COVID-19 Legislative Package Summaries

Below are summaries for legislative packages passed by the U.S. Congress related to COVID-19 and how they may impact the long term care profession:

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As we receive more information, we will update this document.

H.R. 6201, the Families First Coronavirus Response Act

On March 18, 2020, the President signed into law H.R. 6201, the Families First Coronavirus Response Act. Below is a summary of the second stimulus bill, which is now law.

Within our sector, the bill provides temporary 6.2% increase in Federal Medical Assistance Percentages (FMAP). This will allow for state Medicaid programs to have the funding needed to ensure that the most vulnerable patients and residents have continued quality care during the COVID-19 pandemic. In addition to the FMAP increase, below are other provisions that the bill provides.

Social Safety Net — The package provides $1.25 billion in supplemental assistance for those impacted by the epidemic. This funding includes: (1) $500 million for the Women, Infants, and Children (WIC) program; (2) $400 million for the Emergency Food Assistance Program (TEFAP); (3) $100 million in nutritional assistance to the territories; and (4) $250 million for senior nutrition programs. The package also allows the relevant agency heads to waive requirements for participation in the National School Lunch Program SNAP, and other programs, and provides for emergency expanded SNAP eligibility for children facing school closure who would otherwise receive free meals.

Viral Testing — The package requires insurers to cover COVID-19 testing without cost sharing and waives cost sharing for testing under Medicare, Medicaid, TRICARE, and the VA. It gives states the option to cover testing and related services for their uninsured populations at 100 percent federal medical assistance percentage (FMAP). It additionally provides $1 billion for compensating providers for testing uninsured individuals, as well as $206 million for testing by the Department of Defense (DoD, Department of Veterans Affairs (VA), and Indian Health Service.
**Medicare Telehealth** — Makes a technical correction to the Coronavirus Preparedness and Response Supplemental Appropriations Act to clarify that, for the purposes of establishing a relationship with a provider to waive current prohibitions surrounding the furnishing of telehealth services in the Medicare program, during the current public health emergency, furnishing a service allowable under the Medicare program, even if the program did not pay for such service, is a qualifying relationship.

**Personal Protective Equipment** — The package codifies provisions that certain National Institute for Occupational Safety and Health (NIOSH)-approved personal respiratory devices have temporary liability protections under the Public Readiness and Emergency Preparedness (PREP) Act if they are for emergency use.

**Worker Protections** — The package requires employers to provide two weeks paid sick leave and up to three months of paid family leave for employees affected by the virus, the cost of which could then be claimed by the employer as a tax credit. The tax credits, which are fully refundable and may be claimed against an employer’s payroll tax obligation, may also be used to offset employers’ share of their employees’ health insurance premiums during sick or family leave. The measure exempts health care and emergency responders, as well as companies with more than 500 employees. Companies with fewer than 50 employees may get hardship waivers. The package also provides for grants to states to bolster their unemployment insurance programs, as well as guarantees full federal funding of unemployment benefits for states that are hit particularly hard.

**H.R. 748, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)**

On March 27, 2020 the President signed into law the third coronavirus response package, The Coronavirus Aid, Relief, and Economic Security Act, H.R. 748. Of particular note to skilled nursing facilities and assisted living facilities it includes the following provisions:

**Temporary suspension of Medicare sequestration cut.** The bill would suspend the sequestration payment reduction on all Medicare programs from May 1 through December 31, 2020. (Div. A, § 3709.)

**$100 billion fund for eligible health care providers.** The bill would appropriate $100 billion to the Secretary of Health and Human Services in order to reimburse “eligible health care providers” for health care related expenses or lost revenues attributable to coronavirus. The term “eligible health care providers” includes Medicare and Medicaid providers and suppliers, as well as other for-profit and non-profit entities “that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.” The bill would give the Secretary significant discretion in how to administer the fund (e.g., the bill does not specify how funds must be allocated amongst provider and supplier types, nor does it specifically address whether assisted living facilities would be eligible). Those seeking such funds would have to submit an
application to the Secretary and agree to submit such reports as the Secretary deems necessary. (Div. B, tit. VIII.)

$200 million in funding to prevent, prepare for, and respond to coronavirus. The bill would appropriate $200 million to the Centers for Medicare & Medicaid Services (“CMS”) in order “to prevent, prepare for, and respond to coronavirus.” CMS must use no less than half of that amount “for necessary expenses of the survey and certification program,” prioritizing skilled nursing facilities in localities with community transmission of coronavirus. However, the bill appears to give CMS significant discretion in how to expend the remaining $100 million. (Div. B, tit. VIII.)

Childcare support for health care sector employees. The bill provides $3.5 billion in grants to States to support child care for families, specifically authorizing the use of such grant funds to “provide child care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to coronavirus by public officials,” regardless of income level. (Div. B, tit. VIII.)

New loan program for certain employers. The bill would create a “paycheck protection program” by which small businesses and certain other employers could obtain loans through a new program administered by the Small Business Administration (“SBA”). Generally speaking, an eligible loan applicant could have no more than 500 employees. It remains uncertain whether, through application of the SBA’s existing affiliation rules, employee totals in our sector would be aggregated in the case of entities with common ownership or control. Eligible applicants would have to certify that the amounts borrowed would be used to do such things as maintain payroll and make rent or mortgage payments. Generally speaking, loans could not exceed the lesser of $10 million or 2.5 times the applicant’s average payroll costs during the previous one-year period. The bill also provides that loan amounts spent on payroll and certain other costs for eight weeks following loan origination would be forgiven. (Div. A, §§ 1102, 1106.)

Funding for housing for the elderly and disabled. The bill appropriates $50 million to the Department of Housing and Urban Development to provide assistance to owners of certain properties providing supportive housing for the elderly. Similarly, the bill appropriates $15 million for assistance to owners of certain properties providing supportive housing for persons with disabilities.

Deferral of 6.2-percent payroll tax. The bill would defer the deadline for employers to pay the 6.2-percent tax on wages from the date of enactment through the end of 2020. Fifty percent of such taxes would be due on December 31, 2021, with the remainder due on December 31, 2022. However, an employer would be ineligible to defer payment of such taxes if the taxpayer receives loan forgiveness under a new loan program established elsewhere in the bill and administered by the Small Business Administration. (Div. A, § 2302.)

Temporary relaxation of rules limiting net operating loss deductions. Net operating losses (“NOLs”) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The bill temporarily removes the taxable-income limitation to allow an NOL to fully offset income. The bill also would provide that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The combined effect of these two changes is that NOLs incurred in these years could fully offset prior-year taxable income. It
is intended that taxpayers with NOL carryback as a result of these new rules will be able to immediately file amended returns and seek a refund of taxes paid. (Div. A, § 2303.)

Relaxation of excess business loss rules for passthroughs and sole proprietors. The bill provides for a temporary relaxation, until December 31, 2020, of the “excess business loss” rules that limit current net losses attributable to a non-corporate taxpayer’s trade or business to $250,000 ($500,000 for joint filers), indexed for inflation annually. (Div. A, § 2304.)

Refundable employee retention tax credit. The bill provides for a temporary 50-percent refundable tax credit, computed on a calendar-quarter basis, against the 6.2-percent employer-side Social Security payroll tax. However, only employers that are either (a) subject to full or partial business suspension due to a government order or (b) whose gross receipts during a quarter (beginning with the first calendar quarter beginning after December 31, 2019) have declined by more than 50 percent when compared to the same quarter in the prior year qualify for the employee retention tax credit. (Div. A, § 2301.)

H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act

On April 24, 2020, the President signed into law H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act. The major provisions for our sector include:

- $75 billion for health care providers to support the need for COVID-19 related expenses and lost revenue. This funding is in addition to the initial $100 billion provided in the Provider Relief Fund as part of the CARES Act.
- $25 billion for COVID-19 testing
- $321 billion increase in the Small Business Administration’s Payment Protection Program (PPP) loan to allow for more small businesses to apply to receive aid.

All of the provisions above are in addition to the provisions that are in the CARES Act, that was signed into law by the President. Below is the full list of additional provisions found in H.R. 266:

SMALL BUSINESS ADMINISTRATION (SBA)

- Increases the authorization level for the Paycheck Protection program (PPP) from $349 billion to $659 billion.
- Increases the appropriation level for the Paycheck Protection Program (PPP) from $349 billion to $670.335 billion.
- Increases the authorization level for the Emergency Economic Injury Disaster (EIDL) Grants from $10 billion to $20 billion.
- Allows agricultural enterprises as defined by section 18(b) of the Small Business Act (15 U.S.C. 647(b)) with not more than 500 employees to receive EIDL grants and loans.
• Creates a set-aside for Insured Depository Institutions, Credit Unions, and Community Financial Institutions for the Paycheck Protection Program.

• Defines Community Financial Institutions as minority depository institutions, certified development companies, microloan intermediaries, and State or Federal Credit Unions.

• Appropriates an additional $50 billion for the Disaster Loans Program Account to remain available until expended.

• Appropriates an additional $10 billion for Emergency EIDL Grants to remain available until expended.

• This section sets aside the following amounts for the Paycheck Protection Program to be made by the following institutions:
  o $30 billion for loans made by Insured Depository Institutions and Credit Unions that have assets between $10 billion and $50 billion; and
  o $30 billion for loans made by Community Financial Institutions, Small Insured Depository Institutions, and Credit Unions with assets less than $10 billion.

• Appropriates an additional $2.1 billion for the Salaries and Expenses account to remain available until September 30, 2021.

• Appropriates an additional $50 billion for the Disaster Loans Program Account to remain available until expended.

• Appropriates an additional $10 billion for Emergency EIDL Grants to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

• $75 billion in additional aid for reimbursement to hospitals and healthcare providers to support the need for COVID-19 related expenses and lost revenue. Language remains the same as CARES Act. This funding is in addition to the $100 billion provided in the CARES Act.

• $25 billion for necessary expenses to research, develop, validate, manufacture, purchase, administer, and expand capacity for COVID-19 tests. Specific funding is provided for:
  o $11 billion for states, localities, territories, and tribes to develop, purchase, administer, process, and analyze COVID-19 tests, scale-up laboratory capacity, trace contacts, and support employer testing. Funds are also made available to employers for testing.
    ▪ $2 billion provided to States consistent with the Public Health Emergency Preparedness grant formula, ensuring every state receives funding;
    ▪ $4.25 billion provided to areas based on relative number of COVID-19 cases;
    ▪ $750 million provided to tribes, tribal organizations, and urban Indian health organizations in coordination with Indian Health Service.
$1 billion provided to Centers for Disease Control and Prevention for surveillance, epidemiology, laboratory capacity expansion, contact tracing, public health data surveillance and analytics infrastructure modernization.

$1.8 billion provided to the National Institutes of Health to develop, validate, improve, and implement testing and associated technologies; to accelerate research, development, and implementation of point-of-care and other rapid testing; and for partnerships with governmental and non-governmental entities to research, develop, and implement the activities.

$1 billion for the Biomedical Advanced Research and Development Authority for advanced research, development, manufacturing, production, and purchase of diagnostic, serologic, or other COVID-19 tests or related supplies.

$22 million for the Food and Drug Administration to support activities associated with diagnostic, serological, antigen, and other tests, and related administrative activities;

$825 million for Community Health Centers and rural health clinics;

Up to $1 billion may be used to cover costs of testing for the uninsured.

- Includes $6 million for HHS Office of Inspector General for oversight activities.
- Requires plan from States, localities, territories, and tribes on how resources will be used for testing and easing COVID-19 community mitigation policies.
- Requires strategic plan related to providing assistance to States for testing and increasing testing capacity.