

MEMORANDUM

To: O&P Alliance
From: Legislative Practice Group
Date: March 20, 2020
Re: Families First Coronavirus Response Act

Congress and the Trump Administration have taken several key steps to address the expanding public health crisis caused by the coronavirus, officially known as COVID-19, while at the same time trying to staunch the negative repercussions currently affecting the nation’s employment and financial markets. On March 6, 2020, the President signed an emergency supplemental appropriations bill, marking the first major effort to address the coronavirus pandemic. The full text of the Coronavirus Preparedness and Response Supplemental Appropriations Act can be found [here](#), and our memo summarizing the major provisions can be found [here](#). This “Coronavirus 1.0” package includes more than \$8 billion in emergency funding for federal agencies, state and local governments, and community health centers to fund the pandemic response, as well as a series of provisions to expand access to telehealth for Medicare patients.

On March 14, the House of Representatives passed a second “Coronavirus 2.0” package, the Families First Coronavirus Response Act (FFCRA); the Senate passed the bill on March 18, and the President signed it into law later the same day. The following is a summary of the legislative provisions in this second emergency bill. The full text of the legislation can be found [here](#).

The Families First Coronavirus Response Act

I. Second Coronavirus Preparedness and Response Supplemental Appropriations

Provisions under Division A of the FFCRA provide more than \$2 billion in additional appropriations to bolster the federal government’s coronavirus response, in addition to the funds included in the package passed on March 6. The legislation provides:

- \$500 million for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to provide food to low-income pregnant women and mothers with young children.
- \$400 million for The Emergency Food Assistance Program (TEFAP), which assists local food banks and other organizations in purchasing food for distribution to low-income Americans. \$300 million of this funding is designated for the purchase of food and \$100 million is directed towards storage and distribution.

- \$250 million to the Administration for Community Living (ACL) for Aging and Disability Services. Specifically, the bill designates \$160 million of this funding for Home-Delivered Nutrition Services, under the Senior Nutrition program, which provides for an estimated 25 million additional pre-packaged meals to be delivered to low-income seniors who are home-bound or have disabilities and chronic illnesses. \$80 million is designated to the Congregate Nutrition Services program, which provides meals to seniors in congregate settings, such as senior centers and faith-based locations. The remaining \$10 million is directed toward Nutrition Services for Native Americans.
- \$100 million for nutrition assistance grants to U.S. territories (Puerto Rico, American Samoa, and the Northern Mariana Islands).
- \$15 million to the Internal Revenue Service (IRS) to bolster agency operations and taxpayer assistance during the emergency.
- \$82 million to the Defense Health Program to provide coronavirus-related treatment.
- \$64 million to the Indian Health Service (IHS) to provide coronavirus-related treatment.
- \$30 million for the Veterans Health Administration (VHA) to provide coronavirus-related treatment, and \$30 million to the Veterans Administration for Medical Community Care.
- \$1 billion to the Public Health and Social Services Emergency Fund in the Office of the Health and Human Services (HHS) Secretary to pay for coronavirus testing for uninsured patients, as detailed under Section V of this memo (Health Provisions).

This section also allows the Department of Agriculture (USDA) to approve state plans for providing food assistance to families whose children are eligible to receive free or subsidized school lunches, if schools are closed longer than 5 days. This emergency assistance can be provided through the Supplemental Nutrition Assistance Program (SNAP).

II. Nutrition Waivers

Division B of the package provides for additional flexibilities for states to continue to provide school lunches and other nutrition assistance programs through waivers of existing regulatory requirements.

- Title I, the Maintaining Essential Access to Lunch for Students (MEALS) Act, allows the USDA to grant waivers to administer school lunch programs during coronavirus-related closures.
- Title II, the COVID-19 Child Nutrition Response Act, allows the USDA to grant waivers for all states which may waive meal pattern requirements if the emergency creates supply chain problems for state programs, and gives the USDA authority to allow “non-congregate” operation of school lunch programs. This means that schools may provide meals outside of school grounds and in individual settings as necessary.
- Title III provides additional SNAP flexibilities, lifting work requirements for SNAP eligibility during the crisis, allowing states to apply for waivers to provide emergency SNAP benefits to households already enrolled in the program, and requiring the USDA to publicize

all waiver applications, the Department's responses, and any additional guidance provided by the agency.

III. Emergency Family and Medical Leave Expansion, Paid Sick Leave, and Related Tax Credits

Divisions C, E, and G deal with the expansion of family and medical leave as well as paid sick leave, and tax credits for businesses relating to these offerings. For clarity, we have addressed these provisions together under this heading.

Family and Medical Leave Expansion Act

This section of the bill (Division C) amends the Family and Medical Leave Act (FMLA) to provide eligible employees with the ability to take up to twelve weeks of FMLA leave if the employee is unable to work (or telework) due to a need to care for a child whose school or care provider is unavailable/closed due to a coronavirus public health emergency declared by a federal, state, or local authority. The final version of this amendment was significantly altered from the original version of the bill that was considered by the House and widely publicized on March 13.

- Employees are eligible if they work for private sector employers with fewer than 500 employees, or governmental entities, and have been on the job for at least 30 days.
- The initial ten days of an employee's FMLA leave will be unpaid. However, an employee may elect to substitute any accrued paid vacation leave, personal leave, or medical/sick leave for unpaid leave.
- Subsequent to the first ten days, an employer is required to provide paid leave at an amount not less than two-thirds of an employee's regular rate, capped at \$200 per day and \$10,000 total.
- The Secretary of Labor has the authority to exempt small businesses with fewer than 50 employees from this requirement.
- Employers of health care providers or emergency responders may elect to exclude those employees from these provisions.

Emergency Paid Sick Leave Act

This section (Division E) requires certain employers to provide employees with paid sick time if the employee is unable to work (or telework) because of the following:

- The employee is subject to a federal, state, or local quarantine;
- The employee has been advised by a health care provider to self-quarantine;
- The employee is experiencing symptoms of coronavirus and is seeking a medical diagnosis;
- The employee is caring for an individual who is subject to a quarantine or has been advised to self-quarantine by a health care provider;

- The employee is caring for a child or children whose school or care provider is unavailable due to coronavirus precautions; or
- The employee is experiencing any other condition substantially similar to the coronavirus, as specified by HHS in consultation with the Secretary of the Treasury and the Secretary of Labor.

Full-time employees are entitled to two weeks of paid sick leave at the employee's regular rate for quarantine, self-quarantine, or coronavirus symptoms. If caring for a quarantined individual, caring for a child whose school or care provider is unavailable, or experiencing a substantially similar condition, full-time employees are entitled to two-thirds of the regular rate of pay. Part-time employees are entitled to paid sick leave for the average amount of hours worked in a two-week period.

Tax Credits for Paid Sick, Family, and Medical Leave

This section of the bill provides tax credits to private sector employers who are required to provide paid FMLA leave and sick leave for employees under Divisions C and E.

Employers are eligible for a refundable payroll tax credit worth 100 percent of FMLA wages under Division C and paid sick leave wages under Division E for each calendar quarter through 2020. The FMLA leave and paid sick leave credits would include amounts employers paid for the employee's health plan coverage while they were on leave.

IV. Emergency Unemployment Insurance Stabilization and Access

Division D of the FFCRA includes provisions to stabilize and enhance access to unemployment benefits to address the expected surge in claims due to coronavirus-related layoffs.

- The Department of Labor will provide up to \$1 billion in additional emergency grants to states to help fund unemployment benefits.
- One-half of the grant to individual states will be available for administrative assistance in carrying out unemployment insurance (UI) programs, providing that states notify all laid-off workers of their potential eligibility for benefits, provide at least two methods (e.g., online, over-the-phone) of assistance with filing and applications, and notify applicants when their applications have been received and of any issues with the processing of their application.
- The other half of the grant will be available to states who have seen at least a 10% increase in UI applications (as many states are expected to), providing that the states commit to maintaining and strengthening access to UI benefits. States must also demonstrate that they are easing eligibility requirements during the crisis, through methods such as waiving requirements for applicants to be searching for work and removing waiting periods for eligibility.
- States will be able to access federally provided, interest-free loans through the end of calendar year 2020 to pay out UI benefits.

- The Department of Labor will issue guidance to states and employers on how to increase awareness and improve implementation of short-term compensation programs, through which partial UI benefits can be provided to workers whose hours are cut to avoid full-scale layoffs.
- Lastly, Extended Benefits for UI will be fully funded by the federal government, instead of the usual 50-50 split between state and federal funding. Extended Benefits are available when states experience more than a 10% increase in unemployment and can provide up to an additional 26 weeks of benefits past the standard 26 weeks of UI.

V. Health Provisions

Division F includes a variety of additional health care provisions to combat the pandemic. Primarily, these include assurances of free diagnostic testing for coronavirus across all payers nationwide. The legislation requires private health plans, Medicare Advantage plans, Medicaid, the Children's Health Insurance Program (CHIP), TRICARE, the Veterans Health Administration, the Indian Health Service, tribal health care facilities, and plans covering federal employees to provide diagnostic testing for coronavirus and related items and services with no cost-sharing requirements for beneficiaries, whether through co-pays, coinsurance, or deductibles. Medicare Part B is already paying for coronavirus testing, but the legislation requires that the federal program cover all cost-sharing for provider visits during which a test is administered or ordered.

In addition to the requirements for free testing, the bill allows states to extend Medicaid eligibility to the uninsured population for the purposes of coronavirus testing. For any state medical and administrative expenses tied to Medicaid-covered testing of the uninsured, the federal government would provide 100 percent matching funds (the Federal Medical Assistance Percentages, or FMAP).

Additional health provisions in the bill include:

- A temporary FMAP increase for all state Medicaid programs of 6.2% for the duration of the emergency. This will increase federal funding for all state Medicaid programs, as long as state agencies do not institute any more restrictive eligibility policies as the demand for services increases.
- Increased funding for Medicaid in the U.S. territories.
- Technical clarifications to HHS' authority to waive telehealth requirements, as enacted in the first Supplemental Appropriations Act.

VI. Further Legislative Action

Congress will continue to debate and is likely to pass at least one major additional bill in the near future to address the ongoing crisis. Senate Majority Leader Mitch McConnell is leading negotiations regarding this third legislative spending package, and it is expected to be massive, with estimates between \$750 billion and \$1.2 trillion. Powers will continue to report important developments as they occur.