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March 23, 2020

Healthcare Industry Implications of the Families First Coronavirus Response Act

Update: On March 18, the president signed into law the [Families First Coronavirus Response Act](#).

Original text (published 03.16.2020): By a vote of 363-40 the U.S. House of Representatives passed H.R. 6201, the [Families First Coronavirus Response Act](#), on March 14, 2020. The bill now proceeds to the U.S. Senate, and the White House has voiced its support for the legislation. **Update:** Now law, the Families First Coronavirus Response Act provides for supplemental appropriations as well as additional protections for employees and individuals seeking testing or treatment for COVID-19.

This update summarizes provisions of the bill of particular interest to the healthcare industry.

- **Healthcare Occupational Exposure:** The bill requires that, within 30 days, the U.S. Secretary of Labor promulgate an emergency temporary standard requiring employers in healthcare and other designated sectors to develop and implement a comprehensive plan to control or prevent the occupational exposure of employees to SARS-CoV-2. The bill further directs the secretary to develop a permanent standard regarding such occupational exposure.
- **Private Insurance Coverage of COVID-19 Testing-Related Services:** The bill requires group health plans and health insurance issuers to cover, without cost sharing, prior authorization or other medical management requirements, *in vitro* diagnostic products for the detection of the SARS-CoV-2 virus as well as healthcare provider, urgent care, or emergency visits that result in an order for or administration of such tests.
- **Federal Insurance Coverage of Certain COVID-19 Testing-Related Services:** The bill also requires waivers of cost-sharing under the Medicare, Medicare Advantage, Medicaid, the Children's Health Insurance Program (CHIP), TRICARE, veterans, Indian Health Service, and federal civilian health programs related to evaluation and management outpatient visits that lead to or result in COVID-19 testing. These services may be provided in offices and other outpatient settings (including hospital observation beds), hospital emergency departments, nursing facilities, custodial care facilities, and at home. The U.S. Department of Health and Human Services will provide a Healthcare Common Procedure Coding System (HCPCS) code modifier to be used in designating such services. Further, Medicare Advantage plans may not impose prior authorization or medical management prerequisites for COVID-19 testing while the act is in effect.
- **Laboratory Diagnostic Testing Coverage for Uninsured Persons:** The bill appropriates \$1 billion to reimburse laboratories for COVID-19 testing of uninsured individuals.
- **Paid Sick Days:** The bill provides certain paid sick days benefits for public health emergencies as well as personal and family care. Among other things, the bill would require that employers with fewer than 500 employees provide full-time employees with 2 weeks of paid emergency leave related to COVID-19 quarantine, diagnosis or preventive care, or family caregiving.
- **Medicaid FMAP Increase:** The federal government's share of most Medicaid expenses is known as the federal medical assistance percentage (FMAP). Generally, the FMAP is configured so that the federal government pays a higher percentage of the medical expenditures in the Medicaid program in states with lower per capita incomes. The bill would increase the FMAP applicable to each state by eight percentage points, provided that the states meet certain specified requirements, such as providing, without cost-sharing, Medicaid coverage for testing and treatment of COVID-19. A separate provision increases Medicaid allotments in the U.S. territories.
- **Personal Respiratory Protective Equipment Coverage as Countermeasure:** The bill adds personal respiratory protective equipment to the list of protective devices subject to the liability immunity

provisions of the Public Readiness and Emergency Preparedness (PREP) Act. The PREP Act immunizes from liability, other than for acts of willful misconduct, the manufacture, testing, development, distribution, administration, and use of medical countermeasures against chemical, biological, radiological, and nuclear agents of terrorism, epidemics, and pandemics. The listing of personal respiratory protective equipment is set to last until October 1, 2024. Compensation for personal injury resulting from covered countermeasures would flow from a fund authorized in the U.S. Treasury.

- **Relevant Emergency Period:** Many of the bill's health provisions apply during an "emergency period," as defined by Section 1135(g)(1)(B) of the Social Security Act ([42 U.S.C. § 1320b-5](#)), applicable on or after the act's enactment date. "Emergency period" is a defined term in the bill, incorporating a public health emergency declaration by the Secretary of Health and Human Services (HHS). HHS Secretary Alex Azar declared a nationwide public health emergency related to the 2019 novel coronavirus effective on January 27, 2020. Pursuant to other federal law, Secretary Azar's declaration lasts for the duration of the emergency or 90 days, but it may be extended by the secretary.

The Families First Coronavirus Response Act is among the first congressionally-sanctioned responses to the substantial disruption to the nation's economy and its healthcare infrastructure wrought by the novel coronavirus outbreak.

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