

McDermottPlus Check-Up

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



THE RECESS DOSE: With the August recess wrapping up, we are back at the McDermottPlus Weekly Check-Up. Here's what you may have missed over the break.

ADMINISTRATION

- + **ADMINISTRATION ISSUED PUBLIC CHARGE RULE.** On August 12, 2019, the Trump Administration issued the Inadmissibility on Public Charge Grounds final rule, which redefines “public charge” status, a term used to determine whether someone seeking permanent resident status is likely to become primarily dependent on the government. Public charge designations can undermine applications for permanent residence in the US. This rule changes how the Department of Homeland Security (DHS) interprets and defines “public charge” and “public benefit.” The rule defines “public charge” as an alien who receives one or more designated public benefits for more than 12 months within any 36-month period, and it defines “public benefit” as cash benefits for income maintenance, the Supplemental Nutrition Assistance Program, most forms of Medicaid, Section 8 Housing Assistance under the Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance and certain other forms of subsidized housing. Current and past receipt of public benefits above the threshold will be a heavily weighted negative factor against admissibility. Other factors include age, assets and employment. Observers expect that this policy will discourage the use of public benefits and health care services, including reduced use of preventive care services, and could lead to increases in emergency department use. As of August 20, 14 states had filed lawsuits over this new rule, assuring that the future of this policy will be tied up and decided by federal courts.
- + **HHS PROPOSED CHANGES TO 42 CFR PART 2.** On August 22, 2019, the Substance Abuse and Mental Health Services Administration, part of the Department of Health and Human Services (HHS), issued two proposed rules related to the confidentiality of substance use disorder (SUD) patient records. One proposed rule would make changes related to law enforcement use of SUD records, and the other would move the privacy requirements related to use of SUD treatment records (42 CFR Part 2) closer to the privacy requirements that allow the use of identifiable patient information for treatment, payment and health care operations. Notably, the proposed rule would not change the basic framework of the confidentiality requirements under 42 CFR Part 2, and the rules would continue to restrict disclosure of SUD patient records without patient consent. HHS has stated congressional action is needed to resolve this issue. Comments on the proposed rule are due October 25, 2019. On the Congressional front, House Energy and Commerce Committee Ranking Member Greg Walden (R-OR) and Health Subcommittee Ranking Member Michael Burgess (R-TX) issued a press release touting

the proposed rule but urging further action from Congress. Representatives Markwayne Mullin (R-OK) and Earl Blumenauer (D-OR) reintroduced a bill in April to align 42 CFR Part 2 with existing privacy requirements, as did Senators Joe Manchin (D-WV) and Shelley Moore Capito (R-WV). Earlier this month, the National Association of Attorneys General sent a letter to the leadership in the House and Senate urging the passage of these bills. Join us for a breakfast discussion on the topic of these news rules on September 18.

- + **CMS TOOK ACTION ON 1332 WAIVERS.** The Centers for Medicare and Medicaid Services (CMS) approved several Section 1332 Medicaid waivers in August. On August 16, CMS approved Montana's 1332 waiver that establishes a five-year reinsurance program to begin in 2020, followed by approvals of similar waivers from Delaware and Rhode Island. However, on August 29, CMS rejected Idaho's 1332 waiver application, which would have allowed individuals between 100 and 133 percent of the Federal Poverty Line to receive subsidies (i.e., Premium Tax Credit and Cost Sharing Reductions) even if they qualify for Medicaid. CMS noted that the Idaho application was incomplete and that it did not satisfy the deficit neutral requirements of 1332 waivers.
- + **HRSA ISSUED RURAL HEALTH RFI.** The Health Resources and Services Administration (HRSA) and the HHS Rural Health Task Force issued a request for information (RFI) about access to health care in rural communities. Evidence indicates that generally, rural populations experience greater disease burden and continue to experience health care access challenges with closing hospitals and fewer primary and specialty physicians. The Rural Health Task Force is seeking input from stakeholders in determining what health care services are needed in these rural communities, how such services can be delivered and what factors, unique to rural populations, must be considered when addressing health care access issues. Responses are due October 9, 2019.

COURTS

- + **HHS WILL APPEAL COURT RULING ON DIRECT-TO-CONSUMER ADVERTISING RULE.** On August 21, 2019, HHS announced it will appeal a court decision that struck down the Administration's rule that would have required pharmaceutical manufacturers to disclose list prices on television advertisements. The rule was one of the Administration's major efforts to lower drug costs before it was struck down. Senators Chuck Grassley (R-IA) and Dick Durbin (D-IL) introduced a bill to codify the rule, but it has not gained traction in Congress.

STATES

- + **MAINE WILL MOVE TOWARDS STATE-BASED EXCHANGE.** On August 29, 2019, Maine Governor Janet Mills (D) sent a letter to CMS informing them that the state intends to transition from a federally run exchange to a state-based exchange by 2022. In 2021, the state's Marketplace will be a hybrid state and federally run exchange. Other states are in the process of transitioning from a federally run exchange to a state-based exchange including Pennsylvania, New Jersey, and Nevada.

NEXT WEEK'S DOSE

- + Congress is officially back in session! Watch for the September 10 Senate Labor-HHS-Education Appropriations Subcommittee markup of its fiscal year 2020 spending package..

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

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