

# PUBLICATION

---

## Supplemental Coronavirus Legislation H.R. 6201 - Families First Coronavirus Response Act

**Authors: Sheila P. Burke, James W. Dyer, Keith Fagerquist**

**March 17, 2020**

### Introduction

**Update March 18, 2020:** On March 18, 2020, the Senate passed the House bill in a final vote of vote 90-8 without amendment and it was signed by President Trump. [Click here](#) to see a detailed analysis of the Families First Coronavirus Response Act implications for employers.

On March 14, 2020, the House passed H.R. 6201, known as the Families First Coronavirus Response Act. An issue arose regarding a needed "technical amendment" that required further action by the House. That work was completed last night, and the bill was finally sent to the Senate.

Today the Senate Majority Leader announced the Senate would stay in session to consider the House passed Second Stimulus. It is expected the Senate will pass the House bill as is and initiate work on a far broader and more comprehensive stimulus.

Coming on the heels of Senator Schumer's proposal for a \$750 billion stimulus on March 16, the White House announced it will send an \$850 billion package of its own to the Hill on March 17, including a \$500 billion payroll tax holiday. All this activity leaves unclear how both bodies of Congress will proceed. Will the House return this week from its break? How will the Senate act procedurally? What is contained in the White House ask? It is a very active situation.

Treasury Secretary Mnuchin addressed the Senate GOP Policy Lunch on March 17 to outline the White House proposals. The Schumer proposal was also circulated on March 17.

What follows is a brief summary of the key provisions in the House bill as passed on March 14, 2020. We will provide updated information when final action is taken by the Senate.

1. Food and Nutrition Services: To ensure the domestic nutrition assistance programs have adequate resources to help those impacted by the COVID-19 public health emergency. Funding in this area will be provided to the Special Supplemental Nutrition Program for Women, Infants, and Children (\$500 million) and the Emergency Food Assistance Program (\$500 million). In addition, the legislation includes a general provision that allows the Department of Agriculture to approve state plans to provide emergency SNAP assistance to households with children who would otherwise receive free or reduced-price meals if not for their schools being closed due to the COVID-19 emergency. The Secretary of Agriculture will have the authority to issue nationwide school meal waivers during the COVID-19 emergency, which will eliminate paperwork for states and help more schools quickly adopt and utilize flexibilities.
2. Emergency Paid Leave: \$5 million for the Department of Labor to administer the emergency paid sick days program. The new Federal Emergency Paid Leave Benefit Program enables eligible workers to receive a benefit for a month (up to three months) in which they must take 14 or more days of leave from their work due to qualifying COVID-19-related reasons. The program will be overseen by the

Social Security Administration.

The bill amends the Family and Medical Leave Act (FMLA) in instances related to public health emergencies to include up to 12 weeks of job protected leave when schools are closed due to public health emergencies or when an individual's employer is closed due to a public health emergency. Furthermore, this section of the legislation expands FMLA entitlements to employees by requiring employers (those under 500 employees) to provide 14 days of leave in the event of any public health emergency (to include the current coronavirus crisis). Small businesses (those under 50 employees) can be reimbursed for the costs of providing 14 days of additional paid sick leave through a waiver process proving financial hardship in providing this benefit.

3. Emergency Unemployment Insurance Stabilization: Provides \$1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance benefits under certain conditions. \$500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs, so long as they meet basic requirements about ensuring access to earned benefits for eligible workers. The remaining \$500 million under this section would be reserved for emergency grants for states which experience a least a ten percent increase in unemployment as a result of the public health crisis.
4. Enhanced Safety Standards for Health Care Workers: Requirement for the Occupational Safety and Health Administration (OSHA) to issue an Emergency Temporary Standard (ETS) within 30 days, requiring employers within the health care sector or any other designated high-risk sector to develop and implement a comprehensive infectious disease exposure control plan.

On the evening of March 16, the House voted again and unanimously passed technical corrections to the bill. Within the corrections were some substantial tweaks to language, particularly when it came to employee leave policy. Notably, a cap was added to paid sick leave under FMLA for public health emergencies to not exceed \$200 per day or a total of \$10,000 for the full time the employee is out on leave. Qualifying scenarios to warrant paid sick leave were also narrowed through the technical corrections to the bill, removing language for paid sick leave for those who have an affected family member.

### **Health Care Provisions**

The funding bill also includes provisions addressing health care coverage to reduce out-of-pocket costs for individuals receiving testing for COVID-19 and providing flexibility to health care providers during the public health emergency. Key provisions of the health care section include:

5. Coverage of COVID-19 Testing by Private Insurers: The bill requires private health insurers to cover diagnostic testing for COVID-19 at no cost-sharing. Coverage is also required at no cost-sharing for items and services furnished to individuals during office visits, urgent care center visits, and emergency room visits that result in the ordering of COVID-19 testing, to the extent that the items or services relate to the administration of the testing or the evaluation of the need for testing.
6. Coverage for COVID-19 Testing by Medicare: Medicare Part B already covers the COVID-19 diagnostic test at no cost-sharing, and the bill requires Medicare Part B to also cover cost-sharing for provider visits in which a test is administered or ordered. The bill would also require Medicare Advantage plans to cover testing at no cost-sharing, including the costs of the visit to receive testing.
7. Coverage for COVID-19 Testing by Medicaid and CHIP: The bill requires Medicaid and the Children's Health Insurance Program (CHIP) to cover diagnostic testing for COVID 19 at no cost-sharing, including the cost of a provider visit to receive testing. States also have the option of covering testing

for uninsured individuals under Medicaid. The federal government will provide a 100 percent match to states for their medical and administrative costs, not including costs of treatment.

8. Coverage for COVID-19 Testing by TRICARE, Veterans Affairs, the Federal Employees Health Benefits Program, and the Indian Health Service: The bill requires these payers to cover the COVID-19 diagnostic test at no cost-sharing.
9. Funding for Testing Services for Uninsured Individuals: The bill appropriates funding for health care providers to be reimbursed for COVID-19 diagnostic testing for uninsured individuals through the National Disaster Medical System.
10. Temporary Increase in Medicaid FMAP: The bill would temporarily increase through the end of the emergency period the Federal Medical Assistance Percentage (FMAP), the funding match rate provided to state Medicaid agencies by the federal government, by 6.2 percent during the COVID-19 public emergency.
11. Increase in Medicaid Allotments for Territories: The bill increases Medicaid payments to territories for 2020 and 2021.
12. Technical Correction to HHS Waiver Authority of Medicare Telehealth Restrictions: The bill amends the Medicare telehealth provision enacted recently under the Coronavirus Preparedness and Response Supplemental Appropriations Act to clarify that HHS has the authority to waive telehealth restrictions under Medicare when a provider has furnished an item or service to a beneficiary within the last three years that would have been covered by Medicare if the beneficiary was enrolled in Medicare at the time.
13. Liability Protection for Respirator Manufacturers: The bill designates personal respiratory protective devices as "covered counter measures" under the Public Readiness and Emergency Preparedness (PREP) Act, which provides protection from liability to manufacturers of such devices. The protection would be limited to the COVID-19 emergency and would end October 1, 2024.

Again, the situation remains very fluid. Baker Donelson continues to monitor coronavirus developments and we will provide information on any further efforts to develop additional stimulus initiatives as it becomes available. If you have any questions regarding the Act or the impact of the coronavirus (COVID-19) on your organization, please contact any member of Baker Donelson's [Government Relations and Public Policy Team](#). Also, please visit the [Coronavirus \(COVID-19\): What you Need to Know information page](#) on our website.