

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: House Democrats introduced a \$3 trillion coronavirus (COVID-19) relief bill, and the Centers for Medicare and Medicaid Services (CMS) released annual updates to Medicare's Inpatient Prospective Payment System (IPPS).

CONGRESS

- + **HOUSE DEMOCRATS UNVEILED PROPOSAL FOR NEXT RELIEF BILL.** The Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act ([H.R. 6800](#)) invests nearly \$3 trillion in testing capacity, workforce development and economic recovery. The bill would allocate an additional \$100 billion for the Provider Relief Fund and establish specific guidelines for how the funds should be distributed. It also provides \$75 billion to state, local and tribal health departments to support testing, contact tracing and other efforts to mitigate the spread of COVID-19. Other key provisions would increase the Federal Medical Assistance Percentage by 14% from July 1, 2020, through June 30, 2021; boost Medicaid Disproportionate Share Hospital payments by 2.5%; and block the Administration from finalizing the Medicaid Fiscal Accountability Regulation, a controversial new rule proposed in November 2019, during the public health emergency. The House is expected to vote on this proposal today (May 15). While it will most likely pass the House, the bill will likely not be considered in the Senate. After passing the House, the bill will serve as a negotiating tool for Democrats. The Senate's timing for the next relief bill remains unclear.
- + **HOUSE DEMOCRATS PROPOSED REMOTE VOTING RULE.** The [proposal](#) from House Democratic leadership would allow each member to cast votes on behalf of up to 10 colleagues who are not physically present for 45-day periods during the public health emergency. The rule would also allow committees to hold remote hearings, markups and depositions during that time. The chamber has struggled for weeks to balance the need to pass emergency legislation and conduct other business with members' reluctance to travel between their home districts and Washington, DC. The proposed rule change comes as the House prepares to vote on the HEROES Act, with remaining questions about how many members will be physically present to vote. Republicans have voiced strong opposition to the rule, which some say represents a power grab and violates House precedent.

ADMINISTRATION

- + **CMS ISSUED IPPS PROPOSED RULE.** Among the [proposed updates](#) to the IPPS for fiscal year (FY) 2021, CMS is requesting public comment on a potential new market-based

methodology for establishing relative weights for Medicare Severity Diagnosis Related Groups beginning in FY 2024. Typically, CMS is required to publish the final IPPS rule at least 60 days prior to its effective date (October 1). Citing the COVID-19 public health emergency, however, the agency announced that it will exercise its authority under the Congressional Review Act and will provide the final rule only 30 days prior to its effective date. Expect a final rule sometime around September 1, instead of the usual early August posting. A CMS factsheet on the proposed rule is available [here](#). The McDermottPlus summary of key provisions in the proposed rule is available [here](#).

- + **HHS OFFERED INSIGHT INTO HOTSPOT PROVIDER PAYMENTS.** On May 1, 2020, the U.S. Department of Health and Human Services (HHS) announced that it would [distribute \\$12 billion](#) from the Provider Relief Fund to support hospitals in areas heavily affected by the COVID-19 pandemic. Hospitals eligible for these supplemental targeted payments received funds via direct deposit. HHS [made payments](#) to 395 hospitals across the country that furnished inpatient care to at least 100 COVID-19 patients through April 10, 2020. According to HHS, these 395 hospitals accounted for 71% of COVID-19 inpatient admissions over this period. With these new distributions, HHS has dispersed \$72.4 billion of the \$175 billion Provider Relief Fund, leaving \$102.6 billion yet to be allocated.
- + **HHS WILL DELIVER REMDESIVIR TO STATES OVER COMING WEEKS.** Gilead Sciences, the producer of remdesivir—a drug [demonstrated to](#) reduce recovery times for COVID-19—has donated 607,000 vials of the drug to the federal government. According to HHS, this amount will treat about 78,000 patients. After [facing criticism](#) over the initial distribution of the drug, the Trump Administration [announced a strategy](#) designed to get the drug to areas with the greatest need. Rather than utilize a contractor—as the government did with the initial distribution—HHS will send shipments of the drug directly to state and local health departments. Over the last week, HHS has delivered nearly 50,000 vials to health departments in 12 states, the majority of which are on the East Coast. The shipments represent just 8% of the remdesivir supply donated to the government, leaving 92% to be allocated. The federal government will leave decision-making about which hospitals receive these vials up to each health department, based on their knowledge of community need.
- + **CMS REQUIRES NURSING HOMES TO REPORT COVID-19 CASES AND DEATHS.** CMS published an [interim final rule with comment period](#) requiring nursing homes to report COVID-19 cases and deaths at least weekly to the Centers for Disease Control and Prevention (CDC). This information will be made public to increase transparency in nursing homes during the COVID-19 pandemic. Nursing homes are also required to inform facility residents, caregivers, and families of confirmed COVID-19 cases if three or more residents or staff develop new-onset respiratory symptoms. Facilities must also communicate mitigation activities implemented to prevent or reduce the risk of transmission of COVID-19 in nursing homes. Nursing homes have been particularly impacted by the pandemic, as elderly populations are at the highest risk of contracting COVID-19. The CDC continues to issue [guidance](#) for nursing homes to prevent the spread of the disease.

COURTS

- + **DEMOCRATS FILED OPENING BRIEFS IN ACA CONSTITUTIONALITY CASE.** The case, now called *California v. Texas*, concerns whether the Affordable Care Act (ACA) should be overturned following the elimination of the individual mandate penalty in 2017. In 2018, a federal district judge in Texas held that the individual mandate was unconstitutional and not severable from the rest of the law, rendering the entire ACA unconstitutional. A federal appeals court affirmed the district court's decision regarding the individual mandate, but did not address the ACA's overall validity. The case is now before the US Supreme Court, which will hear oral arguments next term (likely October or November 2020), with a decision expected in spring 2021. In their [opening brief](#), the Democratic attorneys general defending the ACA argue that even if the individual mandate is unconstitutional, it is severable, and the rest of the law can stand. President Trump this week recommitted his Administration's support for overturning the ACA, despite the ongoing public health emergency. The politics around this case will continue to build in the lead up to the 2020 presidential election, providing a platform for the candidates to define their views for the future coverage and access landscape. For ongoing updates on the most significant healthcare-related cases working their way through federal courts, check out our [Health Litigation Tracker](#).

QUICK HITS

- + The Senate [Health, Education, Labor and Pensions](#), [Judiciary](#), and [Commerce](#) committees held hearings on topics related to safely reopening the country, liability protection for businesses, and expanding broadband.
- + Senators Jeanne Shaheen (D-NH) and Michael Bennet (D-CO) introduced the [Medicare Accelerated and Advance Payments Improvement Act](#), which would reduce interest rates and modify repayment obligations for Medicare's Accelerated and Advance Payments Program.
- + Prior to [announcing](#) the suspension of the Advance Payment Program and the intent to reconsider current applications for the Accelerated Payment Program, CMS distributed over \$100 billion in payments through these two programs. This [fact sheet](#) details the amounts distributed by state and provider type. CMS has also released a [detailed dataset](#) listing the amount received by each provider.
- + The Health Resources and Services Administration [awarded](#) \$15 million to 159 organizations across five health workforce programs to increase telehealth capabilities in response to the COVID-19 pandemic. The agency also [awarded](#) nearly \$583 million to 1,385 health centers to expand COVID-19 testing.
- + The CDC released [guidelines](#) for all types of COVID-19 billing codes, effective April 1, 2020, through September 30, 2020.
- + The Administration [extended the timeline](#) for people to enroll in COBRA coverage. Individuals now have until 60 days after the COVID-19 national emergency ends to enroll.

M+ RESOURCES

- + Our [COVID-19 Key Dates Calendar](#) highlights important administrative and legislative dates over the past several months.
- + On April 30, 2020, CMS released additional waivers and an interim final rule with comment in response to the COVID-19 pandemic. A summary of these new flexibilities is available [here](#).
- + Find all McDermottPlus analysis related to COVID-19 on our [COVID-19 Resource Center](#).

NEXT WEEK'S DOSE

Negotiations will continue in the Senate regarding the timing and content of another relief bill.

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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