

March 19, 2020

President Signs the Families First Coronavirus Response Act (H.R. 6201)

Bill includes requirements on public and private health care programs to cover COVID-19 testing at no cost to patients; increase in Medicaid funding.

President Trump last night signed the Families First Coronavirus Response Act (H.R. 6201), hours after the Senate overwhelmingly approved the legislation. The House of Representatives March 16 passed by unanimous consent a revised version of the bill that made technical corrections to the legislation that the House originally approved March 14.

The legislation eliminates patient cost-sharing for COVID-19 testing and related services, establishes an emergency paid leave program, and expands unemployment and nutrition assistance. Moreover, the bill provides a temporary increase in the Medicaid Federal Medical Assistance Percentage (FMAP), and creates two mechanisms for coverage of testing for the uninsured – one through the Medicaid program and another through the Public Health and Social Services Emergency Fund.

AHA Take: America's hospitals and health systems are pleased Congress came together to pass today's package, which includes provisions to help workers, families and the uninsured, including boosting Medicaid funding for states and increasing the eligibility for the uninsured to enroll in Medicaid coverage. But more needs to be urgently done. The AHA continues to call on Congress to work on a comprehensive funding strategy to ensure that hospitals, health systems, and our frontline caregivers are directly supported for preparedness and response.

Hospitals and health systems, which are on the frontlines in responding to the COVID-19 pandemic, need significant financial support for numerous time-sensitive and critical tasks. These include obtaining scarce supplies and equipment to protect caregivers and patients, increasing surge capacity, including beds and temporary structures, to diagnose and treat patients, and support for obtaining child care for hospital workers. Congress must act now during this critical window of time.

Key Takeaways

Among other health care-related provisions, the package includes:

- Requirements for public and private health care programs to cover COVID-19 diagnostic testing and related services at no cost to patients.
- A new option for states to expand limited Medicaid eligibility to the uninsured for the purpose of COVID-19 testing and related services.
- \$1 billion for the Public Health and Social Services Emergency Fund to cover costs associated with testing and related services for the uninsured.
- A 6.2% increase to Medicaid FMAP during the COVID-19 emergency.
- New requirements for certain employers to provide COVID-19-related family and medical leave, as well as paid sick leave with exceptions.

HIGHLIGHTS OF PROVISIONS IMPORTANT TO HOSPITALS AND HEALTH SYSTEMS

No Cost-sharing for COVID-19 Testing and Testing-related Services. The legislation prohibits cost-sharing for COVID-19 testing and testing-related services for most forms of coverage. These include Medicare Part B, the Defense Health Program, Medicaid, Children's Health Insurance Program, Indian Health Service, group health plan, individual and other group health coverage, Tricare, Veterans Affairs Health Care and Federal Employee Health Benefits Program enrollees. Cost-sharing is defined as deductibles, copayments and coinsurance. Testing and testing-related services include in vitro diagnostic products approved by the Food and Drug Administration, health care provider office visits, urgent care center visits and emergency department visits that result in an order for or administration of testing. A further list of services is specified for Medicare patients, including nursing facility services; home services; and domiciliary, rest home and custodial care services. The prohibition on cost-sharing in all instances would apply for the duration of the emergency period.

For the Medicare program specifically, the waiver of cost-sharing applies to services paid under the outpatient prospective payment system, the physician fee schedule, federally qualified health center payment system, critical access hospital outpatient payment system, and the rural health center payment system. The Department of Health and Human Services (HHS) Secretary will create a modifier for providers to use to identify testing-related services when billing Medicare.

Further, small and large group health plans, individual market plans and Medicare Advantage plans will not be permitted to apply prior authorization requirements or any other utilization management requirements. The legislation is silent on how plans must reimburse providers with the exception of the Medicare program, which would be required to reimburse providers the full payment amount.

Temporary Increase in Federal Medical Assistance Percentages (FMAP) for Medicaid; Increased Allotments for Territories. The legislation authorizes a temporary increase in federal Medicaid funds to states and territories by increasing the FMAP percentage for each state and territory by 6.2%. The period for the increase begins in the calendar quarter of the emergency period and ends in the quarter when the emergency period ends. States are required to meet certain conditions to receive the FMAP increase, including:

- Maintaining eligibility requirements no more restrictive than the eligibility standards and methodologies in place as of Jan. 1, 2020;
- Maintaining premium amounts that do not exceed those in place as of Jan. 1, 2020; and
- Providing coverage without cost-sharing for COVID-19 testing and testing-related services during the emergency period.

The legislation provides coverage protections for individuals (both those currently enrolled as of the date of enactment, and those who enroll during the emergency) until the emergency period is lifted. Coverage during this period ends only if the individual

terminates coverage or is no longer a resident of the state. Eligibility reviews for income and other criteria do not apply during this emergency period.

The FMAP increase does not apply to some current categories receiving enhanced federal funds, such as the adult expansion populations.

In addition, the legislation makes additional adjustments to the slated increases in the Medicaid allotments for Puerto Rico, the Virgin Islands, Guam and American Samoa.

Medicaid Coverage for the Uninsured. The legislation creates a new, optional Medicaid eligibility category for uninsured individuals. Uninsured individuals — defined as not eligible for Medicaid and not enrolled in group, individual or public coverage — could be enrolled in Medicaid and receive COVID-19 testing services. This is limited to diagnostic services, and does not include treatment or preventive care. This coverage is eligible for a 100% FMAP, including administrative expenses provided the state can demonstrate administrative expenses were attributable to this population.

Funding for Testing and Related Services for the Uninsured. The legislation provides \$1 billion for the Public Health Social Services Emergency Fund to cover COVID-19 testing and related services provided to uninsured individuals. The bill defines an uninsured individual as one who is NOT enrolled in a federal health care program or a plan on the group or individual market.

Treatment of Personal Respiratory Protective Devices as Covered Countermeasures. The legislation includes language that would recognize personal respiratory protective devices as covered countermeasures in response to the declared COVID-19 public health emergency. Specifically, the bill authorizes the use of certain personal respiratory protective devices that are National Institute for Occupational Safety and Health approved, subject to an emergency use authorization issued by the HHS Secretary and used between Jan. 27, 2020 and Oct. 1, 2024 in response to the COVID-19 public health emergency.

Employer Leave Policies. The legislation modifies the Family and Medical Leave Act (FMLA) and creates a new paid sick leave policy. Both policies include some exemptions for health care providers and emergency responders. Federal law and existing regulations implementing the FMLA define health care providers to include physicians, certain classes of advance practice nurses, podiatrists, dentists, physical therapists and others. The regulations do not include many classes of nurses, as well as many other forms of frontline health care workers, such as custodial staff or facility management personnel. The legislation directs the Secretary of Labor to promulgate regulations within 15 days of the date of effectiveness to address, among other things, the definition of “health care provider.”

- **Emergency Family and Medical Leave Expansion Act.** The legislation amends the FMLA to require that employers with fewer than 500 employees provide paid family and medical leave during and related to COVID-19 public health emergencies. The legislation specifically identifies certain child care scenarios that would entitle an employee to this family and medical leave. Specifically,

employees can request such leave if their child's school or place of care has been closed, or the child care provider is unavailable, due to COVID-19.

Employers may first require the employee take 10 days of unpaid leave, which the employee may substitute with any accrued vacation, personal, or medical or sick leave. Thereafter, the employee can take up to 10 weeks of paid leave. Paid leave under this law means that the employer must pay the employee at not less than two-thirds of the employee's regular rate of pay, but no more than \$200 daily or \$10,000 in total.

The legislation includes several provisions regarding which employees may receive such benefits. Specifically, employers are only required to provide such leave for employees who have worked for the employer for at least 30 calendar days. In addition, employers may exclude from paid family and medical leave health care providers and emergency responders.

These provisions are temporary and effective through Dec. 31, 2020.

- **Emergency Paid Sick Leave Act.** The legislation requires employers to provide paid sick leave for employees in certain scenarios specifically related to COVID-19, including that the employee themselves may be awaiting testing or in treatment or quarantine for COVID-19, the employee is caring for someone in a similar scenario, or he or she is caring for a child who, as a result of COVID-19, is not in school or regular child care. Employers must make available 80 hours of paid sick leave for full-time workers, and the legislation provides a formula for determining the amount of paid leave that employers must make available to part-time workers. This leave must be available to employees immediately and is not subject to use of other leave first or dependent on amount of time in employment. Employers may exclude from such benefits health care providers and emergency responders.

FURTHER QUESTIONS

If you have questions, please contact AHA at 800-424-4301.