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Key Health Care Provisions in New COVID-19 Stimulus Legislation

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On December 21, 2020, the House and Senate passed fiscal year (FY) 2021 federal omnibus appropriations legislation that included the fifth measure passed by Congress to address the COVID-19 pandemic. In addition to providing $1.4 trillion to fund the federal government through FY 2021, the legislation includes $900 billion in relief funds to address COVID-19. The bill also includes significant health care provisions unrelated to COVID-19, including a ban on surprise billing by health care providers.

The House passed the legislation in two parts, the first by a vote of 327-85, and the second by a vote of 359-53. The Senate passed the legislation by a vote of 92-6. The legislation is now being prepared for a signature by the President, who has indicated his support. In the meantime, Congress passed, and the President signed into law, a seven-day extension of federal funding through December 28, 2021, to provide ample time for these final steps.

Below are some of the key health care-related provisions in the legislation, including a detailed breakdown of the provisions related to funding for health care providers under the COVID-19 Provider Relief Fund (PRF).

New Funding to Address COVID-19

The legislation provides $73 billion to HHS to address the COVID-19 pandemic, including:

- Centers for Disease Control (CDC): $8.75 billion to support coronavirus vaccination, including $4.5 billion for state, local, territorial, and tribal public health departments, and $300 million for vaccine distribution and administration to high-risk and underserved populations.
- Assistant Secretary for Preparedness and Response (ASPR): $19.695 billion for BARDA for the manufacturing and procurement of vaccines and $3.25 billion for the Strategic National Stockpile.
- Public Health and Social Services Emergency Fund: $22.4 billion for testing and contract tracing, including $2.5 billion to improve testing and contract tracing in high-risk and underserved communities, and $3 billion in additional funds to reimburse health care providers for health care related expenses and revenue losses attributable to COVID-19.
- National Institutes of Health (NIH): $1.25 billion for research and clinical trials.
- Substance Abuse and Mental Health Services Administration (SAMHSA): $4.25 billion for increased mental health and substance abuse services.
- Administration for Children and Families: $10.25 billion for early childhood programs and childcare providers.
- Administration for Community Living: $100 million for addressing abuse, neglect, and exploitation of the elderly.

Provider Relief Fund Updates

Through prior legislation, Congress provided $175 billion to HHS to reimburse health care providers for health care-related expenses and revenue losses attributable to COVID-19. Through these funds, HHS implemented the Provider Relief Fund (PRF) and began issuing PRF payments to providers in April. See Baker Donelson's PRF resources here.

The new funding legislation provides an additional $3 billion to HHS for the PRF. The legislation also includes the following PRF-related provisions:

- Revise Definition of "Revenue Loss:" The legislation revises the definition of a "revenue loss" for which PRF funds may be used to allow providers to calculate revenue losses based on prior guidance issued by HHS in June, which allowed for more flexible approaches to the calculation. Calculations may include looking at the difference between a provider's budgeted and actual revenue, if the budget had been established and approved prior to March 27, 2020.
- Address Use of Payments by a Parent Organization: The legislation allows parent organizations to allocate and transfer PRF funds among subsidiary providers eligible for PRF payments, including for targeted distribution payments. The original recipient must report to HHS how the reallocated payments are used. Previous guidance allowed parent organizations to allocate General Distribution payments issued to subsidiaries but not targeted distribution payments.
- Provide Instructions for Distribution of Remaining Funds: The legislation requires HHS to distribute at least 85 percent of remaining PRF funds to providers based on financial losses and changes in operating expenses attributable to coronavirus occurring in the third or fourth quarter of 2020 or the first quarter of 2021. HHS may have as much as $30 billion left of the remaining $175 billion.

HHS recently announced the agency was starting to issue payments under Phase 3 of the General Distribution based on applications providers submitted in October and November. Under Phase 3, HHS will issue $24.5 billion to over 70,000 providers. HHS is first prioritizing payments to entities that have not yet received General Distribution payments of at least two percent of patient care revenues. After issuing payments to those entities, HHS will be issuing add-on payments based on losses incurred in the first half of 2020, covering up to 88 percent of reported losses.

Coronavirus Relief Fund (State Cares Act) Updates

As part of the CARES Act, Congress created the Coronavirus Relief Fund (CRF), commonly referred to as State Cares Act funding, which has been distributed by the Treasury Department to state and local governments to reimburse COVID-19 expenses. Many health care providers have accessed CRF funding. The new funding legislation extends the date by when state and local governments must use the CRF funds from December 30, 2020, to December 31, 2021.

FCC Telehealth Grant Program Updates

The CARES Act provided $200 million in funding to the Federal Communications Commission (FCC) to support health care providers in the provision of services in patients' homes or through mobile locations in response to COVID-19. The FCC issued grants to providers through Spring 2021, but stopped accepting applications in June and issued final awards in July. The funding legislation provides an additional $250 million to the FCC for grant programs and includes new requirements related to the FCC's review of grant applications, including a requirement that providers in all states access the program.

Medicare Reimbursement Provisions

The legislation includes several changes in Medicare reimbursement to providers to address COVID-19, as well as changes in reimbursement unrelated to the pandemic. Key reimbursement provisions include:

- Extend temporary suspension of Medicare sequestration through March 31, 2021. The suspension was scheduled to end on December 31, 2020.
- Allow a one-time 3.75 percent increase ($3 billion) in payments to physicians and other professionals during 2021 to mitigate the impact of reductions in reimbursement under the 2021 Physician Fee Schedule.
- Enact a moratorium on use of required billing code for complex evaluation and management visits under the Physician Fee Schedule until January 1, 2024.
- Temporarily freeze Advanced Alternative Payment Model (APM) incentive payment thresholds for payment years 2023 and 2024.
- Create a new, voluntary Medicare payment designation that allows either a Critical Access Hospital (CAH) or a small, rural hospital with less than 50 beds to convert to a Rural Emergency Hospital (REH) to preserve beneficiary access to emergency medical care in rural areas that can no longer support a fully operational inpatient hospital. REHs can also furnish additional medical services needed in their community, such as observation care, outpatient hospital services, telehealth services, ambulance services, and skilled nursing facility services. REHs will be reimbursed under all applicable Medicare prospective payment systems, plus an additional monthly facility payment and an add-on payment for hospital outpatient services.
- Support physician workforce development by providing for the distribution of additional Medicare-funded graduate medical education (GME) residency positions. Rural hospitals, hospitals that are already above their Medicare cap for residency positions, hospitals in states with new medical schools, and hospitals that serve Health Professional Shortage Areas will be eligible for these new positions.
- Implement Rural Health Clinic (RHC) payment reform to phase in an increase in the RHC statutory payment cap over an eight-year period.
- Allow RHCs and Federally Qualified Health Centers (FQHCs) to provide and bill for hospice attending physician services in certain circumstances beginning January 1, 2022.

Ban on Surprise Medical Bills

The funding bill includes a significant provision to ban surprise billing by health care providers. The provision prohibits out-of-network providers from sending surprise bills to patients for more than the in-network cost-sharing amount, under certain circumstances. The provision also prohibits certain out-of-network providers from sending surprise bills to patients unless the provider notifies the patient of the network status and estimated charges 72 hours prior to receiving care and the patient provides consent. The provision creates an independent dispute resolution process to allow providers and payers to settle out-of-network claims. The surprise billing ban also applies to air ambulance providers.

Drug Price Transparency Provisions

The funding bill did not include comprehensive legislation to address high drug prices. However, the bill included the following provisions to require increased transparency related to drug prices:

- Require drug manufacturers to report drug average sales price (ASP) data to HHS for drugs covered under Medicare Part B, beginning January 1, 2022.

- Require health plans to report health costs and drug spending to federal agencies and require a report on prescription drug pricing trends and the impact on health insurance premiums.
- Allow CMS to share drug pricing data with the Medicare Payment Advisory Commission (MedPAC) and Medicaid and CHIP Payment and Access Commission (MACPAC).
- Require Medicare Part D plans to create real-time benefit tools to help lower beneficiary costs.

Medicare and Medicaid Extenders

The legislation extends funding for the following health care programs that were set to expire (or further delay scheduled cuts in funding):

- Hospital Medicaid DSH cuts delayed through FY 2023.
- Community health center funding extended through FY 2023.
- Temporary Assistance for Needy Families Program (TANF) and related programs funding extended through FY 2021.
- Community mental health services demonstration funding extended through FY 2023.
- Medicare work geographic practice cost index floor extended through December 31, 2023.
- State health insurance programs funding extended through FY 2023.
- Area Agencies on Aging funding extended through FY 2023.
- Aging and Disability Resource Centers funding extended through FY 2023.
- National Center for Benefits and Outreach Enrollment funding extended through FY 2023.
- Money Follows the Person demonstration program funding extended through FY 2023.
- Spousal impoverishment protections funding extended through FY 2023.
- Sexual risk avoidance education program funding extended through FY 2023.
- Personal responsibility education program funding extended through FY 2023.
- National Health Service Corps funding extended through 2023.
- Teaching health center graduate medical education programs funding extended through 2023.
- Special Diabetes Program and Special Diabetes Program for Indians funding extended through 2023.
- Quality measurement, input, and selection funding extended through September 30, 2023.
- Medicare patient IVIG access demonstration project through December 31, 2023.
- Independence at Home medical practice demonstration program through December 31, 2023.

For questions or additional information about the topics contained in this alert, please contact Sheila P. Burke or any member of Baker Donelson's Health Care Policy or Health Law teams.