

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: Things have quieted down in Congress with the House out of session and the Senate wrapping up its last week before the August recess. But the agencies are still at work, so don't totally check out just yet.

CONGRESS

- + **SENATE PASSED BUDGET DEAL.** The Senate passed the Bipartisan Budget Act of 2019 ([H.R. 3877](#)) by a vote of 67-28, which the House approved last week. The bill raises the debt limit through July 2021 and establishes funding levels for both defense and non-defense programs through fiscal year 2021. The bill includes \$738 billion for defense spending and \$632 billion in non-defense spending for fiscal year 2020. It now heads to President Trump for signature. The spending agreement does not eliminate the threat of a government shutdown in September, as lawmakers still need to agree on appropriations measures, but it greatly reduces the likelihood since overall spending amounts have now been established and agreed to. These negotiations will continue over the August recess.
- + **CONGRESS PASSED MEDICAID EXTENDERS PACKAGE.** The House and Senate sent the Empowering Beneficiaries, Ensuring Access and Strengthening Accountability Act of 2019 ([H.R. 3253](#)) to the President after resolving differences between versions of the bill. The measure extends funding for several Medicaid programs including a demonstration program for community mental health services and a program addressing spousal impoverishment. The bill also provides additional funding for the Money Follows the Person program and family-to-family health information centers.

ADMINISTRATION

- + **CMS RELEASED ANNUAL PAYMENT RULES.** The Centers for Medicare and Medicaid Services (CMS) released the calendar year (CY) 2020 [Revisions to Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies](#), which includes proposals related to Medicare physician payment and the Quality Payment Program. Read our topline summary [here](#). In addition, CMS released the CY 2020 [Proposed Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs](#), which includes proposals updating the hospital outpatient and ambulatory surgical center payment systems, as well as proposed policies on price transparency (see below) and prior authorization. Both rules will be published in the Federal Register on August 14, 2019, and comments are due September 27, 2019. CMS also issued proposed rules updating payment rates and policies for [skilled nursing facilities](#) and [inpatient psychiatric facilities](#).

- + **CMS PROPOSES TO REQUIRE HOSPITALS TO DISCLOSE NEGOTIATED RATES. AMONG** Among the most controversial provisions of the hospital outpatient payment proposed rule, is a proposal requiring hospitals and insurance companies to publically disclose negotiated standard charge rates, which are currently confidential. This proposal responds to President Trump's [executive order](#) in June directing agencies to increase transparency in health care costs. Hospitals and insurers could face civil monetary penalties of \$300 per day for failing to comply and many have stated their strong opposition, arguing that the proposal could reduce competition and lead to higher prices.
- + **CMS WILL NOT PROVIDE ACA FUNDING FOR PARTIAL MEDICAID EXPANSION.** In a surprising development, CMS [announced](#) that it will not grant state requests for federal funds to support partial Medicaid expansion. The Affordable Care Act provides federal funding for states that fully expand Medicaid to 138 percent of the federal poverty line (FPL), but several Republican-led states requested federal funding for Medicaid expansion only up to the FPL. CMS's decision is a setback for states, like Utah, pressured to close the coverage gap for low-income individuals, but proposing to do so at a less generous level, though the agency said it will continue to support changes to Medicaid such as work requirements and developing a plan to allow states to use block grants. Utah is among the states that asked for full funding for partial expansion, and is now seeking permission to impose a per capita cap on its Medicaid program. The state is also working on a fallback plan to fully expand Medicaid, which voters approved by ballot measure in 2018.
- + **HHS ANNOUNCED PLAN FOR FUTURE DRUG IMPORTATION.** The Department of Health and Human Services (HHS) announced an [action plan](#) to lay the foundation for the importation of certain drugs. The plan outlines two potential pathways: one through which states, wholesalers and pharmacists could import drugs from Canada; and one through which drug manufactures could import drugs that they sell in other countries into the US. HHS has faced pressure from several states to allow for drug importation, which the agency historically opposed, but President Trump has vocally supported. However, some industry representatives have raised concerns about guaranteeing drug safety, and the proposal has received mixed reactions in Congress as well. It is likely the Administration will receive some pushback as it explores these options.
- + **CMS UNVEILED PILOT PROGRAM TO GIVE PROVIDERS ACCESS TO MEDICARE CLAIMS DATA.** As part of the Administration's MyHealthEData initiative, CMS announced the [Data at the Point of Care](#) pilot program, which allows providers to request Medicare claims data previously only available to beneficiaries. The program intends to help providers obtain important information about their patients' previous diagnoses, medications and procedures, though patients can opt out of sharing their data. CMS is currently accepting applications for the program, which is set to begin January 2020.

COURTS

- + **FEDERAL JUDGE BLOCKED NEW HAMPSHIRE MEDICAID WORK REQUIREMENTS.** Judge James Boasberg of the US District Court for the District of Columbia, who previously blocked work requirements in Arkansas and Kentucky, has blocked New Hampshire's similar proposal. Judge Boasberg issued his ruling a week after hearing arguments, despite New Hampshire's request for him to wait until the state could submit an updated

waiver request to CMS. The Justice Department appealed Boasberg's rulings in the Arkansas and Kentucky cases, with oral arguments scheduled for October 11, 2019. The Justice Department is expected to appeal the New Hampshire ruling as well.

- + **STAKEHOLDERS APPEALED COURT'S STLDI RULING.** A group of seven industry stakeholders filed an appeal of a federal district court's decision to uphold the Trump administration's expansion of short-term, limited-duration insurance (STLDI) plans. The plaintiffs argue that STLDI plans undermine consumer protections for people with preexisting conditions and can discriminate based on age, gender or health status, while the district court ruled that the benefits of additional insurance options outweigh the drawbacks.

OTHER

- + **GAO ISSUED REPORT ON DSH.** The Government Accountability Office (GAO) published the report [Medicaid: States' Use and Distribution of Supplemental Payments to Hospitals](#). It examines Medicaid disproportionate share hospital (DSH) payments and was requested by Senator Chuck Grassley (R-IA) and Representative Greg Walden (R-OR). The report highlights that between fiscal years 2000 and 2017, DSH payments increased about 16 percent, from \$15.6 billion to \$18.1 billion. Additionally, in 2006, state Medicaid agencies made at least \$6.3 billion in non-DSH payments, and by fiscal year 2017, non-DSH payments increased to \$30.4 billion.

NEXT WEEK'S DOSE

It's time for the August recess.

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