

THE
NATIONAL LAW REVIEW

McDermottPlus Check-Up: February 15, 2019

Friday, February 15, 2019

This Week's Diagnosis

Congress passed a \$328 billion spending package to avert another government shutdown. President Trump is expected to sign it. Congressional hearings continue to focus on coverage and drug pricing.

Congress

- **Medicare Buy-In Bills Introduced.** Senators Debbie Stabenow (D-MI) and Tammy Baldwin (D-WI), along with Representatives Brian Higgins (D-NY) and Joe Courtney (D-CT), introduced legislation (S. 470) that would allow people between the ages of 50 and 64 to buy into Medicare and enable the newly eligible population to use existing tax credits and subsidies to offset the cost of premiums. Senator Stabenow has introduced similar legislation in the past. This legislation is expected to gain little to no traction in the Republican-controlled Senate, but House Democrats could advance a similar approach, along with other coverage expansion approaches, in efforts to message expanded access to health insurance in the lead up to the 2020 Presidential election.
- **Medicaid Expansion Bills.** Senator Brian Schatz (D-HI) and Representative Ben Ray Lujan (D-NM) introduced the State Public Option Act (S. 489 and H.R. 1277). This bill, which is similar to previously introduced legislation, would allow states to create a Medicaid buy-in option. While the Medicare for all approach is getting a lot of attention inside and outside of the beltway, expanding Medicaid is another way some Democrats and "blue states" have pushed to increase insurance coverage. Medicaid buy-in proposals have faced similar pushback though, most notably about the cost of such proposals.
- **Energy and Commerce ACA Bills.** The House Energy and Commerce Subcommittee on Health held a [legislative hearing](#) on several bills that would rollback Administration regulations and guidance on ACA state waivers and short-term, limited duration health plans. Chairman Frank Pallone (D-NJ) has indicated his intention to move these in the near future. The next step would be a Subcommittee mark-up before the bills move to full Committee consideration. There is little chance they would get consideration in the Republican-led Senate.

The bills considered at the hearing include:

- **Protecting Americans with Pre-existing Conditions Act (HR 986):** Introduced by Representatives Joe Courtney (D-CT), Annie Kuster (D-NH) and Don Beyer (D-VA), this bill would prohibit the Administration from implementing the updated 1332 guidance released on October 22, 2018. (The October guidance expanded uses for the ACA's section 1332 waivers, including allowing the use of federal subsidies to purchase short-term, limited duration health plans). **Short-term, Limited Duration Health Plans (HR 1010):** Introduced by Representative Kathy Castor (D-FL), this bill would reverse the Administration's expansion of short-term, limited-duration insurance plans.
 - Senators Mark R. Warner (D-VA), Ben Cardin (D-MD), Jeanne Shaheen (D-NH) and Tammy Baldwin (D-WI) introduced a Senate companion bill this week.



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- Educating Consumers on the Risks of Short-Term Plans Act of 2019 (HR 1143): Introduced by Representative Anna Eshoo (D-CA), this bill would require short-term, limited duration insurance (STLDI) to disclose the risks of STLDI to prospective consumers, including disclosure that STLDI may not cover preexisting conditions, may not cover the costs of medical services, and that coverage may be rescinded if the individual seeks treatment for a preexisting condition.
- **Bipartisanship on Display at Ways and Means Hearing on Drug Pricing.** The House Ways and Means Committee kicked off a drug pricing hearing with a bipartisan [statement](#) from Chairman Richard Neal (D-MA) and Ranking Member Kevin Brady (R-TX). While short, it is revealing of aligned thinking that they issued a joint statement confirming their commitment to working together on lowering the cost of prescription drugs. At the hearing, Neal also mentioned working toward a broad package that could include all aspects of the prescription drug chain: US Food and Drug Administration, Medicare, Medicaid, and the tax code.

Administration

- **Long-awaited ONC Proposed Rule Released.** The Office of the National Coordinator for Health Information Technology (ONC) released a [proposed rule](#) to implement certain provisions of the 21st Century Cures Act, primarily focusing on identifying conduct that is not information blocking. Other areas the nearly 800-page rule covers include conditions and maintenance of certification requirements for health information technology (health IT) developers under the ONC Health IT Certification Program and the voluntary certification of health IT for use by pediatric health care providers. If finalized, ONC's proposed rule would have a significant impact on data sharing arrangements and other relationships among health care providers, health IT developers, and other stakeholders. The proposal gained tepid praise from lawmakers, but we expect that ONC and the Centers for Medicare and Medicaid Services (CMS) will be called to testify at hearings on the matter this year.
- **CMS Proposed Rule Complements ONC Efforts.** CMS simultaneously released a [proposed rule](#) and two requests for information (RFIs) on patient access, electronic data exchange, and care coordination. The proposed rule focuses on expanding the use and reach of innovative technologies beyond traditional Medicare and into Medicare Advantage, Medicaid, Children's Health Insurance Program and health plans offered through the state health insurance exchanges. The RFIs seek feedback on interoperability and health IT adoption in post-acute care settings, and the role of patient matching in interoperability and improved patient care.
- **CMS ACOs Application Programming Interface bulk Medicare data.** At the 2019 HIMSS Global Conference, CMS Administrator Seema Verma announced that CMS is launching a project to share bulk claims data with Medicare accountable care organizations (ACOs). The Beneficiary Claims Data API (BCDA) will enable Medicare Shared Savings Program ACOs to retrieve Part A, B and D claims data for their assigned or assignable beneficiaries, including when beneficiaries receive care outside of the ACO. The BCDA is still in development; stakeholders can join the [Google Group](#) to receive updates.
- **Partial State Medicaid Expansion a Test Case for CMS.** Two states are diving into uncharted waters with CMS as they seek approvals for partial Medicaid expansions. The enhanced 90 percent match rate for expanding Medicaid provided under the ACA has only been approved for states that have sought to expand to 138 percent of the federal poverty level. In Utah and Georgia, Republican legislatures are working toward securing that 90 percent match rate for partial expansions at levels less than 138 percent.
 - In Utah, voters approved a full expansion in the November election, but the Republican state legislature passed and the governor signed legislation setting a course to pursue federal 90 percent match rates for a partial expansion – up to 100 percent of the federal poverty level. Utah is also seeking to add work requirements and enrollment caps. CMS is reviewing Utah's proposal.
 - In Georgia, state Republicans introduced legislation that also would seek a partial expansion of Medicaid. The Republican governor has expressed his support, but few details on the proposal have emerged. While this was not on the ballot in Georgia in November, state Democrats made this a campaign theme in the election and picked up a few state legislature seats. Legislation must be signed before any proposal can be submitted to CMS.
- **Innovation Center Announces Emergency Transport Model.** The CMS Centers for Medicare and Medicaid Innovation (Innovation Center) announced [a new payment model](#) that will allow ambulance suppliers and providers to be reimbursed for transporting patients to alternate sites of care or providing treatment onsite or through telemedicine. The Emergency Triage, Treat and Transport (ET3) model is slated to begin with a request for applications in summer 2019. Once participants have been selected, the Innovation Center will issue a Notice of Funding Opportunity in fall 2019 for up to 40 two-year cooperative

agreements available to certain entities where suppliers and providers have been selected to participate.

- **Bipartisan Senate Letter Supports Mandatory CMMI Models.** Senators Lamar Alexander (R-TN) and Elizabeth Warren (D-MA) sent a bipartisan [letter](#) to US Department of Health and Human Services (HHS) Secretary Alex Azar supporting the Innovation Center's use of mandatory payment models. The letter outlines considerations for the development of appropriate mandatory models and requests additional information about situations where HHS believes mandatory testing is appropriate. Senator Warren has been a vocal supporter of mandatory bundles and Secretary Azar has hinted at forthcoming mandatory models in recent speeches. An internal CMS document was inadvertently posted (and immediately taken down) this week describing preliminary features of a mandatory radiation oncology model.

Next Week's Dose

Congress will have a recess week next week for President's Day.

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