

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: Congress is back, and this week marked the start of another busy legislative session. Work continues on drug pricing, surprise billing and cost containment, and negotiations have begun on an extenders package as well.

CONGRESS

- + **ENERGY AND COMMERCE GOT TO WORK ON EXTENDERS.** The House Energy and Commerce (E&C) Committee began the week with a [hearing](#) to address several health care extenders – a number of temporary policies that need reauthorization or annual appropriations this year, or else they expire. The hearing featured two panels of witnesses, the first dealing with public health extenders and the second with extenders related to Medicare and Medicaid. The conversation focused primarily on the importance of reauthorizing funding for community health centers and on delaying the Medicaid Disproportionate Share Hospital (DSH) payment cuts set to go into effect on October 1. Medicaid DSH is the most significant and expensive extender on the table, and is likely to be a driver of any package that comes together in the next few months. While several Democrats on the committee voiced support for fully repealing the cuts, Republicans raised concerns that doing so would remove the impetus to make meaningful reforms to the program. Several members spoke in favor of MACPAC's recent [recommendations](#) to phase the cuts in over a longer period of time, allocate the cuts first to states with unspent DSH dollars, and align the DSH allotments with the state's percentage of low-income individuals. Read our full summary of the hearing [here](#).
- + **LAWMAKERS INTRODUCED A BILL THAT WOULD REPEAL BAN ON PHYSICIAN-OWNED HOSPITALS.** Representatives Michael Burgess (R-TX) and Vincente Gonzalez (D-TX) introduced [H.R. 3062](#), which would repeal the provision of the Affordable Care Act (ACA) that banned new physician-owned hospitals and limited the expansion of existing ones. Burgess previously led a [letter](#) to the Centers for Medicare and Medicaid Services (CMS) asking the agency to consider establishing a demonstration project to allow for physician-owned hospitals, and last December, the Department of Health and Human Services (HHS) recommended that Congress consider repealing the ACA provision. While the bill is bipartisan, repealing the physician-owned hospital ban has been an effort largely championed by Republicans, and it remains to be seen whether it will attract broad support among Democrats who are reluctant to change the ACA.
- + **CONGRESS PASSED A HAZARD PREPAREDNESS BILL.** The House and Senate both passed the [Pandemic All-Hazards Preparedness and Advancing Innovation Act of 2019](#), which reauthorizes several HHS hazard preparedness programs. The House ultimately passed the Senate version of the bill, which did not include a provision to reform the way the

Food and Drug Administration regulates over the counter products, as the House version did. President Trump is expected to sign the bill.

- + **DEMOCRATS DEMANDED INFORMATION ON ADMINISTRATION EFFORTS TO JEOPARDIZE ACA ENROLLMENT.** E&C Committee Chairman Frank Pallone (D-NJ) and Ways and Means Committee Chairman Richard Neal (D-MA) sent a [letter](#) to CMS Administrator Seema Verma requesting information about the Trump administration's actions aimed at reducing enrollment in the Federal Exchange. Specifically, the letter cites the Administration's efforts to steer consumers towards short-term, limited-duration insurance plans, create barriers for people to receive Medicaid or Children's Health Insurance Plan coverage, and limit the ability of consumers to compare Marketplace plans. The letter requests that CMS respond to the inquiry by June 18.

ADMINISTRATION

- + **THE ADMINISTRATION FILED BRIEF IN AHP LAWSUIT.** The Trump administration has filed an opening brief with the US Court of Appeals for DC, which is hearing the appeal of a lower court decision to vacate provisions of a Department of Labor rule expanding the use of association health plans (AHPs). Twelve Democratic attorneys general (AGs) filed suit shortly after the rule was released claiming that it violated the ACA. In its appeal, the Administration argues that the AGs do not have standing to sue, that the lower court wrongfully decided the case based on its own policy preferences, and that the court overstepped by vacating the rule nationwide rather than simply in the plaintiff states. Final briefs are due August 8.
- + **COURT VICTORY FOR HOSPITALS ON DSH.** Earlier this week, the US Supreme Court ruled that HHS improperly changed its Medicare DSH payments when it made cuts to the program. This change involves \$4 billion in DSH payments to hospitals and was originally implemented by the Obama administration and then defended by the Trump administration. Ultimately, the Court found that CMS did not comply with notice and comment requirements for implementing these changes to DSH. The case immediately benefits the plaintiffs with respect to the DSH payments at issue, but the decision carries far more consequential and enduring administrative procedures implications.

STATES

- + **UTAH SUBMITTED A NEW 1115 WAIVER APPLICATION.** Last week, Utah released its 1115 waiver [proposal](#) to implement a per capita cap in its Medicaid program. The proposal also includes seeking enhanced Federal Medical Assistance Percentages for the state's partial Medicaid expansion, implementing a Medicaid lock-out for intentionally violating Medicaid eligibility rules, requesting federal funding to provide housing-related services and supports, and preventing hospitals from making presumptive eligibility determinations for the expansion population. This waiver application is a follow-up to the recently [approved](#) Utah 1115 waiver, which implemented a partial Medicaid expansion, Medicaid work requirements, and waived the Medicaid institution for mental disease exclusion. The Utah Department of Health Division of Medicaid and Health Financing will accept public comments regarding this demonstration application until June 30. Read our full summary of the waiver [here](#).

OTHER

- + **CBO DETERMINED A PRELIMINARY SCORE FOR SURPRISE BILLING OPTIONS.** The Congressional Budget Office (CBO) conducted a preliminary score of the Senate's options for addressing surprise medical bills, which include arbitration, direct negotiation and setting a benchmark rate for services. According to the draft score, setting a benchmark rate – requiring health plans to pay the provider or facility based on the median contracted rate – would save the government \$25 billion over 10 years. The other options also save money: arbitration would save \$20 billion over 10 years, and guaranteeing that all providers are considered in-network would save \$9 billion over 10 years. Given these potential savings at a time when lawmakers are searching for offsets for other expensive proposals, it is highly likely Congress will pass a surprise billing proposal including one of these options before the year is out.
- + **OMB IS REVIEWING MEDICAID BLOCK GRANTS.** The Office of Management and Budget (OMB) is reviewing the Trump administration's proposal to allow Medicaid block grants. While the extent of the plan is not clear, any guidance to allow for block grants would mark a major shift in Medicaid policy. Many conservatives have long supported Medicaid block grants with an eye towards increased state flexibility, though critics argue that it would limit access to care for millions of low-income individuals. If the Administration does release a block grant proposal, it will certainly be challenged in court.

NEXT WEEK'S DOSE

The House Ways and Means Committee will hold a hearing on Thursday on Medicare for All legislation and several other coverage expansion bills. It is the first time a committee with health care legislation will consider Medicare for All. Also, the House E&C Health Subcommittee will hold a hearing on surprise billing. This is the third hearing on surprise billing this Congress.

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

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