

New Federal COVID-19 Appropriations for Healthcare Providers: The Paycheck Protection Program and Health Care Enhancement Act

Written by Thomas Barker, Brian P. Carey, Ross Margulies

April 24, 2020

Overview

On April 24, 2020, President Trump signed into law the [Paycheck Protection Program and Health Care Enhancement Act](#) (HCEA), which appropriated an additional \$75 billion to the Public Health and Social Services Emergency Fund to reimburse healthcare providers for expenses or lost revenue attributable to COVID-19 and \$25 billion to the same Fund for expenses to research, develop, validate, manufacturer, purchase, administer, and expand capacity for COVID-19 testing and other activities.

These dollars are in addition to the \$100 billion appropriated to that Fund on March 27, 2020 by the CARES Act, \$30 billion of [which has already been disbursed](#) and \$50 billion of which is [expected to be disbursed this week](#).

\$75 Billion to Healthcare Providers and Entities

With respect to the \$75 billion appropriated to the Public Health and Social Services Emergency Fund, the following entities are eligible to receive allocations: (1) public health entities; (2) Medicare and Medicaid enrolled suppliers and providers; and (3) other for-profit and non-profit entities that provide diagnoses, testing or care for people with possible or actual cases of COVID-19. The Secretary of HHS has discretion to determine how the funds will be disbursed among the eligible providers and entities.

The HCEA does not specify the disbursement procedures for these funds; it is possible that the funds may be distributed based on applications submitted to HHS and/or by automatic distribution, as HHS [has done with the first \\$30 billion disbursement of CARES Act funds](#). The appropriations language for this \$75 billion is identical to the language used by Congress for the first \$100 billion. As a result, we expect a similar “process” for how these funds will be managed and distributed

\$25 Billion to Expand Diagnostic Testing Capacity

The \$25 billion appropriated to the Public Health and Social Services Emergency Fund is intended to provide resources for COVID-19 testing, development and manufacturing of COVID-19 tests, testing equipment, and testing supplies (including PPE needed for administering a test), scaling up laboratories, conducting surveillance and contact tracing, and employer testing.

The funds may also be used for constructing or equipping non-federally owned facilities for the production of COVID-19 tests or related supplies or for the purchase of medical supplies and equipment. Of the \$25 billion, Congress appropriated \$11 billion for States, localities, territories, tribes, or Indian health organizations. Specifically:

- \$2 billion provided to States consistent with the Public Health Emergency Preparedness grant formula, ensuring every state receives funding
- \$4.25 billion provided to areas based on relative number of COVID-19 cases
- \$1 billion to the Centers for Disease Control for laboratory capacity expansion, surveillance, and contact tracing
- \$1.8 billion to the National Institutes of Health to accelerate research, development, and implementation of point-of-care and other rapid testing
- \$1 billion to the Biomedical Advanced Research and Development Authority for research, development, and purchase of

diagnostic, serologic, or other COVID-19 tests

- \$750 million to tribes and Indian health organizations
- \$600 million to the Health Resources and Services Administration
- \$22 million to the Food & Drug Administration

In addition, up to \$1 billion may be used to cover the cost of testing the uninsured. As mentioned above, although application procedures are not described in detail, the bill language states that the funds may be distributed by grants or by cooperative agreement mechanisms.

Looking Ahead

We expect clarifying guidance on fund allocation and disbursement procedures to be published by HHS in the coming days and weeks, similar to the guidance issued for the first \$100 billion allocation. It also remains possible that notwithstanding the significant funding provided by the CARES Act and the HCEA, Congress will need to appropriate additional funding for healthcare providers in the weeks and months ahead.

Foley Hoag will continue to provide client alerts on these issues in the coming days and weeks. For more information on these topics, please contact [Thomas Barker](#), [Brian Carey](#), [Ross Margulies](#), or [Ashley Bender Spirn](#).

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.

RELATED INDUSTRIES

- [Healthcare](#)
- [Life Sciences](#)

RELATED PRACTICES

- [COVID-19 Task Force](#)
- [Business Counseling](#)
- [Healthcare](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.