

McDermottPlus Check-Up: March 19, 2021

McDermott+Consulting is pleased to provide the McDermottPlus Check-Up, your regular update on health care policy from Washington, DC.



This Week's Dose: The Senate confirmed former California Attorney General Xavier Becerra as the new Secretary of the US Department of Health and Human Services (HHS), and the House of Representatives passed a sequestration relief bill. The Biden Administration reversed Medicaid work requirements in Arkansas and New Hampshire.

Congress

- + **Senate Confirmed Becerra as HHS Secretary.** The Senate voted 50 to 49 to confirm Becerra, with Senator Susan Collins (R-ME) as the sole Republican joining Democrats to vote in favor of his nomination. With Becerra in place, the Senate will likely move to confirm remaining Health Department positions, including the Administrator of the Centers for Medicare and Medicaid Services (CMS) (Biden has [tapped](#) former HHS official Chiquita Brooks-LaSure for the post). Notably, the President has not yet nominated anyone to lead the Food and Drug Administration (FDA) or the Health Resources and Services Administration, two other large HHS agencies. Healthcare policy under the Biden Administration has so far been dominated by Congress and COVID-19 relief efforts. Regulatory activity will likely pick up once HHS leadership is in place.
- + **House Passed Sequestration Relief Bill, but Senate Prospects Unclear.** The House passed a [bill](#) by a vote of 246 to 175 that would extend the current Medicare sequester moratorium through the end of 2021 and provide prospective relief from additional cuts expected in 2022. The 2% cut to Medicare payments, first implemented in 2013, was suspended by Congress multiple times during the public health emergency, most recently through March 31, 2021, to provide relief to healthcare providers during the pandemic. Unless Congress acts, the 2% cut will resume April 1, 2021. In addition, the bill exempts the American Rescue Plan (ARP), the most recent COVID-19 relief bill, from the Statutory Pay-As-You-Go Act of 2010 (PAYGO), which requires that additional automatic payment cuts be put into place if a statutory action creates a net increase in the deficit. Most budget-watchers expect the ARP to trigger an additional 4% cut to Medicare payments beginning January 2022, unless Congress Acts to suspend the cut. Notwithstanding the strong House vote, which was supported by 29 Republican representatives, most Senate Republicans have voiced opposition to the bill saying that preventing the PAYGO cut goes beyond the immediate issue and could add to the deficit. It is unlikely that 10 Republicans will support the House bill. Senators Jeanne Shaheen (D-NH) and Susan Collins (R-ME) introduced an alternative, the [Medicare Sequester Relief Act](#), which would extend the current looming Medicare sequester moratorium without addressing the PAYGO cut. If there are not 10 Senate Republicans willing to support PAYGO relief at this time, the Shaheen-Collins bill may receive more bipartisan support.
- + **Senators Introduce Bill to Reverse Trump Administration 1332 Regulations.** The [Protecting Americans with Preexisting Conditions Act of 2021](#), led by Senators Mark Warner (D-VA) and Ben Cardin (D-MD), would undo guidance and rulemaking issued during the Trump Administration that gives states greater flexibility to waive certain Affordable Care Act (ACA) coverage requirements. The Obama Administration had prohibited 1332 waivers that would undermine either the number of people covered in a state, or the comprehensiveness of the coverage provided. In 2018, however, the Trump Administration [revised](#) the earlier guidance to prohibit only waivers that restrict "access" to coverage and [codified](#) the guidance in the HHS Notice of Benefit and Payment Parameters for 2022. Democrats widely criticized the change as undermining ACA protections and promoting short-term, limited-duration insurance plans, which do not need to provide coverage for essential health benefits or preexisting conditions. The bill is unlikely to gain the Republican support needed to pass the

Senate but will remain a messaging tool for Democrats. Nonetheless, the new Administration is likely to revisit the regulations on its own, or at least be judicious in which waiver applications it approves.

Administration

- + **Medicaid Work Requirements Rescinded.** The Biden Administration reversed two Trump-era Section 1115 waivers in [Arkansas](#) and [New Hampshire](#) that required some Medicaid beneficiaries to work or participate in related activities to be eligible for benefits. The policy was widely embraced by the Trump Administration, which approved similar waivers in eight other states. Last month, CMS sent letters to the 10 states that had implemented, or sought to implement, Medicaid work requirements, saying the agency does not believe work requirements promote Medicaid objectives and giving states until March 12 to defend the policy. Though the Biden Administration has intended to rescind the policy, the timing of the reversal of the Arkansas and New Hampshire waivers is significant. The US Supreme Court is currently considering whether to hear a case on the legality of the Arkansas and New Hampshire work requirements, which may now be moot. The Court canceled a planned March 29 hearing last week but did not dismiss the case.
- + **CMS Removed Changes to Protected Classes Under Part D Payment Model.** Part D requires plans to cover all drugs in the six classes: antidepressants, immunosuppressants, antipsychotics, anticonvulsants, antineoplastics and antiretrovirals. The Trump Administration sought to test a voluntary model that would have allowed participating Part D plans flexibility in coverage in five of the six protected drug classes (all but antiretrovirals). The model faced criticism from pharmacy and patient groups who argued it would restrict patients' access to needed medications. The CMS Innovation Center removed the requirements from the [request for applications](#) this week "based on stakeholder feedback and other considerations." The Innovation Center has delayed Trump-era demonstration models in recent weeks as the Biden Administration reviews existing policies and programs.

Quick Hits

- + The Senate Health, Education, Labor and Pensions (HELP) Committee held a [hearing](#) on the COVID-19 response, and the Senate Finance Committee [held](#) a hearing on the impact of the pandemic on nursing homes. The House Energy and Commerce Oversight and Investigations Subcommittee [held](#) a hearing on the Biden Administration's efforts to increase COVID-19 vaccinations.
- + A group of 10 Democratic and Republican lawmakers, led by Finance Committee Chair Ron Wyden (D-OR) and Senator Chuck Grassley (R-IA), sent a [letter](#) urging the Biden Administration to implement a [final rule](#) revising performance measures for organ procurement organizations.
- + CMS [increased](#) the Medicare payment for administering a COVID-19 vaccine to \$40 per dose, effective for vaccines administered on or after March 15, 2021. This represents an increase from approximately \$28 for single-dose vaccines and \$45 for two-dose vaccines.
- + FDA [announced](#) that it is streamlining guidance for some COVID-19 test developers to market their products for at-home use.
- + The Medicare Payment Advisory Commission published its March [Report to Congress](#), which includes a recommendation to extend COVID-19 telehealth flexibilities for up to two years after the public health emergency ends.

M+ Resources

- + Last week, President Biden signed the latest COVID-19 relief package into law. Our summary of the major healthcare provisions of the law is available [here](#).

- + McDermottPlus VP Rodney Whitlock discusses congressional efforts to avert impending Medicare sequester cuts on this week's episode of the [Health Policy Breakroom](#).

NEXT WEEK'S DIAGNOSIS: The Senate HELP committee will hold a [hearing](#) on addressing health disparities, and the Primary Health and Retirement Security Subcommittee will hold a [hearing](#) on US drug prices. The House Energy and Commerce Health Subcommittee will hold a [hearing](#) on legislation to build on the Affordable Care Act, and the Ways and Means Oversight Subcommittee will hold a [hearing](#) on private equity's role in healthcare.

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