

McDermottPlus Check-Up

McDermott+Consulting is pleased to introduce the McDermottPlus Check-Up, your regular update on health care policy from Washington, DC.



THIS WEEK'S DIAGNOSIS: The response to the coronavirus (COVID-19) continued to dominate lawmakers' attention. The Senate passed the second emergency funding bill and began work on a third. The Administration released new guidance expanding telehealth services in traditional Medicare.

CONGRESS

- + CONGRESS PASSED "PHASE TWO" SUPPLEMENTAL FUNDING BILL.** The Families First Coronavirus Response Act ([H.R. 6201](#)), referred to as "phase two" of Congress' emergency response to the COVID-19 pandemic, passed the House last week by a vote of 363 to 40 and the Senate this week by a vote of 87 to 8. President Trump signed the bill into law on Wednesday. [The bill](#) requires employers with fewer than 500 employees to provide sick and quarantined workers with two weeks of emergency paid leave (exempting employers of healthcare workers or other emergency personnel), provides tax incentives for these employers to help offset the costs, and \$1 billion in grant funding to help states manage and expand their unemployment insurance programs. It also raises the Federal Medical Assistance Percentages by 6.2% and requires private health plans to cover diagnostic testing for COVID-19 at no cost to consumers. Expect Congress to continue to legislate as the full impact of the virus comes into view.
- + CONGRESS BEGAN WORK ON A "PHASE THREE" FUNDING PACKAGE.** The Senate released initial proposals on a further supplemental stimulus and support bill that could reach over \$1 trillion. Senate Republicans released their [proposal](#), titled the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which includes direct payments of up to \$1,200 for taxpayers making below \$99,000 a year, \$300 billion in federal-guaranteed loans for small businesses, and \$200 billion in supports for airlines and other hard-hit industries. The bill also suspends Medicare sequestration through the end of the year, increases Medicare rates for the treatment of COVID-19 patients by 15%, expands telehealth services and provides \$1.32 billion in funding for community health centers. The bill is a starting point for negotiations, and is sure to go through additional changes. On the Democratic side, Senate Minority Leader Chuck Schumer (D-NY) [called for](#) a \$750 billion package that would include \$400 billion for public health and treatment capacity efforts, small business loans, and social supports like childcare, housing and transportation. Schumer's proposal also allocates \$350 billion for unemployment insurance, public assistance programs, Medicaid and student loan support. With little overlap between the two proposals, it is possible that lawmakers will seek to combine the two into a wide-ranging stimulus bill with a very high price tag that gives each side of the aisle their top priorities. The Senate could vote on this third bill as early as next week. Other healthcare issues, such as addressing surprise billing or funding the health extenders, could be on the table for future negotiations. Healthcare stakeholders should continue to communicate their specific needs to federal and state authorities.

ADMINISTRATION

- + **CMS ISSUED GUIDANCE WAIVING CERTAIN TELEHEALTH REQUIREMENTS DURING PANDEMIC.** The [guidance](#) from the Centers for Medicare and Medicaid Services (CMS) implements provisions in the Coronavirus Preparedness and Response Supplemental Appropriations Act ([H.R. 6074](#)), as signed into law on March 6, 2020, which provided the US Department of Health and Human Services (HHS) with authority to waive certain traditional Medicare telehealth requirements. Using this new waiver authority, states may allow telehealth services to be provided in all settings for Medicare beneficiaries – including at a patient’s home – which was previously prohibited. Clinicians can bill immediately for services beginning March 6, 2020. The HHS Office of Civil Rights (OCR) also issued [guidance](#) allowing covered healthcare providers to use popular applications that allow for video chats to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the Health Insurance Portability and Accountability Act rules during the COVID-19 public health emergency. Finally, the HHS Office of Inspector General issued [guidance](#) specifying that the agency will not take action against providers that choose to waive cost-sharing obligations for telehealth services during the current national emergency. We dive deeper into this guidance [here](#). These measures provide significant new flexibility for providers wishing to expand their telehealth services, which could prove beneficial as shelter in place orders and restrictions on movement sweep the nation.

STATES

- + **FLORIDA AND WASHINGTON RECEIVED SECTION 1135 WAIVER APPROVAL FOR COVID-19 EMERGENCY.** Last week, President Trump [declared a state of emergency](#), which authorized CMS to waive certain requirements in Medicare, Medicaid and the Children’s Health Insurance Program under section 1135 authority. This week, [Florida](#) and [Washington](#) both received approval for section 1135 waivers, which make several changes to provider participation and other administrative requirements in an effort to reduce regulatory burden during the COVID-19 pandemic. Among the changes, the states can reimburse out-of-state providers through Medicaid, expedite enrollment of certain providers in Medicare and waive prior authorization for certain services. The Florida and Washington waivers are the first to be approved under the emergency guidance, but we expect more to be approved in the coming weeks as states respond to the pandemic. Approved waivers will be available [here](#).
- + **OKLAHOMA RELEASED DRAFT BLOCK GRANT WAIVER.** The [draft waiver](#) is the first to be proposed under recent Trump Administration [guidance](#) that would allow states to convert their Medicaid program into a block grant system. The Oklahoma plan would expand Medicaid to adults age 19 to 64 with incomes at or below 133% of the federal poverty line beginning July 1, 2020, and accept a federal per capita spending cap to cover the expansion population beginning in July 2021. For the expansion population, Oklahoma would require premiums of up to \$15 per month based on household income, copays for services up to 5% of the out-of-pocket household maximum and \$8 copays for non-emergency use of the emergency room. Individuals diagnosed with HIV/AIDS or who have a substance use disorder or serious mental illness would be exempt from premiums and copayments. The waiver would also roll back certain benefits, including non-emergency transportation and long-term care, and impose work requirements. Oklahoma has been a vocal supporter of the Trump Administration’s block grant proposal since it was announced, and CMS is expected to approve the waiver. However, many legal experts have raised questions about whether CMS has the authority to implement Medicaid block grants, and work requirements like those proposed by Oklahoma have repeatedly been blocked in court. If approved, the Oklahoma plan will face legal challenges.

QUICK HITS

- + CMS issued [recommendations](#) strongly encouraging hospitals and patients to postpone elective medical procedures until the COVID-19 emergency is over.
- + The Substance Abuse and Mental Health Services Administration released [guidance](#) on 42 C.F.R. Part 2 requirements during the COVID-19 emergency.
- + The Cybersecurity and Infrastructure Security Agency released [guidance](#) on identifying the essential critical infrastructure workforce.
- + Twenty-five Democratic senators sent a [letter](#) urging HHS to open a special enrollment period for anyone seeking insurance on the federal exchange during the COVID-19 emergency.
- + A federal appeals court will hear oral arguments by teleconference today (March 20, 2020) in a case challenging the Trump Administration's expansion of short-term, limited-duration insurance plans.

M+ RESOURCES

- + As part of ongoing White House Coronavirus Task Force efforts, CMS and other agencies have issued several resource documents, refocused activities related to state survey agencies and accrediting organizations and taken other related actions. Recent key COVID-19-related activities and actions can be found [here](#).
- + Our consultants discuss the federal response to the COVID-19 pandemic on the latest episode of the [Health Policy Breakroom](#).
- + Stay up to date with all our latest resources and analysis with the [COVID-19 Resource Center](#).

NEXT WEEK'S DOSE

The House will remain out of session indefinitely while the Senate finalizes the third supplemental funding package.

For more information, contact [Mara McDermott](#), [Rachel Stauffer](#), [Katie Waldo](#) or [Emma Zimmerman](#).

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