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McDermottPlus Check-Up: June 14, 2019

Article By:

McDermott Will & Emery

This Week's Dose: The focus was back on surprise billing this week with the third hearing of the year. We also saw hearings on Medicare for All and vertical consolidation in the health care industry, and the House advanced an appropriations package.

Congress

Another Busy Week for Hearings.

- The House Energy and Commerce (E&C) Health Subcommittee held the third surprise billing hearing of this Congress. Witnesses testified regarding the recently released Energy and Commerce discussion draft, the No Surprises Act, which would hold patients harmless for unanticipated out-of-network charges and establish a benchmark rate for services based on the median contracted rate for the area. While the witnesses agreed that patients should be held harmless, they disagreed on the best way to determine reimbursement. Patient advocates and payers argued that a benchmark rate would best protect patients from high costs, while provider representatives suggested that a benchmark rate could unintentionally limit network participation, and instead pushed for a dispute resolution process for plans and providers to negotiate rates. Read our full summary of the hearing here. View our chart comparing surprise billing proposals here.

- The House Ways and Means Committee held a hearing on Medicare for All legislation, the first time a committee with jurisdiction over health care programs has considered this concept. While Chairman Richard Neal (D-MA) said he hoped the hearing could be the "beginning of a process" and that lawmakers could have a meaningful discussion on expanding coverage, members stuck primarily to partisan talking points. In addition to voicing support for the Medicare for All Act, many Democrats brought up other proposals to expand coverage, such as lowering the Medicare eligibility age, creating a Medicaid buy-in, improving the Affordable Care Act, and encouraging state public options. On the other hand, Republicans emphasized how a Medicare for All system would eliminate all other insurance, harm those currently relying on Medicare and increase government spending. Medicare for All has remained an issue on the campaign trail and in the halls of Congress with no signs of fading from the conversation anytime soon. Read our full summary of the hearing here.

- The Senate Judiciary Committee held a hearing on vertical integration in the health care

industry and the implications for the market. Witnesses agreed that vertical integration can be good for markets in many cases, allowing providers to offer more coordinated, higher-quality care at a lower price. However, they also noted that it is important to challenge the current assumption that all vertical integration is good. There is the potential for anticompetitive behavior, and government agencies like the Federal Trade Commission need more resources to conduct antitrust oversight. Both Chairman Michael Lee (R-UT) and Ranking Member Amy Klobuchar (D-MN) pointed to acquisitions as drivers of increasing health care costs, and stressed the need for regulators to pay close attention to these deals.

House Voted on Appropriations Minibus.

The House initiated floor action on H.R. 2740, a $1 trillion appropriations bill that would provide funding for the Departments of Labor, Health and Human Services, Education, Defense, State, Foreign Operations, and Energy and Water Development appropriations for fiscal year 2020. Lawmakers introduced 221 amendments to the bill, and votes will be taken on each one. Votes began on Wednesday and will likely continue into next week.

Administration

Health Reimbursement Arrangements Final Rule Published.

The Departments of the Treasury, Health and Human Services (HHS), and Labor published the final rule Health Reimbursement Arrangements and Other Account-Based Group Health Plans. This rule expands health reimbursement arrangements (HRAs). Under the rule, employers can provide employees with tax-preferred funds to purchase coverage on the individual market through individual coverage HRAs. Additionally, the final rule creates excepted benefit HRAs, which can be used to pay for vision and dental coverage, as well as premiums for short-term limited duration insurance plans. The excepted benefit HRAs are capped at $1,800 per year. Provisions of the final rule are set to be implemented January 1, 2020.

FDA Issued New Guidance for E-Cigarette Submissions.

The Food and Drug Administration (FDA) finalized guidance for manufacturers to submit e-cigarettes and other electronic vaping devices for regulatory review. The guidance requires that manufacturers demonstrate appropriate marketing that aligns with the FDA's recent push to limit e-cigarette use among children. The FDA originally required manufacturers to submit vaping devices for review beginning in 2018 before former Commissioner Scott Gottlieb pushed implementation back to August 2021.

CMS Issued RFI on Patients over Paperwork Initiative.

The Centers for Medicare and Medicaid Services (CMS) issued a Request for Information (RFI) seeking new ideas from the public on maintaining the progress of the Patients over Paperwork initiative, which is focused on reducing the burden of the healthcare system through streamlined regulations and the reform of other administrative policies. Comments are due August 12, 2019.

States

South Carolina Submitted a Waiver Application for Medicaid Work Requirements.

South Carolina submitted a new 1115 waiver application to CMS. The waiver includes work requirements, expands coverage for children, pregnant women and parents, and expands coverage for some individuals with substance use disorders, who are chronically homeless, or involved in the justice system. CMS is accepting comments on the application through July 10, 2019. Read our full summary of the waiver application here.

New Hampshire Defends Medicaid Work Requirements.

New Hampshire, along with CMS, has filed a brief in the US District Court for the District of Columbia defending its decision to implement new Medicaid eligibility requirements that mandate most adults in the state's Medicaid expansion population work 100 hours a month or participate in qualifying activities. CMS approved the requirement as part of a Section 1115 waiver, and it will take effect June 1, 2019. The state can begin un-enrolling people who fail to comply starting on August 1, 2019. In defending the work requirements, New Hampshire and CMS are relying primarily on the argument that the Secretary of HHS has broad discretion to allow states to test different Medicaid policies if the Secretary believes the policy will help sustain Medicaid. This is the same position taken in previous court cases that challenged work requirements in Kentucky and Arkansas. In both states, the waivers were overturned.

Next Week's Diagnosis: The Health, Education, Labor and Pensions (HELP) Committee's cost containment discussion draft, the Lower Health Care Costs Act of 2019, will be in the spotlight during a HELP Committee hearing on Tuesday, June 18. We will also be watching an E&C Health Subcommittee hearing on strengthening health care in the US territories on Thursday, June 20, and we may see a prescription drug package emerge from the Senate Finance Committee as well.

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