

# 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:** House committees advanced legislation to address surprise billing, and the White House released the President's budget for fiscal year (FY) 2021.

## CONGRESS

- + **SURPRISE BILLING LEGISLATION ADVANCED IN THE HOUSE.** The House [Education and Labor](#) and [Ways and Means](#) committees held markups of their surprise billing legislation this week, potentially moving a step closer to a final deal (read our summaries of the [Education and Labor](#) and [Ways and Means](#) markups here). Significant differences remain in how the bills resolve payment disputes between insurers and providers. The Education and Labor proposal ([H.R. 5800](#)) is substantially similar to proposals advanced by the House Energy and Commerce and Senate Health, Education, Labor and Pensions (HELP) committees, establishing a benchmark rate for out-of-network services below a specified dollar threshold, and then defaulting to an arbitration option as a backstop in higher-dollar cases. The Ways and Means proposal ([H.R. 5826](#)) establishes a multi-step negotiation and mediation process for insurers and providers to reach an agreed-upon rate, and does not include a federal benchmark. Division on whether to include a benchmark rate remains the biggest obstacle to reaching a final deal. Although the White House [signaled opposition](#) to the Ways and Means approach, saying that overuse of arbitration could drive up healthcare costs, President Trump [tweeted](#) this week that he wants a bipartisan compromise on the issue. House lawmakers are under pressure from leadership to reach a deal before May 22, when funding for a slate of healthcare programs runs out. The savings generated by a surprise billing fix could help fund extension of those expiring provisions. The Congressional Budget Office (CBO) estimates that the [Education and Labor bill](#) would save approximately \$24 billion over 10 years (not surprisingly, roughly the same estimate CBO gave to the Energy and Commerce/HELP package), whereas the [Ways and Means bill](#) would save approximately \$18 billion over that span.
- + **THE SENATE CONTINUES TO GRAPPLE WITH DRUG PRICING LEGISLATION.** Last year, Senate Finance Committee Chairman Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) introduced the Prescription Drug Pricing Reduction Act ([S. 2543](#)), which includes provisions to improve transparency in drug pricing and increase access to generic drugs. The bill would also establish a penalty for drug companies that raise their prices above the rate of inflation, a policy many Republicans oppose. The bill was approved by the Finance Committee last July, but with only six Republicans voting in favor and nine opposed. It was [reported](#) this week that Chairman Grassley is working to gain more Republican support for his bill, arguing that the public desire for action on drug pricing should motivate Republicans who are up for reelection. Senator Martha

McSally (R-AZ), who faces a tough reelection campaign, [endorsed](#) the bill this week. Senate Majority Leader Mitch McConnell (R-KY) has so far refused to bring the bill to the floor, citing disagreement within the party. President Trump has repeatedly called on Congress to enact bipartisan drug pricing reform, and US Department of Health and Human Services (HHS) Secretary Alex Azar said this week that the Administration's FY 2021 budget supports bipartisan drug pricing legislation like the Grassley-Wyden plan. As with surprise billing, lawmakers are under pressure to reach a deal in order to use the expected savings to offset the cost of other funding priorities in advance of the May deadline.

## ADMINISTRATION

- + **WHITE HOUSE RELEASED FY 2021 BUDGET.** The President's [\\$4.8 trillion budget](#) requests \$94.5 billion in discretionary budget authority for HHS, which represents a 10% decrease from the 2020 enacted level, and proposes targeted savings of \$1.6 trillion in Centers for Medicare and Medicaid Services (CMS) mandatory programs over the next decade. The [HHS budget](#) includes mostly legislative proposals, meaning congressional action would be necessary to implement many of the Administration's priorities. These proposals aim at reducing the cost of prescription drugs, reducing Medicare spending by lowering payments to certain facilities and providers, reducing Medicaid spending by tightening eligibility requirements and addressing rural healthcare access. The budget is light on regulatory provisions, which the Administration believes it could advance under its own existing authorities. Many observers expected the budget to include provisions related to the [International Pricing Index Model](#) or other regulatory measures to lower drug costs. Instead, the budget telegraphs support for legislation to address drug prices, calling on Congress to find a pathway to address the issue. Ultimately, the Administration's annual budget should be viewed as a messaging tool: most of the legislative policies are unlikely to be enacted with a Democrat-controlled House of Representatives, and the Administration is limited in what it can do without congressional authority. During a Senate Finance Committee [hearing](#) this week, Secretary Azar defended the budget request and called on Congress to enact the President's proposals (read our summary of the hearing [here](#)). However, as in prior years, we expect Congress to largely follow its own priorities in determining the 2021 budget. Read our full summary of the President's HHS budget [here](#).

## STATES

- + **PART OF GEORGIA'S CONTROVERSIAL 1332 WAIVER IS ON HOLD.** Last week, CMS [paused consideration](#) of part of a Georgia [waiver request](#) that would allow the state to transition from the federal exchange to a system where consumers would enroll in coverage through private web brokers or directly with insurance carriers. The waiver would also replace the premium tax credits and cost sharing reductions established by the Affordable Care Act (ACA) with a state-run financial assistance program, and allow Georgia to cap the total amount of financial assistance that residents could receive. Finally, the waiver would create a new type of plan, called a non-qualified health plan, which can impose higher out-of-pocket expenses. In its response to the waiver request, CMS asked for additional information from the state regarding the waiver's ability to meet the ACA's guardrails, the process for any subsidy redeterminations within or between plan years, additional data on the characteristics of the affected population and

information regarding employer-sponsored insurance offerings in the state. Many legal experts have raised questions about CMS' authority to approve the Georgia plan, and it is not clear whether any additional information Georgia provides will be enough to lead the agency to approve the waiver. If the waiver is approved, it is almost certain to face legal challenges. As part of its 1332 waiver application, Georgia also requested authority to set up a state reinsurance program. CMS has allowed this portion of the request to move forward and will accept comments on the reinsurance proposal through March 7, 2020.

## QUICK HITS

- + The House Energy and Commerce Health Subcommittee [considered](#) legislation aimed at improving women's access to reproductive healthcare. House Education and Labor Committee [examined](#) ways to address America's maternal and infant health crisis. Read our summary of the hearing [here](#).
- + The Senators Chuck Grassley (R-IA), Ron Wyden (D-OR), Todd Young (R-IN) and Ben Cardin (D-MD) sent a [letter](#) to the United Network for Organ Sharing (UNOS) asking for information on UNOS' oversight of organ procurement organizations. According to the letter, recent reports have documented "lapses in patient safety, misuse of taxpayer dollars, and tens of thousands of organs going unrecovered or not transplanted." The senators ask for a response to their inquiry by March 1, 2020.
- + CMS released its [proposed 340B acquisition cost data survey](#). The survey will ask hospitals to report the average acquisition cost for specified drugs purchased under the 340B program during the last quarter of 2018 and the first quarter of 2019. Comments on the proposal are due March 9, 2020.
- + CMS issued a [request for information](#) on ways to improve maternal health access, quality and outcomes in rural areas. Comments are due April 12, 2020.
- + A federal appeals court will hear oral arguments on April 17, 2020, in a case concerning whether CMS has the authority to reduce payments to certain off-campus hospital facilities in 2020. The so-called site-neutral policy was blocked by the courts in 2019, but despite the 2019 policy being overturned, CMS continued the cuts in 2020 and has faced continued opposition from hospital groups.
- + A federal appeals court struck down the Trump Administration's approval of Medicaid work requirements in Arkansas, affirming a lower court's ruling. The decision brings the issue of Medicaid work requirements closer to possible review by the US Supreme Court.

## M+ RESOURCES

- + The latest episode of the [Health Policy Breakroom](#) turns to the issue of rural health access and examines ways for stakeholders to engage on the issue this year.
- + To help you keep track of the many regulatory items on the agenda, our [Regulatory Calendar](#) documents the expected proposed rule dates, comment period, final rule date and effective date of the annual payment system regulations.
- + With the federal elections looming later this year, now is a good time to review the power of the Congressional Review Act (CRA). Our [summary](#) provides an overview of the CRA and how it may shape rulemaking this year.
- + For all our latest predictions on the 2020 landscape, be sure to follow our [Policy Forecast page](#).

## NEXT WEEK'S DOSE

Congress adjourns for the one-week Presidents' Day recess.

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

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