

MEMORANDUM

TO: Powers Clients and Friends

FROM: Legislative Practice Group

DATE: March 18, 2020

RE: COVID-19

Congress and the Trump Administration have taken several key steps to address the expanding public health crisis caused by the coronavirus, known as COVID-19, while at the same time trying to staunch the negative repercussions currently affecting the nation's employment and financial markets. Following is a summary of the emergency spending bill enacted earlier this month to fight the epidemic. It is followed by a brief description of a series of waivers issued by the Centers for Medicare and Medicaid Services (CMS), which grant health care providers greater flexibility in treating patients. Included thereafter is a link to new CMS requirements that limit visitors and communal activities in nursing homes, while implementing screening for fever and respiratory symptoms among their residents.

The Coronavirus Preparedness and Response Supplemental Appropriations Act

While Congress debates a second and third iteration of COVID-19 relief and economic stimulus this week and next week, its first major effort to address the coronavirus pandemic was an emergency supplemental appropriations bill signed into law by the President on March 6, 2020. The funding measure provides \$8.3 billion to support Americans during the COVID-19 crisis. Divided into two parts, the first provides \$7.8 billion for the development of a vaccine, support for state and local governments, grants for community health centers, funds for the construction and renovation of non-federally owned facilities, and funding for the purchase of medical supplies. The latter section of the bill contains telehealth provisions that allow the Secretary of Health and Human Services to waive the application of Medicare requirements in order to reach a greater number of coronavirus patients more quickly and safely. The text of the law can be found [here](#).

Provisions under Title I of the Act provide \$61 million for the Food and Drug Administration (FDA) to develop and approve medical countermeasures and vaccines, monitor medical product supply chains, enhance emergency use authorizations, and advance manufacturing for medical products.

Title II deems the coronavirus a "disaster" such that amounts included in the Small Business Administration (SBA)'s Disaster Loans Program, supported by \$1 billion in loan subsidies, may be used to extend low-interest loans to small businesses and private non-profit organizations

impacted by financial losses as a result of the coronavirus. Information on how SBA plans to implement this provision and grant loans of up to \$2 million is provided [here](#).

Supplemental funding in the amount of \$2.2 billion is provided in Title III for the Centers for Disease Control and Prevention (CDC) to undertake agency-wide activities to help federal, state, local, and tribal governments prevent, prepare, and respond to the crisis. These provisions include:

- \$950 million in grants to, or cooperative agreements with, States, localities, territories, and tribes,¹ to conduct preparedness and response activities, such as surveillance and monitoring; laboratory testing to identify cases; tracing to identify other, existing positive cases; infection control to *prevent* new cases; and other mitigation activities. \$475 million of this amount must be allocated within 30 days of the law’s enactment (March 6, 2020).
- \$300 million to replenish the Infectious Disease Rapid Response Reserve Fund, which supports immediate response activities during an outbreak.
- \$300 million to CDC for global disease detection and emergency response.
- Reimbursement for state and local government costs incurred for coronavirus preparedness and response from January 20, 2020, to the date of the law’s enactment.
- Funds to be used for the construction or renovation of non-federally owned facilities to improve preparedness and response capabilities at the State and local level.
- Support for CDC’s continuing effort to contain/combat this virus, including repatriation and quarantine efforts; purchase and distribution of test kits (including to state and local public health agencies); support for laboratory testing; and to communicate with public, state, local, and tribal governments, as well as healthcare institutions.

The law also provides another \$3.1 billion in the “Public Health and Social Services Emergency Fund” for NIH for research, plus the development and review of vaccines, therapeutics, and diagnostics, including:

- More than \$2 billion for the Biomedical Advance Research and Development Authority (BARDA) to support advanced research and development of vaccines, therapeutics, and diagnostics, prioritizing platform-based technologies with U.S.-based manufacturing.
- \$836 million for the National Institutes of Health (NIH) to support basic research of the type described above, including \$10 million for worker-based training to prevent and

¹ Including tribal organizations, urban Indian health organizations, and health service providers to tribes.

reduce the hazards to hospital employees, emergency first responders, and other workers at risk of exposure to the coronavirus through their work duties.

- \$300 million in contingency funding for the procurement of vaccines, therapeutics, and diagnostics subject to the requirement that, if they are developed using taxpayer funds, they must be available for purchase by the Federal government at a fair and reasonable price, but according to assurances by the Secretary of Health and Human Services, also be affordable in the commercial market.
- More grant and other funding to be used for the construction or renovation of non-federally owned facilities to improve preparedness and response capabilities at the State and local level, and for the production of vaccines, therapeutics, and diagnostics where the Secretary determines that such a contract is necessary to secure sufficient amounts of such supplies.

Almost \$1 billion is appropriated for healthcare preparedness, pharmaceuticals, medical supplies, and, as mentioned above, community health, including:

- Approximately \$500 million for procurement of pharmaceuticals, masks, personal protective equipment, and other medical supplies, which can be distributed to state and local health agencies in areas with a shortage of medical supplies.
- \$100 million to be transferred from the Public Health and Social Services Emergency Fund to the Health Resources and Services Administration (HRSA) for grants available to Community Health Centers to prevent, prepare for, and respond to coronavirus.
- Funding for medical surge capacity, which will increase the supply of biocontainment beds at health facilities across the country.

Title IV of the new law addresses the “Administration of Foreign Affairs,” by providing \$1.25 billion for overseas prevention and response to the virus and makes available:

- \$264 million to maintain consular operations overseas, for emergency preparedness for U.S. embassies, and for evacuation of Americans if needed.
- \$435 million to enable overseas health systems to prevent, prepare for, and respond to the virus.
- \$300 million for humanitarian assistance in countries coping with the virus.
- \$250 million for the Economic Support Fund (ESF), including funding related to economic, security, and stabilization requirements.

Finally, the last section of the new law constitutes its own Division B, which includes an emergency telehealth waiver originally drafted by Rep. Mike Thompson (D-CA) for inclusion in the “CONNECT for Health Act,” a bill that he and Sen. Brian Schatz (D-HI) introduced in the current House and Senate, respectively, in October 2019. A version of the waiver contained in their bill is now included in the coronavirus emergency supplemental’s section titled, the **“Telehealth Services During Certain Emergency Periods Act of 2020.”** These provisions:

1) Enable the Secretary of Health and Human Services to waive certain Medicare telehealth restrictions during the coronavirus public health emergency (as declared by the Secretary), so that qualified providers may furnish telehealth services to Medicare beneficiaries in the “emergency area,” regardless of whether the beneficiary is in a rural community;² and,

2) Allow beneficiaries to receive care from qualified physicians and other providers in his or her home. These are important changes, since absent the emergency declaration, Medicare can only provide reimbursement for telehealth services delivered to patients who live in rural locations and attend telemedicine videoconferences in approved healthcare facilities. The cost of this telehealth provision in the Act is estimated at \$500 million over 10 years.

National Association of Community Health Center (NACHC) Chief Medical Officer Ron Yee last week publicly expressed support for expanding the waiver to cover Medicaid, as well as Medicare beneficiaries. His position was recently supported by Rep. Fred Upton (R-MI), a longtime member and former Chairman of the House Energy and Commerce Committee, which maintains jurisdiction over both healthcare and telecommunications.

CMS Waivers for Health Care Providers

On March 13, the Centers for Medicare and Medicaid Services (CMS) announced a series of regulatory flexibilities, temporary waivers, and other actions to help health care providers respond to the ongoing coronavirus crisis. The national emergency declaration made on March 13 allows the Secretary of Health and Human Services (HHS) to authorize waivers of certain Medicare, Medicaid, and Children’s Health Insurance Program (CHIP) program requirements under the Social Security Act, Section 1135. These actions include waivers and flexibilities for hospitals and other health care facilities, provider enrollment flexibilities, relief for state Medicaid agencies, and suspension of non-emergency enforcement activities, such as survey inspections.

² The “emergency area” is defined by the Act as a geographical area in which “there exists the public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act on January 31, 2020, entitled ‘Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus.’” *See also*, HHS Press Release, stating that “Health and Human Services Secretary Alex M. Azar II declared a public health emergency *for the entire United States* to aid the nation’s healthcare community in responding to 2019 novel coronavirus (emphasis added):” <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html> The declaration is retroactive to January 27: <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>

A full outline of the blanket waivers being instituted by CMS can be found [here](#). Among other flexibilities, CMS is waiving a number of post-acute care requirements, including the requirement for a three-day prior inpatient hospital stay before covering admission to a skilled nursing facility (SNF); waiving maximum bed limits and length of stay caps for critical access hospitals (CAHs); allowing Durable Medical Equipment contractors to waive replacement requirements, such as the face-to-face visit and new physician order requirements; and waiving the “60 percent” rule for inpatient rehabilitation hospitals and units (IRFs) to allow IRFs to exclude patients from the inpatient population for 60 percent rule calculations, if the patient is admitted solely due to the emergency. Additionally, state and territorial Medicaid agencies are permitted to apply for additional, facility-specific waivers under section 1135. More information regarding Medicaid and CHIP flexibilities can be found at CMS’ Disaster Response Toolkit, available [here](#).

Lastly, CMS has announced specific new measures for infection control in nursing homes to protect vulnerable populations, including significant restrictions on all visitors, cancellation of group activities and communal dining, and implementation of active screening for residents and health care personnel for coronavirus symptoms. Details on the new nursing home requirements can be found [here](#).

Congress will continue to debate and is likely to pass at least one and likely two major additional bills this week and next week that continue to address the COVID-19 crisis as well as the economic fallout of this pandemic. The House has passed the first of these two bills and the Senate may pass this bill as early as today. The second of these two bills is expected to be massive, with estimates between \$750 billion and \$1.2 trillion. Powers will continue to report important developments as they occur.