

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: It was a relatively quiet week in Washington with the House of Representatives in recess and the Senate enmeshed in the impeachment trial. Activity is sure to pick up as soon as House members are back in town next week.

CONGRESS

- + **SENATORS INTRODUCED E-CIGARETTE USER FEE BILL.** The bipartisan [Resources to Prevent Youth Vaping Act](#) led by Senators Jeanne Shaheen (D-NH) and Lisa Murkowski (R-AK) increases the total amount of user fees that the US Food and Drug Administration (FDA) collects from the tobacco industry by \$100 million in fiscal year (FY) 2021 and removes the existing exclusion for e-cigarette manufacturers. The new fees collected from e-cigarette manufacturers will help fund industry oversight and increase public awareness of the negative effects of e-cigarettes. The Trump Administration included a similar e-cigarette user fee proposal in its FY 2020 budget. Combatting the epidemic of teen e-cigarette use has been a priority for many in Congress and the Administration. Earlier this month, FDA issued a [partial ban](#) on flavored e-cigarette products aimed at reducing their appeal to teens, but many in Congress said the guidance did not go far enough. Issues relating to flavored e-cigarettes and vaping products are likely to continue to play out throughout 2020.
- + **ENERGY AND COMMERCE MEMBERS QUESTIONED FDA ON COMPLEX GENERIC APPROVAL.** A group of House lawmakers led by Energy and Commerce Committee Chairman Frank Pallone (D-NJ) and Ranking Member Greg Walden (R-OR) sent a [letter](#) to FDA Commissioner Stephen Hahn asking for details regarding the lag in development and approval of complex generic drugs. Complex drugs are often high-cost medications used to treat serious conditions, but FDA has been slow to approve generic versions, which are more affordable in many instances. According to the letter, “a primary purpose of this request is to determine whether additional authority is needed to improve the approval process for complex generic drugs to increase access and reduce costs.” Streamlining the development and approval of generic drugs is [one of the few](#) areas of broad bipartisan agreement in the drug pricing reform space. The lawmakers requested a response to their inquiry by January 31, 2020.
- + **HOUSE DEMOCRATS ARGUED AGAINST PUBLIC CHARGE RULE.** A group of House Democrats, led by Speaker Nancy Pelosi (D-CA), submitted an [amicus brief](#) urging a federal appeals court to block the Trump Administration’s [public charge rule](#). If implemented, the rule would allow immigration authorities to deny visas or green cards based on a person’s use of Medicaid or other public benefits, and has faced stiff opposition from immigrant rights groups. The US Department of Homeland Security

issued the rule in August 2019, but it was quickly met with legal challenges. Three federal district courts issued injunctions preventing the rule from taking effect. In December 2019, a federal appeals court lifted two of the injunctions, and last week the Administration asked the US Supreme Court to lift the third nationwide injunction issued by a federal district court in New York. The Supreme Court has not yet responded to the request, and the injunction blocking the rule from taking effect remains in place.

COURTS

- + **US SUPREME COURT WILL NOT EXPEDITE ACA CASE.** The Supreme Court rejected a request by Democratic attorneys general and the House of Representatives to expedite review of a case challenging the constitutionality of the Affordable Care Act (ACA). The request came after a federal appeals court declared the ACA's individual mandate unconstitutional, but remanded the case to a federal district court in Texas to reevaluate whether the rest of the law can stand without the mandate in place. The Court's order this week simply says that it will not expedite review of the case, which likely would have led to a decision prior to the 2020 election. This order does not indicate whether the Court will consider the case at a later date. The Supreme Court may decide to take up the case either before or after the district court in Texas issues a revised decision, though it is rare for the Court to intervene before a case is settled in the lower courts. The outcome is good news for the Trump Administration and Republicans, who argued against expedited review. Had the Supreme Court taken up the case before the 2020 election, Republicans would likely have been under significantly more pressure to present an alternative to the ACA in the event of a total repeal. While a decision for total repeal is not an immediate threat, healthcare is sure to remain a central issue on the campaign trail, and the prospect of sweeping repeal continues to linger.

STATES

- + **ILLINOIS SUBMITTED A WAIVER FOR POSTPARTUM MEDICAID COVERAGE.** The Section 1115 [waiver application](#) would extend postpartum Medicaid coverage from the current 60 days to 12 months for beneficiaries at or below 213% of the federal poverty line. The waiver would also allow for continuous eligibility for mothers and babies for the entire 12-month postpartum period, and would allow beneficiaries to be reinstated in their previous Medicaid managed care organization if they submit renewal paperwork within 90 days of coverage termination (the current window is 60 days). It is not clear whether the Centers for Medicare and Medicaid Services (CMS) will approve the waiver. So far, the Administration has voiced narrower support for expanding postpartum coverage to mothers with substance use disorders. However, many lawmakers in both parties have expressed support for expanding postpartum Medicaid coverage, and the issue is likely to remain at the forefront for many maternal health advocates. CMS will accept comments on the proposal through February 13, 2020.

QUICK HITS

- + CMS is [seeking feedback](#) on ways to better coordinate care from out-of-state providers for Medicaid-eligible children with medically complex conditions. Comments are due March 23, 2020.
- + CMS released a new [data highlight](#) on the reporting of social determinants of health for Medicare fee-for-service beneficiaries.
- + The US Government Accountability Office issued a [report](#) on artificial intelligence in healthcare.
- + The Medicaid and CHIP Payment and Access Commission held its January Commission meeting. Find the agenda [here](#).

M+ RESOURCES

- + The Senate began President Trump's impeachment trial this week. Here is [what you need to know](#) about what comes next.
- + The latest episode of the [Health Policy Breakroom](#) offers a deep dive into what 2020 has in store for Medicaid reform.
- + For all our latest predictions on the 2020 landscape, be sure to follow our [Policy Forecast page](#).

NEXT WEEK'S DOSE

House lawmakers return as the impeachment trial continues in the Senate.

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