

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 of Representatives voted to formally present the articles of impeachment against President Trump to the Senate, kicking off the trial phase of the impeachment process. The Senate trial is expected to tie-up and stall legislation in the upper chamber for several weeks, and perhaps longer. House lawmakers, meanwhile, continued to grapple with surprise billing.

CONGRESS

- + **WAYS AND MEANS RELEASED ADDITIONAL DETAILS OF SURPRISE BILLING PLAN.** The [one-page document](#) released by House Ways and Means Committee Chairman Richard Neal (D-MA) and Ranking Republican Kevin Brady (R-TX) offers some additional insight into the Committee's thinking on how to address surprise billing. The document released this week is light on details, similar to the [outline released in December](#), but does say that the plan would allow insurers and providers to work out any payment disputes "without interference." If they cannot do so, the proposal contains a "robust, impartial, and structured payment process to settle payments." Exactly what that means is unclear. The document does not mention arbitration or a benchmark payment rate, which other committees have proposed to settle payment disputes. With that said, the committee seems to favor arbitration over a benchmark, and that may pull a compromise away from a pegged resolution mechanism. The Ways and Means summary also says it would not pre-empt state laws already enacted on surprise billing. Without legislative text, more details from lawmakers, or any cost or savings associated with the proposal, the path forward remains unclear. For more on what 2020 has in store for surprise billing policy, check out this week's episode of the [Health Policy Breakroom](#).
- + **LAWMAKERS URGED OVERSIGHT OF TENNESSEE BLOCK GRANT REQUEST.** House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) and Senate Finance Committee Ranking Member Ron Wyden (D-OR) sent a [letter](#) to the Department of Health and Human Services (HHS) Office of Inspector General (OIG) calling on OIG to "exercise vigorous oversight" if the Centers for Medicare and Medicaid Services (CMS) approves Tennessee's [waiver request](#) to turn its Medicaid program into a block grant system. If the waiver is approved, Tennessee will become the first state to establish a block grant for its Medicaid program, an idea that many conservatives have championed but Democrats fear could result in reduced access or benefits. In the letter, Wyden and Pallone warn that "the scheme promoted by the administration and embodied in the Tennessee waiver proposal would threaten beneficiary access to care in many ways, including all but ensuring Medicaid dollars are diverted by purposes not allowed under federal law." OIG said that it received the letter, but has not otherwise responded. If CMS does approve Tennessee's waiver, other Republican-led states may pursue similar

plans. Many legal experts have questioned whether CMS has the authority to approve a block grant, and the waiver is sure to face legal challenges if granted.

ADMINISTRATION

- + **ONC RELEASED DRAFT HEALTH IT STRATEGIC PLAN.** HHS Office for the National Coordinator for Health Information Technology (ONC) released its draft [2020-2025 Federal Health IT Strategic Plan](#), which offers a roadmap for health IT efforts by both government agencies and the private sector. The plan is in keeping with the Administration's priorities of improving individual access to, and quality of, health information and promoting interoperability and data sharing. Key objectives of the plan include: advancing health IT safety practices; fostering competition, transparency, and affordability in healthcare; reducing regulatory and administrative burden on providers; and advancing individual- and population-level transfer of health data. CMS will accept comments on the proposal through March 18, 2020.

COURTS

- + **COURT BATTLES OVER VARIOUS ADMINISTRATION POLICIES CONTINUE.**
 - o A group of hospitals filed suit against the so-called site-neutral payment cuts present in the 2020 Medicare Hospital Outpatient Prospective Payment System (OPPS) final rule. CMS implemented the cuts to certain off-campus hospital facilities as part of the 2019 OPPS rule, but the agency announced in December 2019 that it would begin repaying hospitals after a federal district court ruled that the agency lacked the authority to impose them. Despite making the back payments and the 2019 district court ruling, CMS implemented the same cuts in 2020. Expectedly, hospitals sued again, reiterating their earlier arguments that CMS lacks the authority to impose the cuts. Given the identical issues at stake, a similar decision from the district court is expected soon.
 - o The Administration asked the US Supreme Court to allow its public charge rule to take effect, granting immigration authorities the ability to deny visas or green cards based on a person's use of Medicaid or other public benefits. The US Department of Homeland Security issued the rule in August 2019, but it was quickly met with legal challenges, and three federal district courts issued injunctions preventing the rule from taking effect. In December 2019, a federal appeals court lifted two of the injunctions, but a nationwide injunction issued by a federal judge in New York remains in place. The Supreme Court has given challengers until January 22 to respond to the Administration's request to lift the injunction.

STATES

+ STATES CONTINUE TO SEEK FLEXIBILITIES THROUGH WAIVERS.

Even with the fate of the Affordable Care Act (ACA) [uncertain](#), states are continuing to request additional flexibilities in their Medicaid programs and insurance marketplaces through waiver authority provided under the ACA. For example:

- On December 23, 2019, Georgia submitted two waiver requests to CMS. The first was a Section 1115 waiver requesting approval to launch the “Pathways to Coverage” initiative, which includes a partial Medicaid expansion, Medicaid work requirements, and premiums and cost sharing for certain beneficiaries. CMS will accept comments on the application through February 7, 2020. Read our summary of the application [here](#). The second was a Section 1332 waiver to create a state reinsurance program, which the state estimates would lower premiums by 10% in the 2021 plan year. The waiver would also transition the state from the federal exchange to a system where consumers will enroll in coverage through private web brokers or directly with insurance carriers.
- On January 3, 2020, Idaho submitted a Section 1115 waiver application to CMS requesting a 5-year demonstration authorizing the state to receive federal funding for medically necessary, acute, short-term stay services provided in institutions for mental diseases for diagnoses of a substance use disorder, serious mental illness or serious emotional disturbance. CMS will accept comments on the application through February 8, 2020. Read our summary of the application [here](#).
- Last week, New Hampshire Governor Chris Sununu (R) announced plans to submit a Section 1332 waiver to CMS to create a state reinsurance program. State lawmakers authorized the waiver last September and estimate that the program would reduce premiums by about 15% in the 2021 plan year. The program is expected to cost about \$44 million funded by federal pass through funds and a state tax on insurers. The state plans to hold two public hearings on the waiver this spring before submitting it to CMS.

QUICK HITS

- + The House Energy and Commerce Oversight and Investigations Subcommittee [examined](#) states’ response to the opioid epidemic. Read our summary of the hearing [here](#).
- + The House Energy and Commerce Health Subcommittee [considered](#) legislation that would make various changes to federal cannabis policy.
- + The Department of Justice and Republican attorneys general asked the Supreme Court to reject Democrats’ [request](#) to expedite consideration of the high-profile case concerning the constitutionality of the ACA, arguing that the Court should instead wait until a lower court issues a revised decision on which parts of the law can stand.
- + The Medicare Payment Advisory Commission held its annual January meeting. Find the agenda and presentation materials [here](#).

M+ RESOURCES

- + The impeachment process moved to the Senate this week. For more on what a trial means for legislative activity in the Senate, check out this week's episode of the [Healthcare Preview](#).
- + The latest episode of the [Health Policy Breakroom](#) offers a deep dive into what 2020 has in store for the issues of drug pricing and surprise billing.

NEXT WEEK'S DOSE

The House adjourns for a one-week recess and the Senate is expected to begin President Trump's impeachment trial. The Medicaid and CHIP Payment and Access Commission will hold its January public meeting.

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

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