Department continues to implement its agenda. For additional analysis of the provisions of the President's Budget, refer to our summary [chart](#).

- + **ENERGY AND COMMERCE ADVANCED BILLS RELATING TO PRESCRIPTION DRUG COSTS AND ACA STABILIZATION.** Energy and Commerce committee held a [markup](#) of 14 bills, 12 of which were health-related bills that passed out of the Health Subcommittee last week. Six bills aimed to address drug pricing and passed unanimously, including the CREATES Act, which discourages brand manufacturers from using Risk Evaluation and Mitigation Strategies to avoid selling samples that generic drug makers need for the Food and Drug Administration (FDA) reviews, and the Protecting Consumer Access to Generic Drugs Act of 2019, which would make it illegal for brand-name and generic drug manufacturers to enter into agreements where the brand-name manufacturer pays the generic manufacturer to keep a generic equivalent off the market. Another six bills relating to the ACA passed on party lines. It seems all of these bills will be moving quickly to the floor and heading to the Senate for consideration. The drug pricing bills have a chance to move over there, but the ACA bills are likely dead on arrival.
- + **SENATE PASSED THE MEDICAID “MICROBUS” EXTENDER PACKAGE.** The Senate passed [H.R. 1839](#), a package extending funding for behavioral health clinics and certain Medicaid programs, some of which recently expired. The bill, which passed the House on March 25, also creates civil monetary penalties for drug manufacturers who knowingly misclassify covered outpatient drugs under the Medicaid drug rebate program. It also includes the additional funding for the Money Follows the Person program and ACE Kids Act. This package is on its way to the President for signature. Congress can be nimble when it wants to – it took just two weeks to get this passed through House and Senate and on to the President.
- + **LAWMAKERS INTRODUCED THE MEDICARE-X CHOICE ACT.** Senators Michael Bennet (D-CO) and Tim Kaine (D-VA) introduced a [bill](#) that would allow anyone to buy Medicare plans, an option they say is more realistic than Medicare for All. It also includes some ACA stabilization provisions, including increasing the tax credit for individuals below 400 percent of the poverty line and appropriating \$30 billion over three years for a reinsurance program. The House version ([H.R. 2000](#)) was introduced by Representatives Antonio Delgado (D-NY), Brian Higgins (D-NY) and John Larson (D-CT). This is one of many Democratic proposals to expand health insurance, a party priority that is sure to take center stage in the 2020 election. Democrats continue to introduce a variety of expansion bills, showing there is not yet consensus on a path forward.

ADMINISTRATION

- + **CMS RELEASED THE 2020 RATE ANNOUNCEMENT AND CALL LETTER FOR MEDICARE ADVANTAGE.** The Centers for Medicare and Medicaid Services (CMS) released the [final Rate Notice](#) and Call Letter, the annual regulatory payment process for the Medicare Advantage program. Overall, rates will increase by 2.53 percent on average, an improvement from the proposed rate increase of 1.59 percent. The call letter addresses a number of policy and payment issues for Medicare Advantage plans, including the continued phase-in of the use of encounter data and additional flexibility for supplemental benefits.

- + **FDA CALLED FOR REGULATORY FRAMEWORK ON ARTIFICIAL INTELLIGENCE IN MEDICAL DEVICES.** The FDA released a [white paper](#) detailing an oversight process that outgoing Commissioner Scott Gottlieb said could allow artificial intelligence (AI)-based medical devices to operate autonomously while still letting the FDA provide a reasonable assurance of safety and effectiveness. As AI becomes increasingly central to innovation, regulators are grappling with how to best use existing authorities and determine what new authorities are needed.

STATES

- + **NEBRASKA'S MEDICAID EXPANSION WILL INCLUDE WORK REQUIREMENTS.** Nebraska voters passed an initiative last fall to require the state to expand Medicaid. As a result, Governor Pete Ricketts (R) revealed an expansion plan that includes work requirements for certain beneficiaries and two tiers of coverage for the expansion population. This announcement comes after a [federal judge's decision last week](#) to block Medicaid work requirements in Arkansas and Kentucky, as well as [CMS's approval of Utah's](#) partial Medicaid expansion containing work requirements.
- + **OHIO AND MONTANA ATTORNEYS GENERAL ANNOUNCED THEIR OPPOSITION TO *TEXAS V. AZAR* RULING.** Republican attorneys general (AG) in Ohio and Montana broke with the Trump Administration on Monday when they filed a brief opposing a federal judge's ruling that the entire ACA should be thrown out. Though the AGs oppose the individual mandate, they say the rest of the law should be allowed to stand. This also comes on the heels of Wisconsin formally seeking to remove the state from this lawsuit. The Governorship flipped from Republican to Democrat in the 2018 election. Stay tuned for continued developments in *Texas v. Azar*.
- + **MAINE FINALLY GOT MEDICAID EXPANSION APPROVAL** CMS approved Maine's Medicaid expansion after more than one year of state political battles. Voters approved the expansion in 2017, but former Governor Paul LePage (R) had previously blocked the expansion effort. The approval includes federal funding to cover retroactive eligibility for expansion beneficiaries. Current Governor Janet Mills (D) implemented Medicaid expansion on her first day in office, and over 16,000 people have received coverage through the expansion since its implementation.

NEXT WEEK'S DOSE

Pharmacy benefit managers will be in the spotlight next week as the Senate Finance Committee turns its attention to their role in the drug supply chain. Five industry leaders will be testifying. The House Energy and Commerce Oversight and Investigations Subcommittee will hold its second hearing on the rising costs of insulin. The Ways and Means Committee will mark up prescription drug bills.

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

To subscribe to the McDermottPlus Check-Up, please contact [Jennifer Randles](#).



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