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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: Congress is back in town with just two weeks to address government funding and many healthcare issues. More proposals are emerging on drug pricing and surprise billing, and the House Judiciary Committee took up impeachment.

CONGRESS

+ **HOUSE AND SENATE RELEASED DRUG PRICING PLANS.**
    - This morning, the Republican staff of the House Energy and Commerce, Ways and Means, and Education and Labor committees released a summary of H.R. 19, a drug pricing package that represents the Republican alternative to H.R. 3, Speaker Nancy Pelosi's (D-CA) drug pricing bill, which the House is scheduled to vote on next week. H.R. 19 includes the CREATES Act (H.R. 965), the BLOCKING Act (H.R. 938), the Orange Book Transparency Act (H.R. 1503), the Purple Book Continuity Act (H.R. 1520), and a ban on pay-for-delay practices. It also includes some insulin provisions, stops subsidizing other developed counties healthcare, and includes a Part D $3,100 out-of-pocket cap, eliminating the donut hole, and adding a 10% manufacturer responsibility throughout the benefit, which will lower federal spending and beneficiary cost-sharing. It does not include provisions such as the inflationary rebate proposed by the Senate Finance Committee. Exact language is not yet available.
    - Also on Friday, the Senate Finance Committee released an updated version of its drug pricing proposal, which reduces beneficiary cost sharing in the initial coverage phase of Part D from 25% to 20%, and requires drug companies to provide a 7% discount on brand-name drugs in the initial coverage phase and reset the brand catastrophic discount to 14%. The bill also includes two new provisions, which would require insurers to cap beneficiaries' out-of-pocket costs, and require Part D plans and Pharmacy Benefit Managers to pass negotiated discounts along to patients at the pharmacy counter. Finally, the bill includes funding for several health care extenders (expiring healthcare programs that need their funding renewed).

  The release of these two plans ahead of the December 20 government funding deadline shows that members are serious about wanting to address drug costs this year. Whether they can find a compromise that makes it to the President's desk is another matter.

+ **WAYS AND MEANS IS WORKING ON A SURPRISE BILLING PROPOSAL.** The plan, which Democratic leaders of the Committee expect to officially issue shortly, would set a benchmark payment rate for out-of-network services at the *mean* for a geographic area. This is in contrast to the *median* in-network rate benchmark proposed by the House Energy and Commerce and Senate Health, Education, Labor and Pensions (HELP) committees. This represents a more favorable option for healthcare providers because the mean rate likely would be higher than the median, and it could rise faster, provided there is no growth cap, which is present in other pending proposals. The Ways and Means plan also calls for an appeals process for providers to dispute payment rates, rather than the Energy and Commerce arbitration process approach. While the HELP Committee's surprise billing proposal does not include either approach, Chairman Lamar Alexander (R-TN) has said that he is willing to support arbitration in order for the two committees to merge their proposals and move forward. The White House has signaled it would be comfortable with an arbitration alternative as well. The addition of the plan from Ways and Means could complicate the process of getting a surprise billing fix over the finish line as the end of the year approaches. Additionally, the Ways and Means plan could eliminate much of the cost savings that the Energy and Commerce and HELP proposals are expected to generate, thus making it significantly less likely that the Ways and Means proposal will advance. Leaders may want the savings from the surprise billing measure to fund other year-end spending provisions, such as the healthcare extenders. While lawmakers have hinted that they hope to pass a final fiscal year 2020 spending package by the end of the year, disagreements over pay-for provisions like surprise billing could potentially push the process into 2020.

ADMINISTRATION

+ **ADMINISTRATION FINALIZED A RULE TIGHTENING WORK REQUIREMENTS FOR SNAP.** The rule would establish stricter criteria for states wishing to waive work requirements for certain Supplemental Nutrition Assistance Program (SNAP) beneficiaries. Currently, able-bodied adults without dependents must complete at least 80 hours per month of work or a qualified education program to receive SNAP benefits for more than three months in a three-year period. States have the option to waive this time limit in areas where the unemployment rate is 20% above the national average, but the new rule requires the national unemployment rate to be at least 6% for states to use such waivers (it was 3.6% in October). The Administration notes that the rule is estimated to save the government $5.5 billion over five years, but could drop more than 680,000 people from food stamps. The rule is set to take effect April 1, 2020.

+ **CMS RELEASED DIRECT CONTRACTING RFA.** Last week, the Centers for Medicare and Medicaid Services (CMS) and the Center for Medicare and Medicaid Innovation (CMMI) posted the request for application (RFA) for Direct Contracting, a set of voluntary payment model options that test the next iteration of risk sharing arrangements in traditional Medicare. The model builds on the Medicare Shared Savings Program and the Next Generation Accountable Care Organization model. Specifically, it aims to encourage new types of providers to move to two-sided risk in traditional Medicare, seeks to engage beneficiaries in value-based care models and reduce regulatory burden. The application for groups interested in participating in the Implementation Period of the demonstration is open now through February 25, 2020. CMS introduced the Direct Contracting model along with the Primary Care First (PCF) model in April 2019 as part of its Primary Cares Initiative.

COURTS

+ **JUDGED BLOCKED ADMINISTRATION'S IMMIGRATION HEALTH COVERAGE REQUIREMENT.** A federal judge ruled against a Trump Administration policy that would have required immigrants to prove they have health insurance or the means to pay for their healthcare before entering the country. The policy was originally set to take effect on November 3, 2019, but the court previously issued a temporary stay blocking the policy until a final decision was made. The court has now ruled that the requirement violates the Immigration and Nationality Act, going beyond what Congress intended. The Administration is expected to appeal the ruling.

+ **MEDICAID WORK REQUIREMENTS FACE NEW CHALLENGES IN MICHIGAN AND VIRGINIA.** Beneficiary advocates filed a lawsuit against Medicaid work requirements in Michigan, following similar cases challenging work requirements in Arkansas, Kentucky, New Hampshire and Indiana. Judge James Boasberg of the US District Court for the District of Columbia, who previously blocked work requirements in Kentucky, Arkansas and New Hampshire, is expected to hear the Michigan case as well. Given the similarities, he is expected to issue a ruling akin to his previous decisions, holding that CMS overstepped its authority in approving the work requirements. CMS has appealed Judge Boasberg's previous decisions on the issue, and those cases are pending. Michigan has announced that it will not suspend its work requirement, which is set to take effect January 1, 2020, as other states have done until the legal issue is resolved. Also this week, following recent elections in Virginia in which Democrats seized control of both chambers of the legislature, the Commonwealth requested that CMS halt consideration of its work requirement waiver. Governor Ralph Northam (D) said the state is unlikely to fund the measure if CMS approves it.

- **HOSPITAL GROUPS SUE OVER TRANSPARENCY RULE.** A collection of hospital groups, including the American Hospital Association and the Federation of American Hospitals, are challenging the recent Trump Administration final rule that would require hospitals to publish their standard charge information online along with charge information for "shoppable" services such as x-rays and outpatient visits. The rule is set to take effect January 1, 2021. The plaintiffs argue that the Department of Health and Human Services lacks the authority to force hospitals to publish such information and that the rule violates the First Amendment. The Administration released the final rule in November along with a similar proposed rule that would require health plans and insurance issuers offering coverage in the individual and group markets to make price and cost-sharing information public, including personalized estimates of a beneficiary's out-of-pocket cost liability, which is facing similar pushback from industry groups. The Administration is expected to defend both policies.
- **FEDERAL COURT WILL HEAR CSR CASE IN JANUARY.** The appeals case considering whether the Trump Administration had the authority to stop making cost-sharing reduction (CSR) payments to insurers is scheduled for January 9, 2020. Earlier this year, the US Federal Court of Claims held that the Administration violated the Affordable Care Act's requirements when it halted CSR payments at the end of 2017. Further, the court ruled that the government owes insurers the payments for the 2017 and 2018 plan years, totaling nearly $1.6 billion. Several similar cases have been stayed until the appeals court makes a decision. If the appeals court sides with the lower court, insurers could potentially seek reimbursement for the CSR payments in perpetuity.

QUICK HITS

- The Senate HELP Committee advanced Stephen Hahn's nomination for Commissioner of the Food and Drug Administration (FDA) with a vote of 18 to five. Senators Patty Murray (D-WA), Bernie Sanders (I-VT), Elizabeth Warren (D-MA), Maggie Hassan (D-NH) and Tina Smith (D-MN) voted in opposition. His nomination now awaits consideration by the full Senate.
- Tennessee submitted a Section 1115 waiver application to CMS, which, if approved, would implement a block grant for the state's Medicaid program. Read our summary of the waiver here.
- The House Judiciary Committee took up impeachment with a hearing on the constitutional grounds for removing a president. For more on how the impeachment process works, click here.
- The Senate Commerce, Science, and Transportation Committee considered legislation aimed at consumer data privacy. Read our summary here.
- The Energy and Commerce Oversight and Investigations Subcommittee examined US flu season preparedness.
- The Energy and Commerce Health Subcommittee examined FDA's ability to regulate cosmetic safety.

M+ Resources

+ The Innovation Center's PCF model is an opportunity for primary care practices to test whether advanced primary care can reduce the total cost of care while improving or maintaining quality. We take a closer look at the model here.
+ There are a lot of moving parts when it comes to prescription drug cost reform. Keep up-to-date with our tracker.

Next Week's Dose

Adding to Congress's to do list before the end of the year, the House plans to vote on H.R. 3 next week, and the Energy and Commerce Health Subcommittee will hold Congress's fourth hearing on Medicare for All on Tuesday

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