

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: Drug pricing continues to be the focus in Congress with multiple hearings and markups on the subject. So far, lowering drug prices remains a rare area of consensus among lawmakers.

CONGRESS

- + **PBMs. PBMs. AND MORE PBMs.** Pharmacy benefit managers (PBMs) got their week in the spotlight with several congressional and Administration efforts challenging the sector throughout the week.
 - The Senate Finance Committee held the third in a series of [hearings](#) on drug pricing, this time focusing on PBMs. Committee members reviewed the role of PBMs in the drug supply chain, rebates and rising prescription drug costs. Witnesses from the PBM industry stressed PBMs' role in negotiating lower prices with pharmaceutical companies, and insisted that increased competition is the best way to bring down costs. Members and witnesses agreed that more transparency is needed across the pharmaceutical industry. The devil is in the details, though. (Read our full hearing summary [here](#).)
 - Stakeholders submitted thousands of comments in response to the Administration's proposal to eliminate pharmaceutical manufacturer rebates to PBMs and replace them with discounts at the point of sale. Comments were due Monday, April 8. The Administration is expected to move forward with the proposed rule in some form, especially in light of guidance released last week articulating a transitional demonstration for 2020 and 2021. It remains to be seen whether Congress will intervene. Notably, repealing the rule could result in a cost savings.
 - Senate Finance Chairman Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) sent a [letter](#) to the Health and Human Services Office of Inspector General seeking information on PBMs' spread pricing practices (reimbursing pharmacies less than what they charge health plans for the drugs). Grassley and Wyden seem to be using investigations to establish a case for policy changes.
 - The House Energy and Commerce Oversight and Investigations Subcommittee held their second [hearing](#) on the rising cost of insulin, this time with witnesses from the pharmaceutical and PBM industries. It was the first hearing that these industries testified concurrently, leading to direct finger pointing. Members from both parties voiced frustration with the lack of responsibility and accountability. (Read our full hearing summary [here](#).)

- + **PRESCRIPTION DRUG LEGISLATION PASSES WAYS AND MEANS.** The House Ways and Means Committee [marked-up H.R. 2113](#), the "Prescription Drug Sunshine, Transparency, Accountability and Reporting (STAR) Act of 2019," the latest congressional effort to address drug prices that specifically focuses on transparency. (Read our full markup summary [here](#).) The bill was reported favorably to the full House by a unanimous voice vote, reflecting unusual and surprising bipartisan collaboration. The House will now need to go through the process of combining the STAR Act with the suite of drug pricing bills that [passed](#) out of the Energy and Commerce Committee last week to get the package through the House and then the Senate, where the path forward remains unclear.
- + **SANDERS INTRODUCES MEDICARE FOR ALL PROPOSAL.** Senator Bernie Sanders (I-VT) introduced his Medicare for All [proposal](#), which goes slightly beyond his universal health care proposal introduced in the 115th Congress by doing more to cover long-term care for people with disabilities. With this change, the Sanders bill is now in line with the House [version](#) introduced by Representative Pramila Jayapal (D-WA). The Sanders bill would create a program that covers all American residents in one government-run health plan, and would bar employers from offering separate plans that compete with the government-run option. It is unlikely that any version of Medicare for All will be voted on in Congress with Republicans controlling the Senate and Speaker Pelosi (D-CA) focused on stabilizing the Affordable Care Act (ACA). But, the issue is sure to be central to the 2020 election.
- + **EDUCATION AND LABOR TACKLES SHORT-TERM PLANS.** The House Education and Labor Committee [marked-up H.R. 1010](#), which would rescind the Administration's rule expanding the availability of short-term, limited duration insurance (STLDI) plans. The bill was reported favorably to the full House by a vote of 26 to 19 along party lines. The Trump Administration finalized a rule in August 2018 to expand STLDI plans, which lack ACA consumer protection requirements. This bill has been a priority for House Democrats. We will watch to see if it is pushed forward as a standalone bill or with the broader Democratic health bill ([H.R. 1884](#)).

ADMINISTRATION

- + **CMS FINALIZES POLICY CHANGES FOR MEDICARE ADVANTAGE PLANS.** The Centers for Medicare and Medicaid Services (CMS) has finalized proposed [rules](#) to expand telehealth access and coverage in Medicare Advantage (MA). The new rule allows MA plans to offer additional telehealth benefits (beyond what traditional Medicare allows) in their bid for basic benefits. The change is intended to provide plans with additional flexibility to offer expanded telehealth coverage. The rule also finalizes certain regulations related to improving the star ratings system, changes to Dual Eligible Special Need Plans and program integrity policies. The proposals related to risk adjustment data validation provisions in the proposed rule will be finalized at a later date after the comment period was extended to April 30, 2019.
- + **DOJ REQUESTS ARGUMENTS IN *TEXAS V. AZAR* FOR JULY.** The Justice Department requested that arguments in the 5th Circuit Court of Appeals over the constitutionality of the ACA be scheduled for the week of July 8. The motion comes just weeks after the Trump Administration moved to urge the appeals court to overturn the entire ACA. A

group of 16 mostly Democratic-led states and the District of Columbia has appealed the December ruling by a federal judge in that the entire law is unconstitutional because the individual mandate was removed. Additionally, the judge granted the newly elected Democratic Wisconsin Attorney General's request to leave the lawsuit. This case is certain to be appealed to the Supreme Court.

- + **CMS RELEASES ACO CARE COORDINATION TOOLKIT.** CMS released a public [Accountable Care Organization \(ACO\) Care Coordination Toolkit](#) and a series of [case studies](#) that highlight the work of ACOs and End-Stage Renal Disease Care (ESRD) Seamless Care Organizations (ESCOs) participating in the Shared Savings Program, Next Generation ACO Model and the Comprehensive ESRD Care Model. It demonstrates innovative care coordination strategies that ACOs and ESCOs use to collaborate with beneficiaries and providers to ensure high-quality, coordinated care. The toolkit's goal is to educate the public about ACOs and ESCOs' strategies to provide value-based care while also providing actionable ideas to current and prospective ACOs to help them improve or begin operations.

STATES

- + **WORK REQUIREMENT APPROVALS CONTINUE, AS DOES THE LAWSUIT.** Idaho Governor Brad Little (R) signed a [bill](#) that adds work requirements to Idaho's Medicaid expansion that voters approved last fall. Like similar requirements recently established in other states, beneficiaries would have to work, go to school, volunteer or be in job training to receive benefits. Failure to meet the work requirements would result in disenrollment from Medicaid or being charged a copay for medical services. Idaho will have to receive a waiver from CMS to implement the work requirement. While CMS has made it clear that approving such waivers is a priority, and has approved similar waiver requests from other states, Idaho's announcement follows a federal judge's [ruling](#) that work requirements in Arkansas and Kentucky are unlawful, almost assuring that Idaho's waiver would be challenged, if approved by CMS and implemented. Also noteworthy is the Administration's latest appeal to reverse the Arkansas and Kentucky decisions. The appeal goes to the US Court of Appeals for the DC Circuit, which will assign three judges to the case. We wait to see if these judges have different views than the previous judge who blocked these waivers.

NEXT WEEK'S DOSE

Congress begins a long-awaited two week recess. Time to breathe?

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

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