McDermottPlus Check-Up

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

THIS WEEK'S DIAGNOSIS: Speaker Pelosi's announcement of an impeachment inquiry dominated the news this week, but what does that mean for health care policy?

CONGRESS

+ **PELOSI ANNOUNCED OFFICIAL IMPEACHMENT INQUIRY.** Speaker Nancy Pelosi (D-CA) announced that the House of Representatives is opening an official impeachment inquiry into President Trump after recent news that he asked the president of Ukraine to investigate possible Ukrainian interference in the 2016 election and former Vice President and Democratic presidential candidate Joe Biden. This development has significant implications for health care policy. Where it matters most is in any area that requires high-level agreement between the President and the Speaker, e.g., drug pricing. Getting something done on drug pricing this year would require Trump and Pelosi to strongly support a joint agreement to their parties. The impeachment inquiry lowers the possibility of them agreeing on anything. In fact, the President said as much, alleging that an impeachment inquiry will thwart most every major piece of legislation remaining for action this year. While significant drug pricing reform is on life support, that does not mean all health care policy is off the table. More bipartisan drug pricing measures, like the CREATES Act, which would increase access to generic drugs, could still make it over the finish line. Extending funding for expiring health care programs can and should still get done. That is a high priority, and likely does not require the personal involvement of the Speaker or the President. Surprise billing also stays on the table since the remaining areas of disagreement are nuanced policy details that do not require a deal between Pelosi and Trump. Of course, factors beyond impeachment could still come into play, placing the future of legislation, like surprise billing, at risk. Not least of those factors is the outcome of *Texas v. Azar*, which could significantly deter bipartisan compromise.

+ **CONGRESS CONTINUED WORK ON DRUG PRICING AGAINST IMPEACHMENT BACKDROP.**

  - The Senate Finance Committee released the legislative text for its drug pricing proposal, the Prescription Drug Pricing Reduction Act, which the committee approved in draft form in July. The final bill includes provisions to improve transparency, increase access to generic drugs, and establish an inflationary rebate. Finance Committee Chairman Chuck Grassley (R-IA) has said that he hopes the Senate will vote on the proposal this year, though as noted above, that is now a difficult goal, and the chairman has expressed his own pessimism.

  - The House Energy and Commerce Committee held a hearing to consider four drug pricing bills, among them the Lower Drug Costs Now Act of 2019 (H.R. 3), recently released by Speaker Pelosi. The conversation focused primarily on the provision of H.R. 3 that would grant the Secretary of Health and Human Services the ability to negotiate drug prices. Read our full summary of the hearing here. The House Education and Labor Committee also held a hearing on drug pricing legislation, during which Republicans voiced opposition to the price negotiation provisions within the Pelosi proposal.

+ **COMMITTEES WEIGHED IN ON VAPING CONCERNS.** The House Oversight and Reform and Energy and Commerce Committees each held hearings on the public health threats of e-cigarettes. Officials from the Centers for Disease Control and Prevention (CDC) and Food and Drug Administration (FDA), state health department directors and concerned parents testified that vaping products are highly addictive, potentially dangerous and not properly regulated. At least 805 people in 46 states have been sickened by an e-cigarette or vaping-related lung illnesses, with 12 deaths reported. The CDC has warned consumers not to use e-cigarettes of any kind until the cause of the illness is determined. In the meantime, several states have taken action to ban the sale of e-cigarettes, and the FDA has said it plans to finalize policies to increase regulation and enforcement in the coming weeks.

+ **SENATE PASSED SHORT-TERM GOVERNMENT FUNDING BILL.** The Senate approved a continuing resolution (CR), which passed the House last week, to fund the government through November 21, 2019 at current levels. The bill now heads to the President, who is expected to sign it before Monday's end to the current fiscal year. In addition to funding government departments, the CR contains funding extensions for a number of health care programs including Community Health Centers, the National Health Service Corps, Medicaid Disproportionate Share Hospital payments, Medicaid funding for Puerto Rico, and the Medicaid Drug Rebate Program.

ADMINISTRATION

+ **CENTER FOR MEDICARE AND MEDICAID INNOVATION WILL NEED A DIRECTOR.** On Thursday, September 26, the Senate confirmed Adam Boehler, the Director of the CMS Center for Medicare and Medicaid Innovation (CMMI), to be the Chief Executive Officer of the U.S. International Development Finance Corporation (DFC) – a new U.S. Government agency. DFC modernizes and reforms the U.S. Government's development finance capabilities – primarily the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority (DCA) of the U.S. Agency for International Development (USAID). With Boehler's recent confirmation CMMI will be searching for a new director.

+ **CMS ISSUED BURDEN REDUCTION RULE.** In keeping with the agency's Patients Over Paperwork initiative, the Centers for Medicare and Medicaid Services (CMS) issued the Omnibus Burden Reduction (Conditions of Participation) Final Rule. The rule finalizes changes to transplant center requirements regarding data submission, which the agency says are overly burdensome and can result in some transplant organs being discarded. The rule also removes requirements for certain activities, such as X-ray orders needing to be signed by a physician, and removes some other duplicative requirements. CMS estimates that the rule will save $8 billion over 10 years. Along with the rule, Administrator Seema Verma announced that CMS will be setting up an office of burden reduction to expand the agency's efforts to remove administrative hurdles for providers.

+ **CMS Issued Discharge Planning Final Rule.** CMS issued the Revisions to Discharge Planning Requirements Final Rule, which requires hospitals to provide patient access to information about post-acute care (PAC) provider choices when the patient is preparing to move from acute care to PAC (so-called discharge planning). Specifically, the hospital must provide information on the number of pressure ulcers in a given facility, the proportion of falls that lead to injury, and the number of readmissions back to the hospital. The rule also requires a streamlined exchange of patient information between healthcare settings to improve care coordination.

+ **CMS Expects Lower Medicare Advantage Premiums.** CMS announced that Medicare Advantage premiums are expected to fall to an average of $23 per month in plan year 2020, down 14 percent from 2019 and 23 percent from 2018. It would be the lowest average Medicare Advantage premium since 2007. Plan options are also increasing, with 1,200 more plan set to operate in 2020 than in 2018. Medicare Advantage enrollment is expected to reach a record high of 24.4 million beneficiaries next year.

Courts

+ **Medicaid Work Requirements Face Another Legal Challenge.** A group of Medicaid beneficiary advocates has filed a lawsuit against work requirements in Indiana. It is the fourth federal lawsuit challenging the ability of states to implement work requirements through 1115 waivers (similar measures in Arkansas, Kentucky, and New Hampshire have already been blocked by the court). Indiana argues that its work requirement is less strict than those in the other state plans. While the hourly work requirement has taken effect, the reporting requirements are set to be phased in, and no compliance enforcement will take place until next year. Still, the plaintiffs argue that CMS overstepped its authority by approving Indiana's work requirement waiver request, a policy that opponents believe does not support Medicaid's purpose of promoting health care.

Other

+ **CBO Found that Surprise Billing Fix Would Save $21.9 Billion.** Last week the Congressional Budget Office (CBO) published a report that found that the Energy and Commerce Committee's surprise billing proposal, the No Surprises Act (H.R. 3630), would have $21.9 billion over a 10 year period. The bill would implement a benchmark payment rate for out-of-network care, which CBO estimates would drive down the cost of care, both in-network and out-of-network, as insurance rates converge around the median. CBO also estimates that if the bill were enacted, there would be a decrease in the number of people claiming itemized medical tax deductions, increasing federal revenues. This week, a leaked CBO analysis shows that an alternative proposal, supported by many physician and hospital groups, which would establish an arbitration process to settle payment disputes, would cost the government "double-digit billions" over 10 years. It remains unclear which approach will win out, but the substantial savings of the Energy and Commerce proposal will likely appeal to many members of Congress.

NEXT WEEK'S DOSE

Congress is scheduled to have a two week recess beginning Monday, but there are talks the House may stay in session to continue its work on the impeachment inquiry. If they recess, it will be a race to beat the clock on several issues when they get back.

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To subscribe to the McDermottPlus Check-Up, please contact Jennifer Randles.