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Key Health Provisions in the American Rescue Plan Legislation

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On March 11, 2021, President Biden signed into law the American Rescue Plan Act, a $1.9 trillion package to provide relief related to the COVID-19 public health emergency. The final legislation, which passed with support from only Democrats and received no Republican votes in either the House of Representatives or the Senate, includes a number of health care related provisions. Key health provisions include direct funding for health care providers and certain nonprofit organizations; funding for federal agencies and state, local, and territorial governments and tribal organizations that could be issued to providers; and changes and expansions to health care coverage intended to improve affordability and access to care. With the legislation now signed into law, attention will turn to the federal agencies that will be distributing funding and implementing new programs. Much of the detail surrounding payments and new programing will be determined through agency guidance, and some agencies have already announced applications and timelines for these applications to access funding for some programs.

Below are summaries of many of the key health care provisions in the legislation:

Direct Funding for Health Care Providers

Funding for Rural Providers

The legislation provides $8.5 billion for rural health care providers to reimburse health care related expenses and lost revenues that are attributable to COVID-19. This is separate from, although similar to, the Provider Relief Fund (PRF). The provision includes language similar to what Congress included in the CARES Act when creating the PRF that describes the application process the Department of Health and Human Services (HHS) should use to issue payments and the allowed and prohibited uses of the funding. The payments are to be used for reimbursement of health care related expenses and lost revenues that are attributable to COVID-19. Recipients may not use payments to reimburse any expense or loss that has been reimbursed from another source or that another source is obligated to reimburse. The provision provides broad authority to HHS for how to execute distribution of the funds, although it does include a definition of lost revenue for which the payments may be used that allows providers to determine revenue losses by comparing actual patient care revenue to budgeted patient care revenue.

Eligible providers will include both providers and suppliers enrolled in Medicare, Medicaid, or Children's Health Insurance Program (CHIP) that are considered to be a "rural provider or supplier." The legislation lists specific types of entities that are considered a rural provider or supplier but also provides HHS with broad authority to declare other types of providers or suppliers as an eligible rural provider. The list includes:

- A provider or supplier located in a rural area (as defined by Medicare) or treated as located in a rural area (pursuant to the Medicare statute);
- A provider or supplier located in any other area that serves rural patients (as defined by the Secretary), which may include, but is not required to include, a metropolitan statistical area with a population of less than 500,000 (determined based on the most recently available data);
- A rural health clinic (as defined in the Medicare statute);

- A provider or supplier that furnishes home health, hospice, or long-term services and support in an individual's home located in a rural area (as defined in the Medicare statute); or
- Any other rural provider or supplier (as defined by the Secretary).

Emergency Rural Development Grants for Rural Health Care

The legislation provides $500 million for the creation of an emergency pilot program for rural development to provide grants based on rural development needs related to COVID-19. The provision directs the Secretary of Agriculture to establish the grant program no later than 150 days after enactment of the legislation. Grants may be used to reimburse costs, including costs incurred prior to the issuance of the grant, incurred by facilities that primarily serve rural areas (as defined in the Consolidated Farm and Rural Development Act). The facilities must be located in a rural area that serves a population meeting certain household income standards. Eligible uses include reimbursement of costs incurred to:

1. Increase capacity for vaccine distribution;
2. Provide medical supplies to increase medical surge capacity;
3. Reimburse for revenue lost during the COVID-19 pandemic, including revenue losses incurred prior to the awarding of the grant;
4. Increase telehealth capabilities, including underlying health care information systems;
5. Construct temporary or permanent structures to provide health care services, including vaccine administration or testing;
6. Support staffing needs for vaccine administration or testing; and
7. Engage in any other efforts to support rural development determined to be critical to address the COVID-19 pandemic, including nutritional assistance to vulnerable individuals, as approved by the Secretary.

Construction-related costs must meet conditions outlined in the Farm Security and Rural Investment Act of 2002 to be covered using grant funds.

Skilled Nursing Facilities

The bill contains funding – $450 million – to support SNFs in addressing COVID-19: $250 million to the states and territories to deploy strike teams to assist SNFs and $200 million for the development and dissemination of COVID-19 prevention protocols.

Funding for Community Health Centers and Community Care

The legislation provides $7.6 billion to HHS to be used to award grants and cooperative agreements to Federally Qualified Health Centers (FQHCs) and others. Health centers could use the funds to:

- Plan, prepare for, promote, distribute, administer, and track COVID-19 vaccines, and to carry out other vaccine-related activities;
- Detect, diagnose, trace, and monitor COVID-19 infections and related activities necessary to mitigate the spread of COVID-19, including activities related to, and equipment or supplies purchased for, testing, contact tracing, surveillance, mitigation, and treatment of COVID-19;
- Purchase equipment and supplies to conduct mobile testing or vaccinations for COVID-19, to purchase and maintain mobile vehicles and equipment to conduct such testing or vaccinations, and to hire and train laboratory personnel and other staff to conduct such mobile testing or vaccinations, particularly in medically underserved areas;
- Establish, expand, and sustain the health care workforce to prevent, prepare for, and respond to COVID-19, and to carry out other health workforce related activities;
- Modify, enhance, and expand health care services and infrastructure; and
- Conduct community outreach and education activities related to COVID-19.

Funds could be used to cover prior expenses incurred with respect to COVID-19, going back to the beginning of the COVID-19 public health emergency (PHE) (January 31, 2020).

Workforce Related Provisions

The legislation seeks to provide significant funds to establish, expand and sustain a public health workforce. Among the provisions included are:

- $7.6 billion to HHS: To remain available until expended relating to activities to establish, expand and sustain a public health workforce including by making awards to state, local and territorial public health departments. Funds shall be used for the following: costs, including wages and benefits related to recruiting, hiring and training such individuals as investigators, social support specialists, community health workers, public health nurses, disease intervention specialists, epidemiologists, program managers, lab personnel, and others to prevent, prepare for and respond to COVID-19. Eligible for Funds: State, territorial or local public health departments or a non-profit private or public organization with demonstrated expertise. Particular note is made of funding those in medically underserved areas.
- $100 million for Medical Reserve Corps
- $800 million for National Health Service Corps loan repayment and scholarships
- $200 million for Nurse Corps
- $330 million, available until September 2023, for Teaching Health Centers that operate graduate medical residency programs to be used to:
  - Establish new graduate medical residency training programs
  - Increase the per-resident amount by $10,000
  - Fund an expansion of existing approved graduate medical residency training programs
  - Establish or expand primary care residency programs

Mental Health and Substance Use Disorder

The legislation proposes scaling up mental health services, including expanding access to behavioral and mental health prevention and treatment. Among the provisions included are:

- $3 billion to be split between the Substance Abuse Prevention and Treatment and Community Mental Health block grant program. Both programs provide funding to all 50 states, D.C., Puerto Rico, the U.S. Virgin Islands and six Pacific jurisdictions.
- $80 million to Health Resources and Services Administration (HRSA) to award grants or contracts to health professional schools, academic health centers, state or local governments or tribal organizations (taking into consideration the needs of rural and medically underserved communities) or other public or private nonprofit entities, including employers, to plan, develop, operate or participate in health professions and nurse training activities and other programs, including in strategies for reducing and addressing suicide, burnout, mental health conditions and substance use disorders among health care professionals
- $40 million for grants or contracts to establish, enhance or expand programs to promote mental health among providers and other personnel
- $30 million to support community-based overdose prevention, syringe services and other activities
- $20 million to the Centers for Disease Control (CDC) to carry out awareness campaign
- $50 million for community-based funding for local behavioral health needs
- $20 million for youth suicide prevention
- $100 million for behavioral health workforce education

- $80 million for pediatric mental health access
- $420 million for grants to communities and community organizations that are certified Community Behavioral Health Clinics
- $10 million to address problem of high risk or medically underserved persons who experienced violence-related stress

Health Care Coverage Provisions

Medicaid

The bill would make several changes to Medicaid financing and eligibility rules in order to increase access to coverage.

- Postpartum Coverage: The bill would give states, for five years, the option to extend Medicaid and CHIP eligibility to include all items and services covered under the state plan, to pregnant individuals for 12 months postpartum.
- Expansion Incentive: The bill would provide an incentive for states that have not already done so to expand Medicaid by temporarily increasing the state's Federal Medical Assistance Percentage (FMAP) for their base program by five percentage points for two years.
- Other FMAP, Coverage of Funding Improvements: The bill would provide a temporary one-year FMAP increase to improve home- and community-based services as well as FMAP increases for services provided through the Urban Indian Organizations and Native Hawaiian Health Care Systems.
- COVID-19 Vaccines, Testing and Treatment: There is mandatory coverage of COVID-19 vaccines and administration, testing, and treatment under Medicaid and CHIP, without beneficiary cost sharing. Vaccines and vaccine administration will receive a 100 percent FMAP for one year. States would also have the option to provide coverage to the uninsured for COVID-19 vaccines and treatment without cost sharing at 100 percent FMAP.

Health Insurance Marketplace/COBRA

Temporary Expansion of Health Insurance Marketplace Subsidies

The bill would further reduce the cost of Marketplace coverage for all subsidy-eligible individuals and families by increasing the dollar value of the premium tax credit subsidies. These changes would be temporary and in effect for tax years 2021 and 2022.

For example, individuals making between 100 percent and 150 percent of the federal poverty line would not pay anything in Marketplace premiums. The bill would also expand eligibility to more households above 400 percent FPL.

Employer-Sponsored Coverage Through COBRA

Effective April 1, 2021, the bill would provide subsidies valued at 100 percent of the health insurance premium for eligible individuals and families to remain on their employer-based coverage. This provision would remain in effect until September 30, 2021. The premiums are to be paid by employers, who can recover these payments via a refundable tax credit on their quarterly payroll taxes.

Vaccines and Testing

The bill includes a number of provisions related to efforts to expand the nation's vaccine supply and administration and testing capacity.

- $7.5 billion to CDC to enhance, expand and improve nationwide COVID-19 vaccine distribution and administration:
  - To establish and expand community vaccine centers
  - To deploy mobile vaccine units
  - To provide supplemental funding for state vaccine grants
- $500 million to the Food and Drug Administration (FDA) for vaccine, therapeutic and device activities at FDA
- $47.8 billion to HHS to detect, diagnose, trace, and monitor COVID-19 infections, and for other activities necessary to mitigate the spread of COVID-19
- $6.0 billion for the supply chain for COVID-19 vaccines, therapeutics and medical supplies

Funding for States, Cities, Local Governments, and Counties

The legislation provides $219.8 billion to remain available through December 31, 2024, for making payments to states, territories, and tribal governments to mitigate the fiscal effects stemming from COVID-19. Payments will include:

- $195.3 billion for states and Washington, D.C.;
- $20 billion for tribal governments; and
- $4.5 billion for territories.

Each state will receive $500 million plus an additional amount based on unemployment numbers.

The legislation also provides $130.2 billion for a Coronavirus Local Fiscal Recovery Fund to be available through December 31, 2024, for payments to metropolitan cities, non-entitlement units of local government and counties. Payments will include:

- $45.6 billion to metropolitan cities;
- $19.5 billion to non-entitlement units of local government; and
- $65.1 billion to counties.

Funds may be used to cover costs incurred to do the following:

- Respond to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- Respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- For the provision of government services to the extent of the reduction in revenue of such recipient due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; or
- To make necessary investments in water, sewer, or broadband infrastructure.

Recipients will begin receiving payments within 60 days, but the Treasury Department will have the authority to withhold up to half of the payment to states to be issued after one year, and payments to cities, local governments, and counties will be split evenly between two tranches: an initial payment within 60 days and a second payment after one year. Two restrictions on the use of funds are outlined in the language. States and territories are barred from using funds either to directly or indirectly offset a reduction in their net tax revenue

resulting from a change in law, regulation or administrative interpretation during the covered period that reduces or delays any tax increase. Further, states, territories, metropolitan cities, municipalities and counties are also prohibited from using funds to deposit into any pension fund.

Defense Production Act

$10 billion to use Defense Production Act (PDA) to purchase, produce and distribute medical supplies and equipment related to COVID-19. This would include tests, face masks, personal protective equipment, and drugs and vaccines.

For questions or additional information about the topics contained in this alert, please contact Sheila P. Burke or any member of Baker Donelson's Health Care Policy or Health Law teams.