

Data Sharing, Information Technology, and the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

Among the many priorities in Act, data sharing and information technology play a key role as a need that impacts nearly all aspects of federal, state, and local government operations, as well as numerous providers of healthcare services in both the public and private sectors.

The portions of the Act aimed at data sharing and information technology address a mix of immediate and long term priorities, and will likely lay the groundwork for continued investments once the COVID-19 crisis has abated. In addition to laying bare needs in the public health context, COVID-19 has also highlighted the need for flexibility with respect to information sharing and significant divides between populations and geographic areas in accessing needed information resources.

In the immediate term, the last several weeks have seen unprecedented use of and need for remote working technologies across all sectors of the economy in order to maintain social distancing and permit business and government activity to continue to operate. It is unsurprising, then, that significant amounts of supplemental funding to federal and state agencies are aimed at enabling remote operations of governments, healthcare providers, and businesses.

These funds go hand-in-hand with federal efforts to promote the use of telemedicine and telehealth, many of which precede the COVID-19 crisis and dovetail with federal efforts to make health care data more portable and more accessible to patients.

Key Points

- **Emphasis on Telehealth and Telemedicine.** The Act funds multiple initiatives to advance the role of telehealth and telemedicine, most significantly with respect to the Department of Veterans Affairs, but also more generally. In addition to providing funds, the Act aims to ease various statutory restrictions on the use of telemedicine, especially in the Medicare context.

- **COVID-19 Information Technology.** Understandably, significant amounts of funding are directed towards information technologies that are specifically intended to address the COVID-19 crisis, including funds to the National Science Foundation and Centers for Disease Control and Prevention. These funds will also support state and local efforts to coordinate disease prevention and response efforts.
- **Remote Working.** Nearly every category of supplemental funding contains funding to enable government agencies to adapt to remote working. The Act also contains funding for government-wide initiatives to promote use of virtual private networks, digital signature technology, and website development, as well as significant funding for cybersecurity related to critical infrastructure.
- **Broadband Infrastructure.** The Act provides grants for the construction and improvement of broadband infrastructure in rural areas, and also funds a separate grant program for rural communities to advance distance-learning technologies for students, teachers, and medical professionals.

Looking Ahead

Many of the funding and legal provisions of the Act are short-horizon, in the sense that they are intended to facilitate data sharing that is necessary to address the COVID-19 crisis and enable both federal agencies and businesses to conduct effective remote work.

However, many provisions of the Act also reflect long-standing (if not always well-funded) priorities for lawmakers, such as bridging the digital divide between urban and rural areas, promoting greater use of telemedicine and telehealth (which itself often aims to alleviate the urban/rural divide), and marshaling greater resources to address mental health.

Funding aside, the Act also reflects greater acceptance of the role of technology in the medical context. This emphasis is consistent with both state and federal efforts in recent years to promote the use of telemedicine, particularly to address unmet needs in mental health and substance use disorder treatment and the needs of especially vulnerable populations. More generally, it is consistent with federal efforts to mandate greater interoperability and information sharing, including providing patients with more avenues to access medical information.

In sum, COVID-19 is forcing the government's hand on building a more consistent and capable digital infrastructure to respond not only to public health crises, but to health issues more generally. The need rapidly to resort to remote working has also reminded policymakers that access to digital resources is neither equal nor universal, and that continued investments will be needed to keep residents from being left behind.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney. For guidance on CARES Act data sharing and information technology issues, please contact [Jeremy Meisinger](#) or [Colin Zick](#).