

GOP Feud Brews as Trump Sidesteps Congress on Health Payments

By Shira Stein

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- New payment models coming, even as lawmakers express private concerns
- Office used to get around Congressional gridlock

The office Republicans derided as unconstitutional gives the Trump administration leverage to broadly alter how doctors and hospitals are paid under Medicare, sidestepping Congress.

The Center for Medicare & Medicaid Innovation, which was created by Obamacare, has expansive authority to create new payment systems with little oversight by Congress. Now the Trump administration wants to kick it into overdrive, rankling Republicans who have so far held their tongues.

The office, housed within the Department of Health and Human Services, experiments with how to pay for health care. The idea behind it is to allow the administration to test innovative methods of paying for health care without having to wait for congressional approval.

HHS Secretary Alex Azar has floated a few proposals that presumably will be tested out in the innovation unit. One idea would peg what Medicare and Medicaid pay pharmaceutical companies for drugs administered in a doctor's office to the amount other countries pay. Azar has also spoken of changing payment systems for cardiac care and radiation oncology.

The move would get around Republicans in Congress who would rather see the Trump administration be more cautious in its use of the innovation office they think is unconstitutional.

"In a world where it is essentially impossible to pass meaningful, bipartisan health-care legislation," the Trump administration will "turn to the thing they can use to do it," Douglas Holtz-Eakin, president of the conservative think tank American Action Forum, said in an interview. Holtz-Eakin was director of the non-partisan Congressional Budget Office from 2003 to 2005.

'Political Expediency'

Using CMMI is a "matter of political expediency," Doug Badger, a visiting fellow in domestic policy studies at the Heritage Foundation, said in an interview.

The CMMI will save the government \$34 billion from 2017 to 2026 by encouraging more efficient patient care, according to a Congressional Budget Office analysis. About 25.7 million patients have been affected by these models, and 207,000 providers have participated in them, according to a December 2016 CMMI report to Congress.

“CMMI is a major tool of any administration to try to affect certain changes in the payment and delivery of health care,” former HHS Secretary Tom Price said in an interview with Bloomberg Law. That is “not unique to this administration.”

HHS is “leveraging all the tools at our disposal, including the CMS Innovation Center, to deliver each patient the right care, at the right price, in the right setting, from the right provider,” a Centers for Medicare and Medicaid Services spokesperson said in an email.

Administration Action

Azar has said the administration plans to release mandatory payment models in the coming months, which could lead to a public outcry from Republicans. There have been few details released on what the models would do, but they would require providers to participate in tests for different forms of payment if they meet certain criteria.

Thus far, sources say congressional Republicans have expressed their concerns privately. But if HHS puts forth mandatory tests for different payment systems, that could result in a public outcry.

The administration has been using voluntary alternative payment systems where providers earn rewards for delivering high quality and cost-efficient care. The idea, which started in the Obama administration, is to promote payment based on patient outcomes instead of on numbers of procedures.

Republicans are now asking questions about the mandatory demonstrations the CMMI is preparing to release, House Ways & Means Ranking Member Kevin Brady (R-Texas) said in an interview. Their questions include how the models are being designed, how widespread they will be, and the goals of the models.

Price said he’s long been concerned about mandatory test projects. He canceled a mandatory test of payment for heart attacks and joint replacements while he was HHS secretary.

Price said his concerns are primarily about the scope of the mandatory demonstrations. If a majority of patients are in a model, “that’s not a demonstration project, that’s the federal government deciding” how doctors take care of their patients.

Getting Around Congress

“CMMI offers an appealing shortcut to do something about drug pricing,” Badger said, and “as a consequence, there is a more muted response” from Republicans.

The only attention paid to the office has been a letter sent by Reps. Brady and Richard Neal (D-Mass.) asking the CMMI for more transparency about how it creates its models.

Congressional Republicans may not be talking about the office because they see it as a losing battle. They have other issues that are higher on their priority list, and they know that the office is here to stay, Ipsita Smolinski, managing director of health-care consulting firm Capitol Street, said in an interview.

Republicans initially saw the CMMI as a form of executive overreach by the Obama administration. The office isn't required to follow a formal rule-making process or solicit public comments while creating its models, and Congress has limited oversight authority. Republicans take issue with the ability of the office to expand its payment models nationwide, which they see as being the responsibility of Congress.

Republicans have been talking privately with Azar about their concerns about CMMI, Brady said. "The same concerns we've always had about CMMI remain, but the administration has been listening to us very carefully."

Over 170 House Republicans, led by then-Rep. Price, sent a letter to the CMS and the CMMI in September 2016 with "serious" concerns about mandatory payment models the office was putting into place. The letter asked the CMMI to stop all planned mandatory demonstrations and not to exceed the scope of the office's authority.

Brady said congressional Republicans are trying to make sure that the models are designed "correctly," and that the lawmakers understand how changes tested by CMMI would lower health-care costs.

"Well-intentioned people want to use the power of CMMI for good purposes," Badger said, but the office is a "constitutionally flawed power and one any administration should avoid."

"The Affordable Care Act gave too much authority to CMMI. I certainly support innovation, so testing new payment and delivery models should be encouraged, but Congress should always have a say when we're talking about changing law," Rep. Greg Walden (R-Ore.) said in a statement.

How the CMMI does its work hasn't really changed since the Trump administration took office, even though some expected it to, Smolinski said. They're using the evaluations of these demonstrations as a type of guardrail, but haven't put other guidelines in place.

"I continue to have concerns about CMMI," Rep. Michael Burgess (R-Texas) said in a statement. But, "as long as CMMI exists, we should be working to improve it," he added.

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