

McDermottPlus Check-Up: October 18, 2019

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Article By

[Mara McDermott](#)

[Rachel Stauffer](#)

[Katie Waldo](#)

[Emma Zimmerman](#)

[McDermott Will & Emery](#)

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Friday, October 18, 2019

This Week's Dose

The House is moving ahead on Speaker Nancy Pelosi's drug pricing proposal.

Congress

The House Moved Forward with Pelosi's Drug Pricing Bill.

- The House Energy and Commerce and Education and Labor committees held markups of Speaker Pelosi's drug pricing package, the Lower Drug Costs Now Act of 2019 ([H.R. 3](#)). The bill, as amended, was reported favorably out of both committees with party-line votes of 27-21 in Education and Labor and 30-22 in Energy and Commerce. During the Energy and Commerce markup, Republicans argued that allowing Medicare to negotiate drug prices would seriously hamper innovation. (Last week, the Congressional Budget Office released a preliminary [report](#) that found that H.R. 3 would generate \$345 billion in savings, but that the lost revenue for drug makers could result in eight to 15 fewer drugs coming to market over the next ten years). Democrats insisted that negotiation is needed to rein in soaring drug costs. Republicans also expressed

disappointment in the partisan process of drafting the bill and pointed to several consensus policies which they argued could become law if the Democratic majority chose to pursue them. The [version of H.R. 3](#) that passed out of both committees contain several changes. Additionally, in the Energy and Commerce Committee, the Medicare Vision Act ([H.R. 4665](#)), the Help Seniors Afford Health Care Act ([H.R. 4671](#)), the Medicare Hearing Act ([H.R. 4618](#)), and the Medicare Dental Act ([H.R. 4650](#)) were also reported favorably to the full House by voice votes. Read our full summary of the markup [here](#).

- The House Ways and Means Committee also held a [hearing](#) to consider H.R. 3 ahead of a planned markup next week. During the hearing, Republican members voiced disappointment that they were not involved in the drafting of the bill and hoped the committee would work in a more bipartisan way going forward. There was some consensus among members surrounding language in the bill that would cap Medicare beneficiaries' out-of-pocket costs, but Republicans remained vehement in their opposition to granting the Secretary of HHS authority to negotiate drug prices. Read our full summary of the hearing [here](#).

The House spent a considerable amount of time on H.R. 3 this week. House Democrats are moving very quickly to get the bill through the Committees and onto the House floor for a vote. Next week the Ways and Means Committee will markup the bill.

- **Energy and Commerce Held Hearing on Youth Tobacco Use.** The House Energy and Commerce Health Subcommittee held a [hearing](#) to consider the Reversing the Youth Tobacco Epidemic Act of 2019 ([H.R. 2339](#)), which would ban the sale of flavored tobacco products and raise the tobacco purchasing age to 21. Committee members broadly agreed that the age to buy tobacco should be raised, and that tobacco products, particularly e-cigarettes, should not be marketed to children. However, some members expressed concern that banning flavored tobacco products would lead consumers to buy dangerous knock-off products on the black market. The hearing comes in the wake of at least 26 reported deaths from vaping-related lung illness and heightened scrutiny of e-cigarette use among teens. Expect continued Congressional attention on this issue as the medical community comes to better understand vaping-related sickness. Read our full summary of the hearing [here](#).
- **Ranking Member Brady Backed a Benchmark Rate Approach to Surprise Billing.** Before the recent recess, House Ways and Means Committee Chairman Richard Neal (D-MA) released a [letter](#) to Ranking Member Kevin Brady (R-TX) that sketched out an approach to surprise billing that included a negotiated rulemaking structure to settle surprise bills between insurers and providers. This week, Ranking Member Brady said that he prefers an approach that includes both a benchmark payment rate and arbitration, similar to the bill that passed out of the Energy and Commerce Committee. This makes the Neal approach much less likely to gain any traction, despite Chairman Neal's continued commitment to seek out bipartisan support. Because of potential savings, it is likely that a surprise billing provision will be tucked into a larger package as Congress moves to tie up issues including health care extenders and whatever drug pricing provisions can be moved this year.

Administration

- **CMS Released Star Rating Update.** The Centers for Medicare and Medicaid Services (CMS) [released](#) their annual update of Medicare Part C and D Star Ratings, which measure the quality of services received by beneficiaries enrolled in Medicare Advantage (MA) and Prescription Drug Plans (PDPs or Part D plans). CMS data shows that 81 percent of MA enrollees with prescription drug coverage will be in plans with four and five stars in 2020. Approximately 52 percent of MA-PDs that will be offered in 2020 earned 4 stars or higher for their overall rating. This is up from 46 percent in 2019. The Administration has continued to support the Medicare Advantage program and to identify opportunities to grow enrollment, including in a recent [Executive Order on Medicare](#).
- **GAO Report Analyzed High Cost of Medicaid Work Requirements.** According to a [report](#) released last week by the Government Accountability Office (GAO), the cost of administering Medicaid work requirements may reach hundreds of millions of dollars per state, something the agency says CMS should take into account. So far, CMS has approved Medicaid work requirements in nine states but has not considered the administrative cost as a factor in any of the approvals, which are supposed to be budget neutral. In addition to accounting for administrative costs when evaluating work requirement proposals, GAO recommended that CMS require states to release projections of their administrative costs and that CMS should improve its oversight of work requirement programs. The GAO report adds to the mounting opposition to work requirements, which have already been challenged and overturned in multiple court cases. CMS has disputed the report, saying it has appropriate oversight measures in place.

Courts

- **Federal Judge Blocked Public Charge Rule.** Last week, a federal judge in New York blocked the Trump Administration's recent rule that would allow immigration officials to consider the use of public benefits like Medicaid when denying green card applications. Several states and immigrant rights groups have sued to overturn the rule, which opponents claim would harm public health and increase healthcare costs by discouraging immigrants from seeking preventive services. According to the judge, the Department of Homeland Security failed to adequately justify its decision to redefine the term "public charge" to mean someone who uses public benefits, and that in doing so, exceeded congressional intent. The preliminary injunction blocked the rule from going into effect on October 15, though the Administration is sure to appeal the ruling. The Administration has also sought to deter immigrants from using public benefits in other ways, including issuing a [proclamation](#) seeking to block immigrants from entering the country unless they can prove that they will have health insurance or be able to pay for their healthcare costs within 30 days. That proclamation is set to take effect on November 3, 2019. Most of the Trump Administration's immigration efforts have faced legal challenges, and we expect that to continue.

Next Week's Diagnosis

We'll be watching CMS Administrator Seema Verma testify before the House Energy and Commerce Oversight and Investigations Subcommittee on October 23, the House Ways and Means Committee markup of Lower Drug Costs Now Act and the Senate Finance Committee's hearing on treating substance misuse.

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Source URL: <https://www.natlawreview.com/article/mcdermottplus-check-october-18-2019>