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Third Coronavirus Stimulus Package Includes Considerable Funding for Health Care Providers and Other Health Care Provisions

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March 27, 2020

Both the U.S. Senate and House of Representatives have now passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the President is expected to sign the bill into law shortly. The CARES Act appropriates significant funding to federal agencies, both to allow federal, state, and local governments to support COVID-19 treatment and prevention and to directly provide financial support to health care providers.

The legislation is the third emergency funding bill passed by Congress to address the COVID-19 public health emergency. (See Baker Donelson articles on previous stimulus legislation here and here.) The prior two bills also included health care-related provisions, including funding to address COVID-19 as well as changes in Medicare, Medicaid, and other federal health care programs. In some cases, provisions in the CARES Act modify provisions in the earlier legislation.

Upon enactment, attention will turn to the federal agencies that are tasked with administering the funding. Agencies are expected to issue guidance and provide instructions for how health care providers and other entities can access funding.

The CARES Act also includes provisions addressing health care coverage to reduce out-of-pocket costs for individuals receiving testing for COVID-19 and providing flexibility and financial resources to health care providers during the public health emergency.

A Senate Appropriations Committee summary of funding provisions can be found here. A section-by-section summary of other provisions can be found here.

Below, we summarize key provisions of the legislation appropriating funding for agencies and health care providers as well as key provisions related to health care coverage, reimbursement, and flexibility for health care providers.

Health Care Funding Provisions

1. **Funding for Hospitals and Other Health Care Providers**: The bill provides $100 billion to support public entities, Medicare- or Medicaid- enrolled suppliers and providers, and for-profit and not-for-profit entities specified by HHS that provide diagnoses, testing, or care for COVID-19. The funding, to be included in the Public Health and Social Services Emergency Fund that is administered by the Assistant Secretary for Preparedness and Response, is intended to reimburse providers for health care-related expenses or lost revenues that are attributable to coronavirus. The bill calls for the funds to be available "for building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity." The funds may not be used to "reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse." The bill directs HHS to administer the funding through grants or other mechanisms "in consideration of the most efficient payment systems

practicable to provide emergency payment." Providers must submit applications to be reviewed on a rolling basis that include justification for the funding.

2. **Research, Treatment, and Prevention Funding**: The bill provides $27 billion to the Public Health and Social Services Emergency Fund to support the development of vaccines, therapies, and diagnostics to treat and prevent COVID-19. This includes no more than $16 billion to support the procurement of personal protective equipment (PPE), ventilators, and other medical supplies. Of the $27 billion, at least $3.5 billion is available to support construction, manufacturing, and purchasing of vaccines and therapies, and at least $250 million is available for the Hospital Preparedness Program to support health care facilities through grants or cooperative agreements.

3. **Funding for Rural Providers and Ryan White HIV/AIDS Programs**: The bill includes $275 million for the Health Resources and Services Administration (HRSA) to prevent, prepare for, and respond to COVID-19. Of this amount, $90 million is appropriated for Ryan White HIV/AIDS programs, and $185 million is to support rural critical access hospitals, rural tribal health and telehealth programs, and poison control centers.

4. **Centers for Disease Control and Prevention (CDC) Funding**: The bill directs the CDC to provide $4.3 billion to federal, state, and local public health agencies to prevent, prepare for, and respond to COVID-19. Funds will be provided to states, localities, territories, and tribes through grants or cooperative agreements to support preparedness and response activities, including laboratory testing, infection control and mitigation, surveillance, and other activities.

5. **National Institutes of Health Funding**: The bill includes an additional $945 million to support research into vaccines for COVID-19 and an improved understanding of the virus.

6. **Administration for Community Living (ACL) Funding**: The bill includes $955 million for aging and disability support programs, including nutrition programs, home and community-based services, family caregiver services, and independent living.

7. **Substance Abuse and Mental Health Services Administration (SAMHSA)**: The bill provides $425 million for SAMHSA to prevent, prepare for, and respond to COVID-19. The funding includes support for the Certified Community Behavioral Health Clinic Expansion Grant program, suicide prevention programs, and tribal health organizations or behavioral health providers to tribes.

Health Care Coverage, Reimbursement, and Flexibility Provisions

8. **Coverage of COVID-19 Testing and Vaccines and Other Coverage Provisions**: The bill clarifies a provision in the emergency funding bill recently passed by Congress to indicate that private health insurers must cover all diagnostic testing for COVID-19 at no cost sharing, including tests that do not have an emergency use authorization from the FDA. The bill also requires that, when COVID-19 testing is covered by an insurer at no cost sharing, the insurer must pay a contracted rate or, if there is no contracted rate, the provider's cash price. The bill requires insurers to cover COVID-19 vaccines at no cost sharing. In addition, the bill requires Medicare Part D plans to cover up to a three-month supply of prescription drugs and refills if requested by a beneficiary during the public health emergency.

9. **Additional Reimbursement to Providers and Suppliers**: The bill makes changes to Medicare reimbursement and provides funding reauthorizations and grants to several provider and supplier types to ensure they have the resources to address COVID-19 during the public health emergency. Funding provisions include:

- Temporarily suspending "sequestration" under Medicare, which reduces provider reimbursement by two percent, from May 1, 2020, through December 31, 2020. It is estimated that sequestration reduced Medicare reimbursement to providers by $15 billion in Fiscal Year 2020. The bill would extend Medicare sequestration for an additional year, through Fiscal Year 2030;
- Increasing Medicare reimbursement to hospitals through a 20 percent add-on payment for inpatient treatment of COVID-19 patients during the public health emergency;
- Expanding the Medicare accelerated payment program to hospitals during the public health emergency to provide accelerated payments upon request of a hospital and support cash flow for hospitals;
- Providing $1.32 billion to community health centers in supplemental funding. Health centers previously received $100 million in a prior emergency funding bill passed by Congress;
- Reauthorizing Health Resources and Services Administration (HRSA) grant programs for rural community health;
- Waiving during the emergency period the requirement for inpatient rehabilitation facilities that patients receive at least 15 hours of therapy per week (three-hour rule);
- Waiving during the emergency period site-neutral payment rate provisions for inpatient services provided by long term care hospitals and payment adjustments for long term care hospitals that do not have a discharge payment percentage for a period that is at least 50 percent;
- Halting a scheduled reduction in payments for durable medical equipment through the duration of the public health emergency; and
- Halting a scheduled Medicare payment reduction for clinical diagnostic laboratory tests furnished to beneficiaries in 2021 and delaying upcoming reporting requirements for labs by one year.

10. **Telehealth Coverage Under Medicare**: The bill includes a number of provisions to expand coverage of telehealth services under Medicare during the public health emergency and encourage the use of telehealth, including:

    - Amending the authority previously granted to HHS in the prior emergency funding bills passed by Congress, which allowed HHS to waive certain Medicare telehealth coverage restrictions, to broaden the authority and allow HHS to waive any Medicare telehealth requirement;
    - Allowing Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) to provide telehealth services and be reimbursed under Medicare during the public health emergency;
    - Eliminating requirements for nephrologists to conduct periodic evaluations of home dialysis patients in person during the public health emergency so patients can be treated at home via telehealth;
    - Allowing a hospice physician or nurse practitioner to use telehealth to conduct a face-to-face recertification encounter under Medicare during the emergency period;
    - Requiring HHS to issue guidance encouraging the use of telecommunication systems, including remote patient monitoring, for home health services furnished during the emergency period;
    - Reauthorizing HRSA grant programs that encourage telehealth; and
    - Allowing high-deductible health plans that include health savings accounts to cover telehealth services before patients reach their deductibles.

11. **Medicaid FMAP**: The bill revises a provision included in the last emergency funding bill that temporarily increases by 6.2 percent the Federal Medical Assistance Percentage (FMAP), the funding match rate provided to state Medicaid agencies by the federal government, through the end of the emergency period. Under the prior provision, for states to access the increased FMAP, they may not increase premiums for Medicaid patients above the amounts set as of January 1, 2020. The bill delays this requirement by 30 days, during which a state will not be ineligible for the FMAP increase because of a premium change if the increased premium was in effect on the date of enactment of the

bill.

12. **Patient Privacy**: The bill responds to a long-time request from stakeholders to allow the sharing of substance use disorder patient records with broad patient authorization, rather than explicit patient consent each time records are shared, and to align regulation of substance use patient records with Health Insurance Portability and Accountability Act (HIPAA) regulations. The bill also requires HHS to issue guidance on what patient health information from patient records can be shared during the public health emergency.

13. **Extended Funding for Health Care Programs Currently Set to Expire May 22, 2020**: The bill extends funding or delays funding cuts for the following health care programs through November 30, 2020:

    - Hospital Medicaid DSH cuts delayed
    - Community health center funding extended
    - Temporary Assistance for Needy Families Program (TANF) and related programs funding extended
    - Community mental health services demonstration funding extended
    - Medicare work geographic practice cost index floor extended
    - State health insurance programs funding extended
    - Area Agencies on Aging funding extended
    - Aging and Disability Resource Centers funding extended
    - National Center for Benefits and Outreach Enrollment funding extended
    - Money Follows the Person demonstration program funding extended
    - Spousal impoverishment protections funding extended
    - Sexual risk avoidance education program funding extended
    - Personal responsibility education program funding extended
    - National Health Service Corps funding extended
    - Teaching health center graduate medical education programs funding extended
    - Special Diabetes Program and Special Diabetes Program for Indians funding extended
    - Quality measurement, input, and selection funding extended

14. **Health Care Workforce Programs**: The bill would reauthorize and update health professions workforce programs, including Title VII of the Public Health Service Act (PHSA), which offers support for clinician training and faculty development, and Title VIII of the PHSA, which provides for nurse workforce training programs. The bill updates Title VIII to require reporting of information on program performance and permits Nurse Corps loan repayment beneficiaries to serve at private institutions. In addition, the bill requires HHS to develop a comprehensive and coordinated plan for HHS health workforce programs, including education and training programs.

15. **Addressing Supply Shortages**: The bill includes several provisions intended to address supply shortages, including medical product supplies and drug shortages. The bill requires a National Academics report on medical product supply chain security and clarifies that the strategic national stockpile can stockpile medical supplies, including swabs to test for COVID-19. The bill also requires the Food and Drug Administration (FDA) to prioritize reviews of drug applications to prevent and mitigate drug shortages and requires drug manufacturers to report information when there is a supply interruption.

16. **Limitations on Liability**: The bill would prevent volunteer health care professionals from being held liable for harm caused in the provision of health care services provided in good faith during the public

health emergency to treat COVID-19 with regard to services within the scope of license of the professional. The bill provides permanent liability protection for manufacturers and other covered persons of equipment in the event of a public health emergency.

17. **Over-the Counter (OTC) Drugs**: The bill includes reforms to the regulatory process for OTC drug monographs, such as allowing the FDA to make OTC drug changes without going through notice and comment rulemaking and allowing for 18-month market-exclusivity to incentivize new products. The bill also creates a user fee program to fund FDA hiring of staff to conduct oversight of and approve changes to OTC drugs.

Baker Donelson continues to monitor coronavirus developments and we will provide information on any further efforts to develop additional stimulus initiatives as it becomes available. If you have any questions regarding the CARES Act or the impact of COVID-19 on your organization, please contact any member of Baker Donelson's Government Relations and Public Policy Team. Also, please visit the Coronavirus (COVID-19): What you Need to Know information page on our website.