Key Physician Provisions in Phase III

Phase III - *Coronavirus Aid, Relief, and Economic Security (CARES) Act*

On March 25, the Senate passed H.R. 748, the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* unanimously with a vote of 96-0. Before proceeding to final passage, the Sasse unemployment insurance amendment failed 48-48. As previously announced, the Senate will adjourn until April 20 but can return within 24 hours if needed. The final bill text is here, with the appropriations summary (Division B) from Republicans here and Democrats here, unemployment/retirement summary here, Finance Committee health provisions summary here, HELP Committee summary here, HELP Committee one pager here, Small Business Committee summary here, and one pager here.

Key Provisions

Small business relief

There are two main provisions to provide relief to physicians, physician practices, and (in some instances) physician professional organizations:

1. 7(a) Small Business Administration (SBA) "loans";
2. A new $100 billion program through the Public Health and Social Services Emergency Fund; and
3. Loans, loan guarantees, and other investments under the Coronavirus Economic Stabilization Act.

7(a) "loans"

7(a) program offers "loan" amounts or eligible small businesses within the U.S. States and its territories. Before the enactment of the Phase III response, to be eligible for the loan, entities had to be for-profit entities. Therefore, according to the Small Business Administration (SBA), medical facilities such as hospitals, clinics, emergency outpatient facilities, and medical and dental laboratories are eligible. Convalescent and nursing homes are eligible, provided they are licensed by the appropriate government agency and services rendered go beyond those of room and board.

While the initial loans were more focused on traditional business development, the Phase III CARES Act legislation modified the program in several key ways, including:

- Clarifying that the eligibility would be for 500 employees or less, unless the covered industry's SBA size standard allows more than 500 employees,[1]
- Allowing 501(c)(3) non-profit entities[2] to gain access to the program,
- Increasing the maximum 7(a) loan amount to $10 million,
- Expanding allowable uses of 7(a) loans to include payroll support, such as paid sick or medial leave, employee salaries, mortgage payments, and any other debt obligations, and

[1] The bill clarifies that it is 500 or less employees at each business location. See pp. 15-16

[2] Key language (p. 10, l. 16-21): "the term 'nonprofit organization' means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code"

- Perhaps most importantly, providing a process for loan forgiveness for certain payroll costs as well as mortgage, rent, and utility obligations.[3]

Note: This summary does not include ALL of the changes made by the CARES Act, just the high-level ones to help physicians quickly ascertain potential eligibility. In addition to the changes to the program, the bill also includes (as part of Division B), appropriations of $562 billion to help small businesses by ensuring SBA has the resources to provide Economic Injury Disaster Loans (EIDL), including the 7(a) program, to businesses that need financial support.

Division B – Public Health and Social Services Emergency Fund

Division B of the *CARES Act* includes key language related to the $100 billion for health care services related to the COVID-19.[4] Specifically, the funds are "to prevent, prepare for, and respond to coronavirus, domestically or internationally, for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus." 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.

Summary

Definition: "eligible health care providers" means public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit entities and not-for-profit entities not otherwise described in this proviso as the Secretary may specify, within the United States (including territories), that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID–19.

Payments. Directs the Secretary of Health and Human Services to, on a rolling basis, review applications and make payments. The term ''payment'' means a pre-payment, prospective payment, or retrospective payment, as determined appropriate by the Secretary. That payments are directed to be made in consideration of the most efficient payment systems practicable to provide emergency payment.

Use of Funds. Funds are 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.

Application process. An eligible health care provider shall submit to the Secretary of Health and Human Services an application that includes a statement justifying the need of the provider for the payment and the eligible health care provider shall have a valid tax identification number.

Reports. Recipients are required to submit reports and maintain documentation as the Secretary determines are needed to ensure compliance with the required conditions.

[3] Under section 1106, the bill details a process by which first an entity receives a loan, and then an entity can apply for loan forgiveness for certain business expenses, with certain restrictions related to any reduction in the number of employees. Once the SBA has confirmed those amounts and other necessary information, then within 90 days, the SBA pays the lender confirmed business expense amount or the amount of the loan, whichever is less.

[4] Key language begins on p. 750.

Key Considerations

Additional HHS guidance necessary. Given that this is a wholly new program, rather than building upon existing infrastructure, the Department of Health and Human Services (HHS) will need to decide how best to implement the program, including processes for requesting and receiving funds.

Applicability to lost revenues in question. While the initial description of the $100B fund is for "lost revenues" related to the pandemic, further language related to the definition of eligible heath care provider focuses on that that "provide diagnoses, testing, or care for individuals with possible or actual cases of COVID–19." Therefore, physicians and others who have lost revenues due to deferral of elective surgery and similar situations may or may not be able to receive relief. Further, it is unclear if medical suppliers (e.g., drug and device manufacturers) would be able to seek relief, given that language seems to be limited solely to those that provide direct care.

May require both direct grants as well as enhanced payments. While the language provides the flexibility for "pre-payment, prospective payment, or retrospective payment," which could indicate that the Secretary of HHS could opt to provide enhanced Medicare or other payments to provide relief, providers would still likely to submit additional documentation, in light of the application process and report detailed in the summary. As such, the Secretary may be inclined to use a grant process for administering the program.

Title IV, Subtitle A: Coronavirus Economic Stabilization Act

Section 4003 establishes a key fund for loans, loan guarantees, and other investments for companies with losses tied to the coronavirus pandemic that threaten their continued operation. Of the $500 billion fund, $25 billion is available to airlines, $4 billion to cargo air carriers, and $17 billion for companies "critical to national security", with the remainder ($454 billion) for everyone else. Until March 1, 2022, companies that receive aid could not increase compensation for executives and other employees who made more than $425,000 in 2019. Any severance pay or other termination benefits paid to those employees during that period could not exceed twice their 2019 compensation.

Additional Key Health Provisions

A list of additional key health provisions is included below.

Appropriations

- **$16 billion to replenish the Strategic National Stockpile** supplies of pharmaceuticals, personal protective equipment, and other medical supplies, which are distributed to State and local health agencies, hospitals and other healthcare entities facing shortages during emergencies.
- **$3.5 billion for BARDA to expand the production of vaccines**, therapeutics, and diagnostics to help combat this pandemic.
- **$1 billion for the Defense Production Act** to bolster domestic supply chains, enabling industry to quickly ramp up production of personal protective equipment, ventilators, and other urgently needed medical supplies.

HELP Committee Provisions

- **Limitation on liability** for volunteer health care professionals during COVID-19 emergency response. Makes clear that doctors who provide volunteer medical services *during the public health emergency related to COVID-19* have liability protections. (Section 3215)

- Requiring the **strategic national stockpile to include certain types of medical supplies**. Clarifies that the Strategic National Stockpile can stockpile medical supplies, such as the swabs necessary for diagnostic testing for COVID-19. (Section 3102)
- Treatment of respiratory protective devices as covered counter- measures. Provides **permanent liability protection for manufacturers of personal respiratory protective equipment**, such as masks and respirators, in the event of a public health emergency, to incentivize production and distribution. (Section 3203)
- Rapid **coverage of preventive services and vaccines for coronavirus**. Coverage of diagnostic testing for COVID-19. Clarifies that all testing for COVID-19 is to be covered by private insurance plans without cost sharing, *including those tests without an EUA by the FDA*. (Section 3201 and 3717)
- Pricing of diagnostic testing. For COVID-19 testing covered with no cost to patients, **requires an insurer to pay either the rate specified in a contract between the provider and the insurer, or, if there is no contract, a cash price posted by the provider**. (Section 3202)
- **Telehealth network and telehealth resource centers grant programs**. Reauthorizes Health Resources and Services Administration (HRSA) grant programs that promote the use of telehealth technologies for health care delivery, education, and health information services. (Section 3212)

Finance Committee Provisions

- **Increasing Medicare telehealth flexibilities** during emergency period. Allows the Secretary to waive the requirements under section 1834(m). (Section 3703)
- Increasing Provider Funding through Immediate **Medicare Sequester Relief.** Temporarily lifts the Medicare sequester, which reduces payments to providers by 2 percent, from May 1 through December 31, 2020. The Medicare sequester would be extended by one-year beyond current law to provide immediate relief without worsening Medicare's long-term financial outlook. (Section 3709)
- **Extension of the work geographic index floor under the Medicare program**. Extends the floor until December 1, 2020. (Section 3801)
- **Amendments relating to reporting requirements with respect to clinical diagnostic laboratory tests.** Delays certain reporting requirements and payment adjustments. (Section 3719)