



## Health Policy Briefing

March 23, 2020

### Hart Health Strategies COVID-19 Resources

Due to the amount of rapidly emerging information related to COVID-19, Hart Health Strategies has developed a series of COVID-19 resources and continues to update and post the documents at the following links:

- [Health Care Workers on the Front Lines](#)
- [Personal Protective Equipment](#)
- [Disaster Primer](#)
- [State Resources](#)
- [COVID-19 Testing](#)
- [Federal Relief Overview](#)
- [Small Business Resources](#)
- [Telehealth Overview](#)

### *President Signs Coronavirus Response Phase II, Senate Working to Advance Phase III*

Senate Republicans released the third phase (S. 3548) of Congress' legislative response to the coronavirus disease (COVID-19) outbreak on Thursday. The \$1.3 trillion **Coronavirus Aid, Relief, and Economic Security (CARES) Act** is comprised of four main components: health care, tax, impacted industries, and small businesses. The relief bill includes tiered tax rebates up to \$1,200 for middle-income families, loans or loan guarantees through the Treasury Department's Exchange Stabilization Fund for "severely distressed sectors" impacted by the pandemic.

The legislation includes language based on the **Good**

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**Samaritan Health Professionals Act** (S. 1350/H.R. 6283) which would shield health professionals who volunteer their services in response to the pandemic from lawsuits unless they engage in criminal conduct or gross negligence. The bill also proposes an added payment for hospitals amounting to a 15 percent rate bonus for caring for coronavirus patients.

Phase three would provide for expedited coding of novel medical products so that physicians could bill Medicare and Medicaid for the use of new technologies. The Centers for Medicare and Medicaid Services (CMS) would also be required to promptly determine whether new therapies coming to market will be covered on a nationwide basis.

The Republican COVID-19 economic response plan was initially rejected by Senate Democrats, who have argued that it puts the interests of corporations ahead of workers. Administration officials, Senate Democrats, and Senate GOP leaders are involved in the ongoing negotiations on the package. The administration is pushing to include provisions that would further strengthen the economy, including direct payments to more Americans. Democrats support expanding the legislation to increase unemployment insurance and to provide more funding to workers, Medicaid, and public health programs. Democrats are also demanding that the package include additional emergency funding to states and aid for hospitals and other health care facilities caring for patients with the virus. Given the bipartisan agreement on the need to act quickly, discussions on the bill continued throughout the weekend in the hopes of a Monday vote. Senate Majority Leader Mitch McConnell (R-Ky.) filed cloture on the stimulus package on Friday, saying the Senate will not adjourn until a vote on the third spending bill takes place. On Sunday evening, the cloture vote on the bill failed by a vote of 47-47 vote, with 60 needed to advance the measure. It is unclear at this time how McConnell will opt to proceed. House Speaker Nancy Pelosi left a meeting in McConnell's office earlier Sunday saying they had no deal and the House would write its own package.

The House of Representatives remains out of session. Members have been told that they will not be brought back to Washington until the Senate has passed its legislation. Pelosi has expressed support for a broader economic stimulus plan, and stated that the next House response to the virus will expand refundable tax credits for the self-employed and access to longer term leave, increase the scope of allowable uses of family and medical leave, and ensure paid leave for first responders and health workers. The next piece of House legislation is expected to follow regular order and give committees the opportunity to provide input. Work on the bill will proceed even while the House remains in recess.

Recently, the President invoked the **Defense Production Act** (DPA), which could be used to increase the nation's supply of medical products needed to combat the coronavirus. To aid in the formation of any contracts with private manufacturers to make the needed supplies, the latest **CARES Act** includes \$1 billion for these purposes.

The Senate approved the second congressional COVID-19 relief package (H.R. 6201) on Wednesday by a vote of 90-8, with Republican Sens. Marsha Blackburn (Tenn.), James Inhofe (Okla.), Ron Johnson (Wis.), James Lankford (Okla.), Mike Lee (Utah), Rand Paul (Ky.), Ben Sasse (Neb.) and Tim Scott (S.C.) voting against the bill. The President signed the **Families First Coronavirus Response Act** into law on March 18. The phase two COVID legislation includes paid leave requirements and free coverage of coronavirus testing. As a result of its negotiations with the administration and concerns about the impact of the bill on small businesses, the House was required to make technical fixes to the package that included a scale-back of its paid leave program prior to Senate passage. Employees' eligibility for expanded family and medical leave will be limited to childcare purposes. The previous version of the bill would have allowed 12 weeks of partially paid **Family and Medical Leave Act** (FMLA) leave for quarantine or to care for a family members as well.

## ***Diaz-Balart, McAdams, Paul Test Positive for COVID-19, Others Self-Quarantine***

Several lawmakers have announced that they have tested positive for the coronavirus, while several others have made the decision to self-quarantine after coming into contact with someone who had tested positive. Testing positive are Rep. Mario Diaz-Balart (R-Fla.), Rep. Ben McAdams (D-Utah), and Sen. Rand Paul, MD (R-KY). Those in self-quarantine include Reps. Don Beyer (D-Va.), Anthony Brindisi (D-N.Y.), Julia Brownley (D-Calif.), Matt Cartwright (D-Pa.), Tom Cole (R-Okla.), Jason Crow (D-Colo.), Joe Cunningham (D-S.C.), Sharice Davids (D-Kan.), Drew Ferguson (R-Ga.), Vicente Gonzalez (D-Texas), Kendra Horn (D-Okla.), Andy Kim (D-N.J.), Ben Ray Lujan (D-N.M.), Gwen Moore (D-Wis.), Stephanie Murphy (D-Fla.), David Price (D-N.C.), Kathleen Rice (D-N.Y.), Steve Scalise (R-La.), Adam Schiff (D-Calif.), David Schweikert (R-Ariz.), Ann Wagner (R-Mo.), as well as Sens. Cory Gardner (R-Colo.), Mike Lee (R-Utah), Mitt Romney (R-Utah), and Rick Scott (R-Fla.).

## ***Dems Request Details from WH on COVID Related Shortages***

House Oversight Committee Democrats are [requesting](#) a briefing from the U.S. Department of Health and Human Services (HHS) on the Department's plans to meet shortages of ventilators, hospital beds, and personal protective equipment (PPE) for health care workers. The lawmakers ask for details on how equipment and medical gear will be distributed, how the Defense Production Act (DPA) will be used to increase production, and what role the Federal Emergency Management Agency will play in distribution. The panel has also [asked](#) for a copy of the administration's plan for addressing the shortfall of coronavirus diagnostic tests. House Education and Labor Committee Chairman Bobby Scott (D-Va.) is [urging](#) the White House to appoint a designated official to coordinate the distribution of PPE and other equipment to health care workers across the country. His letter argues that coordination will be necessary to address nationwide shortages and direct supplies to the highest priority areas as they become available.

## ***Senate Democrats Push For COVID Coverage Expansion***

A group of Senate Democrats are [urging](#) health insurance companies to cover all services – not just the limited official diagnostic – for patients with a presumptive COVID-19 diagnosis. The letter, led by Sen. Maggie Hassan (D-N.H.), was sent to the CEOs of Aetna, Cigna, the Blue Cross Blue Shield Association, Humana, Kaiser Permanente, United Health, and America's Health Insurance Plans. The lawmakers ask for a commitment to cover diagnostic services and therapeutic care, even in the absence of an authorized COVID-19 diagnostic test due to the current limited capacity to providing testing to all who need it.

## ***Supreme Court Postpones March Session***

The U.S. Supreme Court has postponed a two-week argument session that was scheduled to begin this week as a result of the COVID-19 outbreak. The court was set to hear arguments in 11 cases, and is examining options for rescheduling those cases given the developing circumstances. The court's next two-week sitting is planned to start April, and includes consideration of the Trump administration's expansion of employer exemptions from the Affordable Care Act (ACA) requirement to offer free birth control through health care plans. While the Supreme Court's nine-month term typically concludes in late June, it could be extended if necessary.

### ***CMS Approves First 1135 Waivers, Extends Quality Pay Program Deadlines***

The Centers for Medicare and Medicaid Services (CMS) has approved the first state requests for 1135 Medicaid waivers in response to the COVID-19 national emergency. The Florida waiver will permit the state to waive prior authorization requirements, streamline provider enrollment processes, allow care to be provided in alternative settings when there is an evacuation to an unlicensed facility, suspend certain nursing home screening requirements, and extend deadlines for appeals and state fair hearing requests. The Washington waiver includes similar changes. CMS expects more states to submit 1135 requests in line with the waivers already granted, and is working to expeditiously review and approve the requests. Additional Section 1135 approval letters will be posted [here](#) as they are issued.

CMS also announced that it will extend deadlines for doctors and clinicians who participate in Medicare quality reporting programs. The deadline for submitting data for the Quality Payment Program will be extended from March 31 to April 30. The agency will not count data from the first half of calendar year 2020 when evaluating the care provided by ambulatory surgical centers, hospital inpatient and outpatient programs, purchasing programs, and other participants.

### ***FDA Suspends Domestic Inspections***

The Food and Drug Administration (FDA) announced that it is suspending domestic routine surveillance facility inspections as it works to mitigate the coronavirus outbreak. For-cause inspection assignments will be evaluated and will proceed if mission-critical. The agency will also continue its work in responding to natural disasters and other public health emergencies involving FDA-regulated products.

### ***COVID-19 Likely to Impact Clinical Trials***

A new survey indicates that COVID-19 will significantly impact nearly one-third of clinical trial sites and their ability to recruit patients for new trials or keep patients enrolled in existing studies. Thirty-nine percent of the 170 U.S. clinical trial sites surveyed between March 12-13 responded that they believe patients will be much less or somewhat less likely to enroll in new clinical research trials, while 25 percent of sites expect patients currently enrolled in a trial will be much less or somewhat less willing to continue their participation. Non-academic hospital sites were more likely to face challenges in recruiting new patients, while academic institutions reported more barriers to retaining currently enrolled patients. The FDA has issued a new [guidance](#) on the conduct of clinical trials of medical products during the COVID-19 pandemic.

### ***Senate Confirms HHS Assistant Secretary for Legislation***

The Senate has confirmed Sarah Arbes as HHS Assistant Secretary for Legislation. Arbes has been serving as the acting assistant secretary since June 2019, and was formally nominated by the President to the position last year. Before joining HHS in 2017, Arbes worked as deputy health policy director for the Senate Health, Education, Labor, and Pensions (HELP) Committee and as a legislative assistant for Sen. Mitch McConnell (R-Ky.).

### ***California Congressman in Critical Condition***

Rep. Mark DeSaulnier (D-Calif.), 67, is in critical condition after being hospitalized with pneumonia. He was admitted to the hospital on March 13 after fracturing a rib when he fell running. According to his office, he has tested negative for the coronavirus.

## ***Appeals Court Hears Arguments in Short-Term Plan Case***

A federal appeals court in Washington, D.C. heard arguments in the case against the Trump administration's expansion of short-term health plans last week. While the health insurers challenging the policy argued that it undermines the Affordable Care Act's (ACA's) individual marketplace, the three-panel judge did not seem convinced. The judges called attention to the fact that Congress did not prohibit short-term plans in the ACA and chose to exempt them from some of the law's requirements and consumer protections, and questioned whether the short-term plans were any different from the other forms of exempt non-compliant coverage allowed to remain in place. Trump-appointed Judge Gregory Katsas even suggested that making short-term plans available in states that did not expand their Medicaid programs could be considered consistent with the ACA's congressional intent to reduce the number of uninsured Americans.

## **Recently Introduced Health Legislation**

***H.R.6271 — To provide certain unemployment assistance for individuals impacted by quarantine order for a national or State public health emergency, including a virus threat or other health pandemic; Sponsor: Rep. Jackson Lee, Sheila [D-TX-18]; Committees: House - Transportation and Infrastructure***

***H.R.6272 — To amend the Public Health Service Act to authorize the Secretary of Health and Human Services to make grants to eligible entities to train elementary and secondary school nurses on how to respond to a biological or chemical attack or an outbreak of pandemic influenza in a school building or on school grounds; Sponsor: Rep. Jackson Lee, Sheila [D-TX-18]; Committees: House - Energy and Commerce***

***H.R.6273 — To amend title XI of the Social Security Act to increase allotments under the Medicaid program for territories of the United States, to provide for a temporary increase in the Federal medical assistance percentage for States under the Medicaid program, and for other purposes; Sponsor: Rep. Butterfield, G. K. [D-NC-1]; Committees: House - Energy and Commerce***

***H.R.6274 — To improve State, local, and tribal public health security; Sponsor: Rep. Haaland, Debra A. [D-NM-1]; Committees: House - Energy and Commerce***

***H.R.6275 — To support children and students in responding to safety and health risks presented by qualifying emergencies, and for other purposes; Sponsor: Rep. Scott, Robert C. "Bobby" [D-VA-3]; Committees: House - Education and Labor***

***H.R.6281 — To amend title XVIII of the Social Security Act to codify and permanently extend the Medicare hospital wage index imputed rural floor; Sponsor: Rep. Pascrell, Bill, Jr. [D-NJ-9]; Committees: House - Ways and Means***

***H.R.6282 — To establish a commission to assess, evaluate, and address the dependence of the United States on medications, devices, and medical equipment from foreign countries; Sponsor: Rep. Ruiz, Raul [D-CA-36]; Committees: House - Energy and Commerce***

***H.R.6283 — To amend the Public Health Service Act to limit the liability of health care professionals who volunteer to provide health care services in response to a disaster; Sponsor: Rep. Ruiz, Raul [D-CA-36]; Committees: House - Energy and Commerce; Judiciary***

***H.R.6286 — To amend the Internal Revenue Code of 1986 to modify rules relating to health savings accounts; Sponsor: Rep. Burgess, Michael C. [R-TX-26]; Committees: House - Ways and Means; Judiciary; Energy and Commerce***

***H.R.6288 — To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to include a public health emergency in the definition of a major disaster, and for other purposes; Sponsor: Rep. Richmond, Cedric L. [D-LA-2]; Committees: House - Transportation and Infrastructure***

*S.Res.544 — A resolution supporting the designation of March 2020 as “National Colorectal Cancer Awareness Month”; Sponsor: Sen. Enzi, Michael B. [R-WY]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.3505 — A bill to require private health insurance to rapidly cover preventive services and vaccines related to the coronavirus; Sponsor: Sen. Jones, Doug [D-AL]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.3507 — A bill to require the Secretary of Defense to make testing for the coronavirus disease 19 available to all members of the Armed Forces deployed to an area in which the United States Central Command has responsibility; Sponsor: Sen. Baldwin, Tammy [D-WI]; Committees: Senate - Armed Services*

*S.3510 — A bill to transfer all border wall funding to the Department of Health and Human Services and USAID to combat coronavirus; Sponsor: Sen. Warren, Elizabeth [D-MA]; Committees: Senate - Homeland Security and Governmental Affairs*

*S.3511 — A bill making emergency supplemental appropriations for nutrition and supportive services for older Native Americans under the Older Americans Act of 1965; Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.3512 — A bill to clarify the authority for regulating laboratory-developed testing procedures; Sponsor: Sen. Paul, Rand [R-KY]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.3513 — A bill to provide Americans with paid sick time and paid leave so that they can address their own health needs and the health needs of their families; Sponsor: Sen. Murray, Patty [D-WA]; Committees: Senate - Finance*

*S.3514 — A bill to ensure that facilities of the Indian Health Service, facilities operated by an Indian tribe, tribal organization, or inter-tribal consortium, and facilities operated by an urban Indian organization receive items from the strategic national stockpile and qualified pandemic or epidemic products directly from the Department of Health and Human Services; Sponsor: Sen. Warren, Elizabeth [D-MA]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.3516 — A bill to amend the Internal Revenue Code of 1986 to provide emergency family relief in response to the outbreak of the NCOV-19; Sponsor: Sen. Hawley, Josh [R-MO]; Committees: Senate - Finance*

*S.3517 — A bill to increase the ability of nursing facilities to access to telehealth services and obtain technologies to allow virtual visits during the public health emergency relating to an outbreak of coronavirus disease 2019 (COVID-19), and for other purposes; Sponsor: Sen. Klobuchar, Amy [D-MN]; Committees: Senate - Finance*

*S.3518 — A bill to provide grants to small business concerns, private nonprofit organizations, and small agricultural cooperatives affected by COVID-19, and for other purposes; Sponsor: Sen. Cardin, Benjamin L. [D-MD]; Committees: Senate - Small Business and Entrepreneurship*

*S.3522 — A bill to extend and expand the temporary assistance for needy families (TANF) program and related programs to respond to the COVID-19 public health emergency, and for other purposes; Sponsor: Sen. Cotton, Tom [R-AR]; Committees: Senate - Finance*

*S.3523 — A bill to provide for the temporary funding of the expansion of eligibility of unemployment compensation to respond to the COVID-19 public health emergency, and for other purposes; Sponsor: Sen. Cotton, Tom [R-AR]; Committees: Senate - Finance*

*S.3524 — A bill to modify terms related to the economic injury disaster loan program of the Small Business Administration for applicants affected by COVID-19, and for other purposes; Sponsor: Sen. Cotton, Tom [R-AR]; Committees: Senate - Small Business and Entrepreneurship*

*S.3525 — A bill to allow a tax credit for certain coronavirus-related charitable contributions for taxable year 2020; Sponsor: Sen. Shaheen, Jeanne [D-NH]; Committees: Senate - Finance*

*S.3526 — A bill to restrict the authority of the Secretary of the Treasury to purchase or guarantee assets in response to the coronavirus disease (COVID-19) outbreak; Sponsor: Sen. Reed, Jack [D-RI]; Committees: Senate - Finance*

*S.3530 — A bill to amend the National Security Act of 1947 to require the President to designate an employee of the National Security Council to be responsible for pandemic prevention and response, and for other purposes; Sponsor: Sen. Markey, Edward J. [D-MA]; Committees: Senate - Homeland Security and Governmental Affairs*

*S.3531 — A bill to amend the Small Business Act to ensure small businesses affected by the onset of communicable diseases are eligible for disaster relief; Sponsor: Sen. Menendez, Robert [D-NJ]; Committees: Senate - Small Business and Entrepreneurship*

*S.3532 — A bill to amend titles XVIII and XIX of the Social Security Act to provide coverage of prescription digital therapeutics for the treatment of mental health and substance use disorders under the Medicare and Medicaid programs, and for other purposes; Sponsor: Sen. Capito, Shelley Moore [R-WV]; Committees: Senate - Finance*

*H.R.6291 — To amend the microloan program of the Small Business Administration in response to COVID-19, and for other purposes; Sponsor: Rep. Kim, Andy [D-NJ-3]; Committees: House - Small Business*

*H.R.6292 — To establish the Office of Coronavirus COVID-19 Small Business Recovery Grants in the Small Business Administration to compensate certain small business concerns for substantial economic injury, and for other purposes; Sponsor: Rep. Jackson Lee, Sheila [D-TX-18]; Committees: House - Small Business; Transportation and Infrastructure*

*H.R.6293 — To require issuance of guidance by the United States Interagency Council on Homelessness regarding protecting the homeless from the Coronavirus Disease 2019 (COVID-19), and for other purposes; Sponsor: Rep. Zeldin, Lee M. [R-NY-1]; Committees: House - Financial Services*

*H.R.6294 — To require data-sharing regarding protecting the homeless from coronavirus, and for other purposes; Sponsor: Rep. Tipton, Scott R. [R-CO-3]; Committees: House - Financial Services*

*H.R.6295 — To require issuance of guidance by the Secretary of Housing and Urban Development regarding protecting the homeless who reside in certain federally assisted properties from the Coronavirus Disease 2019 (COVID-19), and for other purposes; Sponsor: Rep. Stivers, Steve [R-OH-15]; Committees: House - Financial Services*

*H.R.6299 — To provide for the rapid coverage of preventive services and vaccines for COVID-19; Sponsor: Rep. Courtney, Joe [D-CT-2]; Committees: House - Energy and Commerce; Ways and Means; Education and Labor*

*H.R.6300 — To provide that under the Older Americans Act of 1965 the State Long-Term Care Ombudsman shall have continuing direct access (or other access through the use of technology) to residents of long-term care facilities to provide services during any portion of the COVID-19 public health emergency declared under section 319 of the Public Health Service Act (42 U.S.C. 247d) that occurs in fiscal year 2020; Sponsor: Rep. Bonamici, Suzanne [D-OR-1]; Committees: House - Education and Labor*

*H.R.6302 — To amend the Public Health Service Act to respond to the shortage of allied health professionals, and for other purposes; Sponsor: Rep. Cicilline, David N. [D-RI-1]; Committees: House - Energy and Commerce*

*H.R.6305 — To assist older Americans and people with disabilities affected by COVID-19; Sponsor: Rep. Dingell, Debbie [D-MI-12]; Committees: House - Appropriations; Budget; Energy and Commerce*

*H.R.6311 — To require private health insurers to cover care related to COVID-19 without cost-sharing and to provide for special enrollment periods for individuals diagnosed with COVID-19; Sponsor: Rep. Ruiz, Raul [D-CA-36]; Committees: House - Energy and Commerce; Ways and Means; Education and Labor*

*H.R.6312 — To provide relief from COVID-19 for small business concerns, and for other purposes; Sponsor: Rep. Velazquez, Nydia M. [D-NY-7]; Committees: House - Small Business*

*S.3534 — A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide assistance to individuals affected by a pandemic, and for other purposes; Sponsor: Sen. Harris, Kamala D. [D-CA]; Committees: Senate - Homeland Security and Governmental Affairs*

*S.3536 — A bill to provide for special enrollment periods during public health emergencies, coverage of services related to public health emergencies, and for other purposes; Sponsor: Sen. Casey, Robert P., Jr. [D-PA]; Committees: Senate - Finance*

*S.3537 — A bill to require the Secretary of Health and Human Services to maintain a list of the country of origin of all drugs marketed in the United States, to ban the use of Federal funds for the purchase of drugs manufactured in China, and for other purposes; Sponsor: Sen. Cotton, Tom [R-AR]; Committees: Senate - Finance*

*S.3538 — A bill to require the Secretary of Defense to submit to Congress a report on the reliance by the Department of Defense on imports of certain pharmaceutical products made in part or in whole in certain countries, to establish postmarket reporting requirements for pharmaceuticals, and for other purposes; Sponsor: Sen. Rubio, Marco [R-FL]; Committees: Senate - Finance*

*S.3539 — A bill to amend the Internal Revenue Code of 1986 to exempt telehealth services from certain high deductible health plan rules; Sponsor: Sen. Daines, Steve [R-MT]; Committees: Senate - Finance*

*S.3541 — A bill to modify requirements relating to small business disaster loans made in response to COVID-19, and for other purposes; Sponsor: Sen. Baldwin, Tammy [D-WI]; Committees: Senate - Small Business and Entrepreneurship*

*S.3544 — A bill to assist older Americans and people with disabilities affected by COVID-19; Sponsor: Sen. Casey, Robert P., Jr. [D-PA]; Committees: Senate - Finance*

*S.3545 — A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for reciprocal marketing approval of certain drugs, biological products, and devices that are authorized to be lawfully marketed abroad, and for other purposes; Sponsor: Sen. Cruz, Ted [R-TX]; Committees: Senate - Health, Education, Labor, and Pensions*

*S.3546 — A bill to waive high deductible health plan requirements for health savings accounts; Sponsor: Sen. Cruz, Ted [R-TX]; Committees: Senate - Finance*

*S.3547 — A bill to amend title XVIII of the Social Security Act to waive limitations on expansion of facility capacity under rural provider and hospital exception to ownership or investment prohibition during coronavirus 2020 emergency period; Sponsor: Sen. Cruz, Ted [R-TX]; Committees: Senate - Finance*

*S.3548 — A bill to provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic; Sponsor: Sen. McConnell, Mitch [R-KY]; Committees: Senate - Finance*