Published on *The National Law Review* https://natlawreview.com

Congressional Health Care Law Response to the COVID-19 Pandemic

Article By:

Jennifer Orr Mitchell

Noah J. Stern

Jared M. Bruce

One day after the declaration of a state of emergency by the Trump administration on Friday, March 13, the House of Representatives passed H.R. 6201, the Families First Coronavirus Response Act (the "Act"). In addition to funding for nutrition services and several key tax provisions designed to allow for additional family leave for coronavirus victims and tax credits to employers of those individuals, the Act contains several important health care-related provisions.

Coverage of Testing for COVID-19. The Act requires private health plans to provide coverage for COVID-19 diagnostic testing, including the cost of a provider, urgent care center, and emergency room visits to receive testing. Coverage must be provided at no cost to the patient.

Waiving Cost-Sharing Under Medicare Part B and the Medicare Advantage Program. The Act requires both Medicare Part B and Medicare Advantage organizations to cover beneficiary cost-sharing for provider visits during which a COVID-19 diagnostic test is administered or ordered. Medicare Part B currently covers the COVID-19 diagnostic test with no beneficiary cost-sharing. Now, coverage must be provided at no cost to both Medicare Part B and Medicare Advantage beneficiaries.

Coverage at No Cost-Sharing of COVID-19 Testing Under Medicaid and CHIP. The Act requires state Medicaid programs to provide coverage for COVID-19 diagnostic testing, including the cost of a provider visit to receive testing. Coverage must be provided at no cost to the Medicaid beneficiary. It would also provide states with the option to extend Medicaid eligibility to uninsured populations for the purposes of COVID-19 diagnostic testing. State expenditures for medical and administrative costs would be matched by the federal government at 100 percent.

Treatment of Personal Respiratory Protective Devices as Covered Countermeasures. The Act requires certain personal respiratory protective devices to be treated as covered countermeasures under the PREP Act Declaration for the purposes of emergency use during the COVID-19 outbreak and ending Oct. 1, 2024. This designation provides immunity from liability (except for willful

misconduct) for claims of loss caused, arising out of, relating to, or resulting from administration or use of countermeasures to diseases, threats, and conditions related to a public health emergency.

Application with Respect to TRICARE, Coverage for Veterans, and Coverage for Federal Civilians. This section of the Act ensures individuals enrolled in TRICARE, covered veterans, and federal workers have coverage for COVID-19 diagnostic testing without cost-sharing.

Coverage of Testing for COVID-19 at No Cost-Sharing for American Indians Receiving Contract Health Services. The Act ensures that American Indians and Alaskan Natives do not experience cost sharing for COVID-19 testing, including those referred for care away from an Indian Health Service or tribal health care facility.

Emergency FMAP Increase. The Act provides a temporary increase of up to 6.2 percent to states' federal medical assistance percentage ("FMAP") to provide coverage of coronavirus testing for the duration of the public health emergency for COVID-19. It requires states to provide the testing without any additional cost-sharing responsibilities or other additional eligibility requirements on the Medicaid beneficiary. In addition, states may elect to extend Medicaid eligibility to uninsured persons for coronavirus testing and would receive a 100 percent increase in FMAP for those expenses.

Increase in Medicaid Allotments for Territories. The Act provides an increase to the territories' Medicaid allotments for 2020 and 2021. It will ensure territories that receive an FMAP increase will have the necessary additional federal funds for their Medicaid programs.

Clarification Relating to Secretarial Authority Regarding Medicare Telehealth Services Furnished During COVID-19 Emergency Period. Finally, the Act makes a technical change to the Medicare telehealth provision of the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123) to ensure new Medicare beneficiaries are able to access telehealth services under the emergency authority granted to CMS. On March 9, 2020, CMS made modifications to their telehealth policies allowing additional telehealth services to be reimbursed by Medicare. For example, a Medicare beneficiary who is looking for advice about symptoms they are experiencing can call their doctor and receive medical advice about whether he or she needs to see their doctor in person for a physical exam. If they start to feel more ill, a virtual check-in allows a health care provider to offer recommendations about next steps and even take precautions for someone they are concerned may have the COVID-19 virus or flu before they step in the office or hospital, putting others at risk. These check-ins are billable services, and the Medicare coinsurance and deductible would apply to these services. Additionally, Medicare Advantage organizations may also provide enrollees access to Medicare Part B services via telehealth in any geographic area and from a variety of places, including beneficiaries' homes, as part of their benefit packages for a plan year.

The text of the Act is available here. A full summary of the Act published by the House of Representatives is here.

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National Law Review, Volume X, Number 76

Source URL:https://natlawreview.com/article/congressional-health-care-law-response-to-covid-19-pandemic