

# 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:** The House Ways and Means Committee completed its markup of H.R. 3, but floor consideration was pushed until mid-November. Seema Verma appeared before the House Energy and Commerce Oversight and Investigations Subcommittee.

## CONGRESS

- + **WAYS AND MEANS ADVANCED PELOSI'S DRUG PRICING BILL.** The House Ways and Means Committee [marked up](#) five health care bills: the Pathways to Health Careers Act of 2019 ([H.R. 3398](#)), the Medicare Dental Act of 2019 ([H.R. 4650](#)), the Medicare Vision Act of 2019 ([H.R. 4665](#)), the Medicare Hearing Act of 2019 ([H.R. 4618](#)), and the Lower Drug Costs Now Act of 2019 ([H.R. 3](#)), Speaker Nancy Pelosi's (D-CA) drug pricing package. All five were reported favorably to the full House, H.R. 3 by a vote of 24-17 with Representative Lloyd Doggett (D-TX) voting "present." One amendment was made to H.R. 3 to rename the bill the "Elijah E. Cummings Lower Drug Costs Now Act." Read our full summary of the markup [here](#). Ways and Means was the final House committee of jurisdiction to take up H.R. 3. While Democrats' original goal was to bring the bill to the floor next week, the timeline will slip until mid-November, at the earliest, to give the Congressional Budget Office (CBO) time to complete a score. Regardless of timing, H.R. 3 is unlikely to advance in the Republican-controlled Senate. Ultimately, if the House votes on and passes H.R. 3, and it fails to move in the Senate, we will be watching to see whether Speaker Pelosi and the Democrats come back to the negotiating table on a handful of consensus provisions, such as the CREATES Act, that could become law.
- + **WAYS AND MEANS ADVANCED FOUR OTHER HEALTH CARE AND TAX RELATED BILLS.** The Committee [marked up](#) additional legislation:
  - o Inhaler Coverage and Access Now Act ([H.R. 4716](#)), to expand access to medical inhalers for chronic lung diseases;
  - o Restoring Access to Medication Act of 2019 ([H.R. 1922](#)), to allow medical savings accounts to be used to purchase over-the-counter drugs and menstrual care products;
  - o Primary Care Enhancement Act of 2019 ([H.R. 3708](#)), to give certain people with primary care service arrangements access to health savings accounts; and
  - o A bill to amend the Internal Revenue Code of 1986 to impose a tax on nicotine used in vaping ([H.R. 4742](#)).

The vaping tax bill is estimated to produce about \$20 billion in federal revenue over the next 10 years, which would cover the costs of the other three bills. All four bills were

reported favorably to the full House. H.R. 4272 advanced on a party line vote of 24-15. The other three bills advanced by voice vote. The tax is a new approach to legislatively restrict vaping products, but with a party-line vote, it does not seem likely to be the answer.

- + **SEEMA VERMA TESTIFIED ON MEDICAID, THE ACA AND MORE.** Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma [testified](#) before the House Energy and Commerce Oversight and Investigations Subcommittee this week. This was her first appearance before a committee with health care jurisdiction since assuming her Administrator role. During the hearing, Democrats focused their questions on the Trump Administration's refusal to defend the Affordable Care Act (ACA) in court, declining Medicaid and Children's Health Insurance Program enrollment, Medicaid work requirements, the Administration's implementation of short-term, limited-duration insurance plans, and cuts to the Marketplace navigator program. Republicans focused their questions on premium reductions and how the economy is affecting insurance enrollment. Administrator Verma defended the Administration's actions, arguing that the policies have provided needed stability to the individual insurance market, and touted the Administration's success increasing beneficiary choice in Medicare and the individual market. There were some challenging lines of questioning, but overall the hearing was tamer than anticipated. Read our full summary of the hearing [here](#).
- + **REPUBLICAN STUDY COMMITTEE RELEASED A NEW HEALTH CARE PLAN.** The new [plan](#) would replace much of the ACA and serve as an alternative to Medicare for All messaging heading into the 2020 election. The plan would eliminate several ACA provisions, including Medicaid expansion and almost all coverage requirements and protections. Like the ACA replacement plans that failed in 2017, the plan would transition Medicaid funding into a block grant system. It would allow the creation of state-run "Guaranteed Coverage Pools," which would allow high-risk patients to have their coverage subsidized by federal grants. The plan outlines some coverage protections; however, most coverage protections would be left to the states to enact, including whether to require plans to offer minimum benefits. Continuing into the 2020 election season, both parties are searching for health care messages that resonate with voters. Expect to continue to see a range of proposals emerge as the election draws closer.

## ADMINISTRATION

- + **LAN HOSTED ANNUAL SUMMIT.** The [Health Care Payment Learning and Action Network \(LAN\)](#) released the results from its 2019 Advanced Payment Model (APM) Measurement Effort, which looks at national progress in APM adoption, and announced new goals for payment reform. The new goals focus on accelerating the transition to what the LAN is referring to as shared accountability APMs, including shared risk, bundled payments and population-based payments. The [announcement](#) included a goal of moving 100 percent of Medicare and Medicare Advantage payments to shared accountability by 2025. The Trump Administration and the Obama Administration before it have prioritized the transition to value-based payment. Under President Obama, the LAN [set a goal](#) of tying 30 percent of Medicare fee-for-service payments to quality or value through APMs by 2016 and 50 percent by 2018. The LAN reported, however, that only 35.8 percent had been achieved across all health care payments. To learn more about the value-based

care movement, please be sure to read our [Special Report: Checking up on the Value Movement](#).

- + **CMS POSTED NEW PAYMENT MODEL APPLICATIONS.** At the LAN summit, Department of Health and Human Services Secretary Alex Azar announced that CMS posted requests for applications (RFAs) for two previously announced payment models: [Primary Care First](#) (PCF) and [Kidney Care Choices](#) (KCC). [PCF](#) aims to improve quality and reduce costs by incentivizing providers to deliver patient-centered primary care that reduces acute hospital utilization. The PCF model will begin in January 2021. The [KCC](#) model aims to improve the cost and quality of kidney care by incentivizing providers to manage the care for Medicare beneficiaries with chronic kidney disease stages 4 and 5 and end stage renal disease in order to delay the onset of dialysis and to increase kidney transplantation. The KCC model is expected to run from January 1, 2020, through December 31, 2023, with the option for one or two additional performance years at CMS's discretion. Applications are due by January 22, 2020. Notably, CMS did not post the RFA for the [Direct Contracting](#) model, but indicated it would be coming in the near future.
- + **CMS SOLICITED COMMENTS ON THE FUTURE OF MEDICARE PROGRAM INTEGRITY.** As a follow-up to the recently released [Presidential Executive Order on Medicare](#), CMS released two requests for information (RFIs) on the future of Medicare program integrity. Through these RFIs, CMS is seeking input on improving the processes currently in place to protect the integrity of the Medicare program. The [Using Advanced Technology in Program Integrity](#) RFI is intended to obtain input on how the agency can better use emerging technologies such as artificial intelligence to ensure proper claims payment, reduce provider burden and conduct program integrity activities more efficiently. The [Future of Program Integrity](#) RFI seeks information about program integrity in value-based payment arrangements, prior authorization and provider education. Comments for both RFIs are due on November 20, 2019.

## COURTS

- + **JUDGE BLOCKED SITE-NEUTRAL PAYMENTS.** A federal judge again ruled to block CMS' attempt to impose payment cuts for clinic visits at certain non-hospital facilities (so-called "site-neutral payments"), denying the agency's request for a stay. The judge ruled in September that CMS lacked the authority to make the cuts and vacated that provision of the 2019 Hospital Outpatient Prospective Payment System rule, which took effect January 1, 2019. CMS requested a 60-day stay to give the agency time to consider an appeal, which the judge refused this week. In the wake of the ruling, hospital groups have called on CMS to repay hospitals already impacted by the cuts (which are phased in over two years beginning in 2019), though the judge did not officially order a remedy. Administrator Verma has been a vocal proponent of site-neutral payments, which she says are a way to reduce hospital consolidation and lower health care costs.

## STATES

- + **ARIZONA SUSPENDED WORK REQUIREMENT PROPOSAL.** The state has indefinitely postponed implementation of its Medicaid work requirement proposal, originally set to take effect next year, citing legal challenges. Arizona is one of nine states that have received approval from CMS to establish work requirements, though the policies have faced significant opposition. Similar programs in Arkansas, Kentucky and New Hampshire have already been overturned in court. The Arkansas and Kentucky cases are currently on appeal, and a ruling is expected in the next few months, though the panel of judges expressed doubts about CMS' authority to approve work requirements during oral arguments on October 11. CMS has reiterated its support of work requirements, which it says provide states flexibility in implementing their Medicaid programs.

## NEXT WEEK'S DOSE

One week to go before the House adjourns for a one-week recess. Look out for hints of a CBO score for H.R. 3.

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

[To subscribe to the McDermottPlus Check-Up, please contact Jennifer Randles.](#)

