

# 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 returned to Washington as lawmakers continued negotiations on the next relief bill. Oral arguments took place in three high-profile healthcare-related court cases.

## CONGRESS

- + **NEGOTIATIONS ARE UNDERWAY ON THE NEXT RELIEF BILL.** House Speaker Nancy Pelosi (D-CA) has previewed Democratic priorities for the next coronavirus (COVID-19) relief package, including aid for state and local governments, additional funding for safety-net programs and healthcare providers, and extending the loan forgiveness period of the Paycheck Protection Program. House leadership has hinted that a bill could come to the floor as early as next week, though with the House still formally out of session, it seems unlikely the chamber will stick to that timeline. Crafting such a sweeping package, which is likely to be more complex and delve into more policy considerations than its predecessors, will likely require members to return to Washington, which many lawmakers remain hesitant to do. Speaker Pelosi has said the decision of when and whether to bring the House back to Washington, DC, will be based on advice from public health experts and COVID-19 cases in the DC area, which continue to rise. The Senate, which returned to normal business this week, is unlikely to act as fast. Majority Leader Mitch McConnell (R-KY) has stressed the need to thoroughly evaluate what Congress has already done before moving on to the next package. While another relief bill is on the way, it may be weeks before we see a final deal emerge.

## ADMINISTRATION

- + **HHS DISTRIBUTED \$22 BILLION TO HOTSPOTS AND RURAL PROVIDERS.** The US Department of Health and Human Services (HHS) [announced](#) details for new distributions from the \$175 billion Provider Relief Fund. HHS will distribute \$10 billion to hospitals located in “hotspots” that have been particularly affected by COVID-19, using a fixed per admission formula. An additional \$2 billion will be allocated to these hospitals based on their Medicare and Medicaid disproportionate share and uncompensated care payments. HHS also announced the distribution of \$10 billion to providers in rural areas. With these new distributions, HHS has dispersed \$72.4 billion, leaving \$102.6 billion in the Fund.
- + **HHS UPDATED RESOURCES FOR PROVIDER RELIEF FUND.** HHS posted additional [Terms and Conditions](#) for each of the distribution streams of the Provider Relief Fund, and

[extended the deadline](#) to attest to the Terms and Conditions to 45 days from the date payment is received. In addition, HHS updated the [frequently asked questions](#) on the Fund's \$50 billion general distribution, including clarification that the Department does not intend to recoup funds from recipients as long as a provider's lost revenue and increased expenses exceed the amount of relief funding a provider has received. Also this week, The Centers for Disease Control and Prevention released [data](#) on the providers that have received money from the general distribution of the Fund and who have attested payments and agreed to the Terms and Conditions as of May 4.

- + **HHS SOUGHT DATA ON MEDICAID PROVIDERS, POSSIBLY FOR FUNDING DISTRIBUTION.** Last week, HHS asked states to submit provider-level 2018 and 2019 Medicaid fee-for-service and managed care revenue data, as well as provider payment information for all Medicaid participating providers. This suggests that targeted relief funding for Medicaid providers may be forthcoming soon. The \$72.4 billion that has been distributed from the Provider Relief Fund so far has been targeted primarily to Medicare providers and those in rural and high impact areas. A likely reason Medicaid providers have been left out is the complexity involved in accessing information generally held at the state level. Top Democrats on the Senate Finance and House Energy and Commerce committees sent a [letter](#) urging the Administration to give Medicaid Providers access to the Provider Relief Fund, a request that has been [echoed](#) by the Medicaid and CHIP Payment and Access Commission. HHS has indicated that some portion of the remaining emergency funds will go to providers who have so far received little or no aid.

## COURTS

- + **COURTS HEARD ORAL ARGUMENTS IN THREE HIGH-PROFILE HEALTHCARE CASES.**
  - o On May 6, the US Supreme Court heard arguments concerning the validity of two Trump Administration [rules](#) that broadened exceptions to the Affordable Care Act's contraceptive coverage mandate. Arguments took place via teleconference with a live audio feed available to the media—the first time the Court has ever allowed live streaming of its proceedings. During the arguments, justices, including Chief Justice John Roberts, expressed sentiments that the Administration's rules may have gone too far.
  - o On May 7, a federal district court heard arguments in a case challenging a [rule](#) issued in November 2019 that would require hospitals to post pricing information online. Hospital groups are strongly opposed to the rule, arguing that disclosing price information will harm competition and violates their First Amendment rights, while the Administration contends that the policy will bring down healthcare costs. During arguments, the judge seemed concerned with the apparent limitlessness of the rule, wondering what rates would not have to be published. He also expressed skepticism that the rule advances a compelling government interest. The rule is set to take effect January 1, 2021.
  - o On May 8, a federal appeals court heard arguments on the [public charge rule](#) that allows immigration authorities to deny visas or green cards based on a person's use of Medicaid or other public benefits. The Supreme Court ruled in

January 2020 to allow the rule to take effect while litigation continues in the lower courts, but did not address the question of the policy's validity.

For ongoing updates on the most significant healthcare-related cases working their way through federal courts, check out our [Health Litigation Tracker](#).

- + **COURT CONTINUED DELAY ON IMMIGRANT INSURANCE MANDATE.** A federal appeals court upheld a nationwide freeze on a Trump Administration [policy](#) that would block immigrants from entering the country unless they can prove that they will have health insurance or be able to pay for their future healthcare costs within 30 days. The appeals court held that President Trump overstepped his authority in issuing the proclamation in October 2019. A federal district court previously blocked the policy from taking effect in November 2019. The Administration may appeal to the Supreme Court to allow the policy to be implemented while litigation continues in the lower courts, as it did with the [public charge rule](#).

## STATES

- + **STATES LIMIT SURPRISE BILLING DURING PANDEMIC.** In response to the public health emergency, several states have taken actions to prohibit or deter the practice of balance billing patients for out-of-network care related to COVID-19. Ohio, Connecticut, Massachusetts, Wisconsin, Colorado and New Mexico have all implemented surprise billing protections tied to the pandemic. Idaho, North Dakota, Pennsylvania, South Dakota, Tennessee, and Washington, DC, have urged providers and insurers not to issue surprise medical bills, though they do not prohibit it. Addressing the problem of surprise billing was at the top of the national agenda prior to the COVID-19 crisis, but Congress has so far failed to get a comprehensive policy over the finish line, leaving states to take matters into their own hands. The Administration has, however, taken narrow steps to limit surprise billing during the COVID-19 pandemic. Providers must agree not to balance bill presumptive or actual COVID-19 patients as a [condition](#) of receiving money from the Provider Relief Fund and receiving reimbursement from the [COVID-19 Uninsured Program](#).

## QUICK HITS

- + The House Appropriations Labor, HHS, and Related Agencies Subcommittee held a [hearing](#) on the COVID-19 response, and the Senate Health, Education, Labor, and Pensions (HELP) Committee held a [hearing](#) on new COVID-19 tests. Senator Pat Toomey (R-PA) hosted a [roundtable discussion](#) on reopening the economy.
- + Senators Chris Coons (D-DE) and Pat Roberts (R-KS) introduced the [FORWARD Act](#), which would expand tax credits for companies that invest in research and development of products like vaccines.
- + Representatives Diana DeGette (D-CO) and Fred Upton (R-MI) released a [concept paper](#) for "Cures 2.0" legislation that would build on the 21<sup>st</sup> Century Cures Act, focusing on modernizing healthcare delivery.

- + Senators Michael Bennet (D-CO) and Cory Gardner (R-CO) sent a [letter](#) urging congressional leaders to consider an increase to the Medicaid federal medical assistant percentage in the next COVID-19 response bill.
- + The Centers for Medicare and Medicaid Services (CMS) issued the final [2021 Payment Notice](#). The annual rule outlines the changes for the next plan year for marketplaces, risk adjustments and other market reforms.
- + CMS issued additional [Frequently Asked Questions](#) for state Medicaid and Children's Health Insurance Program agencies to support their response to COVID-19.
- + The Food and Drug Administration issued [new guidance](#) requiring manufacturers of COVID-19 antibody tests to apply for emergency use authorization within 10 business days of getting their tests to market.

## M+ RESOURCES

- + The Administration continues to loosen Medicare restrictions on telehealth. Here's [where things stand with telehealth](#) as of this week.
- + The federal response to COVID-19 includes several financial relief opportunities for healthcare providers. [Our chart](#) highlights the primary funding streams available.
- + This week's episode of the [Health Policy Breakroom](#) provides an update on the latest developments in the value-based care movement.
- + Find all McDermottPlus analysis related to COVID-19 on our [COVID-19 Resource Center](#).

## NEXT WEEK'S DOSE

The Senate HELP Committee will hold a hearing on May 12 on ways to safely return to work and school. Negotiations continue on COVID-19 response legislation.

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

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