



## ***Senate Considers CARES Act***

Dear NASL Members,

Late this evening, the Senate finalized bill language and began procedures to vote on its third coronavirus response and stimulus legislation titled, the \$2 trillion [\*Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)\*](#). We are providing to you a short summary of provisions in the legislation that impact NASL members. If approved, the legislation will go to the House for approval, which is expected to occur this week. The President's team participated in the negotiation of this package and he is expected to quickly sign it into law.

### **Top Provisions of Interest to NASL Members:**

- Public Health and Social Services Emergency Fund - \$100 billion for a new program to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus. These funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse. 'Eligible health care providers' means public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit entities and not-for-profit entities not otherwise described in this proviso as the Secretary may specify, within the United States (including territories), that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.
- Suspension of Medicare Sequester 2% Cut from May 1 – December 31, 2020 - This benefits all providers that bill Medicare.
- Appropriations for CMS - \$200 million for CMS operations, of which at least \$100 million must be spent on the survey and certification program, prioritizing nursing homes in localities with community transmission of coronavirus.

***The CARES Act contains a wide range of provisions intended to assist businesses of different sizes during this crisis. Below is a topline list of provisions for health care businesses and NASL members to consider during this time.***

### **Medicare Provisions**

**Sec. 3703.** Increasing Medicare telehealth flexibilities during emergency period – *Eliminates the requirement in Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 (Public Law 116-123) that limits the Medicare telehealth expansion authority during the COVID-19 emergency period to situations where the physician or other professional has treated the patient in the past three years (established patient restriction). This would enable beneficiaries to access telehealth, including in their home, from a broader range of providers under 1834(m). This is intended to support the expanded use of telehealth but it is not clear what provisions the secretary may waive or when.*

**Sec. 3704.** Allows Federally Qualified Health Centers (FQHCs) and rural health clinics (RHCs) to utilize telehealth during the emergency period – *Allows, during the COVID-19 emergency period, Federally Qualified Health Centers and Rural Health Clinics to serve as a distant site for telehealth consultations. As a reminder, a distant site is where the practitioner is located during the time of the telehealth service. This section allows FQHCs and RHCs to furnish telehealth services to beneficiaries in their home. Medicare would reimburse for these telehealth services based on payment rates similar to the national average payment rates for comparable telehealth services under the Medicare Physician Fee Schedule. It would also exclude all costs associated with these services from both the FQHC prospective payment system and the RHC all-inclusive rate calculation.*

**Sec. 3705.** Temporary waiver of requirement for face-to-face visits between home dialysis patients and physicians during emergency period.

**Sec. 3706.** Use of telehealth to conduct face to face encounter prior to recertification of eligibility for hospice care during emergency period.

**Sec. 3707.** Encourages the HHS Secretary to consider ways to use telecommunications systems for home health services furnished during emergency period – *Requires HHS to issue clarifying guidance encouraging the use of telecommunications systems, including remote patient monitoring, to furnish home health services consistent with the beneficiary care plan during the COVID-19 emergency period.*

**Sec. 3708.** Improving care planning for Medicare home health services- Allows nurse practitioner, clinical nurse specialist, or physician assistant to do certification. The text seems to replace the face-to-face encounter requirement with certification.

**Sec. 3709.** Medicare Sequester Relief – *Suspends the Medicare 2% sequestration reduction during the timeframe of May 1, 2020 to December 31, 2020. This benefits all providers that bill Medicare. The Medicare sequester would be extended by one-year beyond current law to provide immediate relief without worsening Medicare's long-term financial outlook.*

**Sec. 3711.** Increasing access to post-acute care during emergency period – *Waives the Inpatient Rehabilitation Facility (IRF) three hour rule, which requires that a beneficiary be expected to participate in at least 3 hours of intensive rehabilitation at least 5 days per week to be admitted to an IRF. It would also allow a Long Term Care Hospital (LTCH) to maintain its designation even if more than 50 percent of its cases are less intensive. It would also temporarily pause the current LTCH site-neutral payment methodology.*

**Sec. 3712.** Prevents scheduled reductions in Medicare payments for durable medical equipment, which helps patients transition from hospital to home and remain in their home, through the length of COVID-19 emergency period.

**Sec. 3718.** Amendments Relating to Reporting Requirements with Respect to Clinical Diagnostic Laboratory Tests – *Delays PAMA cuts (“revised phase-in of reductions from private payor rate implementation”) by one year and revises reporting period.*

**Sec. 3801.** Extends the Work Geographical Index (GPCI) Floor of 1.0 to November 30, 2020. It would have expired May 23, 2020. This applies to CPT codes billed under the Physician Fee Schedule.

**Sec. 3811.** Extension of the Money Follows the Person (MFP) rebalancing demonstration program, a Medicaid program that helps patients transition from the nursing home to the home setting, through November 30, 2020.

**Sec. 3812.** Extension of spousal impoverishment protections under Medicaid through November 30, 2020, in order to help a spouse of an individual who qualifies for nursing home care to live at home in the community

**Sec. 3224.** Guidance on Protected Health Information – *Within 180 days of enactment the Secretary shall issue guidance on the sharing of patients' protected health information during the COVID-19 public health emergency. This should specifically include guidance addressing changes made to requirements during the emergency.*

**Appropriations for CMS** - \$200 million for CMS' operations, of which at least \$100 million must be spent on the survey and certification program, prioritizing nursing homes in localities with community transmission of coronavirus.

### **Business Items**

**Sec. 1102.** Paycheck Protection Program – *Small business interruption loans for payroll costs between February 15 and June 30, 2020. Eligible entities include small businesses under 500 employees (some industries may have a higher ceiling). (Payroll costs have certain limitations; loans are guaranteed by federal government and made by banks; amount available is based on payroll calculation, up to \$10 million.) (Program will cover nearly \$300 billion in loans.) Additionally, Sec. 1105 provides for loan forgiveness for these loans under certain criteria (such as retaining employees).*

**Sec. 2102.** Pandemic Unemployment Assistance – *Creates an expanded unemployment assistance benefit for persons who cannot work for various reasons due to coronavirus (including persons diagnosed or believed to have COVID-19, another person in the household has been diagnosed with COVID-19, the person has to care for a child whose school has closed, or the persons place of employment is closed as a result of the COVID-19 emergency, and other scenarios). This is intended to address unemployment scenarios that would not normally qualify for unemployment insurance benefits. The length of the benefit can be up to 39 weeks, but regular unemployment compensation counts toward the 39 week limit. Persons eligible for telework or who are receiving paid sick leave or other paid leave benefits are not eligible. The amount of the benefit provides an additional \$600 above what states pay for unemployment insurance (which varies by state). This benefit is available through the end of 2020.*

### **Tax Provisions**

**Sec. 2301.** Employee retention credit for employers subject to closure due to COVID-19 – *Provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19-related shut-down order; or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.*

**Sec. 2302.** Delay of payment of employer payroll taxes – *Allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2 percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 1, 2021, and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.*

**Sec. 2303.** Modifications for net operating losses – *Relaxes the limitations on a company’s use of losses. Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. This provision provides that a NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow a NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.*

**Sec. 2304.** Modification of limitation on losses for taxpayers other than corporations – *Modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.*

**Sec. 2305.** Modification of credit for prior year minimum tax liability of corporations – *The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. This provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.*

**Sec. 2306.** Modifications of limitation on business interest – *Temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020.*

**Sec. 2307.** Technical amendments regarding qualified improvement property – *Enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.*

**Sec. 3607.** Paid Leave, Advance Refunding of Credits – *Refundable payroll credit for required paid sick leave established in Families First Coronavirus Response Act.*

### **Corporate Loans**

Economic Stabilization And Assistance To Severely Distressed Sectors Of The United States Economy – *(Starting at Sec. 4001) Businesses not received other relief in loans or loan guarantees through this bill are eligible. Secretary has \$500 billion for loans, loan guarantees, and other investments. Note that these loans cannot be forgiven. The Secretary can also make contracts with entities for “participation in gains” which can include stock. This section also includes limits on officer/employee compensation and bonuses.*

NASL will continue to monitor the status of the CARES Act, as well as any other COVID-19-related legislation, as it moves through the legislative process. We will update our members as additional information is released.

To access the text of the CARES Act, please select the following link:

<https://www.appropriations.senate.gov/imo/media/doc/FINAL%20FINAL%20CARES%20ACT.pdf>

For a section-by-section summary, please click here:

<http://nasl.mymemberfuse.com/resources2/view/profile/id/98896>

For any additional questions or concerns, please email Michael Barnett at [michael@nasl.org](mailto:michael@nasl.org).