



McDermottPlus Check-Up: May 28, 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: Home and community-based services (HCBS) emerge as roadblock for progress on the infrastructure legislative package. Chiquita Brooks-LaSure steps into role as the Administrator for the Centers for Medicare and Medicaid Services (CMS).

Congress

- + **HCBS Drive Partisan Divide on Infrastructure Deal.** President Biden's American Jobs Plan included \$400 billion [directed](#) at HCBS. That money, in part, was focused on expanding the healthcare workforce to permit Medicaid beneficiaries to remain in their homes or communities, as well as additional support for the Money Follows the Person Program. This week, the HCBS funding emerged as an impasse for bipartisan discussions. Republicans countered on Thursday with a package nearly 50 percent less than Biden's proposal and that strikes all HCBS spending. In their plan, Republicans noted they focused on more traditional infrastructure funding, like building bridges and roads. The Biden Administration, however, has signaled that eliminating this additional support to the Medicaid population is not on the table. Lawmakers continue to work towards a compromise; however, Democrats are increasingly considering turning once again to the reconciliation process where they would not need Republican support.
- + **Democratic Lawmakers Revive the Push for a Public Option.** Senator Patty Murray (D-WA) and Representative Frank Pallone, Jr. (D-NJ)—the respective chairs of Senate Committee on Health, Education, Labor and Pensions and the House Committee on Energy and Commerce—jointly [issued](#) a request for information (RFI) this week. The RFI is comprehensive in scope and solicits broad input on aspects of designing a public option including eligibility, benefit packages, reimbursement rates and prices, premium support and interaction with other programs. While the current makeup of Congress does not suggest legislative action on a public option is probable in the near-term, responses will serve as a litmus test of public option ambitions and shape conversations around the 2022 midterm elections. Responses to the RFI are due by July 31.

Administration

- + **Senate Confirms Chiquita Brooks-LaSure as CMS Administrator.** With 55 votes—the same as her predecessor, Seema Verma—Chiquita Brooks-LaSure finally secured the nation's top Medicare post. Republican Senators voting to confirm Brooks-LaSure included Senator Roy Blunt (R-MO), Senator Susan Collins (R-ME), Senator Jerry Moran (R-KS), Senator Richard Burr (R-NC), and Senator Lisa Murkowski (R-AK). Brooks-LaSure helped craft and implement the Affordable Care Act (ACA) in her role in the Obama Administration, and she is widely expected to wield CMS's regulatory powers to bolster the law and reverse Trump-era policies consistent with previously outlined Biden Administration objectives. With Brooks-LaSure's confirmation, President Biden is one step closer to rounding out his key leadership team in the U.S. Department of Health and Human Services (HHS), with selections for the Center for Medicare, Center for Medicaid and CHIP Services, and Center for Consumer Information and Insurance Oversight expected imminently. Earlier this week, [HHS announced](#) a number of other appointments, including



counselors and special assistants. Still no apparent movement toward nominating an FDA Commissioner.

States and Courts

- + **Legal and Legislative Barriers to Medicaid Expansion Mount in Several States.** As Texas continues its efforts to reinstate its Medicaid 1115 Waiver through legal and regulatory channels, after CMS revoked the waiver last month, Medicaid expansion efforts stalled in three other states. Earlier this month, the Mississippi Supreme Court [upheld](#) a defunct ballot initiative process that effectively prevents any new initiatives from being considered by voters—including Medicaid expansion. Missouri, which approved expansion by ballot initiative last year, was sued by citizens of that state this week following the legislature's decision not to appropriate funds in the 2022 budget and the governor's subsequent withdrawal of the State Plan Amendment from CMS review. Finally, Republican legislators in Wisconsin swiftly ended a special session called by the state's Democratic Governor, Tony Evers, to consider expansion in that state. The White House has sought to leverage coronavirus aid packages to incentivize these holdout states to reconsider expansion with a significant infusion of federal money, but signs of success remain elusive.

Quick Hits

- + President Biden will [release](#) his full FY2022 budget. We will provide a summary of key health care spending provisions.
- + The Senate Health, Education, Labor and Pensions Committee [passed](#) six bills through markup that focus on maternal health, public health research and provider protections.
- + In a [letter](#) to HHS this week, the American Clinical Laboratory Association said the U.S. Food and Drug Administration lacks authority to oversee lab-developed tests.
- + HHS [allocated](#) \$4.8 billion from the American Rescue Plan for COVID-19 testing of the uninsured.
- + Over 155 Democrats in the House of Representatives [wrote a letter](#) to President Biden and Vice President Harris urging the President to expand Medicare by lowering the age of eligibility and coverage, and also to allow Medicare to negotiate drug prices.
- + Moderna [announced](#) that it will ask the FDA to authorize its COVID-19 vaccine for use in individuals ages 12-17, lining it up to be the second vaccine available to younger populations. Meanwhile, the FDA released new [guidance](#) that indicated it might curb Emergency Use Authorizations of additional vaccines.
- + CMS announced that it would not extend the Next Generation Accountable Care Organization model, but that participants would have the option to apply to be part of the Global and Professional Direct Contracting model, which was previously not going to accept new applicants in 2022.
- + In a Federal Register [notice](#), HHS announced it will reverse the Trump Administration's elimination of the U.S. Food and Drug Administration's Unapproved Drug Initiative.



M+ Resources

- + We are taking a break from the Breakroom this week, but we will return next week with fresh insights and discussion on the latest in healthcare.

NEXT WEEK'S DIAGNOSIS: The House and Senate are both out next week for work periods. Stakeholders will be reviewing the President's Budget requests to determine potential policy priorities and challenges.



For more information, contact [Aaron Badida](#), [Mara McDermott](#), [Kristen O'Brien](#) and [Katie Waldo](#).

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