

McDermottPlus Check-Up

McDermott+Consulting is pleased to provide the McDermottPlus Check-Up, your regular update on health care policy from Washington, DC. McDermottPlus has also launched a new site compiling all of our COVID-19 related analysis. Visit us [here](#).



THIS WEEK'S DOSE: The Administration distributed the first wave of funding from the \$100 billion Public Health and Social Services emergency fund, provided through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, in the form of direct payments to Medicare providers.

CONGRESS

- + **CONGRESS PLANS TO BUILD ON THE CARES ACT WITH NEXT BILL.** Last week, House Speaker Nancy Pelosi (D-CA) sent a [letter](#) to colleagues calling on them to bring a “CARES 2” package to the floor by the end of April. The package would “double-down” on the policies included in the CARES Act and increase many of the emergency funding provisions. This week, Republicans and Democrats in the Senate both offered interim spending proposals they hoped to achieve before moving on to larger negotiations—Republicans proposed \$250 billion in new money for the Paycheck Protection Program, and Democrats called for additional funding for hospitals and state and local government as well—but both sides rejected each other’s bids. Now, lawmakers have turned their attention to the next major bill with these issues as a starting point. The deal will likely include new money for small businesses as well as healthcare providers and build on the consensus provisions of the CARES Act rather than include sweeping new policy changes. However, the door remains open for a future legislative package later in the spring or early summer, which could incorporate more novel policy proposals such as those House Democrats put forth in the Take Responsibility for Workers and Families Act ([H.R. 6379](#)) in March. Stakeholders should continue to communicate their unmet COVID-19 needs to Congress and the Administration as subsequent legislative packages take shape.

ADMINISTRATION

- + **HHS ISSUED \$30 BILLION IN PAYMENTS TO FEE-FOR-SERVICE MEDICARE PROVIDERS.** The Department of Health and Human Services (HHS) announced on Tuesday that \$30 billion of the \$100 billion Public Health and Social Services emergency fund provided by the CARES Act would be distributed in direct payments to providers. Providers began receiving the money through direct deposit early Friday. The payments are based on a provider’s share of total Medicare fee-for-service (FFS) reimbursements in 2019. All facilities and providers that received Medicare FFS reimbursements in 2019 are eligible for this initial rapid distribution. Within 30 days of receiving the payment, providers must sign an attestation on a portal (opening the week of April 13, 2020) confirming receipt of

the funds and agreeing to the [terms and conditions](#) of payment. The terms and conditions impose a number of obligations and present novel issues for many providers; they should be carefully evaluated before providers agree to accept the funds. Additional details are available from HHS [here](#). HHS acknowledged that many providers will not benefit from this initial \$30 billion because they had little or no Medicare FFS revenue in 2019. HHS indicated that these providers will be addressed in the second wave of funding distributions, but did not provide any additional details about how or when they will receive support. The Administration is expected to release additional guidance in the coming weeks describing how the remaining \$70 billion will be distributed.

- + **CMS RELEASED 2021 CAPITATION RATES FOR MEDICARE ADVANTAGE AND PART D.** The [2021 Medicare Advantage \(MA\) and Medicare Part D Payment Policies](#) final rule increases baseline payment rates for MA plans by an average of 1.66%, higher than the 0.93% increase proposed in January 2020. The notice largely finalizes policy proposals from earlier this year, including the risk adjustment methodology, the phase-in of encounter data, and the approach to setting rates for end stage renal disease beneficiaries. CMS acknowledged that stakeholders have asked for clarity around whether diagnoses captured in telehealth visits count for risk adjustment purposes, but said it will issue separate guidance on that topic. The telehealth issue has become a significant focus of providers and plans as most visits have shifted to telehealth in light of the COVID-19 pandemic.

COURTS

- + **THE SUPREME COURT ADJUSTED CASE TIMELINES DUE TO PUBLIC HEALTH EMERGENCY.** The US Supreme Court extended the deadline for parties to file briefs in the high-profile case challenging the constitutionality of the Affordable Care Act (ACA) without the individual mandate penalty in effect. The Court is slated to hear oral arguments this fall, and the parties now have until May 6, 2020, to file their opening briefs (the previous deadline was April 16). The Court also delayed oral arguments in two other healthcare-related cases, one involving state regulation of pharmacy benefit managers and one involving the ACA's contraceptive mandate, which were scheduled for the end of April. The Court has not announced new dates for oral arguments to take place, only that it is considering options to reschedule arguments before the end of the term in June. It is not clear whether the spring 2020 delays may affect the fall 2020 term schedule. Oral arguments in the ACA constitutionality case are expected in October, just before the November elections, but delays now may affect that schedule.

STATES

- + **UTAH SUSPENDED MEDICAID WORK REQUIREMENTS IN LIGHT OF PUBLIC HEALTH EMERGENCY.** Utah put its work requirements on hold citing the public health risks related to COVID-19 as well as the pandemic's impact on the state's economy. Utah was the last state with work requirements in effect. The Trump Administration has granted 10 state requests to implement Medicaid work requirements, but the policy has faced repeated defeats in court. A federal district court blocked requirements in Kentucky, New Hampshire, Michigan and Arkansas, and Arizona and Indiana have suspended implementation of their requirements due to ongoing litigation. Ohio, Wisconsin and

South Carolina have received CMS approval but have not yet implemented their programs. CMS has remained committed to the policy despite the court battles, but its future is unclear.

QUICK HITS

- + A bipartisan group of senators sent a [letter](#) to CMS urging the agency to modify or waive the 10.25% interest rate on Medicare Accelerated and Advance payments that are not recouped within one year. CMS has said it does not have the authority to do so.
- + HHS issued [guidance](#) authorizing licensed pharmacists to order and administer approved COVID-19 tests.
- + CMS posted a [letter to clinicians](#) that includes information about telehealth and virtual visits, Accelerated and Advance payments and recent waiver information.
- + CMS [issued new recommendations](#) to state and local governments, as well as nursing homes, on ways to help mitigate the spread of COVID-19.
- + A CMS announced that it is delaying the start of the [Emergency Triage, Treat, and Transport model](#) from May 1, 2020, until an unspecified date this fall.
- + The Centers for Disease Control and Prevention issued [interim guidance](#) regarding essential workers returning to work after potential exposure to COVID-19.
- + The Department of the Treasury issued a set of [frequently asked questions](#) regarding the Paycheck Protection Program.
- + The Congressional Budget Office and the Joint Committee on Taxation released a [preliminary cost estimate](#) of the Families First Coronavirus Response Act (the second emergency relief bill). The law is expected to increase the federal deficit by \$192 billion over ten years. The estimate assumes that the public health emergency will remain in place through March 2021.

M+ RESOURCES

- + As part of the ongoing White House Coronavirus Task Force efforts, CMS and other agencies have issued several guidance and resource documents related to COVID-19. An inventory of these documents is available [here](#).
- + Find all McDermottPlus analysis related to COVID-19 [here](#), and be sure to follow the [COVID-19 Resource Center](#).

NEXT WEEK'S DOSE

The healthcare industry awaits additional guidance from the Administration regarding emergency funding and flexibilities to fight COVID-19.

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

[To subscribe to the McDermottPlus Check-Up, please contact Jennifer Randles.](#)



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