

McDermottPlus Check-Up

McDermott+Consulting is pleased to provide the McDermottPlus Check-Up, your regular update on health care policy from Washington, DC.



THIS WEEK'S DIAGNOSIS: We saw a flurry of activity this week related to drug pricing, surprise billing, cost containment and tobacco as lawmakers worked through their to-do list ahead of the Memorial Day recess.

CONGRESS

- + **HELP'S LONG-AWAITED COST CONTAINMENT PACKAGE ARRIVES.** Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) released the draft bill ([full text](#) and [summary](#)), which builds off a series of hearings held by the HELP Committee last year on the leading drivers of rising health care costs. The bill would prohibit balance billing for emergency services, reduce barriers to generic and biosimilar drugs getting to market, implement new transparency requirements for health plans and pharmacy benefit managers (PBMs), provide new resources for public health initiatives, and improve the availability and interoperability of electronic health information. Perhaps the most notable and surprising provision is one that would prohibit PBMs from engaging in spread pricing and require that they pass on 100 percent of any rebates or discounts to the plan sponsor – essentially ending the current PBM rebate model. Senators Alexander and Murray have indicated that the draft is meant to kick off discussion with other HELP Committee members and ultimately be combined with the Senate Finance Committee's drug pricing legislation. The Committee is formally accepting comments on the discussion draft through June 5. Alexander has said that he hopes the committee will markup the legislation early this summer in order to get a bill to the President's desk in July. While the Chairman aspires to move the bill quickly, history suggests this year is moving towards a late fall, early winter health care omnibus inclusive of extenders and other policies being developed, with drug pricing issues being the most unclear at this point.
- + **HOUSE COMMITTEES CALL FOR COMMENTS ON BIPARTISAN MEDICARE PART D LEGISLATION.** House Ways and Means Committee Chairman Richard Neal (D-MA) and House Energy and Commerce (E&C) Committee Chairman Frank Pallone (D-NJ), along with Ranking Members Kevin Brady (R-TX) and Greg Walden (R-OR), announced a request for comments on [draft legislation](#) to reform and improve the Medicare Part D program that would establish an out-of-pocket cap for Medicare beneficiaries. The draft would also reduce the government's share of the catastrophic coverage from 80 percent to 20 percent over four years in an effort to encourage Part D plans to better manage costs. The committee is formally accepting comments on the draft until June 6.

+ **A BUSY WEEK FOR HEARINGS BEFORE LAWMAKERS HEAD HOME.**

- The E&C Health Subcommittee held a [hearing](#) to consider seven bipartisan bills related to drug pricing transparency. The bills would require drug companies to give notice and justification of price increases, direct the Federal Trade Commission to report on potential anticompetitive behavior by PBMs and eliminate cost-sharing for generic drugs for low-income subsidy recipients in Medicare Part D. The witnesses and committee members all agreed that more transparency is needed across the industry, but that these proposals would do little to lower drug prices. Some members also raised concerns that certain transparency requirements could lead to anticompetitive behavior, such as manufacturers refusing to negotiate discounts for products if competitors' negotiated discounts are made public. Read our full summary of the hearing [here](#).
- The E&C Committee also held a [hearing](#) on an infrastructure bill, [H.R. 2741](#), the LIFT America Act. The bill includes a section on health care infrastructure that would reauthorize the Hill-Burton Act and provide \$2 billion over five years for hospital infrastructure and \$1 billion over five years for health care infrastructure projects through the Indian Health Service. The bill also creates pilot programs that provides \$100 million to support laboratory infrastructure and \$100 million to fund infrastructure development for community-based care. Additionally, it authorizes \$500 million over five years to improve the health IT capabilities of the Centers for Disease Control and Prevention and public health departments.
- The House Ways and Means Committee held a [hearing](#) on surprise billing. As in other similar hearings, there was strong bipartisan support for protecting patients from surprise bills. The witnesses agreed that insurers and hospitals need to negotiate without involving the patient, but disagreed on the resolution process. The witnesses also agreed that federal legislation is needed, given the patchwork of surprise billing legislation across states. Chairman Doggett, who introduced the [End Surprise Billing Act of 2019](#), said that it is more important for a surprise billing proposal to get passed than it is for his specific proposal to be signed into law. Read our full summary of the hearing [here](#).
- The House Budget Committee held a [hearing](#) on the recently released Congressional Budget Office (CBO) [report](#) on considerations for establishing a single-payer health care system. Committee members stuck to partisan lines, with Republicans focusing on how transitioning to single-payer would disrupt the health care system and the economy, and Democrats highlighting the positives of increased coverage. CBO officials testified as to how a single-payer system could affect patients, hospitals and employers. While members and witnesses agreed that a single payer system would cover more people than the current one, they also acknowledged that the transition would be very disruptive.

- + **SENATE FINANCE SEEKS INSULIN COST DATA FROM CMS.** Senate Finance Committee Chairman Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) sent a [letter](#) to Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma seeking a broad set of data relating to insulin costs. Specifically, the letter asks for

information on insulin reimbursements paid by the federal government, out-of-pocket costs for patients, total prescription volumes for insulin and insulin rebate programs fees. The senators focused on the patient and taxpayer impact with respect to Medicare Parts B and D, Medicaid and the Children's Health Insurance Program. The Finance Committee's investigation into insulin prices began in February with inquiries to the three primary manufacturers of the drug, and the focus is sure to continue.

- + **NEW LEGISLATION TO RAISE TOBACCO PURCHASE AGE.** Senate Majority Leader Mitch McConnell (R-KY) and Senator Tim Kaine (D-VA) introduced legislation that raises the national minimum age to purchase tobacco products from 18 to 21. The [Tobacco-Free Youth Act](#) resembles other recent bipartisan bills (as well as similar legislation approved by a number of states) that raise the minimum purchase age to 21, but it is significant because McConnell, who hails from a tobacco producing state, has stated that raising the age for the purchase of tobacco is one his highest priorities. It is important to remember that this proposal will produce a CBO score, and something will have to pay for the losses in federal tax revenue. Nevertheless, expect this to move quickly in the Senate.

ADMINISTRATION

- + **ADMINISTRATION RELEASES ITS SPRING REGULATORY AGENDA.** The Administration released the [spring regulatory agenda](#), which reports on the regulatory actions federal agencies plan to issue in the short and long term. Some notable proposals include a proposed rule to increase accountability, transparency and clarity through improved Medicaid payment reporting, a proposed rule supporting value-based payments for drugs covered in Medicaid, and long-rumored proposed rules updating the Stark Law and Anti-Kickback Statute. Additionally, the International Pricing Index model is now expected to be proposed in August, and the final rule to require that rebates be passed through to consumers in Medicare Part D and Medicaid managed care is likely in November, both later than previously anticipated. Also of note, the proposed rule regarding non-emergency medical transportation, which had been in previous regulatory agendas, was missing from the spring list. While the agenda does not set an exact timeline, it does give stakeholders an idea of the Administration's priorities.
- + **GAO CALLS FOR GREATER TRANSPARENCY IN MEDICAID WAIVERS.** The Government Accountability Office (GAO) released its report [Medicaid Demonstrations: Approvals of Major Changes Need Increased Transparency](#). In this report, GAO examined CMS's transparency policies and procedures for section 1115 Medicaid waivers. The report found weaknesses in CMS's policies or procedures for ensuring transparency in approvals of new demonstrations and extensions of existing demonstrations, including the transparency of major changes made to pending applications and approved spending limits. CMS also inconsistently reviewed applications for compliance with transparency requirements for new demonstrations and extensions. GAO made two recommendations to address these concerns: 1) develop policies that define when changes to a pending section 1115 demonstration application are considered major and require a new application, and 2) develop transparency requirements for amendments that may have significant impact. The Department of Health and Human Services (HHS) concurred with these recommendations.

STATES

- + **CANADIAN DRUG IMPORTATION AND SURPRISE BILLING.** While Congress continues crafting federal legislation to lower drug prices and address surprise billing, states are passing their own versions. The longer this takes at the federal level, the more preemption will become a sticking point.
 - Colorado Governor Jared Polis (D) signed a bill to create a prescription drug importation program from Canada, making Colorado the second state behind Vermont to pass such a law. The Florida state legislature also passed a bill allowing Canadian drug importation, which Governor Ron DeSantis (R) is expected to sign. HHS would need to approve the importation programs for them to go into effect, and it is unclear whether the department will do so. Clearance by HHS would mark its first-ever certification that drug imports can be safe and save US consumers money. President Trump recently mentioned his support for drug importation during a White House event on surprise billing, raising the probability that HHS will support the state plans.
 - Colorado recently passed a bill that prohibits healthcare providers from sending consumers a balance bill when they unknowingly received out-of-network care, and sets an insurance reimbursement rate for out-of-network hospitals and doctors. Colorado joins more than 20 states that have passed surprise billing protections.

NEXT WEEK'S DOSE

It's time to enjoy the Memorial Day recess.

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