

March 20, 2020

Senate Majority Leader Introduces the Coronavirus Aid, Relief, and Economic Security Act

Bill would provide financial resources for individuals, families and small businesses affected by COVID-19, as well as make several key policy changes impacting health care providers

Senate Majority Leader Mitch McConnell yesterday introduced the [Coronavirus Aid, Relief, and Economic Security Act, \(S. 3548\)](#). The bill, also known as an economic stimulus package, is the third large-scale congressional effort in response to the novel coronavirus (COVID-19) outbreak.

Bipartisan negotiations are ongoing in the Senate among leadership, various committee chairmen and the Trump Administration. Democrats are working on an alternative proposal, and daily negotiations will continue until a proposal is agreed upon. The Senate is expected to pass the legislation first, perhaps as early as next week.

The legislation includes a number of provisions to provide financial relief and resources to individuals, families, and businesses particularly hard hit by the COVID-19 public health emergency. For example, the legislation would provide up to \$300 billion in new government loans for certain small businesses to do things such as make payroll, pay rent, or pay sick leave benefits; however, notably for hospitals, any nonprofit organization that accepts Medicaid funds is ineligible for these particular loans. The bill also would provide many individuals and families with cash rebates, delay the tax filing date to July 15, 2020, and defer payment of certain business taxes. While many hospitals and health systems may be affected by these provisions as employers and incorporated entities, for purposes of this Advisory, the AHA focuses on those provisions directly related to the delivery and financing of health care.

Key Takeaways

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

- Remove the Medicare sequester from May through December 2020;
- Create a Medicare add-on payment of 15% for inpatient hospital COVID-19 patients;
- Take steps to improve the supply chain, including access to masks and drugs, among other items;
- Take steps to expand coverage for COVID-19 testing and testing-related services; and
- Provide new telehealth flexibilities.

HIGHLIGHTS OF PROVISIONS IMPORTANT TO HOSPITALS AND HEALTH SYSTEMS

Support for Health Care Professionals. The bill would provide funding, grants and other authority to help ensure an adequate workforce, including:

- \$1.32 billion in supplemental funding to community health centers;
- Providing the National Disaster Medical Service with direct hiring authority to increase the number of participating health care professionals from 3,500 to 6,000;
- Reauthorizing Health Resources and Services Administration (HRSA) grants related to telehealth and rural health; and
- Establishing a Ready Reserve Corps to help ensure the supply of doctors and nurses trained to respond to public health emergencies.

Medicare Payment Improvements. The bill seeks to provide additional funds to providers caring for Medicare beneficiaries. Specifically, it would eliminate the Medicare sequester from May 1 through Dec. 31, 2020; it also would extend the Medicare sequester for one year beyond current law. In addition, during the emergency period, it would provide a 15% add-on to the diagnosis-related group (DRG) rate for patients with a principal or secondary diagnosis of COVID-19. This add-on would apply to patients treated at inpatient prospective payment system (PPS) hospitals.

Home-based Services. The bill would make a number of policy changes regarding the provision of home-based health care services, which may increase access and decrease patient risk during the emergency period.

Face-to-Face Visits between Home Dialysis Patients and Physicians. This provision would eliminate a requirement during the COVID-19 emergency that a physician conduct some of the required face-to-face evaluations for home dialysis patients.

Enabling Additional Health Professionals to Order Home Health Services. This provision would allow physician assistants, nurse practitioners and certified nurse specialists to certify a beneficiary's need for home health services and document-related requirements, such as the homebound determination. These changes apply to services under Medicare Parts A and B, as well as Medicaid. The provision also allows these additional providers to make requisite certifications for drugs related to the treatment of post-menopausal osteoporosis.

Facilitating Home and Community-based Support Services during Hospital Stays. This provision would allow state Medicaid programs to pay specialists to train and consult with providers in rural and underserved areas on treating COVID-19 and other public health emergencies.

Telehealth. The legislation would make a number of policy changes regarding the provision of telehealth services, which may increase access during the emergency period. These include:

Treatment of Direct Primary Care Service Arrangements. This section would allow patients with high deductible health plans (HDHPs) to use health savings account (HSA)

funds to pay the monthly fee to a “direct primary care” physician practice. The legislation would define a “direct primary care services arrangement” as one under which an individual receives solely primary care in exchange for a fixed periodic fee. These practices often provide more remote care, including telehealth.

Medicare Telehealth Flexibilities. This section would eliminate the requirement included in H.R. 6074 that providers or others in their group must have treated the patient in the past three years to provide them with a telehealth service during the ongoing public health emergency. The net result of this section and Section 102 of the Telehealth Services During Certain Emergency Periods Act of 2020 – a subpart of H.R. 6074 – would be to give the Health and Human Services (HHS) Secretary authority to waive, among others, the geographic and originating site requirements of Section 1834(m) of the Social Security Act (the Act) as he sees fit, without restrictions on the definition of “qualified provider.”

Enhancing Medicare Telehealth Services for Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) during Emergency Period. Subject to a section 1135 emergency declaration, this legislation would waive the Section 1834(m) restriction on FQHCs and RHCs that prohibits them from serving as distant sites. Specifically, during the emergency period, FQHCs and RHCs would be able to serve as distant sites to provide telehealth services to patients in their homes and other eligible locations. The legislation would create a special payment rule for these services, according to which, Medicare would reimburse FQHCs and RHCs at a composite rate that is similar to payment for comparable telehealth services under the physician fee schedule.

Access to Health Care Supplies. The legislation would take a number of steps to address access to health care supplies, including medications. These include:

Moving the Strategic National Stock Pile to ASPR. This bill would amend the Public Health Services Act to give the HHS Assistant Secretary for Preparedness and Response (ASPR) jurisdiction over the National Strategic Stock Pile (SNS). Decisions about allocations would be made in collaboration with the HHS Secretary and in coordination with the Department of Homeland Security.

Actions Aimed at Evaluating the Medical Product Supply Chain. The legislation would require HHS to enter into an agreement with the National Academies to produce a report assessing and evaluating the medical device and pharmaceutical supply chain. The report would emphasize critical drugs and devices and provide recommendations on redundancy, domestic manufacturing and improved information sharing in an effort to mitigate disruptions in the future. In addition, this bill would require certain types of medical supplies be included in the SNS and would cover National Institute of Occupational Safety and Health-approved respirators under the Public Readiness and Emergency Preparedness (PREP) Act, allowing the use of those approved respirators as medical countermeasures during a public health emergency.

Mitigating Emergency Drug Shortages (MEDS Act). The legislation includes a version of the MEDS Act, which would require additional manufacturer reporting requirements in

response to drug shortages; a Government Accountability Office report on intra-agency coordination focused on drug manufacturing and application prioritization; and a report within two years of passage on encouraging the manufacturing of drugs in shortage or at risk of being in shortage.

Preventing Essential Medical Device Shortages. The bill would place new requirements on device manufacturers to notify the HHS Secretary of potential or likely shortages due to discontinuance or interruption during or in advance of a public health emergency. It also allows for expedited inspection and review to curb any potential shortages. Specific devices that would be covered are those that are life-supporting, life-sustaining, used in emergency medical care or during surgery. The list would be made publicly available unless otherwise determined by the HHS Secretary and would include relevant information about the device and the reason for the shortage.

Encouraging the Development and Use of Certain Antimicrobial Drugs (DISARM Act). This provision, after a notice and comment rulemaking process, would increase payment for the use of certain antimicrobial drugs. In order to receive payment under this provision, hospitals must be participating in the National Healthcare Safety Network Antimicrobial Use and Resistance Module for Centers for Disease Control and Prevention or similar reporting program and have an antimicrobial stewardship program. This provision also would require studies and reports focused on removing the barriers to the development of certain antimicrobial drugs.

Coverage of COVID-19 Testing and Other Services. The legislation would expand the types of diagnostic tests that must be covered by certain payers and clarifies several aspects of coverage reimbursement. These include:

Coverage of Diagnostic Tests and Preventive Services. The legislation includes several provisions related to coverage and reimbursement for COVID-19 testing and testing-related services. The legislation would expand the types of diagnostic tests that would be covered to include laboratory tests that have not been approved by the Food and Drug Administration but meet certain conditions, including that the applicable state or territory has assumed responsibility for the validity of the tests. The legislation then directs certain commercial payers to cover this broader range of tests. The AHA is seeking clarification on whether other payers, including Medicare and Medicaid, also would be responsible for covering these tests at no cost-sharing.

Health plans are directed to pay providers' laboratory services the full negotiated rate or, if the provider and plan do not have a contract in place, they must reimburse the provider the cash price for the service. Each provider of laboratory service would be required to post a cash price for COVID-19 testing on a public website and failure to comply could result in civil monetary penalties. In addition, health plans are required to cover qualifying COVID-19 preventive services such as an item, service or immunization recommended by the US Preventive Services Task Force or CDC's Advisory Committee on Immunization Practices.

Novel Medical Products. This provision would provide the HHS Secretary with the authority to determine whether a Healthcare Common Procedure Coding System (HCPCS) code is appropriate for a device for which a manufacturer is applying. The HHS Secretary also would be required to facilitate a coverage pathway for the product.

Qualified Medical Expenses Pre-Deductible. The legislation would treat menstrual care over-the-counter products as qualified medical expenses for HSAs, Archer medical savings accounts, health care flexible spending arrangements and health care reimbursement arrangements.

HDHP Exemption for Telehealth Services. This section allows HDHPs with HSAs to cover telehealth services before a patient reaches his or her deductible amount.

Other Provisions. The legislation includes several other provisions relevant for hospitals and health systems, including:

Family and Medical Leave and Sick Leave Policies. The legislation would amend the changes to the family and medical leave and sick leave policies established by the Families First Coronavirus Response Act to limit the total amount employers may have to pay under each benefit, among other changes. It would not, however, change which employees employers could exempt from such policies.

Sharing of Substance Use Disorder Records with Patient Consent. This section would allow records pertaining to substance use disorder (SUD) treatment or other activities to be used or disclosed to covered entities for the purposes of treatment, payment or health care operations as permitted by HIPAA once a patient's written consent has been obtained. It also would allow disclosures of de-identified health information from these records to public health authorities as defined by HIPAA. The section would prohibit the use of this information for use in any civil, criminal, administrative or legislative proceedings (except as otherwise authorized), and contains an antidiscrimination clause ensuring that the information may not be used in decisions around treatment, employment, housing, access to courts or social services. Patients still would have the right to request restrictions on the use or disclosure of their SUD treatment records. Finally, this section would require an update to the regulations in no less than one year so that covered entities would be required to provide notice in plain language on their privacy practices to patients.

Enabling Use of Distance Learning Programs. This section would allow state Medicaid programs to fund distance learning programs to connect health care professionals, including medical students, in rural and underserved areas with specialists via videoconference to provide training and consultation on protocols for responding to public health emergencies, including COVID-19.

FURTHER QUESTIONS

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