

McDermottPlus Check-Up: July 1, 2021: INVEST in America Act, CMS and Biden's ACA Expansion Promise

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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 legislation begins to move in divided House. Centers for Medicare and Medicaid Services (CMS) proposes Affordable Care Act (ACA) changes. Biden taps Medicaid chief.

Congress

INVEST in America Act Passed in House

Rep. Peter DeFazio's (D-OR) \$715 billion Investing in a New Vision for the Environment and Surface Transportation ([INVEST](#)) in America Act passed the House with a 221-201 majority, which included two Republicans. It is the first legislative move following last week's agreement among a group of 10 Democrat and Republican Senators on an infrastructure framework. However, this does not represent the final bipartisan infrastructure deal. Democratic leaders continue to underscore that a bicameral infrastructure package will not pass both chambers without a second reconciliation package that includes "human infrastructure" priorities, like investments into the workforce that directly provides care to patients. The Senate is the chamber to watch when it comes to meaningful movement on the infrastructure front, and the combination of a bipartisan infrastructure bill and a reconciliation package may not materialize until after August recess. It is likely that the Senate infrastructure bill draws on some of the proposals in INVEST in America, while reflecting other Senate priorities identified by committees and the group of 10.

Administration

CMS Issued Proposed Rule to Advance Biden ACA Expansion Promise

The [proposed rule](#) out of the Centers for Medicare and Medicaid Services (CMS) came in addition to regular updates to payment parameters for ACA plans. The proposed rule seeks to repeal Trump era regulations that allowed states to turn over their marketplaces to direct enrollment entities and the enjoined double-billing requirement for abortion services. It also builds on the Affordable Care Act (ACA) by extending the annual open enrollment period by a month; permitting monthly enrollment by advance payment tax credit-eligible individuals with incomes at or below 150% of poverty; increasing user fees for federal marketplace states; and strengthening requirements for navigator organizations to assist consumers understand their coverage beyond initial enrollment. If finalized, these policies would bolster coverage opportunities under the ACA law and facilitate access for lower-income individuals. Comments are due July 28, 2021.

CMS Proposed to Expand Home Health Value-Based Purchasing (HHVBP) Model

The model began its first five-year performance period in 2016 in nine states. HHVBP offers Medicare payment adjustments to home health providers that improve quality of care and/or reduce utilization, while penalizing those who perform poorly. CMS' most recent assessment found a 1.3% reduction in \$604.8 million in net cumulative savings for Medicare with "modest" gains in quality around 4.6% percent. The program's performance has led the agency to [propose](#) converting the HHVBP program into a nationwide model beginning in January 2022. Comments are due August 27, 2021.

Daniel Tsai Tapped to Lead Center for Medicaid and CHIP Services (CMCS)

Tsai is one of the few [appointees](#) under President Biden without previous political ties to the Obama Administration. He most recently held the roles of Assistant Secretary for MassHealth (Massachusetts' Medicaid and CHIP agency) and state Medicaid Director, where he served for six years and implemented value-based reforms and programs that enhanced supports for social determinants of health. Tsai will hold the titles of Deputy Administrator of CMS and Director for CMCS. In these roles, Tsai will be responsible administering the federal government's role in supporting low-income care for a record 80 million individuals. This includes managing the implementation of a series of state options for care expansion made possible by COVID-19 relief packages. The Biden team has not yet named a corresponding lead for the Medicare program, but rumors abound about who is on the shortlist, and a nominee is expected shortly.

States and Courts

U.S. Supreme Court Declined to Take Up Site-Neutral Cuts

The case involved a Medicare policy that began phased-in decreases in payments to hospitals for routine visits to off-campus outpatient departments, with the goal of aligning hospital outpatient payments with similar visits at non-hospital (i.e., physician office) sites of care. Hospitals argued that provider-based facilities frequently see higher-acuity and more complex patients, and thus should be entitled to higher payments. While a federal district court initially sided with the hospitals, the decision was reversed in favor of the government on appeal. The Supreme Court's action means the appeals court decision stands, and that the policy will remain in effect.

Quick Hits

- HHS will [award](#) \$250 million to 73 local governments to improve health literacy among minority and vulnerable communities with goal of fighting COVID-19.
- Health systems [urge](#) Congress to avoid using unspent Provider Relief Funds as infrastructure pay-for.

Next Week's Diagnosis

The House and Senate are in recess next week. July 1 is the statutory deadline for the first surprise medical billing regulation, which will focus on payment methodology. The regulation has cleared the Office of Management and Budget and its publication is expected imminently.

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