

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 Department of Health and Human Services (HHS) opened the online [portal](#) for providers to attest to the [terms and conditions](#) for the first \$30 billion distributed from the Public Health and Social Services Emergency Fund. Lawmakers and healthcare stakeholders continue to push for details on the timing and methodology for allocating the remaining \$70 billion, as well as for revisions to the terms and conditions for accepting the money. The Paycheck Protection Program and Economic Injury Disaster Loan program ran out of funding.

CONGRESS

- + **LAWMAKERS STRUGGLE TO REACH A DEAL ON SMALL BUSINESS FUNDING.** Funds provided to the Paycheck Protection Program (PPP) and Economic Injury Disaster Loans program by the Coronavirus, Aid, Relief, and Economic Security (CARES) Act have been exhausted. Efforts to appropriate additional money for the programs have so far stalled in Congress. Last week, Senate Republicans proposed \$250 billion in new funding for PPP, but Democrats demanded funding for healthcare providers and local governments in addition to funding for PPP, and the two sides failed to reach agreement. Lawmakers are aiming to complete work on the next relief bill soon, but partisan disagreement over other policy priorities could slow the process.
- + **SENATE DEMOCRATS URGE HHS TO DISTRIBUTE EMERGENCY FUNDING TO PROVIDERS HARDEST HIT BY COVID-19.** Senate Minority Leader Chuck Schumer (D-NY), along with top health committee Democrats Patty Murray (D-WA) and Ron Wyden (D-OR), [say](#) that HHS did not follow Congressional intent when it distributed the first \$30 billion of the \$100 billion CARES Emergency Fund. The senators argue that Congress allocated the funds to help front-line providers, and that the Administration's \$30 billion [distribution](#) based on fee-for-service Medicare revenue did not sufficiently target providers in hot-spots. The senators urge HHS to target the remaining \$70 billion to the hardest hit areas and prioritize equity with regard to payer mix (providers with high Medicaid penetration, for example, received relatively less in the first round). Senate Finance Committee Democrats sent a similar [letter](#) to HHS, calling on the agency to be transparent and equitable in future distributions. HHS acknowledged that not all providers would benefit from the first wave of funding and noted that it would distribute the remaining funds according to different criteria, but has not provided further details. It was [reported](#) this week that HHS may use Internal Revenue Service data to allocate money in the next round. HHS could release official information as early as today (April 17).

ADMINISTRATION

- + **ADMINISTRATION ANNOUNCED DYNAMIC VENTILATOR RESERVE.** The public-private partnership will allow hospitals across the country to lend unused ventilators to other hospitals with an immediate need to treat COVID-19 patients. So far, more than 20 health systems have signed up to participate and have pledged 4,000 ventilators. The online inventory of available equipment will be managed by the American Hospital Association in collaboration with the Federal Emergency Management Agency. The Trump Administration has faced criticism from governors across the country for failing to get adequate supplies, including ventilators, to the hardest hit areas.
- + **THE FEDERAL RESERVE ANNOUNCED THE MAIN STREET LENDING PROGRAM.** The [program](#) will provide up to \$600 billion in four-year loans to US companies employing up to 10,000 workers or with 2019 annual revenues of less than \$2.5 billion. Principal and interest payments will be deferred for one year. Businesses that have taken advantage of the PPP may also take out loans from the Main Street Lending Program. The lending program will manage two types of loans. The [Main Street New Loan Facility](#) is for new loans with a maximum size of \$25 million per borrower. The [Main Street Expanded Loan Facility](#) is available to fund increases in existing loans with a maximum size of \$150 million per borrower. Firms seeking Main Street loans must commit to make reasonable efforts to maintain payroll and retain workers and must also follow compensation, stock repurchase, and dividend restrictions that apply to direct loan programs under the CARES Act. Eligible entities are not yet able to apply for these loans. The Federal Reserve and Department of the Treasury are expected to release more information at a later date.
- + **THE FCC OPENED THE APPLICATION FOR THE COVID-19 TELEHEALTH PROGRAM.** The CARES Act provided \$200 million to the Federal Communications Commission (FCC) to respond to the COVID-19 pandemic by helping providers expand telehealth service. The COVID-19 Telehealth Program will support healthcare providers by fully funding their telecommunications services, information services, and devices necessary to provide critical connected care services until program funding runs out. Eligible healthcare providers include nonprofit and public teaching hospitals, community health centers, local health departments or agencies, not-for-profit hospitals, rural health clinics, and skilled nursing facilities. The application and more information is available [here](#).
- + **PRESIDENT TRUMP UNVEILED HIS PLAN FOR “REOPENING” THE COUNTRY.** President Trump [announced](#) the Great American Economic Revival Industry Groups, who will advise the White House on “reopening” the economy, and unveiled a [three-phase plan](#) that allows states to ease social distancing restrictions and reopen schools and non-essential businesses in stages. States must meet “gating” criteria at each stage that include a “downward trajectory of documented cases [of COVID-19] within a 14-day period” or a “downward trajectory of positive tests as a percent of total tests within a 14-day period (flat or increasing volume of tests),” as well as hospital preparedness. During “phase one,” elective surgeries can resume, as clinically appropriate, on an outpatient basis at facilities that adhere to Centers for Medicare and Medicaid Services (CMS) guidelines. States with no evidence of disease rebound can advance to “phase two,” during which elective surgeries can resume on an inpatient basis. During “phase three,” visits to

senior care facilities and hospitals can resume. President Trump noted that the decision to reopen will be left to individual governors, but that states could begin reopening as early as this month.

COURTS

- + **US SUPREME COURT WILL HEAR ORAL ARGUMENTS VIA TELECONFERENCE IN MAY.** The Court announced that it will hear oral arguments via teleconference for [10 cases](#) that were previously postponed due to COVID-19, including a case regarding the Affordable Care Act's contraceptive mandate. Arguments in that case will take place on May 6. The case concerning contraception mandates was postponed last week, along with another case regarding state regulation of pharmacy benefit managers (PBMs), but oral arguments in the PBM case will be rescheduled for the fall. In addition to hearing arguments by teleconference, the Court also will provide a live audio feed of the arguments to the media, the first time it has ever allowed live streaming of proceedings.
- + **STATES ASKED THE US SUPREME COURT TO PAUSE PUBLIC CHARGE RULE.** New York, Connecticut and Vermont, along with New York City, asked the Court to temporarily halt a [rule](#) that allows immigration authorities to deny visas or green cards based on a person's use of Medicaid or other public benefits. The states argue that the rule deters immigrants from accessing public healthcare services and poses a danger to public health during the COVID-19 pandemic. The Administration previously [announced](#) that the rule will not apply to testing or treatment for COVID-19, but the states argue this is not enough. The US Supreme Court ruled in January to allow the rule to take effect while litigation continues in the lower courts.

QUICK HITS

- + Senate Democratic leadership released a [plan](#) to dramatically expand testing capacity for COVID-19. The plan includes steps to leverage a "whole of society" response and emergency funding to enable rapid scaling of testing.
- + CMS issued [guidance](#) requiring private health plans to cover diagnostic testing and related services for COVID-19 at no cost for beneficiaries.
- + CMS released additional [Medicaid and CHIP guidance to states](#) regarding expanded Medicaid coverage under the Families First Coronavirus Response Act.
- + CMS issued guidance that clarifies that it [will allow](#) some telehealth diagnoses to count towards Medicare Advantage plans' risk adjustment.
- + CMS announced new supervision and staffing flexibilities applicable to Rural Health Clinics and Federally Qualified Health Centers (see [here](#) and [here](#)).
- + CMS [announced](#) that it will increase Medicare payment for certain lab tests that use high-throughput technologies to rapidly diagnose COVID-19 cases.
- + CMS issued three different annual proposed rules updating payment and policy changes for fiscal year 2021 for the [Inpatient Psychiatric Facility](#), [Skilled Nursing Facility](#), and [Hospice](#) Prospective Payment Systems.

- + The Medicaid and CHIP Payment and Access Commission sent a [letter](#) to CMS urging the agency to prioritize Medicaid providers in the distribution of the remaining \$70 billion emergency funding.

M+ RESOURCES

- + The McDermottPlus COVID-19 Guidance Tracker is a comprehensive list of updates focused on agency guidance and insights. This detailed health-policy document is formatted in an easy-to-read and navigate template helping ease the tracking and analysis of various COVID-19 related congressional and administrative directives. Get the Tracker on [our COVID-19 Resource Center](#).
- + Our consultants answer frequently asked questions about the Public Health and Social Services Emergency Fund on the latest episode of the [Health Policy Breakroom](#).
- + Get the major healthcare news of the week in 10 minutes or less with the [Friday Newsflash](#). New videos every Friday afternoon.

NEXT WEEK'S DOSE

Negotiations continue in Congress on a bill to supplement some of the emergency funding provisions of the CARES Act.

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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