

The CARES Act: A Reference Guide

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Introduction

On March 27, 2020, the House passed the third and largest of stimulus packages, the [Coronavirus Aid, Relief, and Economic Security Act](#) (the Act), or the CARES Act, to help large and small businesses, individuals and families better cope financially with the rapid and relentless ravage that the COVID-19 pandemic has unleashed on the U.S. economy. The Act also accelerates the use of telehealth and other technologies and the availability of additional resources for healthcare providers on the frontlines. At \$2.2 trillion, this stimulus is roughly three times the size of the stimulus implemented in the Great Recession.

Below is a review of the material components of the Act to provide an understanding of how the Act may help those struggling against the effects, economic and otherwise, of COVID-19.

Small Business Assistance

For small businesses that need capital to weather the harsh adverse business impacts of COVID-19, the Act allocates \$350 billion to the Small Business Administration (SBA) to offer loans and grants to small businesses on favorable terms. The loans would be administered under the newly established [Paycheck Protection Program](#)^{1, 2, 3, 4, 5} (the Program), which is a modified version of the SBA's 7(a) loan program. The Act also makes important changes to the SBA's [Economic Injury Disaster Loan](#) (EIDL) program that was established in the [Families First Coronavirus Response Act](#) (the Families First Act) enacted by Congress on March 18, 2020.

Paycheck Protection Program

The Act expands the 7(a) loan program to create a new offering – the Paycheck Protection Program business loans (Paycheck Protection Loans). Employers who are currently grappling with how to determine whether to lay off workers or apply for SBA relief will need to understand how the SBA programs work. For example, if employees are laid off then there will be a significant issue with respect to the laid off employee's payment of COBRA premiums (which may be more than the monthly unemployment relief provided by the Act). Conversely, as discussed below, the SBA loan option would allow for coverage of such costs through loan forgiveness.

Highlights of the Program include the following:

- **Eligible Borrowers.** In addition to “small business concerns” as currently defined under the SBA, eligible businesses for the Program include any business, nonprofit organization⁶, veterans' organization or tribal business if it employs not more than the greater of (i) 500 employees (inclusive of full-time, part-time and those employed on other bases); or (ii) if applicable, the size standard in number of employees established by the SBA for the industry in which the entity operates.

The SBA's regulations on aggregation of affiliates are waived for (i) certain businesses in the hospitality industry with not more than 500 employees; (ii) franchise businesses with SBA franchisor identifier codes; and (iii) businesses that receive financial assistance from a Small Business Investment Company.

Sole proprietors, independent contractors, and eligible self-employed individuals are eligible loan recipients, subject to some documentation requirements to substantiate eligibility.

The Act directs the SBA to prioritize disbursements of loans to:

¹ See [Start Your Engines: SBA Issues Interim Final Rules Implementing Paycheck Protection Program](#) (4/3/2020)

² See [Are You Confused Yet? The SBA Issues Supplemental Guidance on Paycheck Protection Program Implementation](#) (4/8/2020)

³ See [Better Late Than Never\(?\): The SBA Issues Second Interim Final Rule on Paycheck Protection Program Implementation](#) (4/20/20)

⁴ See [Fill 'Er Up!: The Paycheck Protection Program and Health Care Enhancement Act](#) (4/24/20)

⁵ See [Private Equity and Other Businesses Need Not Apply: SBA Issues Fourth Paycheck Protection Program Interim Final Rule](#) (4/28/20)

⁶ See [The CARES Act Paycheck Protection Program: Special Considerations For Not-for-Profit Organizations](#) (4/2/2020)

- Small business concerns;
 - Entities in underserved and rural markets (including veteran communities);
 - Small business concerns owned by socially and economically disadvantaged individuals;
 - Women; and
 - Businesses in operation for less than two (2) years.
- **Loan Period.** Applications for Paycheck Protection Loans must be submitted prior to the end of the “covered period” (which is defined as the period beginning on February 15, 2020 and ending on June 30, 2020).
 - **Program Operations.** The SBA will provide the Paycheck Protection Loans directly, or in cooperation with the private sector, through agreements to participate on an immediate or deferred (guaranteed) basis. Lenders authorized to make loans under the SBA’s current [Business Loan Program](#) are automatically approved to make and approve loans under this Program, and they may opt to participate in the Program under the terms and conditions established by the Department of Treasury.
 - **Loan Terms**
 - The maximum loan amount is the lesser of either \$10 million, or the amount obtained by multiplying the average total monthly payments for payroll costs ([see below for what is included](#)) during the one-year period before the loan is made (or if the borrower is a newer business, the average monthly payroll costs during the period from January 1 – February 29, 2020) by 250%;
 - No collateral or personal guarantee is permitted to be required for such a loan;
 - The interest rate of loans will not exceed 4%;
 - The SBA will reimburse qualified lenders for administrative processing costs associated with making covered loans. The borrower pays no fees to obtain the loan; and
 - There is no recourse against any individual, shareholder, member or partner of an eligible loan recipient for non-payment, unless the individual uses the loan proceeds for unauthorized purposes.
 - **Use of Proceeds.** Allowable uses of loans under the Program include:
 - Those permitted under a 7(a) loan;
 - Payroll costs, which includes:
 - compensation to employees, such as salary, wage, commissions, cash, etc; paid leave; severance payments; payment for group health benefits; retirement benefits; state and local payroll taxes; and compensation to sole proprietors or independent contractors (including commission-based compensation) up to \$100,000 in one year, prorated for the covered period; and excludes
 - individual employee compensation above \$100,000 per year, prorated for the covered period; certain federal taxes; compensation to employees whose principal

place of residence is outside of the U.S.; and sick and family leave wages for which credit is allowed under the Families First Act.

- Mortgage interest, rent and utility payments;
- Insurance premiums; and
- Interest on existing debt obligations.

Businesses cannot obtain Paycheck Protection Loans and an EIDL (as defined in the [“Expansion of Disaster Loan Program”](#) section below) for the same purpose. However, borrowers are permitted to receive, for example, both a Paycheck Protection Loan to cover payroll costs and an EIDL to cover non-payroll permitted uses

- **Governmental Guarantee.** The SBA guarantee of Paycheck Protection Loans is increased to 100% through December 31, 2020. After that date, guarantee percentages would return to 75% for loans exceeding \$150,000 and 85% for loans equal to or less than \$150,000.
- **Payment Deferral.** Businesses that were operating on February 15, 2020 and that have a pending or approved loan application under the Program are presumed to qualify for complete payment deferment relief (for principal, interest and fees) for six (6) months to one year. Lenders are required to provide such relief for this period (if secondary market investors decline to approve a lender’s deferral request, the SBA must purchase the loan). The SBA has 30 days from enactment of the Act to provide guidance to lenders on this process.
- **Loan Forgiveness.** Paycheck Protection Loans qualify for the Act’s loan forgiveness provisions. Indebtedness is forgiven in an amount – not to exceed the principal amount of the loan – equal to the following costs incurred and payments made during the eight-week period after the origination date of the loan:
 - Payroll costs;
 - Interest payments on mortgages;
 - Rent; and
 - Utility payments.

The amount to be forgiven is reduced for reductions in employees and reduction in employee pay levels as follows:

- The reduction formula for fewer employees is the maximum available forgiveness *multiplied* by the average number of full-time equivalent employees (FTEs) per month – calculated by the average number of FTEs for each pay period falling within a month – during the covered period *divided* by the average number of FTEs per month (employed either (at the borrower’s election) (i) from February 15, 2019 to June 30, 2019 or (ii) January 1, 2020 until February 29, 2020 (seasonal employers are able to elect to use the average number of FTEs per month employed from February 15, 2019 until June 30, 2019); and

- For reductions in wages, the forgiveness reduction is a straight reduction by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25% of the employee's salary/wages during the employee's most recent full quarter of employment before the covered period. "Employee" is limited, for purposes of this calculation only, to any employee who did not receive during any single pay period during 2019 a salary or wages at an annualized rate of pay over \$100,000.

Borrowers can reverse the forgiveness reductions by rehiring employees or making up for wage reductions by June 30, 2020. Specifically, in the following circumstances, the forgiveness reduction rules above will not apply to a borrower between February 15, 2020 and 30 days following enactment of the Act (presumably late April 2020): (i) in the case of a FTE reduction, the reduction in FTEs is reversed; or (ii) in the case of a salary reduction, eliminating the reduction.

Borrowers seeking forgiveness of amounts must submit to their lender (and certify) supporting documentation, verifying, among other things, payroll and pay rates, and eligible forgiveness costs.

Lenders who rely on documentation and accompanying certifications are held harmless from SBA enforcement actions and penalties relating to the loan forgiveness.

Forgiveness amounts that would otherwise be includible in gross income, for federal income tax purposes, are excluded from taxable income.

Any loan amount not forgiven at the end of one year is carried forward as an ongoing loan with a maximum term of 10 years and a maximum interest rate of 4%.

Expansion of Disaster Loan Program

The Act includes updates to the EIDL program established in Families First Act.

Importantly, under the Act, a borrower that receives a Paycheck Protection Program 7(a) loan for employee salaries, payroll support, mortgage payments and/or other debt obligations would not be able to receive an EIDL for the same purpose, or co-mingle funds from another loan for the same purpose

As modified by the Act, the EIDL program would offer an emergency grant to allow an eligible borrower to request an advance on the EIDL of up to \$10,000 within three (3) days of applying. The applicant would not be required to repay such an advance payment, even if it is subsequently denied an EIDL.

The Act makes the following additional changes to the EIDL program during the covered period:

- Waives rules related to personal guarantees on advances and loans of \$200,000 or less for all applicants;
- Waives the "one year in business prior to the disaster" requirement (except the business must have been in operation on January 31, 2020);
- Waives the requirement that an applicant be unable to find credit elsewhere; and
- Allows lenders to approve applicants based solely on credit scores (no tax return submission required) or "alternative appropriate methods to determine an applicant's ability to repay."

Relief for Large and Mid-Sized Businesses

The Act sets aside \$500 billion to provide loans, loan guarantees and other financial assistance to large businesses. The highlights include:

- \$25 billion in loan and loan guarantees for airlines and other related air carrier businesses, \$4 billion in loan and loan guarantees for cargo air carriers and \$17 billion in loan and loan guarantees for businesses that work in critical national security.
- Allocation of \$454 billion in investments, loan and loan guarantees so the Federal Reserve can invest in, or lend money to, certain businesses. Assistance to large businesses can only be made to businesses that are based in the U.S. and primarily have employees in the U.S. The loans or loan guarantees cannot have a term longer than five (5) years, interest cannot exceed the current prevailing market rates and it cannot be forgiven.
- Mandates that businesses receiving assistance cannot buy back its own stock, pay certain dividends or lay off 10% or more of its staff.
- Prohibition of companies that receive assistance from providing high earning employees who make over \$425,000 per year (including stock) with more compensation than they received in 2019.
- Requirement that airline companies that receive a loan or loan guarantee to sustain scheduled flights through March 1, 2022 to ensure the supply of healthcare materials can be available.
- Prohibition of a landlord from commencing eviction proceedings against a tenant for nonpayment of rent for a period of 120 days from enactment of the Act, if in any way the tenant receives assistance or protection under certain federal programs, including from the U.S. Department of Housing and Urban Development.
- Establishment of a Congressional Oversight Commission over the Federal Reserve and Treasury Department through September 30, 2025 to monitor the implementation and impact of the assistance program.

The Secretary of Treasury has been tasked to develop a program to provide mid-sized businesses (500-10,000 employees) with direct loans. Separate from the \$500 billion to large businesses, these loans cannot have an annual interest rate in excess of 2% and payment of principal and interest under these loans will be deferred for the first six (6) months of the loan. In order to qualify for a loan, a mid-sized business must certify that, among other things, it is using the funds to keep or restore at least 90% of its staff with no reduction in salary and benefits. Mid-sized businesses that receive funding cannot outsource jobs while the loan is outstanding and for a period of two years upon repayment of the loan.

Tax Benefits for Businesses

The tax assistance for businesses in the Act is premised on the need to generate cash flow in an environment where businesses are expected to incur substantial tax losses in 2020 and the following tax years. The allowable payroll tax credit is an illustration of this approach as well as the revision, or more specifically a significant unwind, of many of the revenue raising provisions of the [2017 Tax Cuts and Jobs Act](#) (TCJA) that will now allow businesses to use current losses against profits in prior taxable years to generate cash flow. For example, the Act reinstates and extends the use of net operating loss (NOL) carrybacks, suspends excess loss limitation rules for non-corporate taxpayers, expands the use of minimum tax credits for corporations and liberalizes the deductibility of business interest, all of which were curtailed by the TCJA. The Act also addresses concerns about not triggering the NOL change in control limitation rules to the extent a business receives funding from the Treasury Department. The details of the changes are described below.

Net Operating Loss Rules⁷

- The Act makes significant, but temporary, modifications to the Code Section 172 NOL rules. Under current law, NOLs are generally subject to an 80% of taxable income limitation and NOL carrybacks are generally not allowed.
- The Act amends Section 172(a) of the Internal Revenue Code of 1986 (the Code), as amended to allow taxpayers to use NOLs (carrybacks and carryforwards) for taxable years beginning before January 1, 2021, without regard to the 80% taxable income limitation. For taxable years beginning after December 31, 2020, 100% of NOL carryforwards can be used for a NOL from taxable years beginning before January 1, 2018 and 80% of NOL carryforwards can be used for taxable years beginning after December 31, 2017.
- NOLs for the 2018, 2019 and 2020 taxable years can now generally be carried back five (5) years, although this new carryback rule is not applicable to real estate investment trusts and special rules apply for life insurance companies.
- For taxpayers subject to the Code Section 965 repatriation tax, the five-year carryback will apply for purposes of computing the repatriation tax. Previously, the repatriation tax was computed without regard to NOL carrybacks. Taxpayers can also make a special election for the 2018 and 2019 taxable years to exclude these years from the carryback period.

⁷ See [IRS Issues Net Operating Loss Guidance Under The Cares Act](#) (4/14/20)

Loss Limitation Rules for Non-Corporate Taxpayers

- The Act makes revisions to the loss limitation rules for non-corporate taxpayers. Under current law, non-corporate taxpayers are subject to loss limitation rules under Code Section 461(l) for excess business losses and the excess losses are allowed as a NOL that is carried forward to subsequent taxable years.
- For taxable years beginning after December 31, 2017 and before January 1, 2026, the Act now provides that the excess business losses limitation for farm losses shall no longer apply (making these losses available). In the case of non-farm losses, the Act suspends the excess business losses limitation for taxable years beginning after December 31, 2017 and before January 1, 2021, which means the losses are available for the 2018, 2019 and 2020 taxable years.

Credit for Prior Year Minimum Tax for Corporations

- The Act modifies the minimum tax credit that is available to corporations. Under current law, corporations are subject to a limitation on the amount of the minimum tax credit, although under Code Section 53(e) the minimum tax credit was increased by a 50% Alternative Minimum Tax (AMT) refundable credit for the 2018-2020 tax years and a 100% AMT refundable credit for the 2021 tax year.
- The Act states that the AMT refundable credit is 50% for the 2018 taxable year and 100% for the 2019 taxable year.
- The Act also allows for an election to take the entire refundable AMT credit in 2018.

Limitation on Business Interest

- Under current law, business interest is generally subject to a limitation based on the amount of business interest income and 30% of adjusted taxable income.
- The Act revises the limitation rules for taxable years beginning in 2019 and 2020 and increases the adjusted taxable income percentage from 30% to 50%. In case of partnerships, the revision generally applies beginning with the 2020 taxable year, although an election can be made by a partner to have the rules apply beginning with the 2019 taxable year.
- For taxable years beginning in 2020, the Act also allows a taxpayer to use its 2019 taxable income instead of income for the current taxable year.

Loans Made or Guaranteed by the Treasury Department

- Any loan made by the Treasury Department under the Act is treated as indebtedness for purposes of the Code and is treated as issued for its stated principal amount with the stated interest on the loans treated as qualified stated interest. These rules are important for how the loans will be classified under the original issue discount rules and help avoid adverse consequences under these rules.

- The Treasury Department and the Internal Revenue Service are authorized to issue regulations or guidance that the acquisition of warrants, stock options, common or preferred stock or other equity under the Act's Treasury Department funding program will not result in an ownership change under Code Section 382 (to avoid a limitation on the use of NOLs).

Payroll Tax Credit^{8, 9} and Deferral^{10, 11}

- Businesses are allowed a credit against payroll taxes for “qualified wages” (including amounts paid towards health insurance), not exceeding \$10,000 per employee, paid to or for employees from March 13, 2020 to December 31, 2020 when the business is suspended due to a COVID-19-related shut down order or receipts declined more than 50% when compared to the applicable period in the prior year. If a business has more than 100 full-time employees, the credit is only available if the employees were not providing services and if the business has 100 employees or less, the credit is available whether or not the business remained open.
- The Act provides a grace period for payment of payroll taxes owed for 2020 – 50% of the taxes are due by the end of 2021 and 50% by the end of 2022.

Direct Payments to Individuals and Families and Certain Other Tax Changes

- Certain qualifying individuals and families are set receive direct payments in the form of an advance on a tax credit based in their 2018 or 2019 federal tax return, depending on whether or not a 2019 tax return has been filed. At the maximum relief level, an individual who filed his or her tax return alone and had adjusted gross income (AGI) of \$75,000 or less will receive \$1,200, and joint filers who had an AGI of \$150,000 or less will receive \$2,400. Additionally, families will receive \$500 per child. However, the payments are subject to a phase-out reduction when AGI exceeds certain threshold amounts. The phase-out reduction is equal to 5% of the amount an individual's AGI exceeds the phase-out amount of \$75,000 (\$150,000 in the case of joint filers).
- Non-itemizing taxpayers can tax an above-the-line deduction up to \$300 for certain charitable contributions.
- The dollar limitation for certain charitable contributions for itemizing taxpayers has effectively been removed.

⁸ See [CARES Act Employee Retention Credit: A Detailed Analysis](#) (4/3/2020)

⁹ See [CARES Act Employee Retention Credit Update](#) (4/17/2020)

¹⁰ See [CARES Act Payroll Tax Deferral: A Detailed Analysis](#) (4/3/2020)

¹¹ See [CARES Act Deferral of Employment Tax Payment Update](#) (4/20/20)

Unemployment Compensation Benefits

The Act provides states the opportunity to enter agreements with the federal government to provide enhanced unemployment compensation (UC) benefits¹² under existing state programs for immediate UC payments (*i.e.*, no one-week waiting period), an additional \$600/week for up to four (4) months (on top of state benefits) and an additional 13 weeks of UC benefits for participating states. It also offers states the opportunity to enter agreements with the federal government to receive funding for state-enacted “short-time compensation” programs to subsidize employees who have their hours reduced in lieu of a layoff, where the federal government would fund the shortfall between reduced hour payments and the UC benefit.

Key features of the new unemployment benefits include:

- Benefits extended from 26 weeks (in most states) to 39 weeks;
- Benefits are payable for the period beginning on January 27, 2020, and ends on December 31, 2020;
- The amount of benefits includes the amount that would be calculated under state law *plus* \$600 per week for up to four (4) months and
- Waiver of the usual one-week waiting period.

Additional benefits may also be available to those who exhaust their benefits. The Act also provides funding to states for work share programs.

The Act also creates a temporary program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history and others) who are unable to work as a direct result of the coronavirus public health emergency. Specifically, the Act provides that a “covered individual” includes anyone who self-certifies that he or she is able and available to work, but is unemployed or partially unemployed due to any of the following:

- Has been diagnosed with COVID-19, or is experiencing symptoms and seeking a medical diagnosis;
- A member of the individual’s household has been diagnosed with COVID-19;
- The individual is providing care for a family member or household member who has been diagnosed with COVID-19;
- The individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility as a direct result of COVID-19;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19;

¹² See [Enhanced Unemployment Benefits Under The CARES Act: Everything Employers and Employees Need to Know](#) (3/31/2020)

- The individual is unable to work because a healthcare provider has advised the individual to self-quarantine due to COVID-19 concerns;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19;
- The individual has become the breadwinner, or major support, for a household because the head of household has died as a direct result of COVID-19;
- The individual has to quit their job as a direct result of COVID-19; or
- The individual's place of employment is closed as a direct result of COVID-19.

Grants to States and Localities

The Act has reserved \$150 billion for state and local municipalities to help support the local efforts to combat COVID-19. Many in Congress have recognized that this amount will not be enough to support those efforts, particularly in states that have been hardest hit. Likely, there will be additional funds for states and localities in a future bill.

Employee Benefits Provisions of the Act

Access to Qualified Retirement Plans Funds / Pension Funding

- Individuals are permitted to receive a distribution from their 401(k) plan equal to the lesser of 100% of their vested account balance or \$100,000 from such a plan without incurring a 10% excise tax. The \$100,000 limitation is aggregated across all plans in which the individual has a balance (e.g., a 401(k) plan and an IRA). The distribution is permitted if the individual asserts that (1) they have been diagnosed with COVID-19; (2) a spouse or close family member has been diagnosed with COVID-19; or (3) they have experienced a financial need due to quarantine, furlough or layoff caused by COVID-19. The individual is permitted to either repay the distribution over three (3) years, or, if not repaid, spread the income inclusion over the same three (3) years.
- The maximum amount which an individual may take as a loan from a qualified plan is increased to \$100,000.
- Plans are permitted to effectuate these changes as long as an amendment allowing them is adopted no later than the end of the first plan year beginning on or after January 1, 2022.
- The Act provides for pension funding relief for single employer defined benefit pension plans. Specifically, any minimum contribution due during 2020 (plus interest at the plan's assumed interest rate) will be deemed timely if it is made no later than January 1, 2021. Additionally, such plans are permitted to elect to use the prior year's adjusted funding target attainment percentage (AFTAP) in lieu of one calculated in 2020.

Health and Fringe Benefits Plans

- Employers may pay an employee's student loans during 2020 without income taxation to the employee, unless the expense has already been excluded from the employee's income due to a qualified education fringe benefit.
- Insurers, including employer sponsored group health plans, are required to cover preventative care related to COVID-19 (including immunizations) without co-pays or other cost sharing.
- The Act makes over-the-counter medicines (i.e., health-improving medicine and supplements) and feminine hygiene products "qualified medical expenses." This allows reimbursement or payment for expenses for such medications from health savings accounts (HSAs) or flexible spending accounts (FSAs). The provision also adds feminine hygiene products to the definition of qualified medical expenses.
- Contribution to an HSA will not be disallowed because the owner of the HSA participates in an otherwise compliant high deductible health plan which provides for coverage of telehealth and other remote care services without a deductible, removing a significant barrier to use of telehealth.

Preventative Care and Treatment

The Act modifies the Families First Act's requirement that individual and group health insurers provide coverage for certain COVID-19-related tests and procedures as follows:

1. Expanding the definition of an in vitro test for the detection of either SARS-CoV-2 or COVID-19 to include tests that are *pending* approval for emergency use under the federal [Federal Food, Drug, and Cosmetic Act](#);
2. For purposes of covering in vitro diagnostic testing, the Act obligates health insurers to either (i) accept negotiated rates in place prior to the public health emergency; (ii) reimburse the provider an amount that equals the cash price listed on the provider's public interest website; or (iii) negotiate a rate with the provider; and
3. Requiring group and individual health insurers to cover qualifying coronavirus preventative services and defining such services as either (i) an "evidence-based item[s] or service[s] that have in effect a rating of 'A' or 'B' in the current recommendations of the [United States Preventative Services Task Force](#)" or (ii) an immunization recommended by the [Advisory Committee](#) of the Centers for Disease Control and Prevention (CDC).

In addition, the Act includes the following appropriations and measures for purposes of prevention and treatment of COVID-19:

- Reauthorizing the Public Health Service Act's Healthy Start Initiative – a governmental program providing grants to areas with high annual infant mortality rates - and providing appropriations of \$125.5 million to the program through 2025;
- Requiring the HHS Secretary to carry out a national campaign to improve awareness of, and support outreach efforts regarding, the importance of and need for blood donations during the public health emergency;
- Amending the Public Health Service Act's provisions on biomedical advanced research and development to provide that any transactions entered into by the HHS Secretary for purposes of the public health emergency shall not be terminated solely due to the expiration of the emergency
- Issuing over \$4 billion in appropriations for community health centers for 2020, as well as \$3.61 million in appropriations for the [National Health Service Corps](#);
- Issuing additional appropriations of \$25 million for research into the prevention and cure of Type I Diabetes;
- Providing flexibility for post-acute care providers by waiving certain requirements, including the requirement that inpatient rehabilitation patients receive at least three (3) hours of therapy per day, and waiving the reimbursement rates based on discharge metrics;
- Expanding the applicability of the Spousal Impoverishment Protections – protections that prevent non-applicant spouses from becoming poverty stricken in order for their spouses to qualify for long-term Medicaid - by amending the spousal income methodology; and

- Delaying reductions in Disproportionate Share Hospital (DHS) payments to facilities that serve a significantly disproportionate number of low-income patients.

Medicare / Medicaid

The Act extends the work geographic index floor to December 1, 2020, which increases the geographic index to 1.0 for any locality. In addition, the Act provides a significant increase in funding for the consensus-based entity under contract with HHS – currently the National Quality Forum – that provides recommendations as to priorities for healthcare performance measurement. The Act also provides for a significant increase in funding for state health insurance programs, area agencies on aging and disability resource centers, and the [National Center for Benefits and Outreach Enrollment](#).

The Act also contains several provisions that speak to funding for treatment of Medicare beneficiaries:

- The weighting factor for COVID-19 patients under the Medicare hospital inpatient prospective system is increased by 20% and the payment rates for durable medical equipment are increased by 25% of the unadjusted fee schedule amount;
- Testing and any eventual coronavirus vaccine will be covered under Medicare Part B without any cost-sharing;
- Non-expansion states are permitted to use the Medicaid program to cover COVID-19-related services for uninsured adults who would have otherwise qualified for Medicaid; and
- The Act expands the Medicare hospital accelerated payment program such that all eligible providers may request accelerated payments for inpatient services over a six month period and payment amounts are increased from 70% to 100% of what the provider would have otherwise received

With respect to Medicaid, the Act extends and provides additional funding for the [Money Follows the Person Rebalancing Demonstration Program](#) – a program that provides funding and support for states to transition individuals living in institutional care settings into more integrated settings within their communities. The Act also extends and expands the [Community Mental Health Services Demonstration Program](#) in order to assist states with establishing certified community behavioral health clinics.

Workforce Development

The Act provides for appropriations - ranging from \$5,000,000 to \$51,000,000 - for each fiscal year from 2021 through 2025 to assist with the Public Health Service Act's provisions regarding healthcare workforce development. Among other things, the Act:

- Provides the HHS Secretary with the authority to award grants of at least \$75,000 to schools, programs or other entities that establish or operate [Geriatric Workforce Enhancement Programs](#) (*i.e.* programs providing training for health professionals in geriatric medicine);
- Expands the types of nursing entities eligible to receive grants or contracts under the Public Health Service Act and authorizes appropriations of \$254 million for each fiscal year from 2021 through 2025 to expand the nursing workforce; and
- Requires that, within one (1) year after the Act's enactment, the HHS Secretary, the [Advisory Committee on Training in Primary Care Medicine and Dentistry](#) and the [Advisory Council on Graduate Medical Education](#) shall analyze the manner in which their respective programs strengthen the nation's healthcare workforce needs and identify and remediate any gaps in their programs.

To expand the healthcare workforce, the Act also empowers the [Ready Reserve Corps](#) to respond to COVID-19-related issues and other public health emergencies. Also, to further encourage volunteer healthcare providers, the Act provides immunity for professionals who volunteer their services in the diagnosis, prevention or treatment of COVID-19. The Act's limitation of liability provision provides state and federal immunity to providers offering voluntary services within the confines of their medical licenses without compensation or reimbursement. Exceptions apply for services rendered in a grossly negligent or reckless manner.

Medical Supplies

The Act amends the Public Health Service Act to allow for the strategic national stockpile and security countermeasure procurements to include “personal protective equipment, ancillary medical supplies, and other applicable supplies” needed to administer drugs, vaccines and other testing and treatments. The Act defines a “personal respiratory protective device” as a device approved by [National Institute for Occupational Safety and Health](#) and that is determined to be a priority for use during a public health emergency.

Disclosure of Protected Health Information (PHI)

- The Act modifies the [Health Insurance Portability and Accountability Act](#) (HIPAA) to allow for consensual disclosures and re-disclosures of PHI for purposes of treatment, payment and healthcare operations to continue indefinitely absent the patient’s revocation of consent¹³. The amendments also permit disclosures of appropriately de-identified PHI to public health authorities.
- The Act requires the [U.S. Department of Health and Human Services](#) (HHS) to issue, within 180 days, guidance on the sharing of patients’ PHI relating to COVID-19, including compliance under HIPAA. The [HIPAA Privacy Rule](#) already permits a covered entity, consistent with applicable law and ethical standards, to use or disclose PHI without a patient’s consent where the entity in good faith believes that such use or disclosure is (i) necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and (ii) to a person(s) reasonably able to prevent or lessen the threat.
- HHS already has demonstrated some willingness to lessen privacy restrictions for healthcare providers to tackle the COVID-19 outbreak, including three Office for Civil Rights (OCR) publications:
 - A February 2020 [OCR bulletin](#) providing guidance for permitted disclosure of PHI relating to COVID-19, noting under the Privacy Rule that covered entities may disclose PHI without a patient’s consent “as necessary to treat the patient or to treat a different patient,” including coordination or management of healthcare and related services. Further, a covered entity may disclose PHI to anyone “as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public”;
 - A March 2020 limited waiver from HHS, “[Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency](#),” waiving certain liability under the Privacy Rule to enable better information-sharing in connection with COVID-19; and
 - A March 2020 OCR release, “[COVID-19 and HIPAA: Disclosures to Law Enforcement, Paramedics, Other First Responders and Public Health Authorities](#),” providing guidance for disclosure of PHI related to COVID-19 to law enforcement, paramedics, other first responders and public health authorities without the patient’s authorization.

¹³ See [HHS Relaxes Some HIPAA Disclosures for Public Health](#) (4/6/20)

Increased Funding & Access for Rural Health Centers

The Act allocates \$1.32 billion to rural health centers for the detection, prevention, diagnosis and treatment of COVID-19. These health centers must apply for these funds pursuant to the procedures in the [Public Health Service Act](#), however, the eligibility requirements for these funds are reduced in order to expand the availability of services to rural areas. The Act increases appropriations for these grants to \$79.5 million per year, until 2025.

Telehealth

The Act provides substantial economic incentives and healthcare system enhancements, including special emphasis on increasing accessibility to COVID-19 patients to the healthcare delivery system through telehealth¹⁴. Specifically, the Act gives financial incentives and payment direction, and expressly identifies the importance of remote, telehealth, services in reducing the risk of potential further spread of COVID-19. Applicable provisions in the Act to assist in fighting COVID-19 through telehealth programs, include:

- [Amendment of the Public Health Service Act to allow “evidence based projects that utilize Telehealth technologies through Telehealth networks;”](#)
- [Improving rural healthcare services outreach through telehealth providers by incentivizing network development and providing quality improvement grants;](#)
- [Providing exemptions for telehealth services, amending the Internal Revenue Code, to provide pre-deductible coverage for telehealth services. This means that telehealth and other remote-care services could be covered pre-deductible without violating federal rules for high-deductible health plans;](#)
- [Increasing Medicare telehealth flexibility;](#)
- [Enhancing Medicare telehealth services for federally qualified health centers and rural health clinics, including financial payments and incentives;](#)
- [A temporary waiving of the requirement for face-to-face visits between home dialysis patients and physicians and allowing for telehealth;](#)
- [Authorizing the use of telehealth to satisfy the required face-to-face encounter prior to recertification of hospice care;](#)
- [Encouraging telecommunication for home health services;](#) and
- [Improving care planning for Medicare home health service.](#)

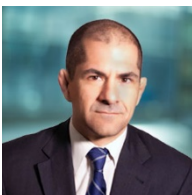
¹⁴ See [Issued Guidance Regarding Telehealth Waivers During the COVID-19 Pandemic](#) (4/22/20)

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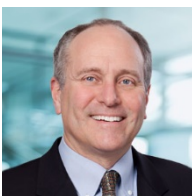
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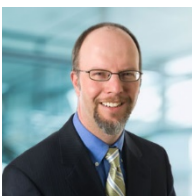
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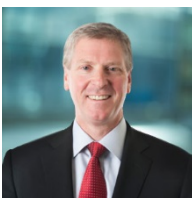


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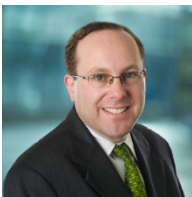
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