

McDermottPlus Check-Up: July 10, 2020

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This Week's Dose

The Senate is on recess for the next two weeks. The House has committee workdays and is focusing on appropriations. The Administration released a proposed rule on end stage renal disease (ESRD) and the Supreme Court ruled on contraception.

Congress

House Appropriations Subcommittee Advanced HHS Funding.

The House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies (LHHS) [approved a bill](#) to provide \$221 billion for the Labor, Education and Health and Human Services departments for fiscal year 2021. The bill provides a total of \$96.4 billion for Department of Health and Human Services (HHS), an increase of \$1.5 billion above the FY 2020 enacted level and \$11.1 billion above the President's budget request. These increases include investments in research, pandemic preparedness, and public health programs. Additionally, the bill provides emergency supplemental funding to further address on-going needs related to COVID-19, including \$4.5 billion for research, development, manufacturing, production and purchase of vaccines and therapeutics, as well as \$5 billion to the Public Health Emergency Fund for HHS. The bill was approved on a party line vote and will advance for full committee approval. Lawmakers are attempting to make up for time lost due to COVID-19 and will be sprinting this month to get all 12 annual bills advanced through the Appropriations Committee.

Negotiations Continued on Next Stimulus Package.

With COVID-19 infections rising across the country, there is a growing consensus that further relief efforts are needed. Senate Majority Leader Mitch McConnell (R-KY) intends to advance a COVID-19 package before the August recess, which gives lawmakers just two weeks to negotiate and pass the bill after the Senate returns on July 20. Democrats have continued to build on the [proposals](#) laid out in the Health and Economic Recovery Omnibus Emergency Solutions ([HEROES](#)) Act; strengthening

the public health workforce, expanding testing capacity, and boosting support for frontline workers. McConnell said Senate Republicans want to focus on liability reform, jobs, healthcare, and supporting the re-opening of schools in the fall. President Trump has indicated that he would support direct payments to individuals but has largely remained silent on other efforts. We expect a busy legislative period before the August recess. Given the tight timeline, lawmakers could look to pass a smaller, more targeted bill this summer and push a bigger package to the fall. Members will likely aim to demonstrate their response to the pandemic ahead of the elections, making November 3 the most significant political deadline.

Administration

HHS Announced Additional Funds from the PRF.

Late Friday, [HHS announced](#) it is allocating additional targeted funding through the Provider Relief Fund (PRF) for safety net hospitals, specialty rural hospitals, urban hospitals with certain Medicare designations, and hospitals in small metropolitan areas, and dentists. For safety net hospitals, in this newest targeted distribution HHS is expanding the profitability requirement under the previously announced Safety Net Hospital Distribution. Now certain acute care hospitals are eligible for the Safety Net Hospital Funding if they meet the revised profitability threshold of less than of 3% averaged consecutively over two or more of the last five cost reporting periods. HHS will distribute approximately \$3 billion to these hospitals that meet the new profitability standard. HHS is also expanding the existing payment formula to try to capture additional rural providers. According to the press release, these may include some suburban hospitals that are not considered rural but serve rural populations and operate with smaller profit margins and limited resources as compared to larger hospitals. In total, payments for this distribution are approximately \$1 billion. Finally, HHS is opening a PRF application process and using the existing Enhanced Provider Relief Fund Payment portal for dentists who may not have previously been eligible to receive funding through the PRF. Eligible dentists will receive a reimbursement of 2% of their annual reported patient revenue and will have until July 24, 2020 to apply for funding.

CMS Increased Support for Home Dialysis in 2021 ESRD Proposed Rule.

The Centers for Medicare and Medicaid Services (CMS) proposed an additional Medicare payment for certain new and innovative equipment and supplies used for home dialysis treatment in the [2021 End Stage Renal Disease \(ESRD\) Prospective Payment System \(PPS\) Proposed Rule](#). CMS proposes the application of an existing transitional add-on payment adjustment for new and innovative equipment and supplies (TPNIES), to new and innovative capital-related assets that are home dialysis machines used in the home on a single patient. CMS established the TPNIES in the CY 2020 ESRD PPS Final Rule to support ESRD facility use and beneficiary access to new technologies. The proposed rule is part of the Administration's broader efforts to reshape kidney care. A press release on the proposed rule is available [here](#) and a fact sheet is available [here](#). Comments will be accepted until September 4, 2020.

HHS Deferred July 10 PRF Compliance Reporting Deadline.

The agency updated [guidance](#) indicating that providers who received funds from the PRF do not have to comply with the July 10 deadline to submit quarterly reports detailing how funds are spent. The Terms and Conditions for accepting PRF money require recipients who receive in excess of \$150,000 in payments to submit quarterly reports to HHS no later than 10 days after the close of each calendar quarter. Instead of requiring providers to report, HHS will [post](#) information on payment

recipients and total amounts to meet this requirement. HHS has indicated it will provide additional guidance to providers in the future regarding their reporting obligations.

Courts

Supreme Court Ruled on Birth Control Exemptions.

The Supreme Court issued a [decision](#) upholding the Trump Administration's rule, expanding the ability for employers to claim religious or moral objections to provide contraceptive coverage required under the Affordable Care Act. By a 7-2 margin, the Court determined that the Health Resources and Services Administration (HRSA) has broad discretion to decide what counts as required coverage and what exemptions are appropriate. At the moment, this ruling allows a broader range of employers to seek exemptions from the mandate. However, the case will return to the lower courts to determine whether the exemptions are "arbitrary and capricious," ensuring that this litigation will continue beyond the fall election.

Quick Hits

- The Trump Administration [published the list of companies](#) that received over \$150,000 in Paycheck Protection Program funding.
- Senators Bill Cassidy (R-LA) and Tina Smith (D-MN) led a [bipartisan letter](#) to HHS and CMS requesting a written timeline for permanent changes to telehealth flexibilities, as well as a list of which changes may require Congressional action. It was signed by over 35 Senators.
- CMS released the [2018 Quality Payment Program \(QPP\) Experience Report](#). This report provides data on participation, reporting, performance categories, and final scores and payment adjustment for the QPP. The report also includes the average payment and patient threshold scores for advanced APMs.
- The National Cancer Institute (NCI) issued a [Request for Information](#) (RFI) seeking information on scientific gaps that need to be addressed as cancer-related care via telehealth becomes a more common part of routine clinical practice. Comments are due July 30, 2020.
- House Ways and Means Republicans [plan to introduce](#) legislation focused on developing new therapies and cures and strengthening the supply chain. It will include at least four bills from Republican members of the committee addressing incentives for innovative research and development.
- Senate Health, Education, Labor and Pensions Committee Democrats [released a report](#) on gaps in testing capacity and supply chain. The report includes a number of recommendations around increasing testing capacity and applying lessons learned for future pandemics.

Next Week's Diagnosis

Negotiations continue on additional relief packages. We will continue to dig into the late breaking announcements on the Provider Relief Fund.

National Law Review, Volumess X, Number 192

Source URL: <https://www.natlawreview.com/article/mcdermottplus-check-july-10-2020>