

## McDermott Plus Check-Up: FEBRUARY 28, 2020

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### This Week's Dose

The Administration requested emergency funding to fight the coronavirus epidemic, and US Department of Health and Human Services (HHS) Secretary Alex Azar defended the President's fiscal year (FY) 2021 budget on Capitol Hill.

### Congress

**Congressional Committees Questioned Azar on Budget, Coronavirus Response.** HHS Secretary Azar testified before the [Senate Appropriations](#), [House Appropriations](#), [House Energy and Commerce](#), and [House Ways and Means](#) committees this week to defend the [President's FY 2021 budget](#). Lawmakers' response to the budget fell predictably along party lines. Democratic members of the committees argued that the Administration is undermining safety net programs and public health efforts by cutting funding for Medicare and Medicaid, while Republicans praised the Administration's efforts to achieve savings in the programs and bring down the cost of insurance. The hearings also focused on the Administration's response to the coronavirus. Members of both parties expressed alarm at the threat and suggested that the Administration's [\\$2.5 billion request](#) for supplemental funding is not sufficient. Democrats also sharply criticized Azar during the Energy and Commerce hearing over his refusal to promise that an eventual coronavirus vaccine would be affordable for all patients. Azar reversed himself at the Ways and Means hearing a day later, saying HHS would ensure that any treatment co-funded by the government would be affordable.

**Congress Considering Coronavirus Funding.** The Administration has requested \$2.5 billion in supplemental funding to fight the coronavirus. However, the amount is significantly less than what some experts have said is necessary ([as much as \\$15 billion](#)). Democrats in Congress have raised concerns that the request includes only \$1.25 billion in new funding and reallocates the rest from existing federal programs, such as the National Institutes of Health and the Low Income Home Energy Assistance Program. Senate Minority Leader Chuck Schumer (D-NY) has sharply criticized the Administration's handling of the outbreak and proposed his own [\\$8.5 billion emergency funding proposal](#). Representative Rosa DeLauro (D-CT), who chairs the House Appropriations subcommittee

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responsible for the HHS budget, also called the Administration's proposal "unacceptable." Congress is expected to authorize additional funding to deal with the virus, though the exact amount and timing are not yet known. Congressional attention is increasingly shifting to the coronavirus response, which may put on hold other legislative activities, such as dealing with [surprise billing](#) or prescription drug costs.

## Administration

**Administration Faces Public and Political Pressure over Coronavirus Response.** President Trump appointed Vice President Mike Pence to lead the Administration's coronavirus taskforce, which is coordinating with state and local governments to contain the spread of the disease, and appointed Ambassador Debbie Birx to be the White House Coronavirus Response Coordinator, reporting directly to Vice President Pence (Birx currently serves as US Global AIDS Coordinator). The move comes as fears about the virus continue to grow. President Trump has [maintained](#) that the disease is under control, though Centers for Disease Control and Prevention (CDC) officials [warned](#) this week that the illness is likely to spread in the US. On Wednesday, the CDC confirmed a coronavirus infection in California, the 15<sup>th</sup> case in the US and the first not linked to overseas travel. Beyond the significant public health concerns, the outbreak could have political consequences as well. With the coronavirus almost certain to spread in the US, the Administration is under intense scrutiny from Congress and the public over its response. Stock markets around the world are faltering as public anxiety mounts, a political threat to President Trump who has centered his reelection campaign on the strength of the economy. During this week's Democratic primary debate in South Carolina, the candidates took turns hammering the Administration's response and budget cuts to public health programs.

**Administration Announced Participants in Ambulance Model.** The Centers for Medicare and Medicaid Services (CMS) has selected [205 applicants](#) to participate in the Emergency Triage, Treat and Transport Model. The five-year, voluntary model is intended to give additional flexibility to ambulance care teams to provide appropriate emergency services to fee-for-service Medicare beneficiaries. Under the model, Medicare will pay participating ambulance suppliers and providers to transport the beneficiary to a destination other than a hospital emergency department (such as a primary care doctor's office or urgent care clinic) or to initiate treatment in place in person or via telehealth.

## Courts

**Public Charge Rule Took Effect as Court Battles Continue.** The [rule](#), which allows immigration authorities to deny visas or green cards based on a person's use of Medicaid or other public benefits, took effect on February 24, 2020. It was originally set to take effect in 2019, but was challenged by many immigrant rights groups, along with the Democratic majority in the House of Representatives, and was temporarily blocked by federal district courts in California, Washington, Maryland, New York and Illinois. In December 2019, federal appeals courts lifted three nationwide injunctions issued by the lower courts, and in January, the US Supreme Court lifted the remaining nationwide injunction issued by a federal judge in New York. Last week, the Supreme Court lifted the final injunction (a statewide injunction in Illinois), clearing the way for the rule to take effect. The Supreme Court did not rule on the merits of the regulation, but allowed it to take effect while legal challenges continue. Many immigrant rights and public health groups have warned that the rule could deter immigrants from enrolling in Medicaid coverage, potentially harming public health. However, Administration officials maintain that the rule is in keeping with existing immigration laws. A federal appeals court heard oral arguments in a case challenging the rule this week and expressed strong

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skepticism of its legality. It is possible that the Supreme Court could eventually rule on the merits of the case.

## States

**Indiana Seeks to Extend Its Medicaid Waiver, Foregoing a Block Grant.** Indiana's current Section 1115 waiver expanded Medicaid coverage to able-bodied adults with incomes at or below 133% of the federal poverty line. The waiver was first approved in 2008 and reauthorized in 2015 for a five-year period. Earlier this month, Indiana [requested](#) to extend the waiver through December 31, 2030. The new request also asks for an additional five-year extension of authority to use federal Medicaid dollars to fund inpatient treatment for serious mental illness at Institutions for Mental Diseases, which the CMS [approved](#) for one year in December 2019. CMS will accept comments on Indiana's request through March 13, 2020. In its [announcement](#) of the request, the Indiana Family and Social Services Administration made clear that it would not seek to implement a Medicaid block grant under [new authority](#) announced by CMS in January. So far, only Oklahoma has announced that it plans to pursue the block grant option, which faces fierce opposition from congressional Democrats and Medicaid advocacy groups. It remains to be seen which other states may adopt the block grant model and whether the policy can survive the promised legal challenges.

## Quick Hits

- The Senate Finance Committee is continuing its [investigation](#) of the role of pharmacy benefit managers in the rising price of insulin.
- A group of Democratic Senators sent a [letter](#) to President Trump urging him to stop the Justice Department's efforts to repeal the Affordable Care Act (ACA), noting that the Administration has no plan to protect people with preexisting conditions in the event of full ACA repeal.
- CMS issued a [proposed rule](#) that would make modifications to the Comprehensive Care for Joint Replacement (CJR) Model. Read our summary of the rule [here](#). Comments on the proposed rule are due on April 24, 2020.
- The Office of the National Coordinator for Health IT and CMS released a [report](#) on ways to reduce the burdens that health information technology imposes on providers.
- A federal appeals court ruled that a Trump Administration rule that blocks Title X recipients from either offering abortion services or referring patients for the services can take effect. It is possible that the plaintiffs, including reproductive rights groups and several Democratic-led states, will appeal to the Supreme Court.
- The Supreme Court will hear oral arguments in two healthcare-related cases at the end of April – a case dealing with states' attempts to regulate pharmacy benefit managers on April 27, and a case regarding the ACA's contraceptive mandate on April 29.
- The Medicaid and CHIP Payment and Access Commission held its [February Public Meeting](#).

## M+ Resources

- Since early 2019, Congress has been focused on passing legislation to address the issue of surprise medical bills. Our [chart](#) compares the similarities and differences between the three leading proposals.
- For all our latest predictions on the 2020 landscape, be sure to follow our [Policy Forecast page](#).

## **Next Week's Diagnosis**

The House Energy and Commerce Committee will consider legislation to help patients with substance use disorders, and the Senate Health, Education, Labor and Pensions Committee will hold a hearing on the US response to the coronavirus. The Medicare Payment Advisory Commission will hold its March Public Meeting.

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