



McDermottPlus Check-Up: July 23, 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: Infrastructure bill inches along in Senate. Energy and Commerce sends health bills to full House. Centers for Medicare and Medicaid Services (CMS) releases outpatient payment proposed rule with launch date for Radiation Oncology Model and increased penalties for failure to comply with price transparency requirements.

Congress

- + **Republicans Blocked Opening Debate on Infrastructure Bill.** This procedural barrier came in response to Senate Majority Leader Chuck Schumer's attempt to force progress by scheduling a procedural vote to start debate (otherwise known as "invoking cloture") on the bipartisan physical infrastructure package agreed to by a group of 10 Democratic and Republican Senators at the end of June. This bill is distinct from the partisan Democrats-only version that the leader intends to advance through a reconciliation process. Republican leadership cited the lack of legislative text and a Congressional Budget Office score as primary reasons for blocking debate. However, many of the ten Republican Senators working on the bill signaled that they are likely to vote to begin debate next week, making passage possible before the looming August recess. The second partisan package also is starting to come together. Democrats envision a \$3.5 trillion "human" infrastructure package with climate, health and social service policies that Democrats intend to push through a second reconciliation. While Democrats will need only a simple majority to advance this bill – and not the 60 votes typically required to advance legislation in the Senate – the outcome is not guaranteed. Democrats have no margin for error in the Senate, and hold only a slim 9 vote majority in the House. House Speaker Nancy Pelosi said this week that the House will not move the bipartisan physical infrastructure package until the Senate passes the second reconciliation, making it likely that the House will not move on any Senate-passed physical infrastructure package until fall.
- + **House Committee on Energy and Commerce (E&C) Sends 16 Healthcare Bills to Full House.** These bills provide additional resources to respond to the ongoing substance use disorder epidemic; improve our nation's public health systems; increase vaccine access; support programs to address maternal health and mortality. Additionally, there was strong support from Democrats and Republicans on H.R. 4406, a bill that temporarily extends increased Medicaid funding for Puerto Rico and other U.S. territories, while also implementing additional accountability measures. While some Democrats noted they still would prefer a permanent Federal Medical Assistance Percentage for Puerto Rico, this extension addressed an issue that otherwise could have been strategic leverage in a year end package or reconciliation. Because this passed outside of a major negotiation, it signals that other issues—including those related to Public Health Emergency flexibilities—could be addressed as standalone issues as well. All bills were passed to the full house by a voice vote with largely technical amendments.



Administration

- + **CMS Released Proposed Annual Outpatient Payment Rule.** The agency proposes to increase payment rates under the Hospital Outpatient Prospective Payment System (OPPS) and the Ambulatory Surgical Center (ASC) Payment Systems by a factor of 2.3%. In continuation of an existing policy, hospitals and ASCs that fail to meet their respective quality reporting program requirements are subject to a 2.0% reduction in the CY 2022 fee schedule increase factor. The rule also proposes to maintain the current reimbursement rate of Average Sales Price minus 22.5% for specified covered outpatient drugs purchased under the 340B program, as well as payment for clinic visits to off-campus provider-based departments at 60% of the OPPS rate. In a surprising and unusual move, CMS proposes to withdraw previous plans to eliminate the Inpatient Only list and expand the ASC Covered Procedures List, two policy changes that were only recently implemented by the agency. Also of note, CMS proposes to significantly **increase penalties** for hospitals to drive compliance with the recently established hospital price transparency program. The proposed rule included a request for information about a soon to be established Rural Emergency Hospital designation. Consistent with other proposed payment rules this year, OPPS requested information on how to address health equity in the hospital quality programs, specifically with a focus on data use strategies. Comments on the proposed rule are due September 17, 2021.
- + **CMS Proposed January 2022 Launch of Radiation Oncology (RO) Alternative Payment Model (APM).** The RO Model is a mandatory nationwide demonstration model that will run for five years encompassing approximately 30% of eligible radiation oncology episodes. The model pays a prospective payment on a site-neutral basis, and the rate does not vary based on the modality of treatment for a 90-day episode. The agency proposed changes that included lowering the discount factors for professional and technical components from 3.75% and 4.75% to 3.5% and 4.5%, respectively, removing brachytherapy as an included modality of care, and removing liver cancer as included cancer type. It also proposed qualifying the RO Model as an Advanced APM or Merit-Based Incentive Payment System APM in Performance Year 1, rather than Performance Year 2. The proposed changes are relatively minor, but stakeholders had been hoping for more changes/flexibility in a model that is expected to have a significant impact coming on the heels of the COVID-19 pandemic.

Quick Hits

- + Secretary Xavier Becerra **issued** another 90-day extension of the COVID-19 Public Health Emergency, extending it to October 18, 2021.
- + Arkansas has sought to **expand** Medicaid program through 1115 waiver demonstration, while the Missouri Supreme Court **ruled** that the state can move forward with its voter-passed Medicaid expansion.
- + CMS published a **payment advisory** for clinicians who are Qualifying APM participants and need to provide updated billing info.
- + CMS **released** a bulletin on Department of Homeland Security's now-vacated public charge rule.



- + Reps. Welch (D-VT), DeBene (D-WA), Wenstrup (R-OH), and LaHood (R-IL) [introduced](#) the Value in Health Care Act, which aims to increase participation in Accountable Care Organizations through reforms to components like quality metrics, risk adjustment and technical support.
- + The Biden Administration [announced](#) a \$1.6 billion investment through the American Rescue Plan targeted at COVID-19 testing and mitigation in vulnerable communities.

M+ Resources

- + On this week's [Breakroom podcast](#), Deb Godes and Sheila Madhani review the updates to outpatient and ambulatory surgical center Medicare rates, hospital price transparency requirements and the Radiation Oncology Model.

NEXT WEEK'S DIAGNOSIS: The Senate could begin debate on the surface infrastructure package. House Veterans' Affairs Subcommittee on Health will look at home and community-based services for veterans. House Transportation and Infrastructure will look at the federal government's COVID-19 [relief and response](#) efforts. Senate Health, Education, Labor and Pensions will [examine](#) learnings and discuss moving forward from COVID-19.



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