

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 Ways and Means and Education and Labor committees released information on their surprise billing proposals, and President Trump delivered the State of the Union on the eve of the Senate's vote to acquit him in the impeachment trial. The partisanship on display during the speech illustrates that it may be difficult for leaders in Washington to come together on legislation to address priority issues, such as drug pricing.

CONGRESS

- + **HOUSE COMMITTEES RELEASED NEW DETAILS OF SURPRISE BILLING PROPOSALS.** The House Ways and Means Committee released a [discussion draft and supporting documents](#) of its long-awaited proposal to address surprise medical bills. The plan includes a multi-step process for insurers and providers to settle payment disputes. First, either party may initiate a 30-day open negotiation process to find an agreement. If they cannot reach agreement, they can move to mediation by an independent arbitrator. There is no minimum dollar threshold to bring disputes. The bill also includes requirements for plans and providers to provide patients with cost estimates and information on in-network providers. Separately, the House Education and Labor Committee released [text and a summary](#) of their own plan to address surprise billing, which includes mechanisms for both a benchmark rate and arbitration. The committees are now expected to begin work on crafting a final deal. Two major issues remain as that work begins: (1) Ways and Means uses a dispute-resolution process with no benchmark rate while other committees rely on benchmark rates as the primary mechanism to address payment disputes; and (2) the relative savings of the various packages will be an important factor, especially if surprise billing savings are used to offset the cost of other spending priorities. Education and Labor and Ways and Means both plan to hold markups of their legislation next week.
- + **LAWMAKERS INTRODUCED BILL AIMED AT INCREASING OVERSIGHT OF CMMI.** The Affordable Care Act (ACA) created the Center for Medicare and Medicaid Innovation (CMMI) to design, test and implement innovative payment models in Medicare, Medicaid and the Children's Health Insurance Program. Since its creation, CMMI has operated with broad authority, though some lawmakers have expressed concern that the agency has too much power. The [bipartisan bill](#) introduced this week by Representatives Terri Sewell (D-AL) and Adrian Smith (R-NE) is the latest example of lawmakers seeking to rein in CMMI's authority. It proposes new requirements for CMMI to incorporate feedback from the public and other federal agencies in the development of payment models, increases oversight with an expedited congressional disapproval process, and requires more stringent monitoring and data sharing of the impact of any model on access to care. CMMI has been active under the Trump Administration as the US

Department of Health and Human Services (HHS) has pursued various mandatory payment models. Expect CMMI and its sweeping authority to come under more critical review as this pursuit continues in areas including kidney care, radiation oncology and the International Pricing Index model.

ADMINISTRATION

- + **CMS ISSUED ANNUAL MARKETPLACE RULE.** The annual [Notice of Benefit and Payment Parameters](#) outlines the changes for the next plan year for marketplaces, risk adjustments and other market reforms. The proposed rule includes changes to the automatic reenrollment process, special enrollment periods, and state reporting for essential health benefits. The rule also makes it optional for insurers to count coupons offered by drug manufacturers towards an enrollee's annual limit on out-of-pocket costs, and requires insurers to deduct rebates and other price concessions provided directly by drug manufacturers as well as those received by pharmacy benefit managers from their Medical Loss Ratio calculations. The Centers for Medicare and Medicaid Services (CMS) will accept comments on the proposal through March 2, 2020.
- + **CMS ISSUED ADVANCE NOTICE PART II AND MA AND PART D PROPOSED RULE.** The [proposed rule](#) and the [Advance Notice](#) contain numerous policy changes for Medicare Advantage (MA) and Part D plans. These include implementing statutory changes that allow Medicare-eligible individuals with end stage renal disease to enroll in MA plans beginning January 1, 2021; revising certain aspects of the Star Ratings system; creating pharmacy performance measure reporting requirements; and proposing network adequacy and telehealth changes. The Administration touted the rule as consistent with its goals of strengthening MA and Part D. CMS estimates that the average expected change in plan payments will be 0.93%. The [first part of the Advance Notice](#) was issued in January, and comments on the proposals set forth in Part I and Part II are due March 6, 2020. The Final Rate Announcement will be published by April 6, 2020. Comments on the proposed rule must be submitted by April 6, 2020.

COURTS

- + **THE US SUPREME COURT WILL CONSIDER WHETHER TO TAKE UP ACA CASE.** The US Supreme Court announced that it will consider whether to hear the appeals in the ACA constitutionality case during its conference on February 21, 2020. At issue is a federal district court decision that found that the ACA's individual mandate is unconstitutional and cannot be severed from the remainder of the law, meaning the entire law should be struck down. The Fifth Circuit Court of Appeals found the individual mandate unconstitutional but remanded the case back to the federal district court to reconsider which other provisions of the law can stand. During its upcoming conference, the Supreme Court will decide whether to hear the case or delay making that decision until a future conference date. It is highly unlikely the Supreme Court will issue a decision on the constitutionality of the ACA before the 2020 election. While a decision for total repeal is not an immediate threat, healthcare is sure to remain a central issue on the campaign trail, and an announcement that the Supreme Court will hear the case, whenever that may be, would certainly heighten political attention to the ACA.

QUICK HITS

- + The Senate voted to acquit President Trump on both articles of impeachment, abuse of power and obstruction of Congress. Senator Mitt Romney (R-UT) joined Democrats in voting “guilty” on the first article. The votes were otherwise divided along party lines.
- + The Energy and Commerce Oversight and Investigations Subcommittee [grilled](#) e-cigarette manufacturers over their products’ impact on public health. Read our summary of the hearing [here](#).
- + The Ways and Means Health Subcommittee [considered](#) pharmaceutical barriers to cure development. Read our summary of the hearing [here](#).
- + The House Foreign Affairs Asia, the Pacific and Nonproliferation Subcommittee [examined](#) the response to the coronavirus outbreak and regional implications.
- + Senators Sherrod Brown (D-OH), Bernie Sanders (I-VT) and Richard Blumenthal (D-CT) sent a second letter to CMS urging the agency to crack down on MA plans for allegedly exaggerating patient diagnoses. A group of senators previously sent an [inquiry](#) to CMS about the issue in September 2019.
- + HHS Secretary Alex Azar notified Congress that he may shift as much as \$136 million within the Department to combat the coronavirus outbreak. It is possible that Congress will consider additional appropriations for the Department to fight the disease. Twelve cases have been confirmed in the US.
- + A federal district court will hear oral arguments on March 20, 2020, in a case challenging the Trump Administration’s [rule](#) expanding the use of short-term, limited-duration insurance plans.

M+ RESOURCES

- + On the latest episode of the [Health Policy Breakroom](#), our consultants take a look at a few of the regulatory areas we expect the Administration to focus on this year.
- + For all our latest predictions on the 2020 landscape, be sure to follow our [Policy Forecast page](#).

NEXT WEEK’S DOSE

With the impeachment trial over, the Senate will turn its attention back to legislative priorities. Expect drug pricing to be at the top of the list. Education and Labor and Ways and Means plan to hold markups of their surprise billing legislation. Several House committees will hold hearings on the President’s Fiscal Year 2021 Budget, which is expected to be released on Monday.

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

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