

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 Senate announced it will reconvene next week, and the Administration issued new coronavirus (COVID-19) testing guidelines. The Centers for Medicare and Medicaid Services (CMS) suspended the Advance Payment Program for Part B suppliers and is reevaluating the Accelerated Payments for Part A providers, and released a sweeping set of new waivers and flexibilities for the healthcare industry.

CONGRESS

- + **THE SENATE WILL RETURN TO WASHINGTON.** Senate Majority Leader Mitch McConnell (R-KY) announced that the chamber will return to Washington next week to begin work on the next COVID-19 relief bill, despite continued stay-at-home orders in the Washington, DC area and in most states across the country. After initially saying that the House of Representatives would follow suit, House Democratic leaders reversed course, citing warnings from public health experts and [substantial pushback](#) from members of their own caucus. Despite concerns from some lawmakers, the Senate is planning to conduct “normal” business. As evidence, the Senate Health, Education, Labor and Pensions Committee scheduled a [hearing](#) for Thursday. Despite not being in session, the House also scheduled a [hearing](#) for next week.

ADMINISTRATION

- + **CMS SUSPENDED ADVANCE PAYMENT PROGRAM AND WILL REEVALUATE ACCELERATED PAYMENT PROGRAM.** These legacy Medicare programs are designed to provide expedited reimbursement when there is a disruption in claims submission or processing. The programs were expanded during the public health emergency. Congress broadened the Accelerated Payment Program in the CARES Act; CMS broadened the Advance Payment Program by regulation. CMS [said](#) the move was taken in light of the funds that are being released through the \$175 billion Provider Relief Fund. CMS has paid out about \$100 billion in Accelerated and Advance payments since the program ramped up at the end of March. Advocates on Capitol Hill have forcefully asked Congress to waive or reduce repayment of Accelerated and Advance Payments. If legislation along those lines were to pass, CMS would not recoup substantial funds that have been paid out. In spite of the agency’s messaging, concerns about those loan funds never being repaid may be the real driver behind the reevaluation.
- + **CMS ISSUED NEW WAIVERS AND FLEXIBILITIES FOR PROVIDERS.** The agency released a second [Interim Final Rule](#) and [additional waivers](#) that provide increased regulatory relief

and flexibility for healthcare providers during the public health emergency. The changes allow for increased access to COVID-19 diagnostic testing, flexibility for hospitals to adapt to changing capacity, further expansion of telehealth services, and removing barriers to support workforce needs, among other things. In the [announcement](#), CMS noted that the new flexibilities are in response to feedback and requests from healthcare providers. Stakeholders should continue to communicate their needs as relief efforts continue.

- + **HRSA OPENED REIMBURSEMENT PORTAL FOR UNINSURED CLAIMS.** The Department of Health and Human Services (HHS) [program](#) being administered by the Health Resources and Services Administration (HRSA) allows healthcare providers who have conducted COVID-19 testing or treatment of uninsured individuals on or after February 4, 2020, to apply for reimbursement. The registration [portal](#) is now open, and providers may begin submitting claims electronically on May 6. Providers will be reimbursed at Medicare rates, subject to available funding. The Families First Coronavirus Response Act and the Paycheck Protection Program and Health Care Enhancement Act each appropriated \$1 billion for this program, and HHS has indicated that it will draw additional funding from the Provider Relief Fund as well, but the Department has not specified an amount. Additional guidance about the uninsured fund can be found in this [FAQ document](#).
- + **ADMINISTRATION RELEASED NEW COVID-19 TESTING GUIDELINES.** The [Testing Blueprint for Opening Up America Again](#) supplements the President's [guidelines](#) for reopening the economy and is intended to facilitate state development and deployment of testing plans. The Blueprint directs the federal government to provide strategic and technical assistance to state, local and tribal governments. States and tribal governments are instructed to develop and implement testing and are responsible for identifying and overcoming barriers to testing. The private sector is responsible for developing new technologies and expanding testing partnerships with state and local governments. In addition, the Centers for Disease Control and Prevention issued [guidance](#) that identifies hospitalized patients, healthcare workers, residents in long-term care facilities, and persons identified through public health clusters and selected contact investigations as priorities for testing. Adequate testing capacity remains a central concern of public health experts as states across the country prepare to reopen.

COURTS

- + **US SUPREME COURT SIDED WITH INSURERS IN RISK CORRIDORS CASE.** The Court [ruled](#) that the federal government violated its commitment to insurers by canceling the “risk corridor” payments established under the Affordable Care Act (ACA) and must repay program participants. The risk corridor program was designed to encourage insurers to participate in the ACA marketplaces by subsidizing some of their losses. However, in 2014 and 2015, Republicans in Congress eliminated much of the funding for the program by attaching riders to appropriations bills. A federal appeals court ruled in June 2018 that while the government did have an obligation to cover insurers’ losses under the ACA, Congress relieved this obligation through the appropriations riders. The US Supreme Court reversed that decision this week. The decision paves the way for insurers to be repaid almost \$12 million in covered losses, and may also have

ramifications for the cost-sharing reduction payments litigation currently before the Supreme Court. These cases examine similar questions about what obligation the federal government owes to organizations with whom it joins in a public-private partnership.

- + **US SUPREME COURT WILL NOT HALT PUBLIC CHARGE RULE.** The Court denied a request from New York, Connecticut and Vermont, along with New York City, 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. However, the Court's order leaves open the possibility that a lower court could pause enforcement of the rule. The US Supreme Court ruled in January to allow the rule to take effect while litigation continues in the lower courts. New York Attorney General Letitia James said she plans to file an emergency motion asking a federal district judge in Manhattan to issue an order halting the rule during the pandemic. Separately, more than 40 Democratic members of the House of Representatives [sent a letter](#) to Vice President Mike Pence urging the Administration to reconsider the public charge rule in light of the COVID-19 outbreak. While the rule is still in effect, U.S. Citizenship and Immigration Services [clarified that](#) immigrants who receive testing or treatment for COVID-19 will not be penalized under the rule.

STATES

- + **WASHINGTON REQUESTED MEDICAID IMD EXCLUSION WAIVER.** The [amendment](#) to the state's existing 1115 demonstration program would allow for federal funding of inpatient mental health services for Medicaid beneficiaries provided at an institute for mental diseases (IMD). It would also allow the state to make capitation payments to state contracted managed care entities to pay for services to Medicaid beneficiaries regardless of their length of stay in an IMD. Currently, Medicaid prohibits federal funding for capitation payments on behalf of Medicaid beneficiaries aged 21-24 residing in IMDs beyond 15 days in a calendar month. CMS has encouraged states to use 1115 authority to waive the IMD exclusion and is expected to approve the waiver. The state requests approval of the amendment through December 31, 2021. The [federal public comment period](#) will be open through May 22, 2020.

QUICK HITS

- + Senators Tammy Baldwin (D-WI), Chris Murphy (D-CN) and Chuck Schumer (D-NY) introduced the [Medical Supply Transparency and Delivery Act](#), which would federalize the medical supply chain and increase production of needed equipment under the Defense Production Act.
- + HHS Secretary Alex Azar [extended](#) the current Public Health Emergency (PHE) as authorized by the Public Health Services Act. The current PHE was set to expire on April 27, but now is extended 90 days, until late July. The PHE authorizes, among other things, the 1135 waivers implemented by CMS.
- + Leadership of the House Energy and Commerce Committee sent a [letter](#) urging HHS to develop a national COVID-19 contact tracing strategy.

- + The Pandemic Response Accountability Committee, established by the CARES Act, [launched a site](#) to track how the \$2.4 trillion in federal relief money is being distributed. The site tracks monthly obligations and expenditures on federal assistance awards and contracts related to COVID-19 as reported by federal agencies, as well as information about COVID-19 fund recipients and operational, economic, financial, and contract information.
- + CMS [released a toolkit](#) to help states evaluate their Medicaid program's capacity to expand telehealth capabilities and coverage policies.
- + CMS [extended the comment period deadline](#) to June 23, 2020, for stakeholders to submit comments on the [Comprehensive Care for Joint Replacement Model](#) Three-Year Extension and Changes to Episode Definition and Pricing proposed rule.
- + The Office of Management and Budget approved CMS' [proposed 340B acquisition cost data survey](#). The survey will ask hospitals to report the average acquisition cost for specified drugs purchased under the 340B program during the last quarter of 2018 and the first quarter of 2019 and must be completed by May 15, 2020.
- + The Federal Reserve released new [guidance](#) on the Main Street Lending Program, which will provide loans to small and mid-sized businesses.

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](#).
- + This week's episode of the [Health Policy Breakroom](#) examines the methodology behind the general distribution portion of the Provider Relief Fund.
- + 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

The Senate will return from its extended recess on May 4 to begin work on the next COVID-19 relief bill, though the House remains out of session.

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

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