

Coronavirus Aid, Relief, and Economic Security (CARES) Act

OVERVIEW

On March 26th, the “Coronavirus Aid, Relief, and Economic Security Act,” or CARES Act, an approximately \$2.2 trillion relief package to address the rapidly growing COVID-19 public health emergency, passed the Senate on a vote of 96-0. The four missing Senators were in isolation due to confirmed or potential COVID-19 infection. The House then passed the law by voice vote on March 27th, and President Trump signed the law on the same day. The CARES Act is the largest relief package in U.S. history. This document summarizes major aspects of the law, which is available [here](#).

APPROPRIATIONS

Direct Appropriations

The law establishes the “Coronavirus Relief Fund,” which provides \$150 billion to states, localities, territories, and tribal governments to use expenditures incurred due to the COVID-19 public health emergency. It sets aside a separate \$100 billion for public entities, Medicare or Medicaid enrolled suppliers and providers (for-profit and not-for-profit), for unreimbursed expenses incurred while preventing, preparing for, and responding to COVID-19. The Department of Health and Human Services (HHS) is instructed to review applications and make payments on a rolling basis. Tens of billions in other health care and public health direct appropriations are included, such as \$8.8 billion for child nutrition programs, \$15.8 billion for the Supplemental Nutrition Assistance Program (SNAP), and \$1 billion for the military’s TRICARE health insurance program. The law prevents duplicate appropriations for fiscal year 2020 from any previous law affected by CARES Act provisions.

In addition, the Act provides approximately \$300 billion in direct appropriations for the Small Business Administration, of which \$299.4 billion is for guaranteed loans.

Agency Appropriations

The law allocates \$172.1 billion to the Departments of Labor, Health and Human Services, Education and Related Agencies, including \$4.3 billion to the Centers for Disease Control and Prevention (CDC), \$945 million to the National Institutes of Health, \$275 million to the Health Resources and Services Administration, \$200 million to the Centers for Medicare and Medicaid Services, \$425 million to the Substance Abuse and Mental Health Services Administration, and \$48.9 billion for Department of Agriculture agencies and the Food and Drug Administration (FDA), among others.

MEDICARE

General Medicare Provisions

The law temporarily lifts the 2% Medicare sequester from May 1st through December 31st, 2020, and extends the work geographic index floor to December 1st, 2020. The law also allocates \$20 million for quality measure endorsement, input, and selection for fiscal year 2020. All Medicare Part A and B providers and suppliers may, effective immediately, request accelerated or advance payments for Medicare services for a period of three to six months, depending on the type of provider or supplier. These lump sum payments will be based on historical claims experience. Requests may be made at any time during the state of emergency. During the first 120 days after an advanced/accelerated payment is

made, providers will continue to bill normally and be paid normally. After 120 days, a recoupment period begins in which new claims are used to offset the balance from the advance payment. Most provider types (except hospitals) will have 210 days from the date of the accelerated/advanced payment to repay the balance. Additional information can be found [here](#).

Medicare Hospital Payments

The law increases hospital payments for treating patients admitted with COVID-19 by 20% during the COVID-19 emergency period. For qualified hospital facilities that request advanced or accelerated payments, they may receive up to a six-month advanced lump sum, or periodic Medicare payments based on net reimbursement represented by unbilled discharges or unpaid bills. Many hospital types could elect to receive up to 100% of the prior period payments, while Critical Access Hospitals could receive up to 125%. Qualifying hospitals would not be required to pay down resultant loans for four months, and would have at least twelve months to complete repayment without interest. The law also prevents scheduled reductions in Medicare payments for durable medical equipment that assist in transitioning patients from the hospital setting to the home setting during the COVID-19 emergency period, as well as scheduled reductions in Medicare payments for clinical diagnostic laboratory tests provided to beneficiaries in 2021.

MEDICAID PROVISIONS

The law allocates \$337.5 million to the Money Follows the Person Rebalancing Demonstration program, extends spousal impoverishment protections to November 30th, 2020, delays Disproportionate Share Hospital reductions through September 30th, 2021, and extends the Community Mental Health Services Demonstration program to November 30th, 2020. The law amends a section of the Families First Coronavirus Response Act of 2020 to ensure that states are able to receive the Medicaid 6.2% Federal Medical Assistance Percentage increase, but does not modify the requirement that states not increase the share of local government responsibility for Medicaid expenses. The law also allows state Medicaid programs to pay for direct support professionals to assist disabled individuals in the hospital in order to reduce length of stay.

COVID-19 COVERAGE PROVISIONS

The law requires private insurance plans to cover COVID-19 diagnostic tests. Providers will be reimbursed at a pre-negotiated rate, or at an amount that equals the cash price for services listed by the provider on a public internet website made available by diagnostic test providers. Diagnostic test providers will be required to host the public internet website at the risk of incurring civil monetary penalties.

Plans will be required to cover any qualifying coronavirus preventive service without cost-sharing. Medicare Part B beneficiaries will receive COVID-19 vaccines without cost sharing, and uninsured individuals will receive COVID-19 tests and related services without cost sharing in any state Medicaid program that chooses to offer that enrollment option. The law also requires that Medicare Part D plans provide a 90-day supply of a prescription medication if requested by a beneficiary during the COVID-19 emergency period, and provides free coverage without cost-sharing for a vaccine or preventive service for COVID-19 within 15 days of that vaccine or service receiving a rating of “A” or “B” from the United States Preventive Services Task Force, or a recommendation from the Advisory Committee on Immunization Practices. Lastly, the law clarifies a section of the Families First Coronavirus Response Act of 2020 to align with the no cost-sharing Medicare Part B requirements of the CARES Act.

TELEHEALTH

The law expands telehealth network and telehealth resource centers grant programs through a \$29 million appropriation for each fiscal year from 2021-2025. The law allows a high-deductible health plan with a health savings account to cover telehealth and other remote care services prior to a patient reaching the deductible, and allows Federally Qualified Health Centers (FQHC) and rural health clinics to serve as distant sites for telehealth consultations. Medicare would reimburse for these telehealth services based on payment rates similar to the national average payment rates for comparable telehealth services under the Medicare Physician Fee Schedule, and costs associated with these services will be excluded from both the FQHC prospective payment system and the RHC all-inclusive rate calculation.

The law allows hospice physicians and nurse practitioners to conduct face-to-face encounters prior to recertification of eligibility for hospice care via telehealth, and temporarily waives the face-to-face visit requirement between home dialysis patients and their providers during the COVID-19 emergency period.

The law also amends a requirement in the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 that limits the Medicare telehealth expansion authority during the COVID-19 emergency period to relationships where a physician has treated a patient in the past three years. Finally, the law requires HHS to consider ways to encourage the use of telehealth with respect to home health services, including remote patient monitoring.

MEDICAL SUPPLIES AND FUTURE EMERGENCY PREPAREDNESS

The law contains provisions devoted to improving the stockpiling of medical equipment for national emergencies and their distribution during an emergency, as well as improving the availability of lab tests and drugs during emergencies. The strategic national stockpile will be under the management of the HHS Assistant Secretary for Preparedness and Response (ASPR) rather than jointly the ASPR and the CDC.

The law allows the Food and Drug Administration (FDA) to expedite the review and inspection of certain drug applications, and adds a number of manufacturer reporting requirements for any drug or medical device deemed critical to the public health during a public health emergency. Drug manufacturer reporting requirements include active pharmaceutical ingredients, risk management plans that identify and evaluate risks to the supply of a drug, and drug volume, in addition to six-months prior notification to a date of discontinuance or interruption of manufacture. Similar to the drug manufacturer reporting requirements, medical device manufacturer reporting requirements include a six-months prior notification of permanent discontinuance or interruption of the manufacture of critical medical devices, as well as the reasons for the discontinuance or interruption. The law allows the Biomedical Advanced Research and Development Authority to more easily partner with the private sector on research and development, which includes helping to scale up manufacturing as appropriate, by removing the cap on other transaction authority during a public health emergency. The law also expedites the development and review of zoonotic animal drugs if preliminary clinical evidence indicates that the drug has the potential to prevent or treat disease that could cause adverse health consequences for humans.

The law provides liability protection for manufacturers of personal respiratory protective equipment, and adds personal protective equipment, ancillary medical supplies, and other applicable supplies for the administration of drugs, vaccines and other biological products, medical devices, and diagnostic tests to the strategic national stockpile as required by the Public Health Service Act. The law also adds National Institute for Occupational Safety and Health-approved respiratory protective devices as covered countermeasures during a public health emergency.

Within 60 days, HHS and the National Academies of Sciences, Engineering, and Medicine will examine and report on the security of the United States medical product supply chain to assess and evaluate the

dependence of the United States on critical drugs and devices that are sourced or manufactured outside of the United States. They'll then provide recommendations, which may include a plan to improve the resiliency of the supply chain for critical drugs and devices.

OVER-THE-COUNTER (OTC) DRUGS

The law allows patients to use funds in health savings accounts and flexible spending accounts for the purchase of OTC medical products without a prescription from a physician. The law also reforms the regulatory process for OTC drug monographs by allowing the FDA to approve changes to OTC drugs administratively, rather than going through a full notice and comment rulemaking, while clarifying that an OTC drug that does not comply with the monograph requirements is misbranded. The law requires an annual update to Congress regarding FDA's progress in evaluating certain pediatric indications for certain cough and cold monograph drugs for children under age six. Finally, the law establishes a new FDA user fee to allow the agency to hire additional staff members to ensure there is adequate agency oversight to approve changes to OTC drugs.

OTHER SUPPORT FOR HEALTH CARE PROVIDERS

The law appropriates \$1.32 billion for fiscal year 2020 in supplemental awards for community health centers (CHCs) for the prevention, diagnosis, and treatment of COVID-19. This funding is in addition to the \$100 million distributed by the Health Resources and Services Administration to CHCs on March 24th. The law also extends rural health care services outreach, rural health care network development, and small health care provider quality improvement grant programs from "essential" to "basic" healthcare services, in addition to a \$79.5 million appropriation for each fiscal year from 2021-2025. The law prevents volunteer health care professionals from being liable under Federal and State laws for any harm caused by an act or omission while providing health care services during a public health emergency.

The law waives the Inpatient Rehabilitation Facility 3-hour rule, allowing a Long-Term Care Hospital (LTCH) to maintain its designation even if more than 50% of its cases are less intensive, and pauses the LTCH site-neutral payment methodology. The law allows nurse practitioners, clinical nurse specialists, and physician assistants to order home health services for beneficiaries within six months of the enactment of the CARES act.

The law reauthorizes Health Professions Workforce Programs, appropriates \$23.7 million for each fiscal year from 2021-2025, and requires that HHS develop a comprehensive workforce development program plan within one year. Certain grants, contracts, and cooperative agreements must be used for the establishment or operation of Geriatrics Workforce Enhancement Programs. The law contains provisions for nursing workforce development to address national nursing needs, including training and education, particularly in geographic areas that have been identified as having a nursing shortage. The law also establishes the Ready Reserve Corps of the U.S. Public Health Service and related statutory guidelines, and gives HHS greater flexibility to assign members of the National Health Service Corps to provide health services.

OTHER PAYMENTS

The law allocates \$13 million for funding to state health insurance programs, \$7.5 million to area agencies on aging, \$5 million to aging and disability resource centers, and \$12 million to the National Center for Benefits and Outreach Enrollment to bolster outreach and assistance for low-income programs for fiscal year 2020.

The law provides \$4.6 billion for CHCs, \$362 million for the National Health Service Corps, \$102.6 million for teaching health centers that offer graduate medical education programs, and \$121.6 million for diabetes programs.

MISCELLANEOUS PROVISIONS

The law aligns 42 CFR Part 2 regulations with the Health Insurance Portability and Accountability Act with regards to the confidentiality and sharing of substance abuse disorder treatment records, establishing new protections against the use of such records for discriminatory purposes or in legal and administrative settings. Violation of these provisions would be enforced through civil monetary penalties. Within 180 days, HHS will also issue general guidance on sharing patients' protected health information during the public health emergency related to COVID-19.

The law allows the Secretary of Labor to extend older adults' participation in community service projects under the Older Americans Act (OAA) and make administrative adjustments to facilitate their continued employment under the program, in addition to allow home-delivered nutrition services for older individuals who are practicing social distancing due to the emergency and are homebound because of illness while waiving dietary guidelines requirements. The law also reauthorizes the Healthy Start Program and appropriates \$122.5 million for each fiscal year from 2020-2024.

The law extends the Sexual Risk Avoidance Education Program, the Personal Responsibility Education Program, the Demonstration Projects to Address Health Professions Workforce Needs, the Temporary Assistance for Needy Families Program, and related programs through November 30th, 2020.

Lastly, the law requires that HHS carry out a national campaign to improve awareness of the public and providers about the importance and safety of blood donation, specifically during the COVID-19 public health emergency.

LABOR PROVISIONS

The law creates a limitation stating that employers will not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee on paid family and medical leave, \$511 per day and \$5,110 in the aggregate for each employee on sick leave, and \$200 per day and \$2,000 in the aggregate for each employee who is absent in order to care for a quarantined individual or child. Employers can receive an advance tax credit for paid leave from the Treasury Department instead of having to be reimbursed on the back end.

The law requires that applications for unemployment compensation and assistance be accessible in two ways, and allows an employee who was laid off by an employer March 1st, 2020, or later to have access to paid family and medical leave in certain instances if they are rehired by the employer. Lastly, The law provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution due during 2020 until January 1st, 2021.

The law creates the Pandemic Unemployment Assistance program, which will last through December 31st, to assist self-employed persons, independent contractors, and others otherwise ineligible for unemployment benefits. All recipients of unemployment insurance or the Pandemic Unemployment Assistance program will receive an additional \$600 per week for up to four months. An additional 13 weeks of federally-funded unemployment benefits will be available to those for whom their state benefits run out. The law will reimburse employers for 100% and states for 50% of the cost of "short-time compensation" programs in which employees have their hours reduced rather than being laid off, and in return receive an unemployment benefit pro-rated to the reduction in hours. States will be given funding to reimburse government agencies and not-for-profits that opt out of state unemployment insurance for 50% of their costs of unemployment benefits.

ECONOMIC PROVISIONS

General Provisions

The law provides \$500 billion in emergency relief funds to provide loans, guarantees, and other investments. The Treasury Department is creating a special lending facility through the Federal Reserve targeted specifically at nonprofit organizations and businesses between 500 and 10,000 employees that will be subject to additional loan criteria and obligations, including retaining at least 90% of the recipients' workforce through September 30th, 2020, not outsourcing jobs or rescinding existing bargaining agreements, and remaining neutral in any union organizing effort for the term of the loan. Additionally, the law establishes the Office of the Special Inspector General for Pandemic Recovery within the Treasury Department, which will oversee audits and investigations of loans, loan guarantees, and other investments made by the Treasury Secretary.

Economic Stimulus

All U.S. residents with an adjusted gross income (AGI) of \$75,000 or less will receive a recovery rebate equal to their net income tax liability up to \$1,200 (\$150,000 AGI and \$2,400 for residents filing jointly). In addition, for every qualifying dependent child a credit of \$500 will be included. This recovery rebate phases out at a marginal rate of 5%, up to \$99,000 in total income, at which point no rebate will be received.

Employers will be eligible for a refundable tax credit of 50% of wages paid during the COVID-19 emergency if (a) their operations were fully or partially suspended due to a COVID-19-related shutdown order, or (b) their gross quarterly revenue declines more than 50% year-over-year. If the tax credit is greater than the payroll tax liability, the Internal Revenue Service will directly pay the excess amount.

The law establishes the Paycheck Protection Program (PPP), which will offer up to \$350 billion in loans to small businesses and not-for-profits that employ no more than 500 people (or higher for some industries, although not within the direct health and human services sector). Proprietors, independent contractors, and self-employed persons are also eligible. The loans will represent 2.5 months of the business's payroll, up to a maximum of \$10 million, and must be used for allowable purposes, such as paying salaries, rent, or insurance costs. The amount of the loan used for payroll costs (up to \$100,000 in wages) or existing rent, mortgage interest, or utilities over an 8-week period will be eligible for loan forgiveness. It will be reduced proportionally with any job reductions and by any salary reductions beyond 25%. Loans will be guaranteed by the federal government, and set at a maximum interest rate of 4%, whether the loan is made by a Small Business Administration (SBA) lender or Treasury-approved lender.

The law also provides \$10 billion for Economic Injury Disaster Loans (EIDLs), which offer small businesses and not-for-profits up to \$2 million in loans, with an immediate advance of up to \$10,000 which will not need to be repaid even if the applicant is denied for the loan, although this amount would be subtracted from forgiveness of PPP loan funds. EIDLs can be used to provide paid sick leave to employees, maintain payroll, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments. Businesses that receive an EIDL between January 31st, 2020 and June 30th, 2020 as a result of a COVID-19 disaster declaration are also eligible to apply for a PPP loan, or they may refinance their EIDL into a PPP loan.

For larger employers, the law provides \$454 billion to support Federal Reserve loans to businesses and not-for-profits with between 500 and 10,000 employees. The loans should be used to retain at least 90 percent of the applicant's workforce through September 30th. Loan forgiveness is not permissible.