
Senate Republicans Release Third Proposed Stimulus Package

March 20, 2020

Andrew E. Bigart | Josh M. Finestone | Ronald M. Jacobs | Amanda L. Crawford | Makalia A. Griffith | Katherine K. Sochacki | Sean J. Wright

On March 19, 2020, Senate Majority Leader Mitch McConnell released the text of a third proposed emergency stimulus measure aimed at helping the American people and businesses in response to the fast-developing coronavirus (COVID-19) outbreak. The Senate Republican measure calls for direct financial help to Americans, immediate assistance for healthcare first responders and patients, support for small businesses, and assistance for distressed industries.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes many provisions to support the economy while the nation works its way through the COVID-19 outbreak. The proposed relief measure will, among other things:

- Provide every American who makes less than \$99,000 a year a \$1,200 check, and if they have a child, an additional \$500 per child.
- Provide \$300 billion for small businesses through federally backed loans that can be forgivable if payroll is maintained. The loans are available to any business that was active on March 1, 2020 and employed individuals.
- Provide \$208 billion in loans for major industries that have been impacted by COVID-19. That amount includes \$50 billion for the U.S. airline industry, \$8 billion for cargo air carriers, and \$150 billion for other eligible entities.
- Delays tax filings for all Americans by 90 days until July 15.

The measure released by Leader McConnell remains a work in progress and must still be negotiated with Democrats before a vote can take place. Leader McConnell has tasked Senators Grassley (R-IA), Crapo (R-ID), Portman (R-OH), Alexander (R-TN), Wicker (R-MS), and Thune (R-SD) to work with Democrat counterparts to begin negotiations with the goal of reaching a quick agreement. Leader McConnell has made it clear that the Senate will not leave until they pass this measure. Senate Minority Leader Charles Schumer (D-N.Y.) said that Democrats would work with Republicans to come up with a bipartisan bill “as soon as we can.”

Should the Senate be able to come to an agreement, the measure will move to the House of Representatives. Speaker Pelosi (D-CA) is exploring whether the measure could be passed by voice vote. Many members have expressed reservations about coming back to Washington, DC, given the COVID-19 outbreak. We expect this measure to eventually pass both chambers and to be signed into law by the President.

Please click on one of the hyperlinks below to jump to summaries of the main sections of the CARES Act (also referred to as the Phase 3 stimulus proposal), including the types and amounts of relief that have been proposed and the individuals and businesses that would qualify for relief.

[Division A – Small Business Interruption Loans](#)

[Division B – Relief for Individuals, Families, and Businesses](#)

[Division C – Assistance to Severely Distressed Sectors of the United States Economy](#)

[Division D – Health Care Response](#)

[Division E – Temporary Permit Use to Guarantee Money Market Mutual Funds](#)

[Division F – Budgetary Provisions](#)

Summary of the CARES Act Economic Relief Proposal

Division A - Small Business Interruption Loans

Summary: The CARES Act's small business-related provisions increase the maximum loan amount available to small businesses through the Small Business Administration's 7(a) loan guaranty program for employers that maintain payroll during the coronavirus pandemic. The proposed measures would provide for loan forgiveness, encourage entrepreneurial development, dedicate funds for Small Business Development Centers, Women's Business Centers, and Minority Business Centers, waive fees, and provide for a process to authorize lending institutions that are not currently authorized to offer SBA loan products to do so during the duration of the President's national emergency declaration.

Sec. 1101. Definitions

- Sets definitions for "Administration" and "Administrator" to refer to the Small Business Administration (SBA) and SBA Administrator, and for "small business concern."

Sec. 1102. 7(a) Loan Program

- Provides for up to \$10 million in small business loans as part of the SBA's 7(a) loan guaranty program during the covered period of March 1, 2020 through December 31, 2020. Loans are fully guaranteed through December 31, 2020.
- Generally defines eligible businesses as those with no more than 500 employees. The maximum loan amount under the 7(a) loan guaranty program has been increased to \$10 million, and loaned funds may now be used for payroll support, like paid sick or medical leave, salaries, mortgage payments, and other debt obligations.
- Unlike other SBA programs that are limited to for-profit businesses, the measure defines eligible businesses to include "public nonprofits," a term that is not defined.
- Fees are waived for both borrowers and lenders.
- The bill provides for complete deferment of applicable loan payments for up to one year. The SBA has been required to issue guidance to lenders on the payment deferment process within 30 days.
- Provides for up to \$1 million in small business loans through the SBA Express Loan program through December 31, 2020.

Sec. 1103. Entrepreneurial development

- Permits the SBA to provide financial grants to small business resource partners, like Small Business Development Centers and Women's Business Centers, for education, training, and advising small businesses on accessing and applying for federal resources and business resiliency strategies to address the effects of COVID-19.
- Authorizes the SBA to award grants to associations or associations representing resource partners to develop online platforms for small businesses to access information and resources provided by the federal government for small businesses regarding COVID-19, and to provide training and education for small businesses.

Sec. 1104. Waiver of matching funds requirement under the Women's Business Center program:

- Waives the requirement to obtain non-federal matching funds for the Women's Business Center program for three months.

Sec. 1105. Loan forgiveness

- Section 7(a) loan guarantee program borrowers are eligible for loan forgiveness for an amount equal to the amount required to maintain payroll continuity for the period of March 1, 2020 through June 30, 2020.
- The amount of funds eligible for forgiveness will be reduced for employers terminating employees during the covered period.
- Employers with tipped employees may receive forgiveness for additional wages paid to tipped employees.

Sec. 1106. Direct appropriations

- Provides for nearly \$300 billion in federally guaranteed loans, as well as additional funds to support the SBA, Small Business Development Centers, Women's Business Centers, and Minority Business Centers, resources for partner associations, and funds for the Office of the Inspector General.

Sec. 1107. Minority business development agency

- Sets definitions for "Agency" [Minority Business Development Agency], "covered small business concern," and "substantially affected by COVID-19."
- Dedicates \$10 million for the Minority Business Development Agency to provide grants to Minority Business Centers.

Sec. 1108. Waiver of prepayment penalty

- Waives any prepayment penalty for applicable loans made on or before December 31, 2020.

Sec. 1109. United States Treasury Management Authority

- Authorizes the Department of Treasury, along with the SBA, and other financial regulatory agencies, to authorize additional lending institutions to provide SBA small business interruption loans for the duration of the President's national emergency declaration.

Division B - Relief for Individuals, Families, and Businesses

Summary: The CARES Act's assistance to individuals and businesses provides individuals with a rebate credit and provides businesses with tax relief. The measures would provide every American who makes less than \$99,000 a year a \$1,200 check, and if they have a child, an additional \$500 per child.

Title I - Rebates And Other Individual Provisions**Sec. 2101. 2020 recovery rebates for individuals**

- Provides a tax credit in the form of a rebate check for the lesser of the individual's net income tax liability, \$1,200 for individual filers, or \$2,400 for joint filers based on the individual's 2018 tax return. This amount will be increased by \$500 for every qualifying child. Qualifying income includes earned income, social security benefits, and any compensation or pension received.
- The credit will be provided to taxpayers who have qualifying income of at least \$2500. The rebate amount is reduced by \$5 for each \$100 of a taxpayer's income that exceeds the phase-out threshold. Phaseouts for the rebate begin at an adjusted gross income of \$75,000 for single filers and \$150,000 for joint filers and completely phase out for taxpayers with \$99,000 of income.
- Eligible individuals do not include nonresident aliens, individuals eligible for 151 personal exemptions, estates, or trusts.

-
- The funds appropriated for the legislation are drawn from money in the Treasury that is not otherwise appropriated for the fiscal year ending September 30, 2020.

Sec. 2102. Delay of certain deadlines

- The April 15 filing date for federal taxes is extended to July 15 for 2019 tax returns. Individuals who owe taxes can postpone estimated tax payments due from the date of enactment until October 15, 2020.

Sec. 2103. Special rules for use of retirement funds

- Waives the 10 percent early withdrawal penalty for any coronavirus-related distribution up to \$100,000; income from the distribution will be taxed over three years beginning on the date the distribution was received. Individuals may repay the distribution over three years without triggering that year's cap on contributions.
- A "coronavirus related distribution" means any distribution from an eligible retirement made between the date of enactment and before December 31, 2020; and made to an individual diagnosed with the virus (by a CDC-approved test), or whose spouse or dependent is diagnosed with the virus; experiences adverse financial consequences as a result of quarantine, furlough, or layoff; experiences a reduction in hours or inability to work due to lack of childcare; or other factors determined by the Secretary of Treasury.
- Provides for an increase in plan loan limits from \$50,000 to \$100,000. This increase will not be treated as a qualified distribution and delays repayment for loans due between enactment and December 31, 2020 for one year.

Sec. 2104. Allowance of partial above the line deduction for charitable contributions

- Eligible taxpayers can deduct up to \$300 of cash charitable contributions beginning in 2019. This includes taxpayers who do not itemize their deductions.

Sec. 2105. Modification of limitations on charitable contributions during 2020

- Modifies for tax year 2020 the limitations on charitable contributions for individuals who itemize their contributions and corporations as follows:
 - For individuals the limitation is suspended.
 - For corporations the limitation is increased to 25 percent of taxable income.

Title II - Business Provisions

Sec. 2201. Delay of estimated tax payments for corporations

- Postpones corporations' due dates for estimated tax payments due after the date of the legislation's enactment until October 15, 2020. There is no cap on tax payments.

Sec. 2202. Delay of payment of employer payroll taxes

- Employer payroll taxes are deferred, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The delay does not apply for businesses that have had indebtedness forgiven under section 1105 of the legislation with respect to a loan under section 7(a) of the Small Business Act. The Social Security Trust Funds will be held harmless.

Sec. 2203. Modifications for net operating losses

- Relaxes the limitations on a company's use of operating losses in previous years by providing that a loss from 2018, 2019, or 2020 can be carried back by five years preceding the loss, allowing the taxpayer to apply the net operating loss against any taxable income to get a tax refund, and by removing the taxable income limitation to allow net operating losses (NOL) to fully offset income.

Sec. 2204. Modification of limitation on losses for taxpayers other than corporations

- Modifies the limitation on losses for taxpayers other than corporations such that the net operating loss carryback rules described above in Sec. 2204 also apply to these noncorporate taxpayers.

Sec. 2205. Modification of credit for prior year minimum tax liability of corporations

- Accelerates the corporate alternative minimum tax credit.

Sec. 2206. Modification of limitation on business interest

- Increases the amount of interest expenses businesses can deduct for tax years 2019 and 2020 from 30 percent to 50 percent. Businesses may also elect to use 2019 income for taxable years beginning in 2020.

Sec. 2207. Technical amendments regarding qualified improvement property

- Businesses can immediately write off costs associated with improving facilities.

Sec. 2208. Installments not to prevent credit or refund of overpayments or increase estimated taxes

- Businesses can recover the overpayment of 2017 taxes as a result of Section 965(h), which allows businesses to pay a repatriation tax in installments over eight years. Correcting this overpayment will give businesses great flexibility to respond to the COVID-19 crisis.

Sec. 2209. Restoration of limitation on downward attribution of stock ownership in applying constructive ownership rules

- Clarifies that certain foreign subsidiaries should be excluded from classification as a United States person. This number saw an increase as a result of the Tax Cuts and Jobs Act and imposed excessive tax and reporting requirements on some foreign entities.

Division C – Assistance to Severely Distressed Sectors of the United States Economy

Summary: The CARES Act's assistance to distressed sectors allows for emergency relief through federal loans and loan guarantees. The loans and loan guarantees impose strict requirements on businesses that accept the relief.

Title I – Economic Stabilization

Section 3102. Emergency relief through loans and loan guarantees

- Provides loans and loan guarantees of up to \$208 billion to eligible businesses for losses incurred as a direct result of the coronavirus. The Secretary will post application procedures and minimum requirements within 10 days and will determine whether a business is eligible for relief. Eligible businesses are generally businesses for which credit is not otherwise reasonably available at the time of the transaction.

Loans and loan guarantee amounts are as follows:

- Passenger airlines – up to \$50,000,000,000
 - Cargo Air Carriers – up to \$8,000,000,000
 - Other eligible businesses – up to \$150,000,000,000
- Interest rates will be determined based on the current average yield on outstanding marketable obligations of the United States of comparable maturity. In order to compensate the government for the loans and loan guarantees, the government will participate in businesses gains through warrants, stock options, common or preferred stock, or other appropriate equity instruments. Any proceeds collected from these loans will be deposited in the Airport and Airway Trust Fund or in the Treasury.

Sec. 3103. Limitation on certain employee compensation

- To receive a loan or loan guarantee, a business must contractually agree to the following compensation restrictions. For the two-year period, beginning March 1, 2020, and ending March 1, 2022, officers or employees whose total compensation exceeded \$425,000 in calendar year 2019 must not receive an increase in 2019 total compensation, or severance pay, or other benefits upon termination of employment (golden parachutes) which exceeds twice the maximum 2019 total compensation. The legislation defines total compensation to include salary, bonuses, stock awards, and other financial benefits.

Sec. 3104. Continuation of certain air service

- Allows the Secretary of Transportation to require any air carriers that receive a loan or guarantee to maintain scheduled air transportation service.

Sec. 3105. Reports

- The Comptroller General will provide and submit to Congress reports on the loans and loan guarantees within nine months of the legislation and annually through the year the last loan or loan guarantee is in effect.

Sec. 3106. Coordination with secretary of transportation

- The Secretary and the Secretary of Transportation will coordinate regarding air carriers.

Sec. 3107. Definitions

- Provides the following definitions:
 - “air carrier” is defined in 49 U.S. Code § 40102 as a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.
 - “coronavirus” is defined as SARS-CoV-2 or another coronavirus with pandemic potential.
 - “covered loss” means losses, direct or incremental, incurred as a result of coronavirus, as determined by the Secretary.
 - “eligible business” means a) an air carrier; or b) a United States business that has incurred covered losses such that the continued operations of the business are jeopardized, as determined by the Secretary, and that has not otherwise applied for or received economic relief in the form of loans or loan guarantees provided under any other provision of law.
 - “Secretary” is defined as Secretary of the Treasury, or the designee of the Secretary of the Treasury.

Sec. 3108. Rule of construction

- The Secretary is explicitly barred from providing direct cash payments and may only provide relief in the form of loans or loan guarantees as provided for in the legislation.

Sec. 3201. Suspension of certain aviation excise taxes

- Suspends excise taxes on payments for transportation by air and suspends taxes on kerosene used in commercial aviation between the date of the legislation and January 1, 2021.

Division D - Health Care Response

Summary: The health care response division of the CARES Act contains wide-ranging provisions on health, education, and labor. In the health provisions, the bill seeks to prevent medical product and emergency drug shortages during the COVID-19 emergency. The bill also prohibits cost-sharing health care insurers from imposing any cost-sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization requirements for COVID-19 diagnostic testing and related services. Among other things, it provides additional support for health care providers, including limiting liability for volunteer health care professionals during the COVID-19 emergency response.

The education-related provisions, known as the “COVID-19 Pandemic Education Relief Act of 2020,” provide various forms of relief and assistance to students (and graduates) of institutions of higher education. Federal student loan payments are suspended for three months, and during the suspension period interest shall not accrue. Institutions of higher education are also allowed to use a portion of their federal Supplemental Educational Opportunity Grant allocations to award grants to undergraduate or graduate students facing “unexpected expenses and unmet financial need” resulting from a qualifying emergency, such as the current COVID-19 pandemic.

The labor-related provisions set limits on the amount that employers must pay for employees on sick and medical leave for various reasons related to the COVID-19 pandemic and expands the Secretary of Labor’s authority to exempt small businesses with fewer than 50 employees from paid leave requirements.

Title I - Health Provisions

Subtitle A - Addressing Supply Shortages

Sec. 4101. Moving the strategic national stockpile to ASPR.

- The Assistant Secretary for Preparedness and Response (ASPR) is made responsible for managing the Strategic National Stockpile (SNS) in place of the Director of the Centers for Disease Control and Prevention.

Sec. 4111. National Academies report on America’s medical product supply chain security.

- Requires the National Academies to draft and submit a report to Congress examining the security of America’s supply chains for medical products (critical drugs and devices) and provides recommendations for improving supply chains for critical drugs and devices.

Sec. 4112. Requiring the strategic national stockpile to include certain types of medical supplies.

- Requires the Strategic National Stockpile to stockpile certain types of medical supplies, specifically: personal protective equipment, ancillary medical supplies, and other applicable supplies required for the administration of drugs, vaccines and other biological products, medical devices, and diagnostic tests.

Sec. 4113. Treatment of respiratory protective devices as covered countermeasures.

- Manufacturers of personal respiratory protective equipment (such as certain types of masks and ventilators) are granted liability protection to incentivize production and distribution of these devices. The equipment must be respiratory protective devices approved by the National Institute for Occupational Safety and Health and that the Secretary determines to be a priority for use during a public health emergency.

Sec. 4121. Prioritize reviews of drug applications; incentives.

- The Food and Drug Administration (FDA) must “prioritize” and “expedite” the review of drug applications and inspections to prevent or mitigate a drug shortage.

Sec. 4122. Additional manufacturer reporting requirements in response to drug shortages.

- Drug manufacturers must submit additional information when there is an interruption in supply, including information about active pharmaceutical ingredients, when active pharmaceutical ingredients are the cause of the interruption.
- Requires manufacturers to maintain contingency plans to ensure a back-up supply of products.

Sec. 4123. GAO report on intra-agency coordination.

- The Comptroller General must submit to Congress a report examining the FDA's intra-agency coordination, communication, and decision-making in assessing drug shortage risks. The report should describe the risks associated with violations of current good manufacturing practices, corrective and preventative actions with respect to such violations requested by the Food and Drug Administration, and the effects of potential manufacturing slow-downs or shut-downs on potential drug shortages, including the discontinuance of drug manufacturing and marketing. It should also describe how FDA proactively coordinates strategies across agencies to mitigate the consequences of these violations, slowdowns, and shut-downs.

Sec. 4124. Report.

- The Secretary of Health and Human Services must submit a report containing recommendations for market-based incentives or other appropriate mechanisms to encourage the manufacture of drugs in shortage or at risk of shortage. The report should also describe how the FDA's Emerging Technology Program can facilitate creating or upgrading existing technologies to address drug shortage challenges and promote modern, reliable manufacturing strategies.

Sec. 4125. Safe harbor provision.

- Creates a safe harbor provision so that drug manufacturers can communicate truthful and non-misleading information regarding products with an emergency authorization (pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act) from the FDA.

Sec. 4131. Discontinuance or interruption in the production of medical devices.

- Manufacturers of medical devices that are critical to public health during a public health emergency must notify the FDA Secretary of any permanent discontinuance in the manufacture of the device or an interruption of the manufacture of the device that is likely to lead to a meaningful disruption in the supply of that device. If the FDA Secretary determines it to be appropriate, FDA should distribute this information to appropriate organizations, including physicians, health providers, patient organizations, and supply chain partners.
- The FDA must establish and maintain an up-to-date list of devices that are determined by the Secretary to be in shortage in the United States. This list shall be made publicly available, except for confidential or trade secret information or if the Secretary determines that disclosure of such information would adversely affect the public health (such as by increasing the possibility of hoarding or other disruption of the availability of the device to patients).

Sec. 4132. GAO report on intra-agency coordination.

- Requires the Comptroller General to submit to Congress a report examining the FDA's intra-agency coordination, communication, and decision-making in assessing device shortages and risks associated with the supply of devices, and any efforts by the FDA to mitigate any device shortages or to take corrective actions.

Sec. 4141. Emergency use of laboratory developed tests.

- Allows for the emergency use of laboratory tests and diagnostic kits intended to diagnose COVID-19 during the COVID-19 public health emergency prior to an Emergency Use Authorization (EUA) from the FDA, if certain criteria are met.

Subtitle B – Access to Health Care for COVID-19 Patients

Sec. 4201. Coverage of diagnostic testing for COVID-19.

- Private health insurance plans are prohibited from imposing any cost-sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements, for COVID-19 diagnostic testing and related services during the COVID-19 public health emergency.

Sec. 4202. Pricing of diagnostic testing.

- Sets reimbursement rates for COVID-19 testing covered with no cost to patients by requiring 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.
- Any provider of a diagnostic test for COVID-19 must make public the cash price for such a test on the provider's public internet website.

Sec. 4203. Rapid coverage of preventive services and vaccines for coronavirus.

- Group health plans and health insurance issuers offering group or individual health insurance must provide free coverage without cost-sharing for any COVID-19 qualifying coronavirus preventative service.
- "Qualifying coronavirus preventative service" means an item, service, or immunization that is intended to prevent or mitigate COVID-19 and is either an evidence-based item or service with a certain rating by the United States Preventive Services Task Force or is an immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices of the CDC.

Sec. 4211. Supplemental awards for health centers.

- Provides \$1.32 billion in supplemental funding to community health centers that are testing and treating patients for COVID-19 (or for detection of SARS-CoV-2).

Sec. 4212. Allowing permanent direct hire of NDMS health care professionals.

- If the Secretary of HHS determines that the number of intermittent disaster response personnel within the National Disaster Medical System is insufficient to address a public health emergency or potential public health emergency, the Secretary may directly hire personnel for an intermittent disaster response.

Sec. 4213. Telehealth network and telehealth resource centers grant programs.

- Reauthorizes Health Resources and Services Administration (HRSA) grant programs that promote the use of telehealth technologies.

Sec. 4214. Rural health care services outreach, rural health network development, and small health care provider quality improvement grant programs.

- Reauthorizes HRSA grant programs that are dedicated to increasing health care access and outcomes in rural communities.

Sec. 4215. United States Public Health Service Modernization.

- Establishes a "Ready Reserve Corps" for public health personnel for emergency response missions.

Sec. 4216. Limitation on liability for volunteer health care professionals during COVID-19 emergency response.

- Health care professionals who provide volunteer medical services during the COVID-19 public health emergency have liability protections for the provision of health care services related to the diagnosis, prevention, or treatment of COVID-19.

Sec. 4221. Confidentiality and disclosure of records relating to substance use disorder.

- Aligns 42 CFR Part 2 regulations, which govern the confidentiality and sharing of substance use disorder treatment records, with the Health Insurance Portability and Accountability Act (HIPAA).

Sec. 4222. Nutrition services.

- During the COVID-19 public health emergency, Americans Act (OAA) meal programs are provided with waivers of nutrition requirements. For home-delivered nutrition services, an individual who is unable to obtain nutrition because that person is practicing social distancing due to the emergency is considered the same as an individual who is homebound by reason of illness.

Sec. 4223. Guidance on protected health information.

- Within 180 days of passage of the Act, the Secretary of Health and Human Services must issue guidance on the sharing of patients' protected health information during the COVID-19 public health emergency.

Sec. 4224. Reauthorization of the Healthy Start program.

- Reauthorizes Healthy Start, which is a program that provides grants with the purpose of improving access and health outcomes for women and their families.
- Requires the GAO to submit to Congress an independent evaluation and report concerning the Healthy Start program.

Subtitle C – Innovation

Sec. 4301. Removing the cap on OTA.

- Removes the cap on other transaction authorities (OTAs), which are a type of flexible, strategic partnership between the government and industry used by the Biomedical Advanced Research and Development Authority (BARDA).

Sec. 4302. Extending the priority review program for agents that present national security threats.

- Strikes the sunset provision from the FDA priority review voucher incentive available to sponsors of a material threat medical countermeasure application. The current law prohibits the award of any priority review vouchers after October 1, 2023.

Sec. 4303. Priority zoonotic animal drugs.

- Provides the Secretary of HHS with the authority to expedite the development and review of such new animal drug if preliminary clinical evidence indicates that the new animal drug, alone or in combination with one or more other animal drugs, has the potential to prevent or treat a zoonotic disease in animals, including a vector-borne disease, that has the potential to cause serious adverse health consequences for, or serious or life-threatening diseases in, humans.

Subtitle D – Finance Committee

Sec. 4401. Exemption for telehealth services

- A healthcare plan may be treated as a high-deductible health plan regardless of whether it has a deductible for telehealth and other remote care services, allowing more patients with COVID-19 to access remote health care services and preventing further spread of the virus.

Sec. 4402. Inclusion of certain over-the-counter medical products as qualified medical expenses

- Over-the-counter medical products, including menstrual care products, are treated as “medical products” and accordingly may be purchased using HSA and FSA funds.

Sec. 4403. Treatment of direct primary care service arrangements

- Direct primary care service arrangement fees are treated as medical expenses for purposes of HSA tax provisions.
- Certain services, including procedures that require the use of general anesthesia and laboratory services not typically administered in primary care settings, are expressly excluded from the definition of “primary care services” for HSA purposes.

Sec. 4404. Increasing Medicare telehealth flexibilities during the emergency period

- Increases Medicare beneficiaries’ access to telehealth services by eliminating the requirement that such services be provided by a “qualified provider,” meaning a provider that had furnished health care items or services to an individual within the past three years.

Sec. 4405. Enhancing Medicare telehealth services for federally qualified health centers and rural health clinics during the emergency period

- During emergency periods, federally qualified health centers and rural health clinics may provide telehealth services to Medicare beneficiaries. Payments for such services would be reimbursed based on a composite rate similar to rates applicable to comparable telehealth services under the Medicare Physician Fee Schedule.

Sec. 4406. Temporary waiver of requirement for face-to-face visits between home dialysis patients and physicians

- During the COVID-19 emergency period, the requirement that dialysis patients have face-to-face visits with their physicians is temporarily waived.

Sec. 4407. Improving care planning for Medical home health services

- Increases flexibility for physician assistants, nurse practitioners, and other professionals such as clinical nurse specialists to provide home health services for purposes of implementing the CARES Act.

Sec. 4408. Adjustment sequestration

- The 2 percent Medicare sequestration reductions are suspended from May 1, 2020 until December 31, 2020, allowing health care providers to receive more funding.

Sec. 4409. Medicare hospital inpatient prospective payment system add-on payment for COVID-19 patients during the emergency period.

- For patients with either a principal or secondary diagnosis of COVID-19, Medicare payments made to hospitals will be increased by 15 percent.
- These add-on payments are applicable for the duration of the emergency period.

Sec. 4410. Revising payment rates for durable medical equipment under the Medicare program through the duration of the emergency period

- Payment rates for durable medical equipment provided through the Medicare program are altered for the entirety of the emergency period.
- The transition rule applicable to durable medical equipment is applicable to items and services furnished in rural and noncontiguous areas for the duration of the emergency period.

Sec. 4411. Providing home and community-based services in acute care hospitals

- Home and community-based services, among other things, may be provided in acute care hospitals to satisfy needs that are not met through the provision of ordinary hospital services and ensure a smooth transition from an acute care hospital to home-based care.

Sec. 4412. Treatment of technology-enabled collaborative learning and capacity building models as medical assistance.

- Allows states to provide, as medical assistance, technology-enabled collaborative learning and capacity building models.
- Also provides financial assistance to states providing such medical assistance to train health professionals (which may include medical students) in protocols for responding to a public health emergency during an emergency period, including the COVID-19 public health emergency.

Sec. 4413. Encouraging the development and use of DISARM antimicrobial drugs.

- Establishes a separate Medicare payment to hospitals that are administering a qualified antibiotic or antifungal to treat a serious or life-threatening infection, applicable to discharges occurring on or after October 1, 2021, and before October 1, 2026.

Sec. 4414. Novel medical products.

- For Medicaid purposes, the Secretary of HHS must make expediated coding (Healthcare Common Procedure Coding System), coverage, and payment determinations when the FDA approves novel drugs, biologics, and devices.

Title II – Education Provisions

Sec. 4501. Short Title

- Title II is known as the “COVID-19 Pandemic Education Relief Act of 2020.”

Sec. 4502. Definitions

- A “qualifying emergency” is defined as an event that the Secretary of Health and Human Services declares to be a “public health emergency” or that the President declares to be a “major disaster or emergency” or “national emergency.”
- An “institution of higher education” has the meaning given by section 102 of the Higher Education Act.
- “Secretary” is defined as the Secretary of Education.

Sec. 4503. Campus-based aid and waivers

- Institutions of higher education need not match federal funds provided under the campus-based aid programs.
- Institutions of higher education may reallocate up to 100 percent of their unexpended federal work-study allotments to be used for the supplemental grants section 413D of the Higher Education Act of 1965.

Sec. 4504. Use of supplemental educational opportunity grants for emergency aid

- Institutions of higher education may use a portion of their federal Supplemental Educational Opportunity Grant allocations to award grants to undergraduate or graduate students facing “unexpected expenses and unmet financial need” resulting from a qualifying emergency. Institutions are given three different options for determining eligibility for and awarding emergency financial aid grants.

Sec. 4505. Federal work-study during a qualifying emergency

- Higher education institutions are authorized to make payments to work-study students who are unable to fulfill their work-study obligations because of COVID-19. Payment may take the form of a one-time grant or multiple payments.

Sec. 4506. Adjustment of subsidized loan usage limits

- For students who are unable to remain enrolled in school because of COVID-19, the semester that the student failed to complete will not count toward the student’s period of enrollment for purposes of lifetime subsidized loan eligibility.

Sec. 4507. Exclusion from federal Pell grant duration limit

- For students who are unable to remain enrolled in school because of COVID-19, the semester that the student failed to complete will not count toward the student's lifetime Pell grant eligibility.

Sec. 4508. Institutional refunds and federal student loan flexibility

- If a student is unable to remain enrolled in school because of COVID-19, the institution need not include the amount of grant or loan assistance paid to that student when determining amounts that the institution must returned to the Secretary under the Higher Education Act of 1965.
- Students who are unable to remain enrolled in school because of COVID-19 are not required to repay Pell grants or other loan assistance.
- Higher education institutions are authorized to approve a leave of absence for any student who is unable to remain enrolled in school because of COVID-19.

Sec. 4509. Satisfactory progress

- If a student fails to complete attempted credits because of a qualifying emergency, the student's grades associated with those credits will not be considered when determining whether he or she satisfies the academic requirements to qualify for Pell Grants or student loans.

Sec. 4510. Continuing education at affected foreign institutions

- If there is a public health emergency, major disaster or emergency, or national emergency in another country, foreign institutions in that country may offer distance learning to U.S. students who receive funds under Title IV of the Higher Education Act for the duration of the emergency or disaster. The Secretary of Education must prepare a report identifying each foreign institution that takes advantage of this option.

Sec. 4511. National emergency educational waivers

- The Secretary of Education is authorized to provide waivers from the statutory and regulatory requirements under the Elementary and Secondary Education Act, the Higher Education Act, and the Carl D. Perkins Career and Technical Education Act, with the exception of civil rights laws, if the Secretary determines that such waivers are "necessary and appropriate" in light of COVID-19.
- The Secretary is also required to prepare a report recommending additional waivers that may be necessary to help states and local educational agencies meet the unique needs of students with disabilities in response to COVID-19.

Sec. 4512. HBCU capital financing

- The Secretary of Education may grant a deferment for payments due on HBCU Capital Financing Loans for the duration of the COVID-19 disaster declaration.
- During the deferment period, the Secretary is required to make all principal payments otherwise due under the loan agreement.

Sec. 4513. Temporary relief for federal student loan borrowers

- Federal student loan payments are suspended for three months. During the suspension period, interest shall not accrue. The Secretary of Education is authorized to extend the suspension period for an additional three months.

Sec. 4514. Provisions related to the Corporation for National and Community Service

- Participants serving in the National Service Corps programs whose service is limited or suspended because of COVID-19 shall be allowed to accrue hours that will count toward the total number of hours needed for that individual's educational award.
- The Corporation for National and Community Service may extend the term of service for up to one year after the national emergency and may waive applicable age limits to allow individuals to return to service after the emergency ends.

Sec. 4515. Workforce response activities

- To respond to the COVID-19 national emergency, local boards are given increased flexibility to use funding provided under the Workforce Innovation and Opportunity Act for administrative costs.
- State governors are given authority to use workforce investment funding provided under the Workforce Innovation and Opportunity Act for statewide rapid response efforts to address COVID-19.

Sec. 4516. Technical amendments

- Amends sections of the FUTURE Act (Public Law 116-91) in order to assist federal student loan recipients and facilitate implementation.

Title III – Labor Provisions**Sec. 4601. Limitation on paid leave.**

- Paid family and medical leave under Section 110(b)(2)(B) of the Family and Medical Leave Act of 1993 is limited to \$200 per day and \$10,000 in the aggregate per employee.

Sec. 4602. Emergency Paid Sick Leave Act limitation

- Employers are not required to pay more than \$511 per day and \$5,110 in the aggregate for each employee who is unable to work because he or she is in quarantine, has been advised by a health care provider to self-quarantine, or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- Employers are not required to pay more than \$200 per day and \$2,000 in the aggregate for each employee who is unable to work because he or she is taking care of an individual who is quarantined or experiencing COVID-19 symptoms or who is caring for a son or daughter whose school is closed or for whom childcare is unavailable.

Sec. 4603. Regulatory authorities under the Emergency Paid Sick Leave Act.

- Expands the Secretary of Labor's authority to exempt small businesses with fewer than 50 employees from paid leave requirements when the imposition of such requirements would jeopardize the viability of the business.

Sec. 4604. Unemployment insurance

- Amends the Emergency Unemployment Insurance Stabilization and Access Act of 2020 to ensure that unemployment applications and assistance with the application process will be available in person, by phone, or online.

Sec. 4605. OMB waiver of paid family and paid sick leave.

- Gives the Director of the Office of Management and Budget authority to exclude certain federal Executive Branch employees from the requirements of the Family and Medical Leave Act for "good cause."
- Gives the Director of the Office of Management and Budget authority to exempt certain federal government employers from the requirements of the Emergency Paid Sick Leave Act with respect to certain federal Executive Branch employees for "good cause."

Sec. 4606. Paid leave for rehired employees.

- Employees who were laid off by an employer after March 1, 2020 and rehired may be eligible for paid leave if they were employed for at least 30 calendar days before being laid off.

Sec. 4607. Advance refunding of credits.

- Provides for the advance payment of payroll tax credits to certain self-employed individuals to cover the cost of paid sick and family leave.

Division E - Temporary Permit Use yo Guarantee Money Market Mutual Funds

Summary: The CARES Act temporarily permits the Treasury Department to develop guarantee programs for the money-market mutual-fund industry.

Sec. 5001 - Non-applicability of restrictions on ESF during national emergency

- Allows the Treasury Department to use its Exchange Stabilization Fund to guarantee money-market mutual funds during the COVID-19 outbreak declared by the President under the National Emergencies Act. This provision would remove a restriction imposed on the Treasury Department’s Exchange Stabilization Fund by the law during the 2008 financial crisis.

Division F - Budgetary Provisions

Summary: The CARES Act designates the funds specified in the bill as an emergency requirement under the Statutory Pay-As-You-Go Act of 2010 and the concurrent resolution on the budget.

Sec. 6001 - Emergency designation

- The bill designates these specified amounts as an emergency requirement.

Contact Us



Andrew E. Bigart
aebigart@Venable.com
+1 202.344.4323



Josh M. Finestone
jmfinestone@Venable.com
+1 202.344.4216



Ronald M. Jacobs
rmjacobs@Venable.com
+1 202.344.8215



Amanda L. Crawford
alcrawford@Venable.com
+1 202.344.4255



Makalia A. Griffith
magriffith@Venable.com
+1 202.344.4274



Katherine K. Sochacki
kksochacki@Venable.com
+1 202.344.4020



Sean J. Wright
sjwright@Venable.com
+1 202.344.4047

© 2020 Venable LLP Attorney advertising. This document is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. #20-242