



Weekly Health Care Checkup October 12 - 16, 2020

IN BRIEF

What Happened This Week: The Senate Judiciary Committee conducted a multi-day [hearing](#) this week to consider Judge Amy Coney Barrett's nomination to the Supreme Court. She fielded several hours' worth of questions during the Q&A portion of the hearing, ranging from health care to abortion to climate change to potential election litigation (click [here](#) to read more).

Shifting gears to the latest on COVID-19 stimulus negotiations... Treasury Secretary Mnuchin and House Speaker Pelosi (D-CA) continued to maintain an open [dialogue](#) on a path forward for a COVID relief package (though it remains highly unlikely that both parties will be able to reach an agreement before the November elections).

Meanwhile, over HHS, CMS [announced](#) it will expand the list of telehealth-covered services under Fee-For-Service Medicare during the COVID-19 Public Health Emergency to include 11 additional procedures (the full list of newly added services can be found [here](#)).

The Agency also separately [said](#) Medicare will pay \$100 per test beginning January 1, 2021 to labs that complete high throughput COVID-19 diagnostic tests within two calendar days of the specimen being collected (\$75 for laboratories that take longer than two days).

What to Expect Next Week: The Senate is expected to return from recess next week. The Judiciary Committee is slated to vote on Judge Amy Coney Barrett's Supreme Court nomination on Thursday, October 22; the full Senate could then proceed with a vote as early as Friday, October 23.

It's also [possible](#) that Senate Majority Leader Mitch McConnell (R-KY) will move forward with a vote on a smaller, more "targeted" COVID-19 relief bill that would provide more funding for the CARES Act's small business loan program, though given their [stance](#) on a "piecemeal" approach to COVID-19 relief, it's highly likely that Senate Democrats will move to block the legislation from advancing.

The House is in recess for the remainder of October (pro forma sessions only), though the Ways and Means Oversight Subcommittee will hold a remote [hearing](#) on Tuesday, October 20th at 12pm entitled: "Maximizing Health Coverage Enrollment Amidst Administration Sabotage."

DEEP DIVE

Senate Republicans Poised to Confirm Judge Barrett to US Supreme Court Ahead of November Elections Following Multi-Day Judiciary Committee Hearing: The Senate Judiciary Committee conducted a multi-day [hearing](#) this week to consider Judge Amy Coney Barrett's nomination to the Supreme Court. She fielded several hours' worth of questions during the Q&A portion of the hearing, ranging from health care to abortion to climate change to potential election litigation. When pressed by Democrats about whether President Trump had spoken to her about how she would rule in the upcoming Supreme Court [case](#) against the Affordable Care Act, Barrett said no, and added that it would be a "gross violation of judicial independence" for her to make a commitment or to be asked about a pending case and how she would rule. The following day – when asked about whether President Trump's involvement in the pending case against the ACA placed a "cloud" over her nomination, Barrett replied: "no matter what somebody's policy preferences are about the ACA, I completely agree with you they shouldn't be trying to undermine the policy that Congress enacted." The Court is slated to hear the oral arguments in the case beginning November 10 – seven days *after* the November elections.

Looking ahead, the Committee is expected to vote on Barrett's confirmation on Thursday, October 22, with a full Senate vote expected to take place shortly after that (possibly beginning as early as Friday, October 23). Modified filibuster rules for Supreme Court nominees (which Senate Republicans voted to change during the first year of the Trump Administration) will allow Barrett to be confirmed by a simple majority (rather than 60 votes). As such, it is expected that Senate Republicans – who hold a 53-47 majority in the Senate – will have the votes to confirm Barrett as only two Senate Republicans (Collins (ME) and Murkowski (AK)) have indicated that they will not vote to confirm Judge Barrett *prior* to the elections.

McConnell Eyes Vote on Targeted COVID-19 Response Bill Amid Long-Stalled Bipartisan Stimulus Negotiations: In a [statement](#) earlier this week, Senate Majority Leader Mitch McConnell (R-KY) said he plans to move forward with a vote on another "targeted" COVID-19 relief bill that would provide more funding for the CARES Act's small business loan program when lawmakers return to Washington next week. He criticized Democrats' "[all or nothing](#)" approach to the next stimulus proposal and reiterated that Republicans "do not agree that nothing is better than something for working families." In response, House Speaker Nancy Pelosi (D-CA) – who continues to [maintain](#) that Democrats will not support a stimulus package less than \$2.2 trillion despite [calls](#) from members of her own party to support the targeted relief bill – said the latest GOP proposal "falls significantly short of what this pandemic and deep recession demand."

This most recent development comes just days after the President [instructed](#) Treasury Secretary Mnuchin to go *back* to the bargaining table with Speaker Pelosi to negotiate a larger stimulus package, and then suggested during an interview that he would like to see a "bigger stimulus package than frankly either the Democrats or Republicans are offering." The resulting White House proposal – totaling \$1.8 trillion – was rejected by both [Democrats](#) (who blasted the proposal for not going far enough) and several [Republicans](#) (who argued that the top line number was too high).

Looking ahead, Secretary Mnuchin and Speaker Pelosi are expected to maintain an open dialogue on a path forward for a larger COVID relief package, though at this point, given the current [state](#) of negotiations, it remains highly unlikely that both parties will be able to reach an agreement before the November elections.

Trump Administration Expands Coverage of Telehealth Services Under Medicare FFS During Public Health Emergency: On Wednesday, CMS [announced](#) it will expand the list of telehealth-covered services under Fee-For-Services Medicare during the COVID-19 Public Health Emergency to include 11 additional procedures (the full list of newly added services can be found [here](#)). In a statement, CMS Administrator Seema Verma called telehealth "revolutionary" and suggested that the service is "transforming healthcare delivery in America." She added that President Trump "will not let the genie go back into the bottle." CMS also said it would be providing additional support to state Medicaid and CHIP

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agencies looking to expand access to telehealth services going forward. As part of this effort, the Agency released a [new supplement](#) to its *State Medicaid & CHIP Telehealth Toolkit: Policy Considerations for States Expanding Use of Telehealth, COVID-19 Version* in an effort to help states think about how they can explain and clarify which policies are temporary or permanent in conversations with providers and other stakeholders.

CMS Updates Medicare Payments to Labs in Effort to Support Faster COVID-19 Testing: The Trump Administration [said](#) yesterday that Medicare will pay \$100 per test beginning January 1, 2021 to labs that complete high throughput COVID-19 diagnostic tests within two calendar days of the specimen being collected (\$75 for laboratories that take longer than two days). This latest announcement follows an earlier [effort](#) by CMS to increase payments to labs for high throughput COVID-19 diagnostic tests from approximately \$51 to \$100 per test.

Johnson & Johnson Halts COVID Vaccine Trial After Participant Experiences “Unexplained Illness”: On Monday, Johnson & Johnson [announced](#) that it would be temporarily pausing its phase 3 COVID-19 vaccine candidate trials after one participant experienced an “unexplained illness.” The company was quick to emphasize that adverse events in studies of this size are not uncommon, though an independent Data Monitoring and Safety Board is still expected to conduct a thorough review of the incident.

In Lieu of In-Person Debate, Trump and Biden Appear on Separate Stages at Dueling Town Hall Events: President Trump and Democratic Presidential hopeful Joe Biden appeared on separate stages at dueling town hall [events](#) last night. At one point, President Trump said his Administration is “always protecting people with preexisting conditions,” though he did not offer any suggestions as to what the Administration would do in the event that the Supreme Court rules the Affordable Care Act – which includes protections for pre-existing conditions – invalid. Separately, when asked whether he would consider “[packing the court](#)” if elected, Biden said that decision would be based largely on whether Senate Republicans vote to confirm Amy Coney Barrett before the November election. “I’m open to considering what happens from that point on,” Biden said.

Democratic Lawmakers Ask GAO to Review President Trump’s Medicare Drug “Discount” Cards: On Monday, House Ways and Means Committee Chairman Richard Neal (D-MA), House Energy and Commerce Committee Chairman Frank Pallone (D-NJ), and Senate Finance Committee Ranking Member Ron Wyden (D-OR) sent a [letter](#) to HHS Secretary Alex Azar expressing concern for President Trump’s recently-announced [plan](#) to distribute \$200 drug “discount cards” to Medicare beneficiaries reportedly using money from the Medicare Trust Fund. The lawmakers also sent a separate [letter](#) to Government Accountability Office (GAO) Comptroller General Gene Dodaro requesting that the nonpartisan government agency conduct a review of the President’s plan. “Given the unusual nature of these taxpayer-funded payments to Medicare beneficiaries, we are concerned that the demonstration fails to comply with relevant federal laws and regulations,” the letter to the GAO reads. While the details of much of Trump Administration’s plan to distribute the cards – and whether the Administration would even be permitted to do so without Congressional approval – is still unclear, recent [reports](#) indicate that the Administration is aiming to send letters to 39 million Medicare beneficiaries this month informing them of the cards.

Governors Ask Trump About Their Role Distributing COVID-19 Vaccine: The Chair and Co-Chair of the National Governors Association – Andrew Cuomo (NY) and Asa Hutchinson (AR) – sent a [letter](#) to President Trump this week asking for “additional guidance and clarification” on the role of states in COVID-19 vaccine distribution. They asked for a meeting with the President to discuss the following: the delineation of federal and state responsibilities; the funding needs associated with those responsibilities; and the planned supply chain management and vaccine allocation process.

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GOP E&C Members Ask GAO to Assess COVID Contact Tracing Apps: A group of House Energy and Commerce Committee Republicans – including the full committee Ranking Member Greg Walden (R-OR), Michael Burgess (R-TX), and Brett Guthrie (R-KY) – sent a [letter](#) to GAO Comptroller General Gene Dodaro this week asking the nonpartisan agency to review and assess COVID-19 contact tracing apps. “Challenges that may reduce the effectiveness of these technologies include low adoption rates, testing delays, privacy concerns, and interoperability of the apps,” the letter reads. The lawmakers also said they are interested in the relationship between testing and state contact tracing programs.

Democratic Lawmakers Ask GAO to Investigate Trump Administration’s Influence Over Government Agencies During Pandemic: Late last week, a group of Democratic Senators – Elizabeth Warren (MA), Patty Murray (WA), and Gary Peters (MI) – sent a [letter](#) to the GAO requesting that the nonpartisan agency review whether the FDA or the CDC were subjected to political influence by the Trump Administration during the COVID-19 pandemic. “The Trump Administration has reportedly pressured the CDC and FDA throughout the COVID-19 pandemic, repeatedly applying political pressure and imposing orders on career scientists that undermine the agencies’ credibility and independence,” the letter reads. Earlier this year, the Senators introduced [legislation](#) (the Science and Transparency Over Politics (STOP) Act) that would require a newly-formed task force to conduct an investigation into political interference with decisions made by scientific agencies of HHS in connection with the pandemic response.

Open Enrollment for Medicare Begins: Medicare open enrollment for the 2021 plan year kicked off this week. CMS [said](#) beneficiaries can expect to see the lowest average monthly premiums for Medicare Advantage plans since 2007. The Agency is also encouraging beneficiaries to choose a prescription drug plan that will offer several types of insulin at a maximum copayment of \$35 for a 30-day supply (a new “Insulin Savings” filter on the Medicare Plan Finder will reportedly display plans that will offer the capped out-of-pocket costs for insulin; beneficiaries can use that to view plan options and look for a participating plan in their area that covers their insulin at no more than a \$35 monthly copay).

UPCOMING COVID / HEALTH-RELATED CONGRESSIONAL HEARINGS

House Ways and Means Committee

Topic: Oversight Subcommittee [Hearing](#) – Maximizing Health Coverage Enrollment Amidst Administration Sabotage

Date: Tuesday, October 20th at 12:00pm

Witnesses:

- The Honorable Marlene Caride, Commissioner, New Jersey Department of Banking and Insurance
- Kevin Patterson, Chief Executive Officer, Connect for Health Colorado
- Andy Slavitt, Board Chair, United States of Care
- Chris Pope, Senior Fellow, Manhattan Institute

ADMINISTRATION ANNOUNCEMENTS

Department of Health and Human Services

- [Trump Administration Expands Manufacturing Capacity with Cytiva for Components of COVID-19 Vaccines](#)
- [Trump Administration Makes Major Investment to Increase Availability of Fast Molecular POC Test](#)

Centers for Medicare & Medicaid Services

- [Trump Administration Drives Telehealth Services in Medicaid and Medicare](#)

Food and Drug Administration

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- [FDA Approves First Treatment for Ebola Virus](#)
- [FDA Warns Dietary Supplement Companies Illegally Selling Products Containing Cesium Chloride](#)
- [FDA Issues New Guidance: Enforcement Policy for Modifications to FDA-Cleared Molecular Influenza and RSV Tests During COVID-19 Public Health Emergency](#)
- [Click here for the full list of all new FDA updates.](#)

Guidance Documents from the Centers for Disease Control and Prevention

- [Click here for the full list of all new CDC updates.](#)

National Institutes of Health

- [NIH Study Aims to Identify Promising COVID-19 Treatments for Larger Clinical Trials](#)
- [NHGRI Researchers Work With Patients, Families and the Scientific Community to Improve the Informed Consent Process](#)
- [NIH-Funded Study Links Adolescent Brain Differences to Increased Waist Circumference](#)

QUICK LINKS

- [Additional Mehlman Castagnetti Resources on COVID-19](#)
- [Johns Hopkins University Map of Global Cases of Coronavirus](#)
- [CDC Map of Coronavirus Cases in the US](#)
- [CMS COVID-19 Stakeholder Call Recording/Transcripts](#)
- [Kaiser Family Foundation: State Data and Policy Actions to Address Coronavirus](#)

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