

McDermottPlus Check-Up: December 21, 2018

Article By:

Mara McDermott

This Week's Diagnosis

Time is ticking for any deal to avoid any partial government shutdown. It is the only thing holding up adjournment.

Congress

- **Political Ping Pong.** The Senate passed a continuing resolution (CR) that would provide funding at current levels for all remaining federal agencies through February 8, 2019. There was no additional funding for the border wall. Before the House even considered this CR, the House Republican leadership met with the President who made clear he would veto the CR that passed the Senate. The House Republicans then speedily put together legislation that would fund the remaining agencies until February 8, but also included the \$5.7 billion requested by the President for the border wall. It passed with no support from Democrats and a few Republican deflections. It is now the Senate's turn. The House funding bill appears dead on arrival in the Senate, as the Democrats have already said they will oppose any additional border wall funding. With no clear path forward at this point, the government appears headed for a partial shutdown at midnight tonight.
- **Republican Tax Bill: Third Time's a Charm.** The House passed the third version of the tax bill introduced by House Ways and Means Committee Chairman Kevin Brady (R-TX) that would extend a number of expiring tax provisions, including some from the Affordable Care Act that were previously suspended. This version made some minor changes including adding a provision sought by outgoing Speaker Paul Ryan (R-WI) related to charitable deductions. The bill still contains the health-related provisions that would extend current by expiring suspensions on the "Cadillac tax" on high-end workplace health plans delayed from 2022 until 2023, the medical device tax delayed from 2020 to 2025 and the fee on health insurers delayed from 2020 to 2022). The Senate has indicated no plans to consider it before Congress adjourns.
- **Warren and Schakowsky Introduce Generics Bill.** Senator Elizabeth Warren (D-MA) and Representative Jan Schakowsky (D-IL) introduced a bill that would create an office within the Department of Health and Human Services to manufacture certain generic drugs. The [Affordable Drug Manufacturing Act](#) would allow the government to manufacture generic drugs

when no company is manufacturing the drug, only one or two companies are producing the drug and the price has gone up or the drug is in shortage, one or two companies are producing the drug, or the price is a barrier to consumer access and the drug is an “essential” medicine according the World Health Organization. This bill is highly unlikely to move in the Senate or the House, but it is another way Democrats are placing markers down on drug pricing.

- **Alexander Leaving 2020.** Senator Lamar Alexander (R-TN) announced that he will not run for re-election in 2020. A senior Senator with a long-record of health policy activism and accomplishments, and the current chairman of the Health, Education, Labor and Pensions Committee has [made lowering health care costs](#) a 2019 priority, including increasing price transparency and addressing surprise medical bills. His pending departure could set the stage for significant action in the cost containment space.

Administration

- **CMS Releases MSSP ACO Final Rule.** CMS released the [final rule](#) implementing Pathways to Success, the agency’s overhaul of the Medicare Shared Savings Program (MSSP). The agency shortened the amount of time that an accountable care organization (ACO) can remain in an upside only arrangement from six years to two or three years, depending on the ACO’s status as high- or low-revenue. The rule includes other provisions aimed at encouraging the transition to performance based risk. In conjunction with the rule, the agency announced that the Next Generation ACO program (the ACOs assuming the highest level of risk in the Medicare portfolio) saved more than \$164 million across 44 ACOs in 2017 and improved quality. The announcements underscore the Administration’s commitment to advancing two-sided risk models in traditional Medicare. Stay tuned for the Administration to release more of these risk-bearing models in 2019.
- **CMS Releases Part I of MA Advance Notice.** The Centers for Medicare and Medicaid Services (CMS) released the first part of the [2020 Advance Notice of Methodological Changes for Medicare Advantage Capitation Rates and Part D Payment Policies](#). The notice includes information about changes to the MA risk adjustment model and the use of encounter data. The advance notice will be published in two parts due to requirements under 21st Century Cures, mandating a 60 day comment period for changes to the risk adjustment model. Final policies from both parts will be published by April 1, 2019.
- **Exchange Enrollment Report.** The CMS released the weekly Affordable Care Act enrollment snapshot for the end of the 2019 open enrollment period. According to the preliminary data, enrollment remained fairly stable from 2018, with approximately 8.5 million people enrolled compared to 8.8 million at the same time last year. The Texas v. Azar lawsuit overturning the ACA threw an unexpected twist into the end of open enrollment (see below for more information on this), creating potential confusion for consumers evaluating their coverage options. Expect exchange stabilization to continue to be a topline issue for 2019.
- **CMS New Office for Regulatory Reform.** Although details are light, CMS Administrator Seema Verma mentioned this week that she plans to create an office for regulatory reform. The office would aim to further reduce regulatory burden and build on existing initiatives like Patients over Paperwork.

Other

- **Judge Rules against the ACA in Texas Suit.** Late on Friday, December 14, 2018, a federal district judge in Texas struck down the ACA in its entirety. The district court did not, however, issue an injunction requiring immediate compliance. The decision is certain to be appealed in due course, and the Trump administration has said that the decision will have no impact until the Supreme Court of the United States decides the case, which will likely not be until 2020 at the earliest. The decision and the ensuing developments are nonetheless significant and merit attention by health care stakeholders. Read more [here](#).

Next Week's Dose

The Check-Up will not publish next week, enjoy your holiday and have a very happy New Year!

© 2025 McDermott Will & Emery

National Law Review, Volume VIII, Number 356

Source URL: <https://natlawreview.com/article/mcdermottplus-check-december-21-2018>