

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) distributed funding to increase coronavirus (COVID-19) testing capacity and announced a targeted Provider Relief Fund distribution for skilled nursing facilities (SNFs).

CONGRESS

- + **HOUSE PASSED NEW COVID-19 RELIEF PACKAGE.** The House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act ([H.R. 6800](#)) on May 15, 2020. This \$3 trillion package articulates the Democrats' vision for a national pandemic response, including coverage expansion, investment in the health care workforce, and targeted recovery funds. Just one Republican—Representative Peter King (NY-02)—voted for the measure, citing relief funds for states hit hardest by the pandemic. Fourteen Democrats voted against it, with representatives in swing districts like Cindy Axne (IA-03) describing the bill as wasteful, and progressives like Pramila Jayapal (WA-07) arguing that the bill does not go far enough. President Trump has threatened to veto the bill in its current form, and Senate Majority Leader Mitch McConnell (R-KY) has said that more time is needed to determine if existing relief measures are sufficient before the Senate takes up another bill, but that another package is “not too far off.” Our key takeaways from the HEROES Act are available [here](#).

ADMINISTRATION

- + **PRESIDENT TRUMP ISSUED EXECUTIVE ORDER ON REGULATORY RELIEF TO SUPPORT ECONOMIC RECOVERY.** The [Executive Order](#) (EO) directs federal agencies to identify regulations that can be rescinded or temporarily waived to promote job creation and economic growth. Additionally, the EO asks agencies to speed up the rulemaking process by moving proposed rules to interim final rules with immediate effect. Notably, the EO requires agencies to evaluate whether regulatory changes provided during the public health emergency should be made permanent. Stakeholders have expressed concerns about the durability of waivers tied to the public health emergency. The Administration is now creating an opening for greater certainty in the future. Stakeholders should identify waivers they do and do not want made permanent and communicate those positions to the Administration.
- + **HHS ANNOUNCED TARGETED RELIEF FUNDING FOR SNFs.** HHS [will distribute](#) \$4.9 billion from the Provider Relief Fund to SNFs based on both a fixed basis and variable basis.

Each SNF will receive a fixed distribution of \$50,000, plus a distribution of \$2,500 per bed. All SNFs with six or more certified beds are eligible for this targeted distribution. HHS indicated that nursing home recipients must attest that they will only use Provider Relief Fund payments for permissible purposes, as set forth in the [Terms and Conditions](#), and agree to comply with future government audit and reporting requirements. With this targeted, industry-specific distribution, HHS has increased the pressure on other healthcare sectors to make their case for distributions from the Provider Relief Fund. This is especially telling for groups who have yet to receive distributions, such as dentists, pediatricians and disability providers. HHS now has \$97.7 billion left to allocate through the Provider Relief Fund.

- + **HHS UPDATED PROVIDER RELIEF FUND WEBSITE AND FAQs.** HHS added language to the [website](#) instructing certain providers to submit materials through the appropriate portal by June 3, 2020. These include those requesting additional funding and those who received cost report distributions on April 24. This week, HHS indicated that these submissions will serve as an application for additional funding, although it is unclear what additional funding they are referencing. Note that the requirement that providers attest to funds received within 45 days of receipt of an electronic payment still applies and is separate from this new announcement. HHS also updated its [frequently asked questions](#) (FAQs) document, adding a series of answers related to provider acquisitions, returning relief funds and updating previously submitted applications. Stakeholders should continue to monitor the website for information as HHS has made multiple updates and changes over the past several weeks.
- + **HHS DISTRIBUTED FUNDING FOR COVID-19 TESTING.** [HHS disbursed](#) \$11 billion in funding to states, territories, and tribes to help boost coronavirus testing. This money was allocated in the Paycheck Protection Program and Health Care Enhancement Act. The bill, which was signed into law on April 24, 2020, set aside this money for states to develop, purchase, and analyze COVID-19 tests, trace contacts, and conduct other activities related to COVID-19 testing. \$10.25 billion of these funds was allotted based on [each state's](#) population and number of COVID-19 cases. The remaining \$750 million was sent to the Indian Health Service to help tribal and urban Indian Health programs. In addition, HHS [dispersed](#) \$225 million to over 4,500 Rural Health Clinics.
- + **MORE DOSES OF REMDESIVIR SHIPPED TO HEALTH DEPARTMENTS.** Last week, HHS sent 206,640 vials of the experimental COVID-19 drug to health departments across the country, and an additional 211,000 doses were [shipped this week](#). As of May 22, 2020, approximately 80% of the remdesivir supply donated by Gilead Sciences so far has been distributed (Gilead is expected to donate an additional 333,160 vials in June). These distributions follow an initial shipment on May 4, 2020, in which the government sent vials directly to hospitals. After this move generated [confusion and criticism](#), HHS [announced](#) that all shipments will be redistributed to state health departments based on reported data of intensive care unit (ICU) and non-ICU patients with confirmed or presumed cases of COVID-19. HHS will leave decision-making about which hospitals receive these vials up to each health department, based on their knowledge of community need. Stakeholders continue to request more transparency in how these vials will be disseminated to hospitals.

- + **CMS RELEASED MA AND PART D FINAL RULE.** The Centers for Medicare and Medicaid Services (CMS) released a [final rule](#), which provides some additional flexibility on network adequacy standards, implements legislative requirements allowing end stage renal disease beneficiaries to enroll in Medicare Advantage (MA) plans beginning in 2021, and finalizes certain changes to the MA and Part D Star Ratings systems. The CMS fact sheet is available [here](#).

COURTS

- + **A FEDERAL DISTRICT COURT IS CONSIDERING HALTING PUBLIC CHARGE RULE.** A judge in New York heard oral arguments this week regarding whether to block the Trump Administration's [public charge rule](#), which allows immigration authorities to deny visas or green cards based on a person's use of Medicaid or other public benefits. Judge George Daniels issued a nationwide injunction against the rule in October of last year, which was lifted by the US Supreme Court in January. Last month, New York, Connecticut and Vermont, along with New York City, requested that the Supreme Court temporarily halt the rule considering the COVID-19 public health emergency, citing concerns that the policy deters immigrants from seeking healthcare. The Court denied the request but left the door open for lower courts to consider new injunctions. 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.

STATES

- + **STATES SCALE BACK COVERAGE EXPANSION PLANS DURING PANDEMIC.** States across the country are facing dire financial circumstances as revenues fall and demands for state services, such as Medicaid, increase. California Governor Gavin Newsom released a [revised budget](#) that cuts spending across state programs in response to the economic shortfall caused by the COVID-19 pandemic. Some proposed expansions to the state's Medicaid program will not move forward, including extending coverage to undocumented adults and increasing eligibility for post-partum mental health services. The budget also includes cuts to existing Medicaid benefits, such as audiology, optometry, and occupational and physical therapy, which will be triggered if Congress does not approve additional aid for states by July 1, 2020. In Washington, Governor Jay Inslee [announced](#) that the state will pursue a limited rollout of its public insurance option, originally slated to take effect this fall. Washington is the first state to implement a public option, but the plan is facing resistance from providers who are reluctant to accept the lower payment rate amid the ongoing emergency. Healthcare coverage and access remain central issues as states begin to see the long-term financial impacts of the pandemic. Governors are likely to continue to call on Congress to provide more aid to state and local governments.

QUICK HITS

- + The Senate [Banking](#) and [Aging](#) committees held hearings on implementation of the CARES Act and caring for seniors during the COVID-19 pandemic. The House Select Subcommittee on the Coronavirus Crisis held a [briefing](#) on protecting essential workers.
- + The [Pandemic Response Accountability Committee](#), created by the CARES Act, will require each federal agency to submit a plan describing how it will use emergency funds provided by Congress no later than June 25, 2020. Plans will be available [here](#) as they are submitted.
- + Senator Bernie Sanders (I-VT) introduced the [Health Care Emergency Guarantee Act](#), which would eliminate healthcare cost sharing for every person in America during the COVID-19 crisis.
- + Republican members of the House Ways and Means Committee released a [list of 32 states](#) they say are withholding federal COVID-19 relief funds from local governments.
- + The Centers for Disease Control and Prevention posted [guidelines](#) supporting the President's plan for Opening America Up Again, and CMS issued [new guidelines](#) for reopening nursing homes, which the agency says should be some of the last facilities to reopen.
- + CMS issued [pricing information](#) for COVID-19 tests, including serological tests.
- + HHS released the [National Health Quality Roadmap](#), which details a strategy for HHS and the departments of Defense and Veterans Affairs to adopt a common set of health quality measurements. The document was required by President Trump's June 2019 Executive Order on [Improving Price and Quality Transparency in American Healthcare to Put Patients First](#).
- + The Government Accountability Office [announced](#) new appointments to the Medicare Payment Advisory Commission.
- + Minnesota Governor Tim Walz approved a [bill](#) that requires drug companies to justify annual price increases over 50% for generic drugs and 10% for brand name drugs. The law takes effect in October 2021.

M+ RESOURCES

- + This week's episode of the [Health Policy Breakroom](#) provides an update on how the COVID-19 pandemic is affecting the diagnostics industry.
- + Find all McDermottPlus analysis related to COVID-19 on our [COVID-19 Resource Center](#).

NEXT WEEK'S DOSE: Congress adjourns for the Memorial Day recess, though the House is expected to reconvene for votes on Wednesday and Thursday. The House plans to vote on legislation that would extend the loan forgiveness period of the Paycheck Protection Program.

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

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