



Policy Brief

June 5, 2020



COVID-19 Deaths: A New, Heartbreaking Milestone

Last week, the number of COVID-19 deaths in this country crossed the 100,000-lives marker, ballooning from the two known fatalities reported in February. The number of lives that have been lost to this pandemic is now nearly enough to fill Yankee stadium—twice. Although COVID-19 deaths have now occurred in all 50 states, the disease has had a disproportionate impact on men, the elderly and racial or ethnic minorities.

What is the latest on COVID-19 deaths in the U.S.?

As of Tuesday, more than [105,000 people](#) have died from the COVID-19 pandemic. According to Johns Hopkins' [mortality analyses](#), this is roughly 6% of all infected. Public health experts warn that the current death toll in the U.S. likely does not account for misdiagnoses or deaths that are more indirectly linked to the pandemic. For example, death data currently do not capture those who may have died from chronic illnesses exacerbated by a COVID-19 infection.

Which communities are disproportionately impacted?

In examining the death data, the CDC has identified disparities related to race and ethnicity, gender and age. COVID-19 appears to be much more deadly for the elderly, [for men](#), and for those of a racial or ethnic minority. Despite [no evidence](#) of a biological difference, Black Americans continue to die at three to four times the rate of their White peers. Black members of the workforce are also [less likely](#) to have jobs that allow them to work remotely.

Some public health analysts also predict that income and job class may play a role, with lower-income frontline workers at increased risk both for infection and death. Lower income communities have less access to preventative and emergency medical care, higher rates of chronic disease and are often unable to practice strict social distancing due to the kinds of jobs they hold.



Liability Protections at the Center of Next COVID-19 Legislation

As Congress gears up for the next COVID-19 legislative package, granting liability protections for COVID-19-related claims has become central to the discussions. Last week, Senate Majority Leader Mitch McConnell (R-KY) said he will not support the next relief package unless it includes liability protections for businesses and health providers. Democratic leaders oppose this, wanting to focus on providing more financial assistance for cities and states instead. Below is more on the issue and what can we expect.

Are Liability Protections Needed?

Groups such as the American Hospital Association and the Health Coalition on Liability and Access [argue](#) that treatment delays, inadequate access to testing and practices such as the recycling of personal protective equipment have left providers particularly vulnerable to lawsuits. Although 17 states have [passed legislation](#) to grant COVID-19-specific liability protections, these don't extend nationwide, making it difficult for health systems operating across various states to provide care.

Despite these challenges, Democratic leaders and consumer groups argue that liability protections are not needed. "I have confidence that businesses and employers have nothing to fear if they simply follow the basic standard of care that applies to their industries," said Sen. Richard Blumenthal (D-CT), a member of a [Senate Committee](#) examining liability protections. Democrats also argue that if the Occupational Safety and Health Administration issued national coronavirus-related standards for the workplace, liability protections would be unnecessary—an idea that is opposed by both the White House and the U.S. Chamber of Commerce. Only time will tell whether health providers will see an increase in lawsuits due to COVID-19.

What's Next?

Senate Judiciary member John Cornyn (R-TX) and Sen. McConnell are expected to soon release an employer liability protection bill. The bill will likely be limited to the duration of the COVID-19 public health emergency and include broad exclusions for bad actors. Whether such a bill will pass remains to be seen; Republicans and Democrats may try to seek a compromise by passing enforceable safety standards in exchange for liability protections.



Policy Efforts to Lower Insulin Prices

Last week, CMS [announced](#) that 1,750 standalone Medicare Part D prescription drug programs have enrolled in the Part D Senior Savings Model. The model is designed to help control prescription costs for seniors, capping copayments for a broad set of insulins at \$35. This has been the next step in a series of ongoing policy efforts to lower drug costs—particularly the cost of insulin, which [has tripled](#) in the last decade. In 2016, individuals with Type 1 diabetes spent, on average, \$5,705 on insulin, an [increase of \\$2,841 per person](#) since 2012. Pressure from patients to lower costs for critical medications has spurred government and private payers to cap out-of-pocket costs and provide more cost transparency.

Federal Initiatives

Earlier this year, [CMS launched](#) the Part D Senior Savings Model, which requires participating pharmaceutical manufacturers and Part D sponsors to cap copayments for a month's supply of insulin at \$35 beginning in 2021. This builds on [previous work](#) launched by the Trump Administration in 2017 to lower the average monthly basic Part D premium.

State Initiatives

[Illinois](#), [Colorado](#) and [New Mexico](#) have all passed laws prohibiting private health insurers from charging enrollees more than \$100, or \$25 in New Mexico, for a month's supply of insulin. Several other states, such as [Florida](#) and [Kentucky](#), have proposed copay cap legislation, but the bills have yet to be passed. Nevada was the first state to pass [a transparency law](#) which mandated that the pharmaceutical industry share their insulin profits and details on any price

increases. Colorado, California and Massachusetts are part of the [handful of states](#) that have also introduced bills requiring greater transparency.

Private Initiatives

Oscar Health, [Cigna Health and Express Scripts](#) have [announced](#) that they will cap copayments for insulin at \$25. CVS Health has [launched a program](#) for employers and health plans to offer diabetes medication with no out-of-pocket costs.



Updates on COVID-19 Regulations

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since May 25th to help mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the last [Policy Brief](#).

HHS Extends Deadline for Attestation, Acceptance of Terms and Conditions for Emergency Fund Payments

- Providers now will have 90 days, instead of the original 45, from the date they receive a payment from the Public Health and Social Services Emergency Fund to attest and accept the terms and conditions or return the funds.

Small Business Association Rule to Clarify Paycheck Protection Program Requirements

- The SBA's [interim final rule](#) provides guidance on the requirements governing loan forgiveness under the Paycheck Protection Program. It covers issues such as the payroll and non-payroll costs eligible for forgiveness, as well as how to calculate the number of full-time equivalent employees.

Guidance on Using the “CR” Modifier and “DR” Condition Code

- CMS updated its [guidance](#) regarding the use of modifier “CR” (catastrophe/disaster related) and condition code “DR” (disaster related) when submitting claims to Medicare. The update includes a chart of blanket waivers and flexibilities that require the modifier or condition code.

CMS Releases Fact Sheet on Hospital Alternate Care Sites

- CMS has released [guidance](#) for state and local governments that are developing alternate care sites due to the COVID-19 public health emergency.



Election Watch 2020: News from the Campaign Trail

The journey to the 2020 presidential election continues. Below are the latest highlights from the campaign trail:

- This week, Pennsylvania held its [primary election](#), which featured a large number of mail-in ballots due to the pandemic.
- Former Vice President Joe Biden has [released a plan](#) to combat COVID-19 and to prepare for future global health threats. Highlights include the restoration of the White House National Security Council Directorate for Global Health Security and Biodefense, as well as increased reporting and transparency.



A Look at the Federal Register

CY 2021 Policy Changes to Medicare Advantage, Medicare Prescription Drug Benefits and the Medicare Cost Plan

CMS has released a [final rule](#) that revises Medicare Advantage, the Medicare Prescription Drug Benefit program and the Medicare Cost Plan. The rule is effective August 3, 2020.

Risk-Adjustment Data Validation Amendments

CMS has released a [proposed rule](#) outlining changes to the risk adjustment data validation error estimation methodology, starting with the 2019 benefit year. Comments must be received by July 2, 2020 at 5 p.m.

Tobacco Products' Required Warnings Delayed

The FDA has released a [final rule](#) delaying the new requirements for cigarette packages and advertisement warnings. The new health warnings will not be mandated until October 16, 2021.

IN OTHER NEWS

[Seema Verma's Blog on New CMMI Model Flexibilities](#) – Health Affairs

[George Floyd and the Cascade of Crises in Black America](#) – Vox

[FDA Rolls Back Food Rules for 5th Time During Pandemic](#) – The Washington Post

[WHO's Measured Reaction to Trump's Pledge to Cut U.S. Ties to the Agency](#) – NPR

[COVID-19 Privacy Proposals on Both Sides of the Aisle: A Comparison](#) – Lexology

[Many Black Men Fear Wearing A Mask More Than the Coronavirus](#) – STAT