

# 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:** Congress approved additional emergency relief for healthcare providers and small businesses, and the Department of Health and Human Services (HHS) announced additional allocations from the Public Health and Social Services Emergency Fund.

## CONGRESS

- + **CONGRESS APPROVED ADDITIONAL FUNDING FOR CARES ACT PROGRAMS.** The \$484 billion [deal](#) provides additional funding for the central relief programs created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, including \$75 billion for the Public Health and Social Services Emergency Fund for healthcare providers and \$310 billion for the Paycheck Protection Program (PPP) to help small businesses. The package also provides \$25 billion to increase testing capacity, of which \$11 billion is allocated to state and local governments, and up to \$1 billion is provided for covering the costs of testing for the uninsured (read our summary [here](#)). The bill makes no significant health policy changes, leaving the door open for yet another legislative package that could include more sweeping provisions. Congress is likely to continue its work on coronavirus (COVID-19) relief through May and possibly into the summer.

## ADMINISTRATION

- + **HHS ANNOUNCED ADDITIONAL PROVIDER RELIEF FUND ALLOCATIONS.** HHS [announced](#) the release of \$40.4 billion from the \$100 billion provider relief fund created by the CARES Act (in addition to the \$30 billion that was [released](#) April 10, 2020, to Medicare fee-for-service providers). Distributions were described as follows:
  - o \$20 billion to Medicare facilities and providers taking into account providers' 2018 net patient revenue and the \$30 billion already distributed. Approximately \$10 billion was expected to be distributed on April 24 based on provider cost reports, and for those providers that do not submit cost reports, funds will be distributed based on revenue information they submit to HHS;
  - o \$10 billion will be distributed to hospitals in areas that have been particularly impacted by the COVID-19 outbreak (hotspots);
  - o \$10 billion will be distributed to rural hospitals and health clinics; and
  - o \$400 million will be distributed to Indian Health Service facilities.

HHS also [announced](#) a process whereby certain healthcare providers that have treated uninsured COVID-19 patients on or after February 4, 2020, can be reimbursed at

Medicare rates, subject to available funding. Services not covered by traditional Medicare will not be covered under this program.

This announcement leaves \$29.6 billion of the original \$100 billion unaccounted for and also excludes the additional \$75 billion that Congress approved this week. HHS has implied that funds will be available to address the uninsured and providers who need separate funding allocations, such as skilled nursing facilities, dentists and providers that solely take Medicaid, but has not provided further details. There are still unanswered questions about which providers specifically will be eligible for funding. We expect HHS to issue more guidance in the coming weeks.

- + **HHS REVISED TERMS AND CONDITIONS FOR PROVIDERS ACCEPTING RELIEF FUNDS.** In addition, HHS updated the [Terms and Conditions](#) for the \$50 billion allocated to Medicare providers (\$30 billion distributed on April 10, plus \$20 billion to be distributed). The updated version narrows the surprise billing term. Under previous iterations of the Terms and Conditions, HHS included a balance billing prohibition that applied to “possible or actual” cases of COVID-19. Following publication of the initial version of the Terms and Conditions, HHS separately [clarified](#) that the Department “broadly views every patient as a possible case of COVID-19,” creating potential ambiguity as to whether the surprise billing prohibition could be applied to *all patients*. Subsequently, HHS changed the language in the surprise billing provision to “presumptive or actual” COVID-19 patients. This is a minor but helpful change for fund recipients. Providers should be thoughtful before agreeing to the Terms and Conditions and consider reaching out to HHS if they have questions. Providers who received funds in the April 10 distribution will have 30 days from receipt of the money to attest or return their funds.
- + **CMS RECOMMENDED REOPENING HEALTHCARE SYSTEMS IN AREAS WITH LOW INCIDENCE OF COVID-19.** The [guidance](#) allows healthcare systems to resume in-person care of non-COVID-19 patients as clinically appropriate in states that have entered “Phase I” of the Administration’s [three-phase plan](#) to reopen the country. The Centers for Medicare and Medicaid Services (CMS) continues to recommend maximum use of telemedicine and personal protective equipment to mitigate the spread of COVID-19. For states considering resuming in-person care, CMS recommends that health systems or clinicians take several precautionary steps, including coordinating with state and local officials to evaluate the incidence and trends of COVID-19 in the area, conserving supplies to maintain surge capacity, screening and testing staff for COVID-19, and maintaining social distancing and sanitizing protocols.
- + **ADMINISTRATION DELAYED IMPLEMENTATION OF INTEROPERABILITY RULES.** HHS will delay implementation of certain provisions of the interoperability final rules released in March in order to devote more resources to COVID-19. CMS [announced](#) a series of implementation delays related to the timeline for the admission, discharge, and transfer notification Conditions of Participation and exercising enforcement discretion in connection with certain API provisions. The Office of the National Coordinator for Health IT (ONC) [announced](#) it will exercise its discretion in enforcing all new requirements under health information technology standards (45 CFR Part 170) that have [compliance dates and timeframes](#) until three months after each initial compliance date or timeline identified in the ONC Cures Act Final Rule. The HHS Office of Inspector General (OIG)

also [released](#) a [proposed rule](#) outlining civil monetary penalties related to information blocking. OIG said it would delay enforcement until 60 days after its final rule is released.

## STATES

- + **OKLAHOMA SUBMITTED MEDICAID BLOCK GRANT WAIVER REQUEST.** The state formally submitted the [waiver request](#) that it released in [draft](#) form in March, which would expand Medicaid to adults age 19 to 64 with incomes at or below 133% of the federal poverty line, implement work requirements, and establish a block grant funding mechanism. The 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. However, the plan could be moot before it takes effect. Oklahoma will vote on June 30 to approve a ballot measure that would institute traditional Medicaid expansion through an amendment to the state constitution, which would block the major provisions of the waiver. In addition, 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 is likely to face legal challenges.

## QUICK HITS

- + The House voted 212 to 182 along party lines to establish a Select Subcommittee on the Coronavirus Crisis as part of the Committee on Oversight and Reform. The subcommittee will conduct oversight of the government's response to COVID-19.
- + Senator Gary Peters (D-MI) sent a [letter](#) urging the Government Accountability Office to investigate the allocation of PPP funds.
- + The Small Business Administration issued an [Interim Final Rule](#) on process and eligibility for the PPP. Among the clarifications included, the agency is allowing hospitals partially owned by state or local government entities to apply for the funds. This will help many rural hospitals across the country that were previously excluded from participating in the program.
- + CMS issued [guidance](#) allowing independent freestanding emergency departments to treat Medicare and Medicaid beneficiaries.
- + CMS issued [guidance](#) requiring nursing homes to report incidents of COVID-19 to the Centers for Disease Control and Prevention. CMS will make the data public. Facilities must also notify residents and their families.
- + CMS [announced](#) that clinicians can earn credit in the Merit-based Incentive Payment System by participating in clinical trials for drugs to treat COVID-19 and sharing their data.
- + CMS issued [blanket waivers](#) related to caring for patients in Long-Term Care Hospitals, temporary expansion locations of Rural Health Clinics and Federally Qualified Health Centers, and staffing and training modifications in Intermediate Care Facilities.

- + The Food and Drug Administration [granted an emergency use authorization](#) to an at-home COVID-19 test.
- + The Health Resources and Services Administration [awarded](#) \$165 million in grants for small rural hospitals and Telehealth Resource Centers.

## 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 and more from our [COVID-19 Resource Center](#).
- + Leveraging the use of telehealth technologies has become a critical component of care during the COVID-19 pandemic. Our [Telehealth Roundup](#) documents a number of recent developments including the creation of an HHS telehealth website, clarity on flexibilities for rural health centers and Federally Qualified Health Centers, and updates on funding opportunities.
- + The latest episode of the [Health Policy Breakroom](#) breaks down the supplemental funding bill passed this week.
- + 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

HHS continues to release additional money from the provider relief fund, though there are still unanswered questions about how the money will be allocated.

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

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