

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: Lots of movement in Congress ahead of the Fourth of July recess with the House and Senate both advancing a number of health care bills. President Trump also signed an executive order this week, continuing the Administration's focus on health care transparency.

CONGRESS

- + **HELP COMMITTEE ADVANCED COST CONTAINMENT PACKAGE.** The Senate Health, Education, Labor, and Pensions (HELP) Committee held a [markup](#) of three bills: the Poison Center Network Enhancement Act of 2019 ([S. 1199](#)), the Emergency Medical Services for Children Reauthorization Act of 2019 ([S. 1173](#)) and the Lower Health Care Costs Act ([S. 1895](#)). All three were reported favorably out of committee. During the markup, two amendments were added to the Lower Health Care Costs Act — one to amend the reporting requirement for insurance plans to include a list of categories of providers of ancillary services for which the plan has no in-network providers, and one to require reporting from pharmaceutical companies regarding certain drug price increases. The bill now moves to the full Senate where lawmakers are expected to continue making changes, including to the surprise billing sections. A growing number of coalitions are staking their ground over the surprise billing sections of the bill, and these stakeholder battles are sure to heat up throughout July. HELP Committee Chairman Lamar Alexander (R-TN) said that he hopes the Senate will hold a vote on the legislation before the August recess.
- + **HOUSE AND SENATE COMMITTEES HELD MARKUPS OF HEALTH CARE LEGISLATION.**
 - The House Ways and Means Committee held a [markup](#) of five health care bills. The Beneficiary Education Tools, Telehealth, and Extenders Reauthorization Act of 2019 ([H.R. 3417](#)) extends funding for the National Quality Forum and State Health Insurance Programs; the HEARTS and Rural Relief Act ([H.R. 3429](#)) allows injured veterans to retain coverage under TRICARE, the veterans' health coverage program, without having to pay Medicare premiums; the Improving Chronic Care Management Act ([H.R. 3436](#)) eliminates coinsurance for chronic care management services; the Opioid Workforce Act of 2019 ([H.R. 3414](#)) funds 1,000 new residency positions in the areas of addiction medicine and psychiatry over the next six years; and the Protecting Access to Information for Effective and Necessary Treatment Act of 2019 ([H.R. 3439](#)) funds the Patient-Centered Outcomes Research Trust Fund through fiscal 2026. All five bills were reported favorably out of committee. The discussion during the markup focused primarily on H.R. 3414, which Republicans criticized as insufficiently addressing the

physician shortage in rural areas. The bills now move to the full House. Ways and Means Committee Chairman Richard Neal (D-MA) said that negotiations continue with leaders on the Energy and Commerce Committee to find offsets to pay for the legislation.

- The Senate Judiciary Committee held a [markup](#) of four prescription drug bills. The Prescription Pricing for the People Act of 2019 ([S. 1227](#)) requires the Federal Trade Commission (FTC) to study the role of pharmacy benefit managers in the drug supply chain; the PACED Act ([S. 440](#)) prohibits patent-holders from using tribal or foreign government sovereign immunity as a defense in certain legal proceedings; the Stop STALLING Act ([S. 1224](#)) gives FTC authority to limit citizen petitions aimed at slowing competing generics or biosimilars; and the Affordable Prescriptions for Patients Act of 2019 ([S. 1416](#)) curbs tactics used by drug companies to extend their products' patent protections and market share. All four bills were reported favorably out of committee. S. 1416 passed unanimously and has a clear path to a full Senate vote.
- + **SENATORS INTRODUCED BIPARTISAN BILL ON MATERNAL HEALTH.** Senators Debbie Stabenow (D-MI) and Susan Collins (R-ME) introduced the Quality Care for Moms and Babies Act ([S. 1960](#)), which would create maternal and infant health quality measures for Medicaid and the Children's Health Insurance Program (CHIP). Representatives Eliot Engel (D-NY) and Steve Stivers (R-OH) introduced a companion bill in the House in March ([H.R. 1551](#)). The bill would set higher quality standards for maternal and infant health measures in Medicaid and CHIP and recommend new measures that take into account postpartum outcomes, low-intervention birth and care coordination. The bill would also provide funding for local public-private partnerships to improve maternal care. There has been a lot of legislative attention to maternal mortality (including provisions in the Lower Health Care Cost Act), but very little has made it across the finish line.

COURTS

- + **ACA COURT CHALLENGES CONTINUE.**
 - Judges have asked for additional information on whether the House of Representatives and Democratic states have standing to appeal a December court decision that declared the entire Affordable Care Act (ACA) unconstitutional. The House and 16 Democratic Attorneys General have been leading an appeal to defend the ACA, which the Trump administration announced it would not do. This week, the court requested that both parties file additional briefs regarding who, if anyone, has standing to appeal the lower court ruling, and be prepared to address the issue during oral arguments before the US Court of Appeals for the Fifth Circuit on July 9. This is an important development because if the court finds that the plaintiffs do not have standing, then the lower court's decision will remain in place for now. That means the entire ACA would be overturned, causing significant disruption across the health care system. How this all plays out remains to be seen, but it is highly likely that the case will end up at the Supreme Court.

- The Supreme Court agreed to hear a case led by a group of health insurers who argue that they are owed over \$12 billion from the ACA's risk corridors program, which was aimed at helping insurance companies that attract sick and expensive customers. The program expired in 2016, leaving several companies without the financial assistance they qualified for. Unlike the case currently before the US Court of Appeals for the Fifth Circuit, this one does not question the ACA's constitutionality. However, a ruling in favor of the insurers could represent a political challenge for the Trump Administration that has failed to deliver on promises to repeal the ACA.

ADMINISTRATION

- + **TRUMP ISSUED EXECUTIVE ORDER ON HEALTH CARE TRANSPARENCY.** The President signed an [executive order](#) that directs government agencies to issue regulations and guidance regarding price, quality and data transparency for health care services. Among other things, the executive order directs the Secretary of the Department of Health and Human Services (HHS) to propose regulations requiring hospitals to publicly post standard charge information and directs the Secretaries of HHS, Defense and Veteran Affairs to develop a Health Quality Roadmap to improve data reporting and quality measures across federal health insurance programs. Additionally, the order calls for the Secretary of HHS, in consultation with other agencies, to increase access to de-identified claims data from federal healthcare programs and group health plans for researchers, providers and others. The Administration has made health care transparency a priority, and we expect to see additional transparency provisions implementing the executive order in the upcoming payment rules (e.g., Physician Fee Schedule proposed rule, expected in the coming weeks). However, implementation and direction of this executive order will be driven by the agencies, which will be issuing guidance and regulations over the next few months to deliver on the directives.
- + **TRUMP SIGNED PANDEMIC PREPAREDNESS BILL.** President Trump signed the [Pandemic and All-Hazards Preparedness and Innovation Act](#), which reauthorizes several hazard preparedness programs at HHS, many of which expired in 2018. While the House had previously passed the bill multiple times, both on its own and as part of a larger legislative package, the Senate was unable to reach an agreement until recently. The bill directs HHS to prepare a strategy for public health preparedness and response to cybersecurity threats, and to submit a formal strategy for reuniting families separated at the border. It also directs the Government Accountability Office to conduct a study on the use of animal models for the development of medical countermeasures.

STATES

- + **PENNSYLVANIA ADVANCED LEGISLATION TO ESTABLISH EXCHANGE AND REINSURANCE PROGRAM.** The Pennsylvania House of Representatives passed a bill that would establish a state-based health insurance exchange and authorize a Section 1332 waiver to set up a reinsurance program. The bill passed the House with an overwhelming majority of 198 to one, and is expected to pass the Senate and be signed into law by Governor Tom Wolf (D). If the bill becomes law, Pennsylvania will be the second state in

recent months to create a state-based exchange (New Jersey passed a law to do so in March).

- + **OKLAHOMA COURT CLEARED STATE'S MEDICAID EXPANSION EFFORT.** The Oklahoma Supreme Court has ruled that an effort to expand Medicaid in the state by ballot initiative can go forward. Supporters of Medicaid expansion filed a petition in April to begin collecting signatures in order to get the measure on the ballot in 2020, but were challenged by the Oklahoma Council of Public Affairs, a conservative think tank. The court decision now allows the initiative process to continue.

NEXT WEEK'S DOSE

This legislative session is over, and it is time for the Fourth of July recess.

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

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