

# 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:** Impeachment continued to dominate the news, Congress averted a government shutdown, and federal vaping regulation stalled.

## CONGRESS

- + **CONGRESS AGREED TO FUNDING DEAL.** Lawmakers reached a deal on a continuing resolution (CR) to fund the government through December 20, 2019. The new CR maintains funding for several expiring healthcare programs (the so-called extenders), including:
  - o Community health centers;
  - o Medicaid in Puerto Rico and other territories;
  - o The Certified Community Behavioral Health Clinic demonstration;
  - o The National Health Service Corps;
  - o Teaching health centers' graduate medical education programs;
  - o The Special Diabetes Program; and
  - o The Special Diabetes Program for Indians.

The deal also includes an extended delay of the disproportionate share hospital (DSH) payment cuts through December 20. Congress will now work to reach a deal on the final fiscal year 2020 spending package that will likely include longer-term funding for the extenders and further delay or repeal the DSH cuts.

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## ADMINISTRATION

- + **FUTURE OF E-CIGARETTE REGULATION UNKNOWN.** A Food and Drug Administration (FDA) regulation that was expected to implement a ban on flavored tobacco products cleared review at the Office of Management and Budget (OMB) on November 4, but has yet to be published. House Oversight and Reform Subcommittee on Economic and Consumer Policy Chairman Rep. Raja Krishnamoorthi (D-IL) sent a [letter](#) to the White House and FDA demanding to know the status of the rule, and six major healthcare organizations published an [op-ed](#) urging the Administration to move forward with the flavor ban. Also

this week, the House Energy and Commerce Committee advanced [a bill](#) that would go even further than the Administration's initial proposal, banning all flavored tobacco products, raising the tobacco purchasing age to 21 and banning all online tobacco sales. While the bill could pass the House, it is not expected to be considered in the Senate, where Republicans have voiced concerns that a flavor ban goes too far. President Trump's position has been difficult to discern, though Joe Grogan, the head of the Domestic Policy Council, recently called regulating tobacco a "huge waste of time." The Administration has not indicated whether it will backtrack completely on the flavor ban or attempt a different compromise.

## COURTS

- + **A THIRD JUDGE BLOCKED THE ADMINISTRATION'S "CONSCIENCE RULE."** A federal judge in San Francisco ruled against a Trump Administration rule that would have allowed healthcare providers to refuse to offer certain healthcare services that they disagree with on religious or moral grounds. The policy had been scheduled to take effect on November 22, 2019. The ruling follows similar decisions by federal district courts in New York and Washington State, holding that the Department of Health and Human Services (HHS) overstepped its authority in issuing the rule. The Administration has not said whether it plans to appeal, though it has repeatedly been willing to engage in prolonged court battles over its policies.

## STATES

- + **TENNESSEE SUBMITTED BLOCK GRANT WAIVER TO CMS.** Tennessee's [proposal](#) would establish a cap on federal funds in exchange for new program flexibility. The waiver comes after the Centers for Medicare and Medicaid Services (CMS) withdrew from OMB review a proposed guidance letter, which was expected to encourage states to convert their Medicaid programs to block grant systems. The withdrawal was unexpected, though CMS reiterated that it would soon release new Medicaid funding guidance. Tennessee has responded to critics who argue that a block grant system would result in reduced services, saying that it will use its new flexibility to add coverage and will not make changes to preventative service benefits for individuals under 21. Many legal scholars have questioned whether CMS has the authority to implement block grants. If CMS approves the Tennessee waiver, it is almost certain to be challenged in court.
- + **MASSACHUSETTS ADVANCED STRICT VAPING BAN.** The state Senate approved a measure that would ban flavored tobacco products, including menthol flavors, place a new excise tax on vaping products, and require health insurers to cover FDA-approved smoking cessation products and counseling with no copays. The bill now heads to the state House, which passed a similar measure earlier this month. Governor Charlie Baker (R) has not said whether he would sign the legislation. If enacted, the Massachusetts plan would be the strictest statewide vaping restriction to emerge thus far amid rising concern over teen vaping and vaping-related lung illnesses. Given the recent uncertainty surrounding a flavor ban at the federal level, more states may follow Massachusetts's lead and pursue restrictions of their own.

## QUICK HITS

- + The House Energy and Commerce Committee [advanced](#) several pieces of legislation, including [a bill](#) to raise the tobacco purchasing age to 21 and [a bill](#) to create maternal health programs with an emphasis on quality, rural areas, and addressing racial and ethnic disparities.
- + Senators pressed Stephen Hahn on the teen vaping epidemic during his confirmation [hearing](#) to be FDA commissioner.
- + A Finance Committee [hearing](#) examined barriers to Alzheimer's diagnosis, treatment and care coordination. Read our summary [here](#).
- + Representatives Diana DeGette (D-CO) and Fred Upton (R-MI) released a [framework](#) and request for feedback on policy areas for "Cures 2.0." It includes a focus on areas such as digital health, Medicare coverage of new drugs and devices, harnessing patient data to improve treatments and cures, and supporting families and caregivers. They are asking for comments on these issue areas by December 16, 2019.
- + HHS indicated its plan to propose the International Pricing Index demonstration this month, according to the [fall regulatory agenda](#).
- + Last week, HHS issued the [Transparency in Coverage](#) proposed rule, which outlines new reporting requirements for group health plans and issuers in the individual and group markets regarding beneficiary cost sharing, in-network provider negotiated rates and historical out-of-network allowed amounts. Read our summary of the rule [here](#).

## M+ RESOURCES

- + There are a lot of moving parts when it comes to prescription drug cost reform. Keep up-to-date with our [tracker](#).
- + Public impeachment hearings are underway and dominating the news. Here is [what you need to know](#) about how the impeachment process works.
- + Healthcare remains a pressing concern for voters heading into the 2020 presidential election. Our [chart](#) offers a broad overview of the healthcare plans proposed by the major contenders in the Democratic primary.

## NEXT WEEK'S DOSE

Congress adjourns for the Thanksgiving recess. We will be back with your Checkup on December 6.

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

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