



# McDermottPlus Healthcare Preview

## WEEK OF JUNE 22, 2020

### HOW MUCH LONGER WILL WE BE IN A STATE OF EMERGENCY?

- + **THE COVID-19 PANDEMIC HAS SPURRED MANY EMERGENCY ACTIONS BY THE ADMINISTRATION.** The Centers for Medicare and Medicaid Services (CMS) has used §1135 authority under the Social Security Act to issue [numerous waivers](#) giving healthcare providers the flexibility to meet the demands presented by the crisis. In addition, CMS issued two interim final rules on [March 30, 2020](#), and [April 30, 2020](#), which relaxed regulations in a broad range of areas, including hospital capacity and telehealth. Finally, Congress granted the Secretary of Health and Human Services (HHS) specific authority to waive certain telehealth requirements under the Coronavirus Preparedness and Response Supplemental Appropriations Act and the CARES Act.
- + **ALL OF THESE FLEXIBILITIES FLOW FROM THE NATIONAL AND PUBLIC HEALTH EMERGENCIES.** The authority to grant §1135 waivers exists when the HHS Secretary declares a public health emergency (PHE), and the President declares a national emergency. Both of these declarations are currently active. The authorities granted in the interim final rules and emergency legislation passed by Congress are tied to the duration of the PHE. A PHE declaration is effective for 90 days at a time and is currently [in effect](#) through July 25, 2020.
- + **WHAT HAPPENS WHEN THE NATIONAL EMERGENCY AND PHE END?** If the national declaration ends, all of the §1135 waiver flexibility provided would end and no further §1135 waivers could be granted. Telehealth is one exception, however, because the telehealth waiver authority is authorized under a separate law, and is tied only to existence of the PHE. The other exceptions are the policy changes included in the CMS interim final rules, as the agency specified these also were tied to the PHE, and certain provisions in the emergency legislation, as Congress tied their duration to that of the PHE. If the national declaration ends but the PHE stands, these policies would continue until the end of the PHE. If both the national emergency and the PHE end, all waived policies also would end, barring other Administrative or congressional action. Stakeholders should consider which waivers are necessary for short- and long-term durations, and should communicate with the Administration and congressional allies accordingly. Find more on the emergency declarations and waiver authority [here](#).

#### THIS WEEK IN THE SENATE

Senate HELP Committee  
[COVID-19: Lessons Learned to Prepare for the Next Pandemic](#)  
 Tuesday, June 23, 10:00 AM

#### THIS WEEK IN THE HOUSE

House Education and Labor Committee  
[Inequities Exposed: How COVID-19 Widened Racial Inequities in Education, Health, and the Workforce](#)  
 Monday, June 22, 12:00 PM

House Energy and Commerce Committee  
[Oversight of the Trump Administration's Response to the COVID-19 Pandemic](#)  
 Tuesday, June 23, 11:00 AM

House Ways and Means Committee  
[Examining the COVID-19 Nursing Home Crisis](#)  
 Thursday, June 25, 2:00 PM

#### CONTACT INFO

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