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Healthcare Policy Priority Amid And Beyond The COVID-19 Pandemic

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At the start of 2020, several health policy challenges captured the attention of congressional leaders, regulatory agencies and the US public: surprise medical billing, prescription drug pricing and "Medicare-for-All" topped the list. Since then, the Coronavirus (COVID-19) pandemic has dominated and altered the health policy landscape. As a result, these and other issues—including proposed changes to data sharing rules and innovative payment models—have been largely set aside as lawmakers and healthcare providers respond to the immediate demands of the pandemic. With case numbers again spiking and a long recovery period anticipated, the COVID-19 pandemic will shape health policy conversations for months and years to come. Here, we delve into several policy discussions that intertwine with COVID-19 response efforts, and that are likely to dominate the health policy agenda for the balance of 2020 and maybe beyond.

Government Regulation

President Trump established regulatory reform as a hallmark of his policy agenda and has made significant progress in this regard. In the healthcare context, the Centers for Medicare & Medicaid Services (CMS) championed its Patients Over Paperwork initiative and the Regulatory Sprint to Coordinated Care to revise or repeal regulations believed to be complicated or burdensome.

This policy objective has found a home amidst the pandemic. In response, CMS issued more than 100 waivers to give healthcare providers flexibility to respond to emergency community health needs. On May 19, 2020, President Trump signed Executive Order 13924 directing federal agencies to identify regulations that can be permanently rescinded or temporarily waived to promote job creation and economic growth.

Of all the changes the Trump Administration has made during the pandemic, telehealth flexibilities appear the most likely to be made permanent. Providers and patients across the country have embraced telemedicine while adhering to stay-at-home orders. In many cases, hospitals and physician practices shifted to telehealth far more quickly than policymakers anticipated. The US Department of Health and Human Services (HHS) supported this shift by issuing waivers allowing providers to be reimbursed for telehealth regardless of where the patient is located, boosting

Medicare and Medicaid payment for virtual care, and permitting televisits to satisfy many face-to-face requirements. This real-time experiment has convinced policymakers across both political parties that easing restrictions on the use of telemedicine may support providers and patients beyond the pandemic.

The Trump Administration will advance regulatory relief changes in the run-up to the November 2020 election and, depending on the election results, continue this push into a second term. In a Biden Administration, policymakers likely would examine how healthcare delivery evolved during the pandemic and whether regulatory overhauls are necessary. A Biden Administration would also carefully review the previous Administration's regulatory decisions.

Surprise Billing

Protecting patients from surprise medical bills was a dominant pre-COVID-19 policy priority. Congress spent much of 2019 working toward legislation intended to address surprise billing. One US Senate committee and three US House of Representatives committees approved surprise billing proposals, with considerable alignment among the different approaches.

The Trump Administration also favored surprise billing solutions and used the pandemic to advance related policy objectives. The terms and conditions accompanying distributions from the Provider Relief Fund currently prohibit recipient facilities and providers from balance billing presumed or actual COVID-19 patients. However, the policy is narrow in comparison to legislative efforts considered in the pre-COVID debate.

The Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, passed by the House of Representatives, also prohibits balance billing for a broader set of COVID-19 patients and demonstrates Democrats' support for this policy shift.

However, sweeping action on surprise billing is unlikely during the pandemic, because it would further limit hospital and provider revenue during a time of financial instability in those sectors. Nonetheless, Congress may take up this bipartisan issue in a scaled-down form after the November 2020 presidential election or revisit it in early 2021.

Price Transparency

Prior to COVID-19, the Administration advanced sweeping regulatory changes intended to make prices charged by hospitals, pharmaceutical manufacturers and health plans more transparent. The new requirements are designed so that consumers may, theoretically, price-shop for services that can be anticipated in advance.

Both the hospital and pharmaceutical pricing rules were challenged in court. On June 16, 2020, the US Court of Appeals for the District of Columbia Circuit ruled that the drug pricing rule—which would have required manufacturers to disclose certain prices in television advertisements—overstepped HHS's legal authority. Just a week later, the US District Court for the District of Columbia upheld the hospital pricing requirements, determining that CMS has the authority to require hospitals to reveal negotiated prices. Both rulings are expected to be appealed.

The outcome of these cases will dictate how much progress the Trump Administration can make through administrative action. Even if the rules are overturned, there is considerable support from both Democrats and Republicans for greater price and quality transparency. This momentum is

expected to continue when law- and policymakers can return focus to matters other than COVID-19.

Consolidation

As it affects the broader US economy, the pandemic will also likely lead to more consolidation within the healthcare market. Financial pressure on smaller hospitals and physician practices—which has intensified during the pandemic and accompanying recession—will likely increase the number of consolidations and mergers within the healthcare system. Small and rural hospitals, physician practices and other provider types will seek refuge in larger, more financially stable systems and from private equity investors.

Prior to the pandemic, the Administration and Congress were increasingly focused on consolidation and potential correlations to increased costs. We expect the issue of consolidation to resurface in the media, and therefore in the minds of some members of Congress.

Value-Based Care

During the public health emergency, CMS provided regulatory relief for providers participating in value-based care models. In general, CMS took steps to protect providers in two-sided risk contracts from financial losses, while also mitigating their potential savings. CMS will evaluate how to address the 2020 disruption in future program financial models.

One lesson from the COVID-19 pandemic for the value-based care movement is that providers that had fully transitioned to capitated payment models were less severely affected in the immediate term than those that reimbursed for patient volumes. This reality, and the prospect of future pandemics, could serve as a catalyst for the value movement and might push certain types of providers into performance-based risk models.

Value-based care has been a rare area of agreement between Democrats and Republicans, and we expect the move to value-based care to continue no matter who wins the presidential election in November. However, the tone and details of the models may shift. The Trump Administration has shown a commitment to pre-paid and capitated models. For example, the recently announced Direct Contracting Model requires participating entities to take some amount of capitated payment for services. The Obama Administration previously offered increasingly advanced forms of payment as options but not requirements. It remains to be seen whether a Biden Administration would make capitation optional within a model such as Direct Contracting, or otherwise put its own stamp on the movement to value-based care. Regardless of the election results, models that have been announced to date likely will continue to move forward.

Medicare Solvency

In the 2020 Annual Report of the Medicare Trust Fund, the Medicare Board of Trustees estimated that the Medicare program would become insolvent in 2026. This estimate was based on data gathered prior to the pandemic. Since the report was released, more than 36 million people have lost their jobs, and the federal government has lost significant tax contributions to the Trust Fund. At the same time, significant dollars are being spent on COVID-19 care in both direct medical expenditures and additional financial relief for providers.

Congress has already recognized the need to consider the solvency of the Medicare Trust Fund.

Payments through the Accelerated and Advance Payment Program are currently made through the Trust Fund. Under the proposed HEROES Act, the funding for this program would move from the Medicare Trust Fund to general Treasury funds. Trust Fund solvency likely will play an important role in the Medicare program after the termination of the public health emergency, and in how Congress and the Administration may expand coverage for telehealth services moving forward. A focus on Trust Fund solvency typically leads to expenditure reduction measures, which often mean lower reimbursements for providers. The 2020 presidential election will play a key role in determining the long-term solvency of the Medicare program.

Coverage Expansion

Access to health insurance was a leading issue in the 2020 presidential campaign before COVID-19, and that topic features even more prominently now. During the pandemic, record numbers of people have lost their jobs and employer-sponsored health coverage. Many of these people will turn to Medicaid for healthcare coverage, further straining state resources. As the economy is predicted to take years to rebound from this economic downturn, closing current—and growing—holes in healthcare coverage will become paramount.

The results of the upcoming election will largely determine how the government responds to the increasing uninsured population. Additionally, any potential expansion in federal healthcare coverage will be influenced by the federal court case California v. Texas (formerly, Texas v. Azar). In this case, plaintiffs argue that the 2017 Tax Cuts and Jobs Act, which eliminated the individual mandate penalty, rendered the entire ACA unconstitutional. California v. Texas could have a far-reaching impact on healthcare coverage, including potentially eliminating protections for people with preexisting conditions, subsidies for health insurance and Medicaid expansions.

Conclusion

The effects of the COVID-19 pandemic will reverberate for years to come as the nation faces an arduous road to recovery. The pandemic has exposed significant flaws in the healthcare system, elevating existing policy conversations and bringing new issues to the forefront. Just as the 2008 economic crisis paved the way for the ACA, the global COVID-19 pandemic may lead to major healthcare reforms. Stakeholders should stay alert and monitor how the healthcare system emerges from this pandemic. Depending on the outcome of the November election and the scope of the crisis, we could see seismic shifts in how healthcare is provided, paid for and regulated in the United States.

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