COVID-19: Federal Agencies Prepare to Distribute Unprecedented Federal Financial Relief for the Health Care Industry

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In response to the coronavirus (COVID-19) pandemic, Congress has enacted three laws—the Coronavirus Preparedness and Response Supplemental Appropriations Act 2020, the Families First Coronavirus Response Act, and the CARES Act—that authorize unprecedented levels of funding to support the health care industry. While some of these authorizations build upon existing networks of grants and contracts, much of the appropriated funding grants significant discretion to federal agencies to allocate and distribute the money. Many of the funds will be distributed in the coming days and weeks by various federal agencies.

In anticipation of applying for these funds, businesses affected by the pandemic should begin identifying, documenting, and projecting expected additional costs and losses, and be prepared to submit a succinct statement justifying their need for the funds. In addition, companies should be aware that they may have a choice of programs from which they may seek reimbursement. Foley attorneys are actively tracking the grant solicitations and can assist in identifying opportunities and applying for available funds.
The legislation appropriates unprecedented funds to the Secretary of the U.S. Department of Health and Human Services to “prevent, prepare for, and respond to the coronavirus.” In total, over $130 billion dollars were placed into the pre-existing Public Health and Social Services Emergency Fund, which previously had an annual budget of just over $2 million.

Of these funds:

- $100 billion are marked for distribution to reimburse—through grants or other mechanisms—eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus. Health care providers include public entities, Medicare or Medicaid enrolled suppliers and providers, and for-profit and non-profit entities as the Secretary may specify that provide diagnosis, testing, or care for individuals with actual or suspected cases of the coronavirus. The funds will be made available on a rolling basis, and further guidance is expected in the coming days.

- Over $30 billion are available for broader purposes, which include the development of necessary countermeasures and vaccines, prioritizing platform-based technologies with U.S.-based manufacturing capabilities, the purchase of vaccines, therapeutics, diagnostics, necessary medical supplies, as well as medical surge capacity.

- $3.5 billion for Biomedical Advance Research and Development, including manufacturing, production, and purchase of vaccines, therapeutics, diagnostics, and small molecule active pharmaceutical ingredients, including the development, translation, and demonstration at scale of innovations in manufacturing platforms.

- $250 million for grantees and sub-grantees of the Hospital Preparedness Program, or other entities that meet criteria the Secretary may prescribe.

- $1 billion to pay the claims of providers for health services consisting of SARS-CoV-2 or COVID-19 related items and services (or the administration of such products) or visits for uninsured individuals, to the extent authorized under 42 U.S.C. 300hh-11 (related to the National Disaster Medical System).

**U.S. Department of the Treasury**

$150 billion will be distributed to states, territories, tribes, and local units of government for necessary expenditures incurred due to the COVID-19 emergency through the end of calendar year 2020, that were not accounted for in the most recent budget. Payments to states will be made by end of April 2020 and local governments may submit certifications requesting a portion of the funds.

**Centers for Medicare and Medicaid Services (CMS)**
Medicare hospitals may request acceleration of interim payments for their Medicare receivables, allowing them to double their interim payments. Hospitals will be required to repay the accelerated payments out of future Medicare receivables, but will not be charged interest.

For Medicaid payments, CMS has announced that states may submit emergency requests for section 1115 demonstrations to address coronavirus emergency, which can be used to waive otherwise applicable requirements and to draw down funding for things that Medicaid does not normally cover. These demonstrations may be used by states to expand Medicaid coverage or reimbursement during the emergency period.

**Centers for Disease Control and Prevention**

$2.45 billion for grants and cooperative agreements to carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities. These funds are available to states, localities, territories, tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes, and will be automatically provided to entities that received grants in 2019.

**Health Resources and Services Administration**

The legislation include two appropriations for supplemental distributions to health centers (including Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) that have Health Resource & Services Administration (HRSA) grants), one of $100m that has already been distributed to health centers and a separate one for $1.32 billion that has not yet been distributed.

In addition, $180 million for health centers to carry out telehealth and rural health activities, $90 million for Ryan White grantees, and $125 million to re-authorize the Healthy Start Program for project areas with high (or increasing at a rate above national average) rates of infant mortality.

**Substance Use and Mental Health Services Administration**

At least $250 million to increase access to and improve the quality of community mental and substance use disorder treatment services through the expansion of Certified Community Behavioral Health Clinics.

**Federal Emergency Management Authority (FEMA)**

The President’s recent declaration of a national emergency has also allowed FEMA to access $42 billion from the Federal Disaster Fund to support qualifying activities.

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