

April 4, 2020

Hello Friends,

Since my earlier messages ([here](#) and [here](#)), the COVID 19 pandemic in Alabama has progressed, more active in our metropolitan areas but growing every region. Your Council and I have been monitoring the issues most urgent for practicing internists and internal medicine subspecialists. I appreciate the input from those of you who have been in touch with us. Here is what we understand to be important to you and your patients:

- **Tighter restrictions on social distancing and work.** On March 27, Governor Ivey and state health officer, Dr. Scott Harris, ordered only essential work and no gatherings of over ten people, followed April 3 by a “Shelter in Place” order, with a list of exceptions: governor.alabama.gov/assets/2020/04/Final-Statewide-Order-4.3.2020.pdf
- On behalf of the Council and Chapter, I have sent a letter to the Governor (**attached**) thanking her for her decisions and urging careful surveillance and tighter restrictions as necessary to blunt escalation in any county or community.
- **Limiting entrance to the state from “hot spot” areas of the outbreak.** Other states are doing this through interstate check-points, and the Council and I urged the Governor to enact a policy.
- **Finding a solution to the Nursing Home “refugee” problem.** Physicians around the state are struggling with nursing home patients being refused readmission after being sent to ER’s or after hospitalization – even for problems not related to COVID. It is a complex problem. On one hand, preventing a Nursing Home outbreak is essential. On the other, demonstrating lack of disease can be done more rapidly and less wastefully. We need hospital beds for the expected April surge in COVID patients. The ER scenario is concerning because of the sudden demand on a patient and family. As the licensing agency, public health has a major role. On behalf of the Council and Chapter, I have sent a letter to our state health officer, urging collaboration with the nursing home community, but using his legal authority if necessary (**attached**).
- **Inadequate supplies of Personal Protective Equipment.** In Alabama, it appears some areas are facing worse problems than others. Masks of all kinds are being manufactured in great numbers nationally and here in Alabama, but reserves remain low. Reuse of surgical and N-95 masks is now accepted by CDC and other authorities, recognizing this is not ideal. When reusing a mask, it is essential to handle it carefully, not touching the front of the mask and placing it in a secure container (often a bag of some sort). Disinfection of masks by heat, convection, UV, or other means is controversial and without solid evidence. However, some expert opinion supports it. The University of Nebraska has extensive experience dating from Ebola and other infections, and they have extensive related information: (www.nebraskamed.com/for-providers/covid19).
- **Physician rights to use PPE.** There have been incidents around the country in which even though institutional PPE was scarce or unavailable, physicians were prohibited from bringing their own PPE. ACP and others have advocated for this right to self-protection. Details are in the ACP links below.
- **Community donations of available PPE.** This was mentioned in earlier messages, but it bears repeating. If you are interested in how to do this in your community, contact your local health department office as a potential coordinator and repository. If you have further questions, we can connect you to successful programs. The Medical Association is sponsoring a day of donations, with a date to be set soon.

- **Financial Distress in physician practices.** At my request, our chapter member Dr. Rick deShazo MACP (emeritus chair of Medicine of the University of Mississippi) searched extensively the literature and resources available for practice support. These include conventional loans, the Small Business Administration, and the Paycheck Protection Program in the federal CARES Act. His summary is a wealth of concentrated, useful information which may be critical for your practice (**attached**). Information also is available on www.acponline.org
- **Visa relief for International Medical Graduates matched to U.S. residency positions.** ACP has advocated for this and there appears to be a solution. 4222 IMG graduates matched into U.S. residencies for July 1 had their visas suspended because of COVID-related travel restrictions. On March 26, the State Department lifted those suspensions, thus avoiding a loss of these new residents for our workforce.
- **Retired physicians wishing to volunteer or resume practice to help in the crisis.** In Birmingham, UAB issued an invitation through the county medical society to interested retired physicians, and the result was enthusiastic. The Alabama BME confirms that physicians retired in the past two years may resume their license (www.albme.org). Physicians should consult their previous medical liability carrier about terms of any tail policy, though ProAssurance has graciously waived any such restrictions.
- **ACP RESOURCES.** These are extensive and were updated April 1. Start with www.acponline.org ACP is making any COVID-related resources fully available to members or non-members during the crisis. Encourage your non-member friends to make use of ACP resources at their best. COVID 19 information, PPE, practice management, and telemedicine pages all are rich resources.

Please stay in touch with each other, your Council members, and me through email, AL ACP on [Facebook](#) and [Twitter](#), or by phone. We need to hear from you! **You are essential in this fight, which together we will win.** Let us know any way ACP can help!

Bill
William Curry, MD MACP
Governor



April 3, 2020

The Honorable Kay Ivey
Governor, State of Alabama
600 Dexter Avenue
Montgomery, Alabama 36130

RE: Urgent COVID 19 precautions

Dear Governor Ivey:

On behalf of our members, I want to thank you for your resolute decision to allow only essential business activity across our state, followed by your April 3 order to Shelter in Place except for essential activities, in order to reduce the spread of COVID 19 infection. This required political courage and resourcefulness to balance the health of the public and the well-being of the economy.

As I write, Alabama has 1,597 confirmed COVID 19 cases and 43 reported deaths. Reports of new cases continue to emerge rapidly in counties which already have a high burden of the disease, less rapidly in more remote counties where testing remains scarce. Given the differences in our counties – both in disease burden and resources for detecting and managing it – we realize that monitoring the outbreak and making responsible decisions about public safety is a great challenge. We support your efforts to do this, along with those of our State Health Officer Dr. Harris and the members of your Task Force.

Based on our own experience so far in Alabama and in states with an earlier onset of infections, it is likely that there will be a surge in cases over the next several weeks. This likely will occur not only in larger metropolitan areas but also in smaller communities. With this likelihood in mind, our Council recommends you strongly consider adopting the following two additional precautions:

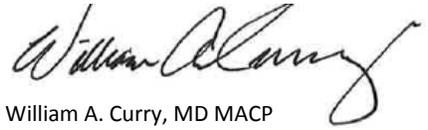
- 1. Establish an evidence-based protocol for further stepwise restrictions by community or county.** Progression of the pandemic is likely to occur at different times in communities, depending on their current level of infection and effectiveness of existing restrictions. Your Shelter in Place order of April 3 is a critical step in the right direction. US and Alabama experiences show that for increased social distancing to be most effective, it must be implemented before the virus is widespread in a community. There may be other steps that need to be taken, and we urge you to collaborate closely with Dr. Harris and other experts in public health and infectious disease about the need for removing exemptions in the Shelter order as the outbreak progresses.
- 2. Establish interstate check-points to prevent spread from areas of known high levels of infection.** This prohibition could be limited to known “hot spots” or to any out of state travel, based on your assessment of risk.

We are fortunate to have your leadership and that of your staff. We also are blessed as a state to have the resources of our state health department and the outstanding members of your Coronavirus Task Force. The Alabama Chapter of the American College of Physicians is an organization of internal

medicine specialists and subspecialists with 1741 members. Internists are on the front lines of this pandemic, in hospital, ICU, and medical office settings. Our Chapter members are available at any time to assist you and agencies of state government in this extraordinary challenge.

Thank you again for your leadership, your commitment to the people of Alabama, and your consideration of these proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Curry". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

William A. Curry, MD MACP
Governor, Alabama Chapter



April 3, 2020

Scott Harris MD FACP
State Health Officer
Alabama Department of Public Health
200 Monroe Street, Suite 1552
Montgomery, Alabama 36104

RE: COVID and Nursing Home transfers

Dear Dr. Harris:

On behalf of the Alabama Chapter of the American College of Physicians, I want to thank you for your hard work and perseverance in the face of the COVID 19 pandemic as it has progressed in our state.

We are hearing from members and other physicians of confusing and medically disruptive experiences involving patients sent from nursing homes to emergency departments and hospitals. We realize this is a very complex matter, and we would like to add our perspective in the hope that there can be a solution that meets the needs of patient safety and effective use of scarce health care resources.

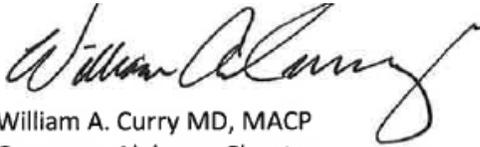
We acknowledge the appropriate desire of nursing home administrations to prevent spread of COVID 19 in their facilities. Given the experience in Washington state and elsewhere, the susceptibility and vulnerability of this population are clear. We also recognize the challenges of staffing, expertise, PPE, and other resources in our nursing homes. Our members are prominent among nursing home medical directors and attending physicians, so we are sympathetic to the threats and the difficulties nursing homes face in addressing them.

However, in the fast-changing environment of this pandemic, there appears to be a mounting number of patients unable to return to appropriate SNF care from hospitals, awaiting both time and multiple COVID tests, regardless of whether the patient has COVID or is a Patient Under Investigation for it. This is placing a demand on acute care hospital beds at exactly the time we anticipate a surge in demand in the next few weeks.

In addition, there have been reports of patients sent to emergency departments for evaluation who then are not able to return to the SNF from which they came, even if the problem is not COVID-related. This is disruptive and distressing to families, who then must make immediate arrangements for their family member, even those requiring complicated SNF care. The difficulties and risks to patient safety and quality care are obvious.

We propose the development of protocols in collaboration with the nursing home community that address specific categories of problems, addressing the challenges described above. In some settings it may be necessary to cluster COVID-positive patients in an appropriate, available facility. A consensus solution would be ideal. Lacking that, we call on you to act under your authority to assure that care for these vulnerable patients is safe and effective. As you know, the Alabama Chapter of the American College of Physicians has 1741 members including internal medicine specialists and subspecialists. We support your efforts to achieve this end, and we stand ready to provide any assistance that might be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Curry". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

William A. Curry MD, MACP
Governor, Alabama Chapter

**A SUMMARY OF RECENT COVID-RELATED LEGISLATION
OF PARTICULAR INTEREST TO ALABAMA PHYSICIANS**

This information for Physicians was developed by Hart Health Strategies and is provided courtesy of the American College of Allergy, Asthma and Immunology. Baker Donelson provided a second piece on SBA loans. Before acting on specific matters reviewed in this information, please contact your financial manager, banker or attorney as this is offered for informational purposes only.

Items Below

Summary of HR 748

Resources for Small Business (See Baker Donelson Below)

Small Business Paycheck Protection

Telehealth Payments

A Summary of Federal COVID Relief Programs

A Summary Sheet IN SBA Loans from the Baker-Donaldson Website

Summary of the CARES Act (Also Known As H.R. 748)

- There are many **tax provisions** for individual, joint and corporate filers in this bill to allow for increased deductions and delayed payments. **Talk to your accountant!**
 1. Certain **payroll taxes** deferred through 2020, will not become due until the end of 2021 (50%) and 2022 (50%).
 2. Any business that does not have a loan forgiven under the new Small Business Administration (SBA) Paycheck Protection Program (see below) is eligible for the payroll tax deferral.
- **A \$100 billion fund**, run through the Public Health and Social Services

Emergency Fund, will cover **non-reimbursable expenses attributed to COVID-19.**

1. Designed to be immediately responsive to needs. The Department of Health and Human Services (HHS) will release funds to healthcare entities on a rolling basis as qualified applications are received. *The HHS Secretary still needs to release guidance on the application process.*
 2. Non-reimbursable expenses include PPE or foregone revenue from cancelled procedures, such as skin tests, spirometry, etc.
- Specific details about the **7(a) SBA Paycheck Protection Program** can be found below.
 1. \$500 billion, 100% federally guaranteed loans to employers who maintain their payroll during this emergency, maximum \$10 million – loans forgiven if payroll maintained.
 2. Apply to an SBA-approved lender for a **loan up to 250% of average monthly payroll costs** (from 2/15/19 to 6/30/19) to cover eight weeks of payroll, benefits, and other expenses like rent, mortgage, and utilities.
 3. Loan **can be forgiven** based on maintaining employee and salary levels.
 - Amount forgiven is reduced in proportion to number of employees retained, if any wages are reduced by more than 25%.
 - This reduction will not apply if you rehire employees previously laid off or resume prior wages by June 30, 2020.
 - For any portion of the loan not forgiven, payback terms include maximum term of 10 years and maximum interest rate of 4%.
 - Available through June 30, 2020.
 - There is an **employee retention tax credit** for businesses that are not eligible or choose not to participate in the SBA Paycheck Protection Program.
 1. Any business forced to fully or partially suspend operations, or that has seen a significant drop in revenues are eligible for 50% credit for wages paid to furloughed or reduced-hour employees.
 2. For businesses with 100 employees or less, credit is based on all wages paid, regardless of whether the employee is furloughed.
 3. Can be claimed against the business quarterly payroll tax liability and is fully refundable to the extent of excess. Check [IRS.gov](https://www.irs.gov) and talk to

your payroll service provider.

- **\$17 billion for immediate relief to small businesses with non-disaster SBA loans.** SBA will cover all loan payments for six months.
- **SBA Economic Injury Emergency Grant Program:** Emergency advance of up to \$10,000 to small businesses and private non-profits within three days of applying for an SBA Economic Injury Disaster Loan (which was discussed in a previous message). Ask for it when you apply for the loan – does not need to be repaid.
- **Medicare** patients can fill up to 90 days of **medications** if prescribed.
- **Unemployment Insurance**
 1. An additional \$600 added to every check between now and July 31. Expands insurance to individuals who are not traditionally covered, including self-insured, and independent contractors. Contact your state unemployment office.
 2. Eligible for an additional 13 weeks of benefits if you have already exhausted your benefits.
 3. There are incentives for states to waive the waiting week.
- **Emergency Leave Provisions Changed**
 1. With respect to the paid sick and family leave discussed in our last message, as provided by the Family Coronavirus Recovery Act, the CARES Act made some changes, including allowing the Secretary of Labor to exempt employers with fewer than 50 employees from the requirement to provide paid leave for childcare due to closures of schools and daycare. Additionally, employers of healthcare providers have the authority to unilaterally exclude their employees from all of the paid sick leave and family leave requirements.
- **Higher Education**
 1. \$13.9 billion Higher Education Emergency Relief Fund to support students and colleges/universities. Most will go to public institutions.
 2. Federal student loan borrowers do not need to make payments through September 30, 2020, and interest does not accrue.
- **Child Care**
 1. States can use their funding through the Child Care and Development Block Grant to provide childcare assistance to **healthcare sector employees**.

.....
.....

The logo for the U.S. Department of Health and Human Services (HHS), consisting of the letters 'HHS' in a large, blue, serif font.The logo for Hart Health Strategies Inc., consisting of the company name in a grey, serif font, separated from the HHS logo by a vertical line.

Resources for Small Businesses during the COVID-19 Pandemic

The U.S. Small Business Administration (SBA) was created in 1953 “to aid, counsel, assist and protect the interests of small business concerns, to preserve free competitive enterprise and to maintain and strengthen the overall economy” of the United States. SBA has set up a [Small Business Guidance & Loan Resources](#) webpage with resources to assist small businesses during the COVID-19 pandemic.

Economic Injury Disaster Loan Program

On Friday, March 13, 2020, President Donald Trump declared COVID-19 a national emergency. The declaration allows the SBA to make available Economic Injury Disaster Loans. The SBA will work directly with state governors to provide targeted, low-interest loans to small businesses and non-profits that have been severely impacted by COVID-19. The SBA’s Economic Injury Disaster Loan program provides small businesses with working capital loans of up to \$2 million to help respond to the temporary loss of revenue they are experiencing.

Upon a request received from a state’s or territory’s governor, SBA will issue under its own authority, as provided by the *Coronavirus Preparedness and Response Supplemental Appropriations Act* (PL 116-123), an Economic Injury Disaster Loan declaration. Any such Economic Injury Disaster Loan assistance declaration issued by the SBA makes loans available to small businesses and private, non-profit organizations in designated areas of a state or territory to help alleviate economic injury caused by COVID-19. SBA’s Office of Disaster Assistance will coordinate with the state’s or territory’s governor to submit the request for Economic Injury Disaster Loan assistance.¹ Once a declaration is made for designated areas within a state, the information on the application process for Economic Injury Disaster Loan assistance will be made available to all affected communities as well as updated on SBA’s [website](#).

These loans may be used to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster’s impact. The interest rate is 3.75 percent for eligible small businesses. The interest rate for non- profits is 2.75 percent. SBA offers loans with long-term repayments in order to

keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower's ability to repay.

For additional information, contact the SBA disaster assistance customer service center at 1-800-659-2955 or e-mail disastercustomerservice@sba.gov. Applicants are encouraged to [apply online](#) for a disaster loan.

SBA Products and Resources

The SBA has 68 District Offices, as well as support provided by its Resource Partners, such as SCORE offices, Women's Business Centers, Small Business Development Centers and Veterans Business Outreach Centers. The SBA's [Local Assistance Directory](#) can be used to locate offices.

¹ On March 17, the SBA [announced](#) updated criteria for states or territories seeking an economic injury declaration related to COVID-19 to ease the qualification process and expand availability of disaster assistance loans statewide.

.....

The logo for the Department of Health and Human Services (HHS), consisting of the letters "HHS" in a large, blue, serif font.The logo for Hart Health Strategies Inc., featuring the company name in a dark grey, serif font, separated from the HHS logo by a vertical line.

Small Business Paycheck Protection Program

Overview of Changes to Section 7(a) Loan Program

Please find below a summary of the Paycheck Protection Program, which was a key provision for small business included in H.R. 748, the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*. This is a preliminary analysis of key provisions and should be reviewed with caution, given that the underlying legislative language may be subject to some unintended drafting errors. Therefore, the forthcoming required guidance or regulations from the Small Business Administration (SBA) should be relied upon and any examples should be reviewed with caution.

Paycheck Protection Program

The *CARES Act* establishes a "Paycheck Protection Program" in Section 1102. The goal of this program is to enable employers to carry their payroll and other operating costs through this crisis. To accomplish the goal of fast disbursement of funds to struggling businesses, the bill plugs into an existing loan program created by section 7(a) of the Small Business Act, administered by the [Small Business](#)

Administration. However, the bill makes significant changes to that program to ensure the needs of businesses can be met quickly during this unprecedented time. Logistical details are as follows.

Timeframe

“Covered period” begins on February 15, 2020 and ends on June 30, 2020. The loans are unavailable after June 30, 2020.

Amount

The legislation establishes a cap of \$10 million per loan or 250% of the average monthly payroll, whichever is less.

Eligibility

Employers with up to 500 employees (full-time or part-time) will be eligible. For employers with more than one physical location, the 500-employee limit applies per location. Subject to certain documentation requirements, individuals who are self-employed, independent contractors, or sole proprietors are eligible. Nonprofits are eligible as well, but only 501(c)(3) nonprofits.

Payroll Costs Defined

“Payroll costs” are broadly defined, as including: a salary, wage, commission, or similar compensation, cash tips, leave payment, dismissal or separation allowance, payments for an employer’s group health benefits (including premiums), payment for retirement benefits, or payment of State or local tax assess on employee compensation.

For a sole proprietor or independent contractor: payment that is a wage, commission, income, net earnings from self-employment, or similar compensation, with a cap of \$100,000 in one year (pro-rated for the covered period).

Disclaimer: The information included in this document is included only for informational purposes and is only interpretation made based

on available information that is subject to change. The information should not be construed as legal or tax advice, nor does Hart Health

Strategies Inc. provide legal or tax advice in any context. Any action taken related to these matters should only be done in conjunction

with the appropriate legal and/or other professional advice.

Payroll costs specifically exclude: compensation of an individual above \$100,000 annually (pro-rated for the covered period), taxes imposed or withheld under IRC Chapters 21, 22, or 24, any compensation of an employee with a principal place of residence outside the U.S., and any sick or family leave for which a credit is allowed under the Families First Coronavirus Response Act.

Allowable Uses

During the covered period, the recipient may use the loan for:

- Payroll costs (see above)
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Interest on any mortgage obligation (but not any principal payment)
- Rent
- Utilities
- Interest on any other debt obligations incurred before the covered period

Process

An eligible recipient shall make a good faith certification that the uncertainty of current economic conditions makes the loan necessary to support ongoing operations. The recipient must further certify that funds will be used to maintain payroll, make mortgage, lease, and utility payments. Finally, the recipient must certify that it does not have any duplicative applications. Fees are waived and the usual requirement that a small business cannot get credit elsewhere does not apply. The usual personal guarantee requirement is waived, and no collateral will be required. A covered loan can have interest up to 4%. Prepayment penalties are prohibited.

Deferment

Lenders are required to provide complete payment deferment relief for “impacted borrowers” for a minimum of six months and no more than a year. This includes interest and fees. Impacted borrowers are presumed to have been impacted adversely by COVID-19, and all recipients are presumed to be “impacted borrowers.”

Authorization

For the period February 15, 2020 until June 30, 2020, the amount authorized for commitments for general business loans under Small Business Act Section 7(a) is \$349 billion. Separately, the legislation provided the actual appropriations of \$349 billion for the program.

Loan Forgiveness

In section 1106, the bill creates “loan forgiveness” for loans described above (taken out pursuant to the new Payroll Protection Program). A recipient is eligible for forgiveness of indebtedness on a covered loan in amount equal to the sum of the costs incurred and payments made for one of the allowable uses, outlined above. Here, for purposes of loan forgiveness, a “covered period” is the eight-week period starting on the date of loan origination.

Amounts forgiven shall be considered “canceled indebtedness” by a lender authorized by Section 7(a). Within 90 days after the date on which the amount of forgiveness is determined, the SBA shall remit to the lender the amount of forgiveness, with any interest accrued through the date of payment.

The amount of forgiveness is reduced based on a formula for business owners who have laid off employees or reduced wages, as follows:

Prepared by Hart Health Strategies Inc., 3/27/2020 Page 2

- **Lay-offs:** The forgiveness amount is offset by the percentage reduction in total number of FTEs. It seems that the intent of the legislation is that, if an employer has 100 employees and lays off 25, their forgiveness should be offset by an equivalent percentage. However, the legislative language is unclear here.
 - Example: A firm reduces the total amount of FTEs by 25%. As such, the total amount of the loan forgiveness is reduced by 25%.
- **Wage reductions:** The forgiveness amount is offset for each salary reduction of more than 25% (for employees making under \$100K annually). The total salary reduction amount would be subtracted from the forgiveness amount.
 - Example: A firm reduces the salary of a salaried employee who makes \$90,000 per year to \$60,000 per year, which is more than 25% of the annualized salary (i.e., more than \$67,500). Therefore, the loan forgiveness should be reduced by \$7,500.

However, there is an exemption for rehires or increasing the salary of an employee. The reduction in employees or the reduction in total salary is disregarded in any of the following circumstances:

- With respect to the reduction in employees, there was a reduction in employees during the period of February 15 and ending on the date that is 30 days after enactment, as compared to February 15. But, not later than June 30, 2020, the employer has eliminated the reduction in the number of full-time equivalent employees.
- With respect to the reduction in salary for certain employees, between February 15 and ending on the date that is 30 days after enactment, there is a reduction in the salary or wages of one or more employees, as compared to February 15. But, not later than June 30, 2020, the employer has eliminated the reduction in the salary to be less than, or equal to, a 25% reduction.
- Both of the above.

To obtain loan forgiveness, the recipient must submit an application to the lender. The bill specifically prohibits forgiveness without this documentation. The lender must make a decision within 60 days, and the application is to include:

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings.
- Documentation, including canceled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments.
- A certification that the documentation presented is true and correct and that the amount for which forgiveness is re-requested was used for allowable uses, and
- Any other documentation the Administrator determines necessary.

Timeline For Forgiveness

Within 60 days after a lender receives an application for loan forgiveness, the lender must issue a decision. Within 90 days after the date on which the amount of forgiveness is determined, the SBA shall remit that forgiveness amount, with interest, to the lender.

Implementation Timing

The SBA must issue guidance and regulations on the loan forgiveness aspect within 30 days of enactment.

.....

HHS

**Hart Health
Strategies Inc.**

Telehealth Payments in the Response to the COVID-19 Pandemic

Overview

Telehealth is a critical tool in the response to the COVID-19 pandemic. This document details steps taken to expand the availability of telehealth services.

Federal Response

Congressional Medicare activity. The [Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020](#) (Public Law No: 116-123) included a provision related to telehealth for the Medicare population. Section 6010 of the [Family First Coronavirus First Response Act](#) (H.R. 6201) made a technical change to the Medicare telehealth provision of the [Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020](#) (P.L. 116-123) to ensure that new Medicare beneficiaries are able to access telehealth services under the emergency authority granted to the Secretary. The [Coronavirus Aid, Relief, and Economic Security Act \(CARES\)](#) (H.R. 748) includes additional changes to further expand the availability and use of telehealth services.

Related Medicare Administrative activity. On March 17, CMS provided new information regarding the implementation of this new waiver authority, including a [press release](#), [fact sheet](#) and updated [FAQ](#). This waiver authority is separate and distinct from the section 1135 waiver authority. The key takeaways from the announcement are as follows:

Effective for services starting March 6, 2020 and for the duration of the COVID-19 Public Health Emergency, Medicare will make payment for Medicare telehealth services furnished by physicians and other qualified professionals to beneficiaries in all areas of the country in all settings. This includes any healthcare facility and the patient's home.

These visits are considered the same as in-person visits and are paid at the same rate as regular, in-person visits.

The Medicare coinsurance and deductible would generally apply to these services. However, the HHS Office of Inspector General (OIG) is providing flexibility for healthcare providers to reduce or waive cost-sharing for telehealth visits paid by federal healthcare programs (see additional information below).

To the extent the 1135 waiver requires an established relationship, HHS will not conduct audits to ensure that such a prior relationship existed for claims submitted during this public health emergency.

CMS further reiterated the telehealth waivers in several updates to an [MLN Matters Special Edition Article](#), which provides additional detail on telehealth waivers. For a list of covered services payable under the Medicare Physician Fee Schedule, visit [here](#).

In addition, the Office of Inspector General (OIG) published its opinion that during the emergency period “[a] physician or other practitioner reduces or waives cost-sharing obligations (i.e., coinsurance and deductibles) that a beneficiary may owe for telehealth services furnished consistent with the then-applicable coverage and payment

rules.” The opinion further states that this does “not require physicians or other practitioners to reduce or waive any cost-sharing obligations Federal health care program beneficiaries may owe for telehealth services.” For more information, visit the OIG fact sheet [here](#). On March 24, OIG issued a [FAQ](#) on this topic.

Previously, on March 13, Secretary Azar [waived](#) certain requirements, retroactive nationwide as of March 6, related to HIPAA privacy. Specifically, the announcement states the following:

Pursuant to Section 1135(b)(7) of the Act, I hereby waive sanctions and penalties arising from noncompliance with the following provisions of the HIPAA privacy regulations: (a) the requirements to obtain a patient's agreement to speak with family members or friends or to honor a patient's request to opt out of the facility directory (as set forth in 45 C.F.R. § 164.510); (b) the requirement to distribute a notice of privacy practices (as set forth in 45 C.F.R. § 164.520); and (c) the patient's right to request privacy restrictions or confidential communications (as set forth in 45 C.F.R. § 164.522); but in each case, only with respect to hospitals in the designated geographic area that have hospital disaster protocols in operation during the time the waiver is in effect.

On March 17, the Office of Civil Rights ([OCR](#)) announced enforcement discretion for certain widely used communications. Specifically, the OCR press release states “effective immediately, that it will exercise its enforcement discretion and will waive potential penalties for HIPAA violations against health care providers that serve patients through everyday communications technologies during the COVID-19 nationwide public health emergency. This exercise of discretion applies to widely available communications apps, such as FaceTime or Skype, when used in good faith for any telehealth treatment or diagnostic purpose, regardless of whether the telehealth service is directly related to COVID-19. For more information, see the [statement](#) and [Bulletin](#).

On March 20, [OCR](#) further announced enforcement discretion regarding HIPAA security, privacy, and breach requirements, while clarifying that this discretion does not apply to the confidentiality of substance use disorder records, given the Substance Abuse and Mental Health Services Administration ([SAMHSA](#)) has announced separate enforcement discretion regarding those rules. OCR continues to discourage the use of certain “public facing” platforms such as Facebook Live, Twitch, and TikTok. For additional OCR FAQs, visit [here](#).

Also on March 20, the Drug Enforcement Agency ([DEA](#)) issued a press release noting that DEA-registered practitioners may use telehealth during the public health emergency, provided that:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system.
- The practitioner is acting in accordance with applicable Federal and State law.

On March 22, CMS issued a [FAQ](#) regarding provider enrollment, including flexibilities to ease certain enrollment requirements under the national emergency. As part of that FAQ, CMS provided information on a toll-free hotline that could be used by physician and non-physician practitioners to initiate temporary Medicare billing privileges. CMS clarified (per question 11) that a provider can practice from home but noted that practitioners are required to update their Medicare enrollment with the home location. On March 23, CMS issued updated [FAQs](#), which clarified (under the first question under physician services), that telehealth could be provided by a practitioner in his or her home.

On March 24, OCR [announced](#) the issuance of [guidance](#) on how covered entities may disclose protected health information (PHI) about an individual who has been infected with or exposed to COVID-19 to law enforcement,

paramedics, other first responders, and public health authorities in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule.

On March 26, CMS issued a [memorandum](#) and [FAQs](#) announcing enforcement discretion for CLIA laboratories to ensure that pathologists may review and report pathology data, results, and slides remotely if certain conditions are met.

In response to the Medicare changes, the American Medical Association (AMA) shared the [Quick Guide to Telemedicine in Practice](#), a new resource to help mobilize remote care with implementation tips, as well as a reference to Current Procedural Terminology (CPT®) codes for reporting telemedicine and remote care services. The AMA also offers an education module in the AMA's [STEPS Forward™](#) that can help physicians [use telemedicine in practice](#), and the [Digital Health Implementation Playbook](#) with a 12-steps process for adopting remote monitoring of patients outside the traditional clinical environment. AMA also released [special coding advice](#) related to coding of various scenarios related to care for COVID-19 for physicians and other professionals, some of which address telehealth.

[Application to hospice care.](#) Section 3706 of CARES directly address a key hospice concern by allowing the requirement under section 1814(a)(7)(D)(i) for a face-to-face encounter for 180-day hospice recertification to be performed via telehealth as part of the pandemic response. In light of these changes, CMS will likely revise its previous FAQs on the topic.

[Application to FQHCs and RHCs.](#) Section 3704 of CARES allows federally-qualified health centers (FQHCs) and rural health clinics (RHCs) to furnish telehealth services to Medicare beneficiaries and details payment implications.

VA and Telehealth

To bypass state licensure, the Veterans Administration (VA) issued a [final rule](#) *“that ensures that VA health care providers can offer the same level of care to all beneficiaries, irrespective of the State or location in a State of the VA health care provider or the beneficiary”* and *“achieves important Federal interests by increasing the availability of mental health, specialty, and general clinical care for all beneficiaries.”*

FDA Guidance

On March 20, the Food and Drug Administration (FDA) issued a [final](#) guidance document that allows manufacturers of certain FDA-cleared non-invasive, vital sign-measuring devices to expand their use so that health care providers can use them to monitor patients remotely. The devices include those that measure body temperature, respiratory rate, heart rate and blood pressure.

HRSA Resources

Section 3212 of the CARES Act reauthorizes HRSA grant programs that promote the use of telehealth technologies for health care delivery, education, and health information services.

Actions Related to the Private Market

Section 3701 of the CARES Act clarifies that high deductible health plans (HDHPs) could opt to waive deductibles for telehealth services and still be considered a HDHP (i.e., be within a safe harbor).

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 3

On March 24, CMS issued [FAQs](#) addressing the availability and usage of telehealth services through private health insurance coverage, encouraging issuers to promote the use of telehealth services and encouraging states to support issuers' efforts. CMS specifically urged states to consider whether state licensing laws could be relaxed. CMS also noted its plan to exercise enforcement discretion with respect to changes in plan benefits during the year to provide or expand coverage for telehealth services and encouraged states to take a similar enforcement approach. CMS also noted enforcement discretion to allow catastrophic plans to provide pre-deductible coverage for telehealth services, even if the services are not related to COVID-19 and encouraged states to take a similar approach.

State Response

For a list of current state laws as well as legislation and regulation related to telehealth policies, visit the Center for Connected Health Policy [website](#). On March 17, the American Telehealth Association provided a [summary](#) of state activities.

State Licensing and Interstate "Compacts"

Given challenges with clinicians providing care across state lines, the Federation of State Medical Board (FSMB) established the [Interstate Medical License Compact Commission \(IMLCC\)](#). According to IMLCC, "[t]he Interstate Medical Licensure Compact offers a new, voluntary expedited pathway to licensure for qualified physicians who wish to practice in multiple states." At this time, 29 states, the District of Columbia and the Territory of Guam, have agreed to the compact. Additional information about FSMB and telemedicine policy is available [here](#).

According to the Center for Connected Health Policy of the National Telehealth Policy Resource Center report, [State Telehealth Laws & Reimbursement Policies](#), issued in late 2019, "[n]ine state medical (or osteopathic) boards issue special licenses or certificates related to telehealth. The licenses could allow an out-of-state provider to render services via telemedicine in a state where they are not located, or allow a clinician to provide services via telehealth in a state if certain conditions are met (such as agreeing that they will not open an office in that state)."

In addition to the IMLC, there are additional compacts for nurses, physical therapists and psychologists.

- The [Nurses Licensure Compact](#) (34 state members)
- The [Physical Therapy Compact](#) (26 members)
- The [Psychology Interjurisdictional Compact](#) (12 members)

Emergency Management Assistance Compact. Some have suggested that the use of the Emergency Management Assistance Compact, an agreement among the states and U.S. territories allowing sharing of resources during emergencies, would be a good tool to eliminate telehealth licensure barriers. The EMAC includes a provision for someone licensed in one state to be licensed in another facing an emergency when the compact is invoked. According to

Bloomberg, Trina Sheets, executive director of the National Emergency Management Association, which administers the compact, said the compact has not been used in the past to provide telehealth services but would make a good vehicle for that purpose.

State Flexibility. The President [declared](#) an emergency under the [Stafford Act](#) on March 13. As a result of that declaration and the prior public health emergency declaration, CMS has additional waiver authority under section [1812\(f\)](#) and [section 1135](#). States can gain new authority to use their Medicaid programs to respond to the coronavirus pandemic under the national emergency President Donald Trump declared Friday. For instance, States may be able to expand the use of telehealth services in their Medicaid programs to combat the coronavirus

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 4

outbreak. On March 17, CMS issued additional Medicaid telehealth [guidance](#) and while also highlighting their main [website](#) for telehealth in Medicaid. Per the [FAQs](#), “[n]o federal approval is needed for state Medicaid programs to reimburse providers for telehealth services in the same manner or at the same rate that states pay for face-to-face services.”

State Activity. The list of CMS-approved section 1135 waivers is available [here](#). This list does not necessarily include all telehealth waivers, as noted below.

A Federation of State Medical Boards (FSMB) chart detailing updates to State licensure requirements/renewals in response to COVID-19 is available [here](#).

Key Limitations & Additional Considerations

Key Limitations. Despite these recent activities, key gaps remain.

Medicaid. As noted above, CMS has provided flexibility for automatic approval for certain State telehealth waivers. For a list of approved waivers, which do not necessarily include all of the telehealth waivers, visit [here](#).

Private payers (especially ERISA covered plans). While CMS Administrator Seem Verma has made it clear that the Administration is urging private payers to make similar modifications, so far, there has not been a broad announcement to that effect. While some states are moving forward to address the topic at the state level, state activities cannot address ERISA-covered plans.

Coding concerns. Given that this is the first time in which widespread telehealth services would be available, there have been some concerns that the current telehealth codes (for both Medicare and other payers) are not quite comprehensive enough to address all of the needed situations.

Telephone only. Several of the current Medicare codes require audio and visual capabilities. Given that many elderly individuals may not have access to such resources, providers are requesting the ability to perform certain tasks via telephone only. The CARES Act allows for waiver of all telehealth provisions under section 1834(m) of the Social Security Act, offering the Secretary the authority to permit use of telephone only when furnishing telehealth services.

Additional Considerations. As providers take steps to implement new telehealth provisions, legal experts suggest that providers should take into account key issues with respect to security (including specific platforms), medical credentials, and recording of those visits. Changes in health care as the coronavirus pandemic progresses may force regulators to adjust barriers around telehealth.

Medical licensing, credentials, and out of network issues. While Secretary Azar was able to waive certain licensure requirements to allow for Medicare and Medicaid payments to providers who do not have a license within that State, the waiver does not extend to non-Federal programs.¹ As such, some states require physicians

¹ Recent CMS [FAQs](#) state the following: **Can Medicare fee-for-service rules regarding physician State licensure be waived in an emergency?** The HHS Secretary has authorized 1135 waivers that allow CMS to waive, on an individual basis, the Medicare requirement that a physician or non-physician practitioner must be licensed in the State in which s/he is practicing. However, the 1135 waiver is not available unless all of the following four conditions are met: 1) the physician or non-physician practitioner must be enrolled as such in the Medicare program, 2) the physician or non-physician practitioner must possess a valid license to practice in the State which relates to his or her Medicare enrollment, 3) the physician or non-physician practitioner is furnishing services – whether in person or via telehealth – in a State in which the emergency is occurring in order to contribute to relief efforts in his or her professional capacity, and 4) the physician

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 5

to have a medical license in the same state that their patient is located in order to provide virtual healthcare. And, especially with respect to controlled substances, States may have additional requirements for e-prescribing those products. Further, even if the State opts to waive the licensure requirements, it may still have additional requirements regarding credentialing. Finally, even if an out-of-state provider is able to address the licensure and credentialing issues, the provider will likely be considered out-of-network by private payers.

Adequate notes. To ensure proper compliance in the event of an audit, clinicians should ensure that provider notes are adequate and consider the use of audiovisual recording to provide the necessary data to support coding and billing.

Legislative Text. As described above, the text of Public Law No: 116-123, showing changes made by sec. 6010 of H.R. 6201 and section 3703 of H.R. 748, follows:

SEC. 101. SHORT TITLE.

This division may be cited as the “Telehealth Services During Certain Emergency Periods Act of 2020”.

SEC. 102. SECRETARIAL AUTHORITY TO TEMPORARILY WAIVE OR MODIFY APPLICATION OF CERTAIN MEDICARE REQUIREMENTS WITH RESPECT TO TELEHEALTH SERVICES FURNISHED DURING CERTAIN EMERGENCY PERIODS.

-

(a) In General.--

(1) Waiver authority.--The first sentence of section 1135(b) of the Social Security Act (42 U.S.C. 1320b-5(b)) is amended-

(A) in paragraph (6), by striking "and" at the end;

(B) in paragraph (7), by striking the period at the end and inserting "; and"; and (C) by inserting after paragraph (7) the following new paragraph:

"(8) in the case of a telehealth service (as defined in paragraph (4)(F) of section 1834(m)) furnished in any emergency area (or portion of such an area) during any portion of any emergency period, **the requirements of section 1834(m)**, to an individual by a qualified provider (as defined in subsection (g)(3))--

"(A) the requirements of paragraph (4)(C) of such section, except that a facility fee under paragraph (2)(B)(i) of such section may only be paid to an originating site that is a site described in any of subclauses (I) through (IX) of paragraph (4)(C)(ii) of such section; and

"(B) the restriction on use of a telephone described in the second sentence of section 410.78(a)(3) of title 42, Code of Federal Regulations (or a successor regulation), but only if such telephone has audio and video capabilities that are used for two-way, real-time interactive communication."

(2) Definition of qualified provider.--Section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) is amended by adding at the end the following new paragraph:

"(3) Qualified provider.--The term 'qualified provider' means, with respect a telehealth service (as defined in paragraph (4)(F) of section 1834(m)) furnished to an individual, a physician or practitioner (as defined in paragraph (4)(D) or (4)(E), respectively, of such section) who--

"(A) furnished to such individual an item or service for which payment was made under title XVIII during the 3-year period ending on the date such telehealth service was furnished **furnished to such individual, during the 3-year period ending on the date such telehealth service was furnished, an item or service that would be considered covered under title XVIII if furnished to an individual entitled to benefits or enrolled under such title; or**

"(B) is in the same practice (as determined by tax identification number) of a physician or practitioner (as so defined) who furnished such an item or service to such individual during such period."

or non-physician practitioner is not affirmatively excluded from practice in the State or any other State that is part of the 1135 emergency area. In addition to the statutory limitations that apply to 1135-based licensure waivers, an 1135 waiver, when granted by CMS, does not have the effect of waiving State or local licensure requirements or any requirement specified by the State or a local government as a condition for waiving its licensure requirements. Those requirements would continue to apply unless waived by the State. Therefore, in order for the physician or non-physician practitioner to avail him- or herself of the 1135 waiver under the conditions described above, the State also would have to waive its licensure requirements, either individually or categorically, for the type of practice for which the physician or non-physician practitioner is licensed in his or her home State. (emphasis added)

Disclaimer: The information included in this document is included only for informational purposes and is only interpretation made based

on available information that is subject to change. The information should not be construed as legal or tax advice, nor does Hart Health

Strategies Inc. provide legal or tax advice in any context. Any action taken related to these matters should only be done in conjunction

with the appropriate legal and/or other professional advice.

Payroll costs specifically exclude: compensation of an individual above \$100,000 annually (pro-rated for the covered period), taxes imposed or withheld under IRC Chapters 21, 22, or 24, any compensation of an employee with a principal place of residence outside the U.S., and any sick or family leave for which a credit is allowed under the Families First Coronavirus Response Act.

Allowable Uses

During the covered period, the recipient may use the loan for:

- Payroll costs (see above)
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Interest on any mortgage obligation (but not any principal payment)
- Rent
- Utilities
- Interest on any other debt obligations incurred before the covered period

Process

An eligible recipient shall make a good faith certification that the uncertainty of current economic conditions makes the loan necessary to support ongoing operations. The recipient must further certify that funds will be used to maintain payroll, make mortgage, lease, and utility payments. Finally, the recipient must certify that it does not have any duplicative applications. Fees are waived and the usual requirement that a small business cannot get credit elsewhere does not apply. The usual personal guarantee requirement is waived, and no collateral will be required. A covered loan can have interest up to 4%. Prepayment penalties are prohibited.

Deferment

Lenders are required to provide complete payment deferment relief for “impacted borrowers” for a minimum of six months and no more than a year. This includes interest and fees. Impacted borrowers are presumed to have been impacted adversely by COVID-19, and all recipients are presumed to be “impacted borrowers.”

Authorization

For the period February 15, 2020 until June 30, 2020, the amount authorized for commitments for general business loans under Small Business Act Section 7(a) is \$349 billion. Separately, the legislation provided the actual appropriations of \$349 billion for the program.

Loan Forgiveness

In section 1106, the bill creates “loan forgiveness” for loans described above (taken out pursuant to the new Payroll Protection Program). A recipient is eligible for forgiveness of indebtedness on a covered loan in amount equal to the sum of the costs incurred and payments made for one of the allowable uses, outlined above. Here, for purposes of loan forgiveness, a “covered period” is the eight-week period starting on the date of loan origination.

Amounts forgiven shall be considered “canceled indebtedness” by a lender authorized by Section 7(a). Within 90 days after the date on which the amount of forgiveness is determined, the SBA shall remit to the lender the amount of forgiveness, with any interest accrued through the date of payment.

The amount of forgiveness is reduced based on a formula for business owners who have laid off employees or reduced wages, as follows:

Prepared by Hart Health Strategies Inc., 3/27/2020 Page 2

- **Lay-offs:** The forgiveness amount is offset by the percentage reduction in total number of FTEs. It seems that the intent of the legislation is that, if an employer has 100 employees and lays off 25, their forgiveness should be offset by an equivalent percentage. However, the legislative language is unclear here.
 - Example: A firm reduces the total amount of FTEs by 25%. As such, the total amount of the loan forgiveness is reduced by 25%.
- **Wage reductions:** The forgiveness amount is offset for each salary reduction of more than 25% (for employees making under \$100K annually). The total salary reduction amount would be subtracted from the forgiveness amount.

○ Example: A firm reduces the salary of a salaried employee who makes \$90,000 per year to \$60,000 per year, which is more than 25% of the annualized salary (i.e., more than \$67,500). Therefore, the loan forgiveness should be reduced by \$7,500.

However, there is an exemption for rehires or increasing the salary of an employee. The reduction in employees or the reduction in total salary is disregarded in any of the following circumstances:

- With respect to the reduction in employees, there was a reduction in employees during the period of February 15 and ending on the date that is 30 days after enactment, as compared to February 15. But, not later than June 30, 2020, the employer has eliminated the reduction in the number of full-time equivalent employees.
- With respect to the reduction in salary for certain employees, between February 15 and ending on the date that is 30 days after enactment, there is a reduction in the salary or wages of one or more employees, as compared to February 15. But, not later than June 30, 2020, the employer has eliminated the reduction in the salary to be less than, or equal to, a 25% reduction.
- Both of the above.

To obtain loan forgiveness, the recipient must submit an application to the lender. The bill specifically prohibits forgiveness without this documentation. The lender must make a decision within 60 days, and the application is to include:

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings.
- Documentation, including canceled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments.
- A certification that the documentation presented is true and correct and that the amount for which forgiveness is re-requested was used for allowable uses, and
- Any other documentation the Administrator determines necessary.

Timeline For Forgiveness

Within 60 days after a lender receives an application for loan forgiveness, the lender must issue a decision. Within 90 days after the date on which the amount of forgiveness is determined, the SBA shall remit that forgiveness amount, with interest, to the lender.

Implementation Timing

The SBA must issue guidance and regulations on the loan forgiveness aspect within 30 days of enactment.



Hart Health
Strategies Inc.

Federal Relief to Address the COVID-19 Pandemic

To help keep you apprised of the various Federal relief packages to address the COVID-19 pandemic, please find below key information regarding the status, summary of key provisions, and other relevant information, in reverse chronological order.

Coronavirus IV – Infrastructure

Status: in development

Discussions on a “phase four” bill have already started in a general way, according to Sen. Richard Shelby (R-Ala.). The focus of this legislation would be on major infrastructure to boost the economy in the long run.

House Speaker Pelosi has expressed support for a broader economic stimulus plan, and stated that the next House response to the virus will expand refundable tax credits for the self-employed and access to longer term leave, increase the scope of allowable uses of family and medical leave, and ensure paid leave for first responders and health workers. The next piece of House legislation is expected to follow regular order and give committees the opportunity to provide input. Work on the bill will proceed even while the House remains in recess.

Coronavirus III.5 – Major Disaster

Status: major disaster declared

On March 20, President Trump declared a major disaster for the State of [New York](#). Other states with such a designation include: [California](#), [Florida](#), [Iowa](#), [Louisiana](#), [New Jersey](#), [North Carolina](#), [Texas](#), and [Washington](#) state. Previously, the President noted that he had been considering declaring the pandemic a “major disaster,”¹ which would add additional levels of Federal assistance.

Coronavirus III – Economic Aid

Status: passed

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](#).

¹ See March 13 [letter](#) which states: “In addition, after careful consideration, I believe that the disaster is of such severity and magnitude nationwide that requests for a declaration of a major disaster as set forth in section 401(a) of the Stafford Act may be appropriate.”

The package included an additional \$45.8 billion of funding that the Office of Management and Budget (OMB) requested to help address the pandemic.

Coronavirus II.5 – Defense Production Act

Status: invoked

On March 18, the President invoked the [Defense Production Act \(DPA\)](#), which allows the federal government to compel companies through loans, loan guarantees, purchases and purchase commitments to prioritize and expedite the manufacture of medical supplies that are in short supply. The President delegated the key authority for implementing the DPA to Secretary Azar. Shortly thereafter, Secretary Azar issued a [press release](#). For more information on the DPA, visit [here](#) (CRS report) and [here](#) (FEMA fact sheet). Separately, General Motors Co. Chief Executive Officer Mary Barra offered to manufacture hospital ventilators in auto factories closed because of the coronavirus outbreak, according to top White House economic adviser Larry Kudlow. On March 24, [press reports](#) indicated that, according to FEMA Director Gaynor, the authority was being used to help secure 60,000 test kits and 500 million PPE masks. Subsequent [reports](#) indicated that the Administration opted not to utilize the authority, given that companies were willing to comply voluntarily. The phase III proposal included \$1 B to implement the DPA.

Coronavirus II – Testing and Paid Leave

Status: signed into law

The House passed [H.R. 6201](#), the *Families First Coronavirus Act*, in the early hours of March 14. The large-scale economic relief plan aims to support Americans in combatting the spread of the coronavirus through the expansion of paid leave, food assistance, and unemployment assistance and through increased federal Medicaid funding. Speaker Pelosi and Secretary Mnuchin worked to negotiate the House-passed legislation, which was backed by President Trump. The bill would increase federal medical assistance percentages (FMAP) for state Medicaid programs by 6.2 percentage points. Medicaid funding for U.S. territories would also be increased. The bill includes a prohibition against cost sharing and prior authorization for certain coronavirus testing and related services, such as provider visits for testing. It

also appropriates \$1 billion for the National Disaster Medical System to reimburse costs associated with testing the uninsured. The bill would add personal respiratory protective devices as a covered countermeasure under the Public Readiness and Emergency Preparedness Act and allow HHS to provide liability protections for certain emergency response products.

The chamber later passed “technical corrections” to the emergency aid bill which scale back “qualifying need” for Family and Medical Leave Act (FMLA) leave to circumstances in which an employee cannot work or telework because a child’s school, day care, or childcare is unavailable. The original version of the bill would have required employers to provide employees with 12 weeks of partially paid FMLA leave for quarantine, to care for a family member, or to care for a child. The Senate passed the bill unamended in the afternoon of March 18, by a vote of 90-8. The President signed the bill later that evening.

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 2

Coronavirus I.5 – Emergency Declarations

Status: emergency declared

On Friday, March 13, 2020, President Donald Trump [declared](#) a national emergency with respect to the COVID-19 pandemic. By declaring the emergency, billions of dollars in the Disaster Relief Fund and additional resources from the Federal Emergency Management Agency (FEMA) and other parts of the government are now available. The declaration also makes more federal funds available along with supplies, personnel, and other support. The emergency order confers new broad authorities to HHS Secretary Alex Azar. Azar has [waived](#) certain laws and regulations to give doctors and hospitals maximum flexibility to test and respond to the virus. In addition, as part of the emergency declaration, the Small Business Administration is now able to offer Economic Injury Disaster loans – up to \$ 2 million – for small businesses impacted by the virus. Previously, on January 31, 2020, U.S. Department of Health and Human Services (HHS) Secretary Alex Azar [determined](#) that a public health emergency existed because of confirmed cases of the coronavirus disease (COVID-19) under the authority granted by section 319 of the Public Health Service Act (PHSA). The nationwide determination took effect January 27, 2020.

Coronavirus I – Emergency Appropriations

Status: signed into law

President Trump signed into law a \$7.8 billion emergency spending bill ([H.R. 6074](#)) (P.L. 116-123) to combat the coronavirus outbreak on March 6. The bipartisan *Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020* also allows the Medicare program to spend \$500 million on telehealth programs used in response to the virus. The legislation includes \$6.5 billion for the U.S. Department of Health and Human Services (HHS), \$1.25 billion for the State Department and the U.S. Agency for International Development (USAID), and \$20 million for the Small Business Administration (SBA). The bill provides:

- \$3.1 billion for the Public Health and Social Services Emergency Fund to be used to develop and purchase vaccines and medical supplies;
- \$300 million in contingency funds to purchase vaccines if necessary;

- \$100 million for community health centers;
- \$2.2 billion to the CDC, including \$950 million for state and local preparedness grants, \$300 million for

global disease detection and response, and \$300 million for the Infectious Disease Rapid Response

Reserve Fund;

- \$836 million for the NIH;
- \$10 million for worker-based training and health worker protection;
- \$435 million for international public health programs, including \$200 million for the U.S. Emergency

Reserve Fund; and

- \$300 million for humanitarian and health assistance in areas affected by the virus.

The bill will also allow HHS to regulate the commercial price of a coronavirus vaccine. It was advanced by the House of Representatives by a vote of 415-2 and was passed by the Senate by a vote of 96-1. Reps. Ken Buck (R- Colo.) and Andy Biggs (R-Ariz.) and Senator Rand Paul voted no.

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 3

Pages 4, 5 and 6 have been deleted for space considerations but are available at the HHS website in an updated form if desired.

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 6

(3) Implementation.--The Secretary of Health and Human Services may implement the amendments made by this subsection by program instruction or otherwise.

(b) Clarification of Definitions of Emergency Area and Emergency Period.--Paragraph (1) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) is amended to read as follows:

“(1) Emergency area; emergency period.--

“(A) In general.--Subject to subparagraph (B), an ‘emergency area’ is a geographical area in which, and an ‘emergency

period’ is the period during which, there exists--

“(i) an emergency or disaster declared by the President pursuant to the National Emergencies Act or the Robert T.

Stafford Disaster Relief and Emergency Assistance Act; and

“(ii) a public health emergency declared by the Secretary pursuant to section 319 of the Public Health

Service Act.

“(B) Exception.--For purposes of subsection (b)(8), an ‘emergency area’ is a geographical area in which, and an ‘emergency period’ is the period during which, there exists--

‘(i) the public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act on January 31, 2020, entitled ‘Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus’; and

“(ii) any renewal of such declaration pursuant to such section 319.”.

1834(m) reads as follows:

(m) PAYMENT FOR TELEHEALTH SERVICES.—

(1) IN GENERAL.—The Secretary shall pay for telehealth services that are furnished via a telecommunications system by a physician (as defined in section 1861(r)) or a practitioner (described in section 1842(b)(18)(C)) to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner providing the telehealth service is not at the same location as the beneficiary. For purposes of the preceding sentence, in the case of any Federal telemedicine demonstration program conducted in Alaska or Hawaii, the term “telecommunications system” includes store-and-forward technologies that provide for the asynchronous transmission of health care information in single or multimedia formats.

(2) PAYMENT AMOUNT.—

(A) DISTANT SITE.—The Secretary shall pay to a physician or practitioner located at a distant site that furnishes a telehealth service to an eligible telehealth individual an amount equal to the amount that such physician or practitioner would have been paid under this title had such service been furnished without the use of a telecommunications system.

(B) FACILITY FEE FOR ORIGINATING SITE.—

(i) IN GENERAL.—Subject to clause (ii) and paragraph (6)(C), with respect to a telehealth service, subject to section 1833(a)(1)(U), there shall be paid to the originating site a facility fee equal to—

(I) for the period beginning on October 1, 2001, and ending on December 31, 2001, and for 2002, \$20; and

(II) for a subsequent year, the facility fee specified in subclause (I) or this subclause for the preceding year increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) for such subsequent year.

(ii) NO FACILITY FEE IF ORIGINATING SITE IS THE HOME.—No facility fee shall be paid under this subparagraph to an originating site described in paragraph (4)(C)(ii)(X).

(C) TELEPRESENTER NOT REQUIRED.—Nothing in this subsection shall be construed as requiring an eligible telehealth individual to be presented by a physician or practitioner at the originating site for the furnishing of a service via a telecommunications system, unless it is medically necessary (as determined by the physician or practitioner at the distant site).

(3) LIMITATION ON BENEFICIARY CHARGES.—

(A) PHYSICIAN AND PRACTITIONER.—The provisions of section 1848(g) and subparagraphs (A) and (B) of section 1842(b)(18) shall apply to a physician or practitioner receiving payment under this subsection in the same manner as they apply to physicians or practitioners under such sections.

(B) ORIGINATING SITE.—The provisions of section 1842(b)(18) shall apply to originating sites receiving a facility fee in the same manner as they apply to practitioners under such section.

(4) DEFINITIONS.—For purposes of this subsection:

(A) DISTANT SITE.—The term “distant site” means the site at which the physician or practitioner is located at the time the service is provided via a telecommunications system.

(B) ELIGIBLE TELEHEALTH INDIVIDUAL.—The term “eligible telehealth individual” means an individual enrolled under this part who receives a telehealth service furnished at an originating site.

(C) ORIGINATING SITE.—

(i) IN GENERAL.—Except as provided in paragraphs (5), (6), and (7), the term “originating site” means only those sites described in clause (ii) at which the eligible telehealth individual is located at the time the service is furnished via a telecommunications system and only if such site is located—

(I) in an area that is designated as a rural health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A));

(II) in a county that is not included in a Metropolitan Statistical Area; or

(III) from an entity that participates in a Federal telemedicine demonstration project that has been approved by (or receives funding from) the Secretary of Health and Human Services as of December 31, 2000.

(ii) SITES DESCRIBED.—The sites referred to in clause (i) are the following sites:

(I) The office of a physician or practitioner. (II) A critical access hospital (as defined in section 1861(mm)(1)).

(III) A rural health clinic (as defined in section 1861(aa)(2)).

(IV) A Federally qualified health center (as defined in section 1861(aa)(4)).

(V) A hospital (as defined in section 1861(e)). (VI) A hospital-based or critical access hospital-based renal dialysis center (including satellites).

(VII) A skilled nursing facility (as defined in section 1819(a)).

(VIII) A community mental health center (as defined in section 1861(ff)(3)(B)).

(IX) A renal dialysis facility, but only for purposes of section 1881(b)(3)(B).

(X) The home of an individual, but only for purposes of section 1881(b)(3)(B) or telehealth services described in paragraph (7).

(D) PHYSICIAN.—The term “physician” has the meaning given that term in section 1861(r).

(E) PRACTITIONER.—The term “practitioner” has the meaning given that term in section 1842(b)(18)(C).

(F) TELEHEALTH SERVICE.—

(i) IN GENERAL.—The term “telehealth service” means professional consultations, office visits, and office psychiatry services (identified as of July 1, 2000, by HCPCS codes 99241–99275, 99201–99215, 90804–90809, and 90862 (and as subsequently modified by the Secretary)), and any additional service specified by the Secretary.

(ii) YEARLY UPDATE.—The Secretary shall establish a process that provides, on an annual basis, for the addition or deletion of services (and HCPCS codes), as appropriate, to those specified in clause (i) for authorized payment under paragraph (1).

(5) TREATMENT OF HOME DIALYSIS MONTHLY ESRD-RELATED VISIT.—The geographic requirements described in paragraph (4)(C)(i) shall not apply with respect to telehealth services furnished on or after January 1, 2019, for purposes of section 1881(b)(3)(B), at an originating site described in subclause (VI), (IX), or (X) of paragraph (4)(C)(ii).

(6) TREATMENT OF STROKE TELEHEALTH SERVICES.—

(A) NON-APPLICATION OF ORIGINATING SITE REQUIREMENTS.—The requirements described in paragraph (4)(C) shall not apply with respect to telehealth services furnished on or after January 1, 2019, for purposes of diagnosis, evaluation, or treatment of symptoms of an acute stroke, as determined by the Secretary.

(B) INCLUSION OF CERTAIN SITES.—With respect to telehealth services described in subparagraph (A), the term “originating site” shall include any hospital (as defined in section 1861(e)) or critical access hospital (as defined in section 1861(mm)(1)), any mobile stroke unit (as defined by the Secretary), or any other site determined appropriate by the Secretary, at which the eligible telehealth individual is located at the time the service is furnished via a telecommunications system.

(C) NO ORIGINATING SITE FACILITY FEE FOR NEW SITES.—No facility fee shall be paid under paragraph (2)(B) to an originating site with respect to a telehealth service described in subparagraph (A) if the originating site does not otherwise meet the requirements for an originating site under paragraph (4)(C).

(7) TREATMENT OF SUBSTANCE USE DISORDER SERVICES FURNISHED THROUGH TELEHEALTH.—The geographic requirements described in paragraph (4)(C)(i) shall not apply with respect to telehealth services furnished on or after July 1, 2019, to an eligible telehealth individual with a substance use disorder diagnosis for purposes of treatment of such disorder or co-occurring mental health disorder, as determined by the Secretary, at an originating site described in paragraph (4)(C)(ii) (other than an originating site described in subclause (IX) of such paragraph).

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 8

SEC. 3706. USE OF TELEHEALTH TO CONDUCT FACE-TO FACE ENCOUNTER PRIOR TO RECERTIFICATION OF ELIGIBILITY FOR HOSPICE CARE DURING EMERGENCY PERIOD.

Section 1814(a)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395f(a)(7)(D)(i)) is amended—

(1) by striking “a hospice” and inserting “(I) subject to subclause (II), a hospice”; and

(2) by inserting after subclause (I), as added by paragraph (1), the following new subclause:

“(II) during the emergency period described in section 1135(g)(1)(B), a hospice physician or nurse practitioner may

conduct a face-to-face encounter required under this clause via telehealth, as determined appropriate by the Secretary; and”.

The amendment would change current law as shown below (proposed new text added in red):

(7) in the case of hospice care provided an individual— (A)(i) in the first 90-day period—

(I) the individual’s attending physician (as defined in section 1395x(dd)(3)(B) of this title) (which for purposes of this subparagraph does not include a nurse practitioner), and

(II) the medical director (or physician member of the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program providing (or arranging for) the care, each certify in writing at the beginning of the period, that the individual is terminally ill (as defined in section 1395x(dd)(3)(A) of this title) based on the physician’s or medical director’s clinical judgment regarding the normal course of the individual’s illness, and (ii) in a subsequent 90- or 60-day period, the medical director or physician described in clause (i)(II) recertifies at the

beginning of the period that the individual is terminally ill based on such clinical judgment;

(B) a written plan for providing hospice care with respect to such individual has been established (before such care is provided by, or under arrangements made by, that hospice program) and is periodically reviewed by the individual’s attending physician and by the medical director (and the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program;

(C) such care is being or was provided pursuant to such plan of care; and

(D) on and after January 1, 2011—

(i) **(I) subject to subclause (II)**, a hospice physician or nurse practitioner has a face-to-face encounter with

the individual to determine continued eligibility of the individual for hospice care prior to the 180th-day recertification and each subsequent recertification under subparagraph (A)(ii) and attests that such visit took place (in accordance with procedures established by the Secretary);

(II) during the emergency period described in section 1135(g)(1)(B), a hospice physician or nurse practitioner may conduct a face-to-face encounter required under this clause via telehealth, as determined appropriate by the Secretary; and

(ii) in the case of hospice care provided an individual for more than 180 days by a hospice program for which

the number of such cases for such program comprises more than a percent (specified by the Secretary) of the total number of such cases for all programs under this subchapter, the hospice care provided to such individual is medically reviewed (in accordance with procedures established by the Secretary);

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 9

Access to Capital

The SBA-developed [Lender Match](#) is a free online referral tool that connects small businesses with participating SBA-approved lenders within 48 hours.

[7\(a\) program](#) is an all-inclusive loan program deployed by lending partners for eligible small businesses within the U.S. States and its territories. Currently, to be eligible for the loan, entities must be for-profit entities.² 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.

[Express](#) loan program provides loans up to \$350,000 for no more than seven years with an option to revolve. There is a turnaround time of 36 hours for approval or denial of a completed application. The uses of proceeds are the same as the standard 7(a) loan.

[Community Advantage](#) loan pilot program allows mission-based lenders to assist small businesses in underserved markets with a maximum loan size of \$250,000. The uses of proceeds are the same as the standard 7(a) loan.

[504](#) loan program is designed to foster economic development and job creation and/or retention. The eligible use of proceeds is limited to the acquisition or eligible refinance of fixed assets.

[Microloan](#) program involves making loans through nonprofit lending organizations to underserved markets. Authorized use of loan proceeds includes working capital, supplies, machinery & equipment, and fixtures (does not include real estate). The maximum loan amount is \$50,000 with the average loan size of \$14,000.

Legislative Response – Coronavirus Packages

Phase I Package

The *Coronavirus Preparedness and Response Supplemental Appropriations Act* provided \$1 billion in loan subsidies to be made available to SBA to help small businesses impacted by financial losses as a result of the coronavirus outbreak. This enables SBA to provide an estimated \$7 billion in loans to such entities. The bill also included \$20 million to SBA to administer these loans.

Phase II Package

The *Families First Coronavirus Response Act* (H.R. 6201) included a refundable payroll tax credit to reimburse businesses for sick leave and family and medical leave wages paid to employees affected by COVID-19. For businesses that otherwise may not be able to afford the employee costs associated with COVID-19-related paid leave, the Treasury Department has stated that it will use its regulatory authority to advance funds to employers concerned about cash flow.

The bill requires employers to provide notice of eligibility for paid sick leave and family and medical leave to its employees. The Department of Labor will create a model notification within seven days following enactment of the bill.

²The CARES Act, which passed the Senate on March 25, expanded the eligibility for the program. See below in Phase III for more information.

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 2

Phase III Package

The Senate passed a third legislative response package on March 25, 2020 to further assist the economy in responding to the pandemic.

Paid Leave Program Modifications

The Senate bill modified the paid leave requirements of the Phase II package to allow recently laid off workers to receive family leave benefits if they are rehired. The Office of Management and Budget (OMB) is also authorized to exclude federal government employers from the paid leave requirements.

7(a) loan program. Key changes to the 7(a) loan program include:

- Clarifying that the eligibility would be with 500 employees or less, unless the covered industry's SBA size standard allows more than 500 employees,
- Allowing non-profit entities to gain access to the program while clarifying that non-profit organizations that receive Medicaid funding are not eligible,
- 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 medical leave,
employee salaries, mortgage payments, and any other debt obligations,
- Increasing the maximum loan amounts,
- Providing a process for loan forgiveness for certain business expenses.

Delay of payment of employer payroll taxes. Allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. All employers are responsible for paying a 6.2-percent Social Security tax on employee wages. The Social Security Trust Funds will be held harmless under this provision.

Loans for severely affected sectors. Provides guaranteed loans to companies with losses tied to the coronavirus pandemic that threaten their continued operation. 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.

Frequently Asked Questions (FAQ)

The House Ways and Means Republicans assembled the following FAQ related to the Phase II package, small business and the COVID-19 pandemic.

I'm worried my small business will have to close due to financial issues. Will there be more assistance?

Secretary Mnuchin [has made clear](#) immediate assistance is on the way. Moreover, H.R. 6047—the first Coronavirus bill— allowed \$1 billion in loan subsidies to be made available to help small businesses, small agricultural cooperatives, small aquaculture producers, and nonprofit organizations which have been impacted by financial losses as a result of the coronavirus outbreak. This funding could enable the Small Business Administration to provide an estimated \$7 billion in loans to these entities. In addition, provides \$20 million to administer these loans.

My small business can't afford to pay sick leave.

H.R. 6201—the second Coronavirus bill, as passed by the House — includes a refundable payroll tax credit to reimburse—dollar-for-dollar—local businesses for paid sick leave and family and medical leave wages paid to employees that are affected by COVID-19.

The leave is fully funded by the tax credit, but my small business will be interrupted by cash flow issues.

H.R. 6201 provides significant relief to businesses that otherwise may not be able to afford the employee costs associated with coronavirus-related paid leave. Treasury has broad regulatory authority to advance funds to employers to protect businesses concerned about cash flow. In a March 14th [press release](#), Treasury stated that “employers will be able to use cash deposited with the IRS to pay sick leave wages. Additionally, for businesses that would not have sufficient taxes to draw from, Treasury will use its regulatory authority to make advances to small businesses to cover such costs.”

The legislation exempts businesses with more than 500 employees from mandated paid leave while imposing the requirement on small- and medium-sized job creators.

The benefits under H.R. 6201 are not an expense for the business, rather it operates as a benefit to both the worker and the employer. The legislation will ensure that every dollar of leave that an employer is required to pay is reimbursed—dollar-for-dollar—by the federal government. It will allow workers to care for themselves and loved ones impacted by coronavirus. Additionally, the credit will help businesses to stay up and running. After all, workers who knowingly show up sick jeopardize the health of coworkers and business operations.

Nearly 90% of businesses with more than 500 employees offer paid sick leave to their full-time workers. To facilitate more universal coverage of paid sick leave, H.R. 6201 provides temporary federal coverage for paid sick and family leave to all employers with fewer than 500 employees.

Does the bill mandate an unaffordable extension of FMLA on my small business?

H.R. 6201 as passed by the House permits the Secretary of Labor to exempt businesses with fewer than 50 employees from the longer-term mandate where it creates significant hardship. Please see the attached chart for more information.

How do employees find out if they can receive sick leave?

H.R. 6201— the second Coronavirus bill, as passed the House— requires employers to provide notice of eligibility to employees. The Department of Labor is required to create model notification within 7 days after enactment of the bill.

How does the H.R. 6201 support states that are experiencing a spike in claim for unemployment benefits due to COVID-19 layoffs and business closings?

The bill immediately provides \$500 million in emergency administrative grants to increase state capacity to process unemployment applications and make payments. It also makes an additional \$500 million available to states that experience a 10% percent increase in unemployment to provide 100% federally funded benefits to provide extra weeks of benefits.

What flexibility is there for states to offer unemployment insurance now to individuals that have lost their job or are unable to work due to COVID-19 crisis?

The Department of Labor (DOL) has issued guidance that can be found [here](#), which explains flexibility states have to provide unemployment benefits when:

- An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;

by Hart Health Strategies Inc., 3/26/2020 Page 4

- An individual is quarantined with the expectation of returning to work after the quarantine is over; and
- An individual leaves employment due to a risk of exposure or infection or to care for a family member. To find out details on your state’s unemployment insurance program, visit DOL’s website [here](#).
Also, you can find a list of **state-specific FAQ’s about unemployment insurance** and COVID-19 [here](#).



- Key Tax Provisions of the CARES Act
- On March 25, 2020 the Senate passed the *Coronavirus Aid, Relief, and Economic Security Act (CARES Act)*. The legislation includes various tax provisions that are designed to stimulate the economy and provide relief to impacted individuals and businesses. Many individuals will receive tax rebate checks and will have the opportunity to take advantage of expanded deductions. Entities will also see expanded deductions, and many will be able to utilize new payroll tax credits. The following summary lists the individual, corporate, and payroll tax provisions of the legislation.
- **Individual Tax Provisions**

Topic	Prior Law	Current Law/Issued Guidance
Recovery Rebates	N/A	U.S. residents are eligible to receive a tax rebate of \$1,200 per taxpayer or \$2,400 for a couple that files a joint tax return. An additional rebate of up to \$500 is available for each child. The rebate phases out based on the taxpayer’s adjusted gross income as reported on the taxpayer’s most recently filed tax return. The phaseout range begins at \$75,000 for a single taxpayer (or \$150,000 for a joint filer) and phases out at a 5% rate.
Filing Due Dates	Tax returns and income tax payments for the	2019 tax returns and estimated tax

	<p>2019 tax year</p> <p>th were due by April 15, 2020. Estimated tax payments for</p> <p>th Q1 of the 2020 tax year were also due on April 15, 2020.</p>	<p>payments for Q1 2020 will</p> <p>th not be due until July 15, 2020. An extension request is not</p> <p>required to take advantage of the extended deadline.</p>
Early Withdrawal of Retirement Funds	<p>Early withdrawal from an Individual Retirement Account (IRA) prior to age 59 1/2 was subject to inclusion in gross income plus a 10 percent tax penalty.</p>	<p>Early withdrawals from an IRA for a “coronavirus-related distribution” are exempt from the 10 percent penalty on withdrawals of up to \$100,000. Gross income from the distribution may be spread over a three-year period, and amounts may be recontributed to the plan within a three-year period without exceeding the current year maximum contribution to a plan.</p>
Topic	Prior Law	Current Law/Issued Guidance
		<p>A “coronavirus-related distribution” is a distribution related to an individual’s diagnosis (or their spouse’s/dependents’ diagnosis) with COVID-19 or adverse financial consequences of being laid off or quarantined.</p>
Required Minimum Distributions from Retirement Plans	<p>Individuals who reach age 72 (70 1/2 if you reach 70 1/2 before January 1, 2020) are generally required to withdraw a minimum amount from a retirement plan and include distributions in gross income.</p>	<p>The minimum required distribution rules are temporarily suspended for the 2020 tax year.</p>
Charitable Contributions	<p>Individuals were only able to deduct charitable contributions if they itemized their deductions. The maximum allowable deduction for charitable contributions was limited to 50% of adjusted gross income.</p>	<p>Individuals will be able to deduct up to \$300 of charitable contributions in 2020 even if they do not itemize their deductions. The 50% of adjusted gross income limitation is temporarily suspended for the 2020 tax year.</p>
Excess Business Loss Limitation	<p>The 2017 Tax Cuts and Jobs Act limited the amount of business losses that were able to be deducted to \$250,000 for an individual or \$500,000 for a jointly filed tax return.</p>	<p>The excess business loss limitation is temporarily suspended.</p>
Business Interest Expense Limitation	<p>The 2017 Tax Cuts and Jobs Act limited the amount of business interest expense that was deductible to corporations, individuals, and pass-through entities. Business interest expense was only deductible up to 30% of Adjust Taxable Income (ATI). ATI is calculated as taxable income before any deduction or</p>	<p>The 30% of ATI limitation is increased to 50% of ATI for the 2019 and 2020 tax years.</p>

	income related to depreciation, amortization, interest expense or interest income.	
Immediate Expensing of Qualified Improvement Property	<p>The 2017 Tax Cuts and Jobs Act allowed for the immediate expensing of most property that was placed in service after September 27th, 2017. However, a drafting error in the Act removed “Qualified Improvement Property” from the list of property eligible for immediate expensing. Qualified Improvement Property generally consists of improvements that have been made to nonresidential real property. Absent a correction to the law, qualified improvement property had to be depreciated over a maximum of 39 years.</p>	<p>Qualified Improvement Property placed in service as of September 27th, 2017 is now eligible for immediate expensing.</p> <p>Individuals and entities can also amend prior tax returns to claim the additional deduction.</p>

- **Disclaimer:** The information included in this document is included only for informational purposes and is only interpretation made based on available information that is subject
- to change. The information should not be construed as legal or tax advice, nor does Hart Health Strategies, Inc. provide legal or tax advice in any context. Any action taken
- related to these matters should only be done in conjunction with the appropriate legal and/or other professional advice.

Topic	Prior Law	Current Law/Issued Guidance
Employer Payments of Student Loans	Employees who received student loan reimbursement (or payment on their behalf by their employer) had to include the amounts received or paid in gross income.	Employees may exclude up to \$5,250 of income in 2020 related to student loan reimbursement or payments made by an employer on behalf of the employee.

- **Payroll Tax Provisions**

Topic	Prior Law	Current Law/Issued Guidance
Employee Retention Credit	N/A	<p>A refundable credit is established against the employer portion of payroll taxes for employers that are financially impacted by COVID-19 in the last three quarters of 2020. The credit is calculated as 50% of wages paid to qualified employees, not to exceed \$10,000 per employee or the total employer payroll taxes paid for the period.</p> <p>For employers with more than 100 employees, the credit is allowed for wages</p>

		<p>paid during a government ordered shutdown of the business.</p> <p>For employers with less than 100 employees, the credit is allowed for wages paid during a government ordered shutdown of the business or during a quarter in which gross receipts declined by at least 50% when compared to the same quarter of the prior year.</p>
Delayed Payment of Employer Payroll Taxes	N/A	Employers and self-employed individuals are able to defer payment of the employer portion of payroll taxes that would have been due in 2020. One half the deferred amount must be paid by December 31, 2021, and the remaining half must be paid by December 31, 2022.

- **Disclaimer:** The information included in this document is included only for informational purposes and is only interpretation made based on available information that is subject
- to change. The information should not be construed as legal or tax advice, nor does Hart Health Strategies, Inc. provide legal or tax advice in any context. Any action taken
- related to these matters should only be done in conjunction with the appropriate legal and/or other professional advice.

- **Corporate Tax Provisions**

- Charitable The maximum deduction for charitable contributions was The taxable income limitation is increased from 10% to 25% for Contributions limited to 10% of taxable income. the 2020 tax year.

Topic	Prior Law	Current Law/Issued Guidance
Net Operating Losses		<p>The 2017 Tax Cuts and Jobs Act limited the use of Net Operating Losses (NOLs) that were generated after the 2017 tax year. NOLs could only be used to offset up to 80% of taxable income and could not be carried backwards to a previous year.</p> <p>NOLs that were/are generated in 2018, 2019, and 2020 can be carried backward for five years, which will allow businesses to amend prior tax returns to claim a refund. The 80% of taxable income limitation is also temporarily suspended.</p>
Alternative Minimum Tax (AMT) Credits		<p>The 2017 Tax Cuts and Jobs Act repealed corporate AMT. Excess AMT tax credits that existed before the enactment of Tax Cuts and Jobs Act were to be refunded to corporate taxpayers over a four-year period, ending in 2021.</p> <p>AMT credits that have not yet been refunded are able to be claimed in full before 2021.</p>
Business Interest Expense Limitation		<p>The 2017 Tax Cuts and Jobs Act limited the amount of business interest expense that was deductible to corporations, individuals, and pass-through entities. Business interest expense was only deductible up to 30% of Adjust Taxable Income (ATI). ATI is calculated as taxable income before any deduction or income related to depreciation, amortization, interest expense or interest income.</p> <p>The 30% of ATI limitation is increased to 50% of ATI for the 2019 and 2020 tax years.</p>
Immediate Expensing of		<p>The 2017 Tax Cuts and Jobs Act allowed for</p> <p>Qualified Improvement Property placed in</p>

<p>Qualified Improvement Property</p>	<p>the immediate expensing of most property that was placed in service after th September 27, 2017. However, a drafting error in the Act removed “Qualified Improvement Property” from the list of property eligible for immediate expensing. Qualified Improvement Property generally consists of improvements that have been made to nonresidential real property. Absent a correction to the law, qualified improvement property had to be depreciated over a maximum of 39 years.</p>	<p>service as of th September 27, 2017 is now eligible for immediate expensing. Individuals and entities can also amend prior tax returns to claim the additional deduction.</p>
---------------------------------------	--	---

- **Disclaimer:** The information included in this document is included only for informational purposes and is only interpretation made based on available information that is subject
- to change. The information should not be construed as legal or tax advice, nor does Hart Health Strategies, Inc. provide legal or tax advice in any context. Any action taken
- related to these matters should only be done in conjunction with the appropriate legal and/or other professional advice.



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 entities² 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 medical 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”

Disclaimer: The information included in this document is included only for informational purposes and is only interpretation made based on available information that is subject to change. The information should not be construed as legal or tax advice, nor does Hart Health Strategies Inc. provide legal or tax advice in any context. Any action taken related to these matters should only be done in conjunction with the appropriate legal and/or other professional advice.

- 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.

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 health 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)

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 3

- 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)

Prepared by Hart Health Strategies Inc., 3/26/2020 Page 4



Hart Health
Strategies Inc.

Federal Relief to Address the COVID-19 Pandemic

To help keep you apprised of the various Federal relief packages to address the COVID-19 pandemic, please find below key information regarding the status, summary of key provisions, and other relevant information, in reverse chronological order.

Coronavirus IV – Infrastructure

Status: in development

Discussions on a “phase four” bill have already started in a general way, according to Sen. Richard Shelby (R-Ala.). The focus of this legislation would be on major infrastructure to boost the economy in the long run.

House Speaker Pelosi has expressed support for a broader economic stimulus plan, and stated that the next House response to the virus will expand refundable tax credits for the self-employed and access to longer term leave, increase the scope of allowable uses of family and medical leave, and ensure paid leave for first responders and health workers. The next piece of House legislation is expected to follow regular order and give committees the opportunity to provide input. Work on the bill will proceed even while the House remains in recess.

Coronavirus III.5 – Major Disaster

Status: major disaster declared

On March 20, President Trump declared a major disaster for the State of [New York](#). Other states with such a designation include: [California](#), [Florida](#), [Iowa](#), [Louisiana](#), [New Jersey](#), [North Carolina](#), [Texas](#), and [Washington](#) state. Previously, the President noted that he had been considering declaring the pandemic a “major disaster,”¹ which would add additional levels of Federal assistance.

Coronavirus III – Economic Aid

Status: passed the Senate

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](#).

¹ See March 13 [letter](#) which states: “In addition, after careful consideration, I believe that the disaster is of such severity and magnitude nationwide that requests for a declaration of a major disaster as set forth section 40 of the Stafford Act.—The House leadership has advised members that they will convene at 9:00 a.m. on Friday, March 27, 2020 to consider the coronavirus package passed by the Senate.

The package included an additional \$45.8 billion of funding that the Office of Management and Budget (OMB) requested to help address the pandemic.

Coronavirus II.5 – Defense Production Act

Status: invoked

On March 18, the President invoked the [Defense Production Act \(DPA\)](#), which allows the federal government to compel companies through loans, loan guarantees, purchases and purchase commitments to prioritize and expedite the manufacture of medical supplies that are in short supply. The President delegated the key authority for implementing the DPA to Secretary Azar. Shortly thereafter, Secretary Azar issued a [press release](#). For more information on the DPA, visit [here](#) (CRS report) and [here](#) (FEMA fact sheet). Separately, General Motors Co. Chief Executive Officer Mary Barra offered to manufacture hospital ventilators in auto factories closed because of the coronavirus outbreak, according to top White House economic adviser Larry Kudlow. On March 24, [press reports](#) indicated that, according to FEMA Director Gaynor, the authority was being used to help secure 60,000 test kits and 500 million PPE masks. Subsequent [reports](#) indicated that the Administration opted not to utilize the authority, given that companies were willing to comply voluntarily. The phase III proposal included \$1 B to implement the DPA.

Coronavirus II – Testing and Paid Leave

Status: signed into law

The House passed [H.R. 6201](#), the *Families First Coronavirus Act*, in the early hours of March 14. The large-scale economic relief plan aims to support Americans in combatting the spread of the coronavirus through the expansion of paid leave, food assistance, and unemployment assistance and through increased federal Medicaid funding. Speaker Pelosi and Secretary Mnuchin worked to negotiate the House-passed legislation, which was backed by President Trump. The bill would increase federal medical assistance percentages (FMAP) for state Medicaid programs by 6.2 percentage points. Medicaid funding for U.S. territories would also be increased. The bill includes a prohibition against cost sharing and prior authorization for certain coronavirus testing and related services, such as provider visits for testing. It also appropriates \$1 billion for the National Disaster Medical System to reimburse costs associated with

testing the uninsured. The bill would add personal respiratory protective devices as a covered countermeasure under the Public Readiness and Emergency Preparedness Act and allow HHS to provide liability protections for certain emergency response products.

The chamber later passed “technical corrections” to the emergency aid bill which scale back “qualifying need” for Family and Medical Leave Act (FMLA) leave to circumstances in which an employee cannot work or telework because a child’s school, day care, or childcare is unavailable. The original version of the bill would have required employers to provide employees with 12 weeks of partially paid FMLA leave for quarantine, to care for a family member, or to care for a child. The Senate passed the bill unamended in the afternoon of March 18, by a vote of 90-8. The President signed the bill later that evening. Prepared by Hart Health Strategies Inc., 3/26/2020 Page 2

Coronavirus I.5 – Emergency Declarations

Status: emergency declared

On Friday, March 13, 2020, President Donald Trump [declared](#) a national emergency with respect to the COVID-19 pandemic. By declaring the emergency, billions of dollars in the Disaster Relief Fund and additional resources from the Federal Emergency Management Agency (FEMA) and other parts of the government are now available. The declaration also makes more federal funds available along with supplies, personnel, and other support. The emergency order confers new broad authorities to HHS Secretary Alex Azar. Azar has [waived](#) certain laws and regulations to give doctors and hospitals maximum flexibility to test and respond to the virus. In addition, as part of the emergency declaration, the Small Business Administration is now able to offer Economic Injury Disaster loans – up to \$ 2 million – for small businesses impacted by the virus. Previously, on January 31, 2020, U.S. Department of Health and Human Services (HHS) Secretary Alex Azar [determined](#) that a public health emergency existed because of confirmed cases of the coronavirus disease (COVID-19) under the authority granted by section 319 of the Public Health Service Act (PHSA). The nationwide determination took effect January 27, 2020.

Coronavirus I – Emergency Appropriations

Status: signed into law

President Trump signed into law a \$7.8 billion emergency spending bill ([H.R. 6074](#)) (P.L. 116-123) to combat the coronavirus outbreak on March 6. The bipartisan *Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020* also allows the Medicare program to spend \$500 million on telehealth programs used in response to the virus. The legislation includes \$6.5 billion for the U.S. Department of Health and Human Services (HHS), \$1.25 billion for the State Department and the U.S. Agency for International Development (USAID), and \$20 million for the Small Business Administration (SBA). The bill provides:

- \$3.1 billion for the Public Health and Social Services Emergency Fund to be used to develop and purchase vaccines and medical supplies;
- \$300 million in contingency funds to purchase vaccines if necessary;
- \$100 million for community health centers;

- \$2.2 billion to the CDC, including \$950 million for state and local preparedness grants, \$300 million for

global disease detection and response, and \$300 million for the Infectious Disease Rapid Response

Reserve Fund;

- \$836 million for the NIH;
- \$10 million for worker-based training and health worker protection;
- \$435 million for international public health programs, including \$200 million for the U.S. Emergency

Reserve Fund; and

- \$300 million for humanitarian and health assistance in areas affected by the virus.

The bill will also allow HHS to regulate the commercial price of a coronavirus vaccine. It was advanced by the House of Representatives by a vote of 415-2 and was passed by the Senate by a vote of 96-1. Reps. Ken Buck (R- Colo.) and Andy Biggs (R-Ariz.) as well as Sen. Rand Paul (R-Ky.) voted against the measure.

Further Information from Baker, Donaldson Website

PUBLICATIONS

CARES Act: Understanding SBA Loan Programs to Determine Eligibility and Best Fit for Your Company

March 27, 2020

SHARE

As a result of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) passed by the Senate on Wednesday March 25,

2020 and expected to be passed by the House of Representatives and signed into law by the President on March 27, 2020, multiple avenues of relief will be available to small businesses through programs administered by the Small Business Administration (SBA). Notably, the size limits for consideration as a "small business concern" have been changed, making many more entities eligible for assistance through programs administered by the SBA.

Because each business is different, every business should consider the various assistance programs available to determine which fit it best, including other programs and benefits available under the Family First Coronavirus Response Act and the CARES Act. In addition, some states may have their own loan, grant and incentive programs. Please check with your local Baker Donelson office for availability of these programs.

Economic Injury Disaster Loan Program

The CARES Act made several changes to the Economic Injury Disaster Loan (EIDL) Program under Section 7(b) of the Small Business Act and described in previously issued Alerts. Those alerts are available [here](#) and [here](#) . As modified by the CARES Act:

- EIDL Loans are available to small businesses in a declared disaster area (all 50 states, Puerto Rico, Guam and the North Mariana Islands have all been declared disaster areas for purposes of the EIDL Program effective January 31, 2020) to cover economic injury resulting from the disaster (e.g., loss of revenue).
- EIDL Loans are processed directly through the SBA, although the SBA may determine to enlist the assistance of lenders for the processing and making of loans.

- EIDL Loans are available in a maximum amount of \$2 million, carry an interest rate of 3.75 percent and have a maximum term of 30 years.
- Loans over \$200,000 must be guaranteed by any owner having a 20 percent or greater interest in the applicant (the CARES Act removed the requirement for personal guarantees on loans under \$200,000).
- The CARES Act also removed standard EIDL Program requirements that the borrower not be able to secure credit elsewhere or that the borrower have been in business for at least one year, as long as it was in operation on January 31, 2020.
- Applicant may request an expedited disbursement that is to be paid within three days of the request. The advance may not exceed \$10,000 and must be used for authorized costs but is otherwise not repayable if the EIDL Loan is not approved.

NOTE: An applicant may receive an EIDL Loan and loans under other programs (such as the Paycheck Protection Program described below) as long as the basis for the loans/costs being paid with each are different (no "double-dipping").

Paycheck Protection Program

The Paycheck Protection Program authorized by the CARES Act makes loans of up to \$10 million available to certain qualified small businesses. These loans are intended to be forgivable if the borrower maintains employees and otherwise complies with the CARES Act. Congress has appropriated \$349 billion for this program.

A qualified small businesses is a business that:

- Does not have more than 500 employees or the maximum number of employees specified in the current SBA size standards, whichever is greater; or
- If the business has more than one location and has more than 500 employees, does not have more than 500 employees at any one location and the business' primary NAICS code starts with "72" (Accommodation and Food Service); or
- Is a franchisee holding a franchise listed on the SBA's registry of approved franchise agreements; or
- Has received financing from a Small Business Investment Corporation.

NOTE: Sole proprietorships and self-employed individuals may qualify under this program. Additionally, the CARES Act makes certain nonprofit organizations (must be tax-exempt under Section 501(c)(3) of the Internal Revenue Code), qualified veterans organizations and certain Tribal business concerns eligible.

The maximum amount of the loan is set by formula (average monthly payroll prior to the COVID-19 pandemic times 2.5 plus the amount of any other debt approved for refinancing, including any debt incurred as a result of COVID-19 under the EIDL Program), subject to a maximum of \$10 million.

Other key provisions:

- Maximum interest rate of 4 percent per annum.
- Loans are made by SBA-approved lenders that have delegated authority to make the loans without approval from the SBA (no SBA Authorization required for each individual loan). This should help expedite the application and closing process.

- In reviewing the application, a lender has to evaluate whether the borrower was in business on February 15, 2020 and had employees and paid salaries and taxes or had independent contractors and filed 1099-MISC for them.
- Guarantee fees are waived (these are typically 2 percent-3.75 percent of the loan amount, depending on the size of the loan, and would otherwise be paid by the borrower).
- Loans are non-recourse to the borrower. In addition to waiving any guaranty that might otherwise be required by the Small Business Act, the CARES Act specifically provides each loan is nonrecourse to the shareholders, members and partners of the borrower.
- No "credit elsewhere test." That is, the borrower does not have to demonstrate it was unable to secure financing elsewhere before qualifying for SBA financing.
- No collateral requirement.
- No prepayment penalties.
- Payments are deferred for six to 12 months.
- The applicant is required to certify:
 - Current uncertain economic times make the loan request necessary to support ongoing operations; and
 - Funds will be used to keep workers and make payroll, mortgage payments, lease payments and utility payments; and
 - Applicant does not already have an application pending for other payroll assistance under the CARES Act.

NOTE: A loan under the Paycheck Protection Program makes the borrower ineligible for the Employee Retention Tax Credit made available under the CARES Act. This only applies to the Employee Retention Tax Credit in the

CARES Act and does not apply to any credits available under the FFCRA (such as the paid sick leave tax credit) or other credits available under the CARES Act.

Loan Forgiveness Provisions

Under the CARES Act, small business loan borrowers will be eligible for loan forgiveness, both for new loans under the Paycheck Protection Program and for existing 7(a) loans.

For borrowers under the Paycheck Protection Program, the loan forgiveness will equal the amount spent by the borrower in the eight-week period after the loan origination date on the following items (not to exceed the original principal amount of the loan):

- payroll costs (not to exceed \$100,000 of annualized compensation per employee); and
- payments of interest on any mortgage loan incurred prior to February 15, 2020; and
- payment of rent on any lease in force prior to February 15, 2020; and
- payment on any utility for which service began before February 15, 2020.

The amount forgiven is not considered taxable income to the borrower.

The amount forgiven will be reduced proportionally by any reduction in the number of employees retained as compared to the prior year. The proportional reduction in loan forgiveness also applies to reductions in the pay of any employee where the pay reduction exceeds 25 percent of the employee's prior year compensation. A borrower will not be penalized by a reduction in the amount forgiven for termination of an employee made

between February 15, 2020 and April 26, 2020, as long as the employee is rehired by June 30, 2020.

Any amount outstanding after considering the amount forgiven will be repayable over a term not to exceed 10 years.

NOTE: The borrower must apply to the lender for loan forgiveness with supporting documentation.

For borrowers with existing 7(a) or microloan program loans, the SBA will pay principal, interest, and any associated loan fees for a six-month period starting on the loan's next payment due date. Payment on loans that are on deferment will begin with the first payment after the deferment period. Please note that this relief will not include loans made under the Paycheck Protection Program.

Considerations for Lenders and Others

The risk rating of Payroll Protection Program loans under risk-based capital requirements is 0 percent.

The SBA will pay lenders fees for processing loans under the Payroll Protection Program as follows:

- 5 percent of loan up to \$350,000
- 3 percent of loan from \$350,000 to \$2 million
- 1 percent of loans of \$2 million or more.

Fees to lenders are payable within five days of disbursement of the loan.

Express Loan Program loan limit is raised to \$1 million from \$350,000 until December 31, 2020.

MAJOR NOTE: The SBA has up to 30 days following the enactment of the CARES Act to issue regulations implementing and providing guidance under certain provisions of the CARES Act. In addition, the Treasury Department is required to issue regulations implementing and providing guidance under certain provisions of the CARES Act. Issuance of regulations and guidance may delay loan approval and disbursement or modify/waive certain loan requirements.

Resources

Other Baker Donelson alerts:

- [Coronavirus: Small Business Administration to Make Economic Injury Disaster Loans Available in Response to Pandemic \(March 13, 2020\)](#).
- [Coronavirus: Resources Materials Available for Small Business Administration Economic Injury Disaster Loans \(March 24, 2020\)](#)
- [CARES Act: Understanding SBA's Loan Eligibility Requirements, Including Affiliation Rules \(March 30, 2020\)](#)

Other resources:

- [Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#)
- [North American Industrial Classification \(NAICS\) Codes](#)
- [SBA - Calculating Number of Employees](#)
- [SBA - Calculation of Annual Receipts](#)
- [SBA - Disaster Assistance Loan Application](#)
- [SBA - Economic Injury Disaster Loan Program \(EIDL\) Eligibility](#)
- [SBA - Franchise Directory](#)
- [SBA - Lender Match Program](#)

- [SBA – Size Standards and Affiliation Principles for Financial Assistance Programs](#)
- [SBA – Small Business Investment Corporation \(SBIC\) Program](#)
- [SBA – Small Business Size Standards by NAICS Code](#)

Baker Donelson is working hard to assist its clients during these uncertain times. Our team of professionals continues to monitor and advise on new issues as they develop. For specific guidance or more information please contact [Jeff Wagner](#), [Scott Sargent](#), or [Chris Saville](#). For additional information you can also visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.

You Might Also Be Interested In...

- **Publications | March 2020**
[Coronavirus: FMCSA Acts to Protect Against CDL and CLP Expirations](#)
- **Publications | March 2020**
[CARES Act: Understanding SBA's Loan Eligibility Requirements, Including Affiliation Rules](#)
- **Publications | March 2020**
[U.S. Immigration System Plagued by Coronavirus](#)

END.....