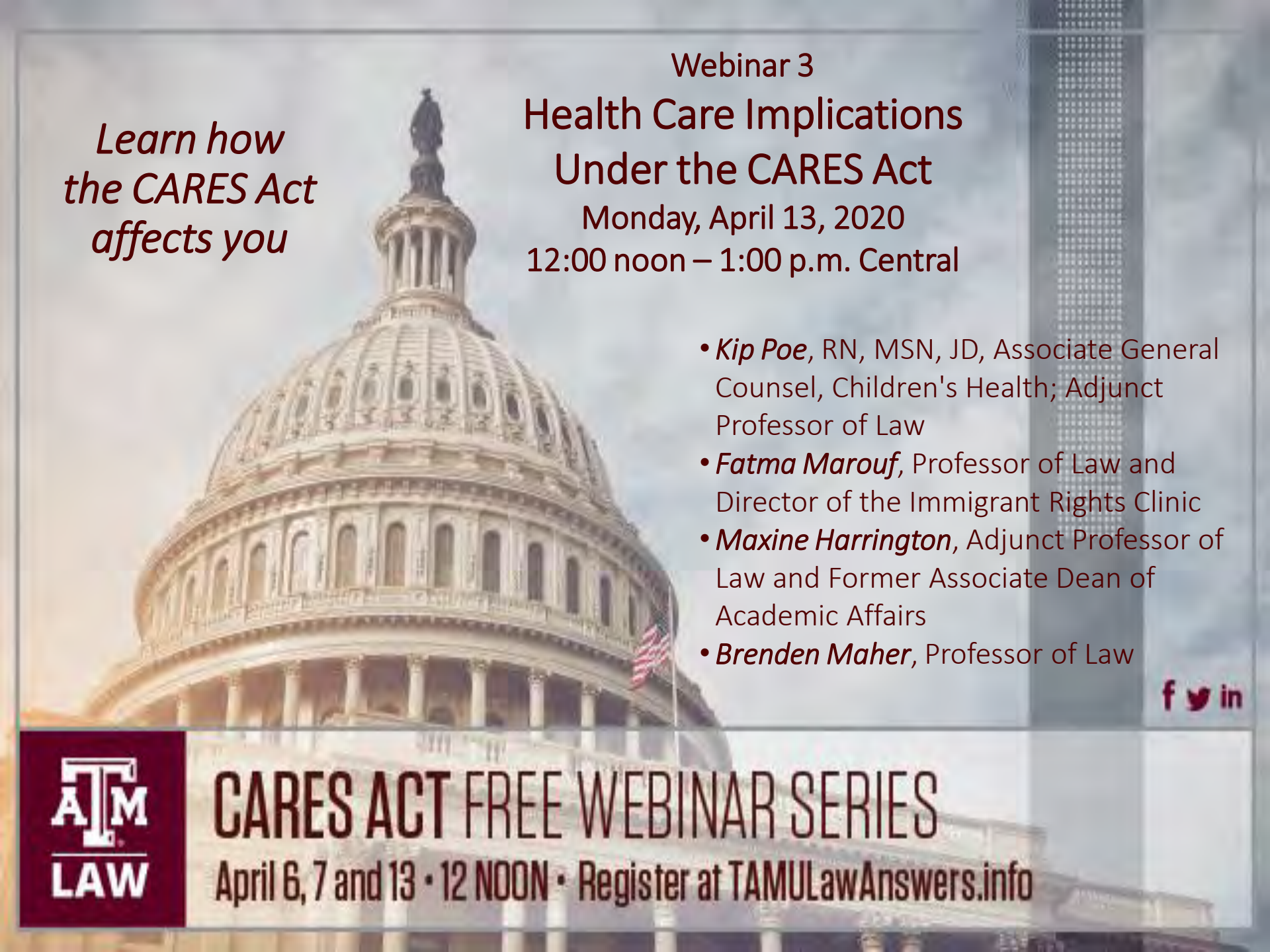

Webinar 3
Health Care Implications Under the CARES Act
Monday, April 13, 2020
12:00 noon – 1:00 p.m. Central
Learn how the CARES Act affects you
• Kip Poe, RN, MSN, JD, Associate General Counsel, Children's Health; Adjunct Professor of Law
• Fatma Marouf, Professor of Law and Director of the Immigrant Rights Clinic
• Maxine Harrington, Adjunct Professor of Law and Former Associate Dean of Academic Affairs
• Brenden Maher, Professor of Law
A&M LAW
CARES ACT FREE WEBINAR SERIES
April 6, 7 and 13 • 12 NOON • Register at TAMULawAnswers.info

CARES ACT

Availability of and Funding for Testing, Treatment and Vaccines

Kip Poe

Adjunct Professor

Texas A&M University School of Law

April 13, 2020

CARES ACT—Access to Health Care for COVID-19 Patients

Coverage of Diagnostic Testing

- Intended to encourage needed testing and mitigate patients' out-of-pocket costs
- FFCRA requires group health plans and insurers (includes M&M) to cover FDA-approved testing and related office, telehealth, urgent care center and ER visits without any cost-sharing (i.e., no deductibles or copayments)
- No prior authorization required
- CARES Act expands coverage to COVID-19 tests that are subject to/requested for emergency use authorization and certain State approved tests (CLIA-waived lab developed tests)

CARES ACT—Access to Health Care for COVID-19 Patients

Pricing of Diagnostic Tests

- Law does not include a reimbursement amount
- Group health plans and insurers must reimburse the provider for testing at negotiated rate in effect prior to the COVID-19 emergency or, if no negotiated rate, at cash price posted by provider on internet
- Provider of test must post cash price on internet
- Failure to post cash price—subject to $300 penalty per day

CARES ACT—Access to Health Care for COVID-19 Patients

Coverage of Preventative Services and Vaccine

- Group Health Plans and insurers must cover any qualifying preventive service/vaccine with no cost sharing within 15 days after the date the service is recommended.
- To qualify, it must be a service, treatment or vaccine for COVID-19 that is recommended by the US Preventative Health Services Task Force or the CDC Advisory Committee on Immunization Practices

CARES ACT—Access to Health Care for COVID-19 Patients

Funding in the CARES Act includes:

- $127 billion for medical response efforts (construction of temporary hospitals, medical supplies, increased workforce, etc.)
- $3.5 billion for development and purchase of vaccines and therapeutics for COVID-19
- $16 billion for PPE and supplies
- $4.3 billion for the CDC
- $945 million to NIH for COVID-19 research

CARES ACT—Access to Health Care for COVID-19 Patients

Who Can Get Tested, Where and When?

- Initially plagued by significant shortages—biotech companies ramping up production
- Tests are becoming increasingly available by public health agencies and hospitals—currently available in every U.S. state
- Requirements for testing sites are state by state
- Many sites now have rapid response tests (results available in under an hour instead of 3-7 days)
- Check state or local websites for testing locations
- Recommendations on who can be tested have been fluid and CDC leaves decisions to state/local health departments and providers

CDC Testing Guidance

PRIORITY 1 Ensure optimal care options for all hospitalized patients, lessen the risk of nosocomial infections, and maintain the integrity of the healthcare system
- Hospitalized patients
- Symptomatic healthcare workers

PRIORITY 2 Ensure that those who are at highest risk of complication of infection are rapidly identified and appropriately triaged
- Patients in long-term care facilities with symptoms
- Patients 65 years of age and older with symptoms
- Patients with underlying conditions with symptoms
- First responders with symptoms

PRIORITY 3 As resources allow, test individuals in the surrounding community of rapidly increasing hospital cases to decrease community spread, and ensure health of essential workers
- Critical infrastructure workers with symptoms
- Individuals who do not meet any of the above categories with symptoms
- Health care workers and first responders
- Individuals with mild symptoms in communities experiencing high COVID-19 hospitalizations
- **NON-PRIORITY** Individuals without symptoms

Treatment for COVID-19

There are no drugs approved by the FDA to prevent or treat COVID-19. Current clinical management includes infection prevention and control measures and supportive care, including supplemental oxygen and mechanical ventilatory support.

Clinical Trials

- Remdesivir – an IV antiviral drug; numerous clinical trials; also available through expanded access program from Gilead Sciences.
- Hydroxychloroquine – a drug used for treatment of malaria and certain inflammatory conditions; numerous clinical trials; available through FDA emergency use authorization
- Actemra –a drug used to treat rheumatoid arthritis
- Plasma transfusions from antibody-rich patients who have recovered
- ClinicalTrials.gov

COVID-19 Funding

Brendan S. Maher
Connecticut Mutual Professor of Law, UConn School of Law
(Joining Texas A&M School of Law Fall 2020)
April 13, 2020

Conceptual Roadmap

Going to talk about key COVID-19-related federal funding for:

- Hospitals and facilities
- Equipment (ventilators, PPE inc. masks, etc.)

Federal Legislation Roadmap

COVID-19 specific

- Phase I, H.R. 6074, March 6, Coronavirus Preparedness & Response Supplemental Appropriations Act ($8.3 billion)
- Phase II, H.R. 6201, March 18, Families First Coronavirus Response Act ($100 billion)
- Phase III, H.R. 758, March 27, CARES Act ($2.2 trillion)

National Strategic Stockpile

- Federal law authorizes HHS Secretary to stockpile and deploy things like vaccines, ventilators, masks, etc. (42 U.S.C. § 247d–6b)

Defense Production Act

- Federal law grants President broad procurement power to respond to national emergencies (50 U.S. Code § 4501 et seq.)

Funding re Testing COVID-19

- COVID-19 relief laws require that most insurance -- private group plans, ACA exchange plans, Medicare, Medicaid, etc. -- must/will cover COVID testing without cost-sharing (Families First Coronavirus Response Act, Division F, Section 6001).
- But as several observers noted, not all health insurance -- e.g., some short term policies and health care sharing ministry policies -- is covered by the above.
- So Families First provided that states could expand Medicaid coverage to include uninsureds seeking COVID-19 diagnosis and testing (with federal government picking up the cost). Division F, Section 6004(a)(3). Trump admin has said anyone with private insurance that doesn't cover testing would be considered uninsured.
- Families First also makes $1b available to reimburse providers who test uninsureds. Division A, Title V.

Funding re Treating COVID-19

- Treatment:
  - CARES ACT (Division B, Title VIII) provides $100 billion for Public Health and Social Services Emergency Fund, for the HHS Secretary to distribute in his discretion “to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus”
    - HHS Secretary’s discretion is very broad, few limits
    - Trump administration has said it plans to use this $100b to reimburse the cost of hospital care for COVID-19 for the uninsured
    - Kaiser Family Foundation estimated that paying for treatment for uninsured will cost between $14-42 billion
    - Federal law does not bar balance-billing for COVID testing or treatment (balance billing is when provider sends bill to patient for amount not covered by insurance) but HHS has said that would be a condition of a provider receiving funds

Equipment Provision and Funding

- Strategic National Stockpile has some number of ventilators and PPE (exact number secret)
  - Idea is that the Assistant Secretary for Preparedness and Response (who reports to the HHS Secretary) distributes these items in accordance with emergency need
  - Problem is that based on various projections, not enough ventilators and PPE even including the stockpile
- So: one way to make more ventilators and masks is through the Defense Production Act
  - Idea is that President can order private manufacturers to allocate and/or produce for domestic use the items the nation needs in an emergency, whether war or health
  - President Trump invoked the DPA on March 18
  - Since then, Trump administration has ordered multiple companies (General Motors, General Electric, Hill-Rom, Medtronic, ResMed, Royal Philips, Vyaire Medical, 3M) to produce ventilators, N95 masks, hospital beds and other needed equipment

TEXAS A&M UNIVERSITY
SCHOOL OF LAW

CARES ACT

MEDICARE AND MEDICAID

Maxine M. Harrington

COVID-19 TESTING AND VACCINE

- Coverage of COVIC-19 testing under Medicare and Medicaid without cost-sharing
- Coverage of COVID-19 vaccine (when available) under Medicare and Medicaid without cost-sharing

Medicare Provider Payments

- Medicare Inpatient Prospective Payment System (IPPS) hospitals will receive an add-on of 20% for Medicare patients hospitalized with COVID-19 during the emergency period

- Expansion of the accelerated payment program
  - Increases prepayment amount from 70% to 100% of expected Medicare payments (125% for critical access hospitals
  - Increases length of time for such payments from 3 to 6 months
  - Delays start of recoupment of payments
  - Expands the types of hospitals that are eligible for accelerated payments to critical access hospitals, children's hospitals, and cancer centers.

Medicare Provider Payments

- Suspension of Medicare sequestration
  - Annual 2% reduction to Medicare payments is eliminated from May 1-December 31, 2020.
- Delay of durable medical equipment payment reduction
- Delay of scheduled clinical laboratory test payment reduction

Easing of Regulatory Requirements to Increase Access to Care

- Waives requirement that inpatient rehabilitation facilities provide at least 3 hours of intensive therapy a day or 15 hours a week
- Allows payment for home health services ordered by nurse practitioner, certified midwife, clinical nurse specialist, or physician assistant (effective six months after Act)
- Requires Medicare Prescription Drug Plans and Medicare Advantage Plans to allow fills and refills of covered drugs for up to a 90-day supply (unless unsafe)

Telehealth During Emergency Period

- Waives requirement that a patient receiving services under Medicare, Medicaid, or CHIP have a prior relationship with the provider during the previous three years
- Allows Federally Qualified Health Centers and Rural Health Clinics to be distant sites for telehealth and to be reimbursed by Medicare

Telehealth During Emergency Period

- Waiver of requirement for face-to-face visits between home dialysis patients and physicians. Allows monthly telehealth assessments
- Allows hospice physician or nurse practitioner to conduct telehealth meetings with patients to determine continued eligibility for hospice
- Encourages telehealth services for home health services. HHS to issue guidelines

Medicaid

- Clarifies option for states to extend Medicaid eligibility to uninsured population for COVID-19 testing (but not treatment) with federal government paying 100% of the cost
  - "Uninsured" includes adults below 138% of FPL in states that did not expand Medicaid under ACA (for example, Texas). To date, Texas has not opted to extend Medicaid eligibility for COVID-19 testing to uninsured
- Provides that the federal COVID-19 unemployment compensation add-on will not count as income for an individual applying for Medicaid or CHIP

Medicaid

- Clarifies requirements for enhanced Federal Medical Assistance Percentage (FMAP) increase authorized by Families First Coronavirus Act
  - States will receive an additional 6.2% federal match during emergency period
  - Does not apply to Medicaid expansion programs that have a federal match of 90%

Medicaid

- Delays (again) cuts in the Disproportionate Share Hospital payments
  - Delays $4 billion in cuts until December 1, 2020
  - Reduces cuts for 2021 from $8 billion to $4 billion (rising to $8 billion per fiscal year from 2022 through 2025)

CARES Act: Access to Care for the Uninsured, Immigrants, Veterans, Minorities, & Incarcerated Individuals

Fatma Marouf, JD, MPH

Professor of Law

UNINSURED INDIVIDUALS

U.S. Uninsured Population

- 27.5 million Americans uninsured in 2018 (around 9% of US population)
- Uninsured rate higher now that millions of people have lost their jobs
- An estimated 3.5 million people lost employer-sponsored insurance in past few weeks; projected that up to 11 million people could become uninsured

Care for Uninsured Under CARES Act

- Builds on Families First Act, which allows states to use their Medicaid programs to provide free testing to uninsured persons
- Portion of $100 billion fund to relieve health care providers (4.5% of total $2.2 trillion in relief) will cover costs of COVID-19 care for uninsured
  - Providers will be reimbursed at Medicare rates (about half of what private insurers pay)
  - Providers prohibited from balance billing

Defines "uninsured" as including:

- Anyone not enrolled in a federal health care program, federal plan, or private health insurance coverage
- Anyone enrolled in a plan that does not provide minimum essential coverage defined by ACA (e.g. coverage for only vision or dental, worker's comp, discount on medical service)
- People who fall in the Medicaid coverage gap (low-income adults in states that have not expanded their Medicaid programs)

Lots we don't know yet . . .

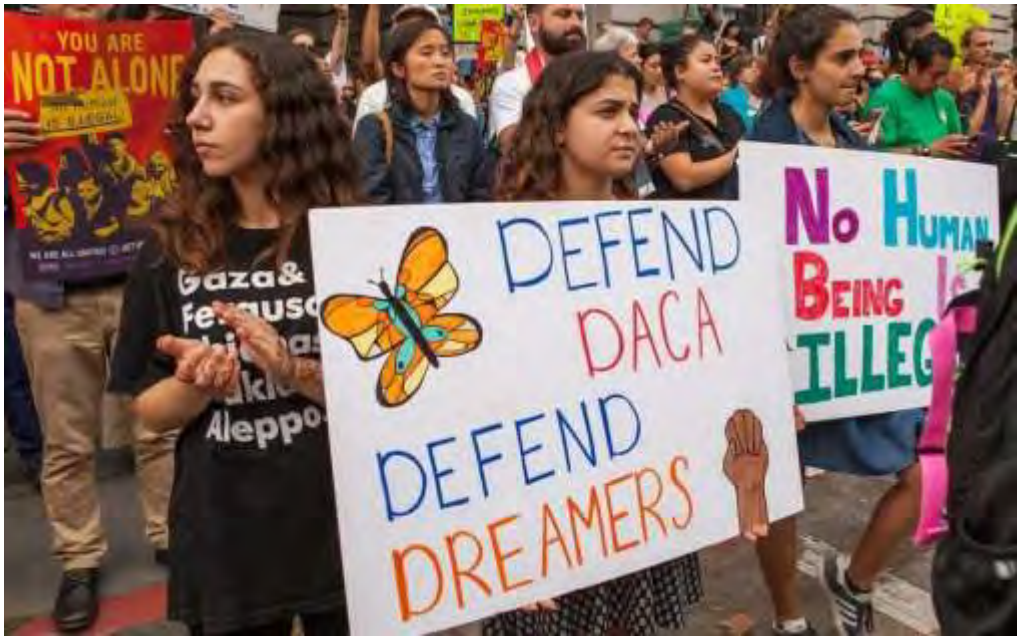
- **How much of the $100 billion will be used to pay for care of uninsured?**
- **What exactly will be covered?**
  - Physician services that are billed separately from hospital services?
  - Care outside hospitals, including follow-up?
  - Care for symptoms like COVID-19 if person ultimately tests negative?

Is the funding sufficient?

- What is the cost of covering COVID-19 testing and treatment for uninsured?
- Estimates is $13.9 to $41.8 billion: https://www.kff.org/uninsured/issue-brief/estimated-cost-of-treating-the-uninsured-hospitalized-with-covid-19/
- At the high end, that's 40% of the total $100 billion budget for health care providers!

Other Options to Cover Uninsured

- Designating a special enrollment period for the ACA for COVID-19 pandemic (federal program that serves 38 states has not done this; 12 states have done it)
- Expanding Medicaid to provide uninsured with testing and treatment
- Using National Disaster Medical System or another federal emergency program
- New, special fund just for uninsured


YOU ARE
NOT ALONE
DEFEND
DACA
DEFEND
DREAMERS
No Human
Being
Aleppo

IMMIGRANTS

Immigrants – No New Insurance Options

- CARES Act doesn't change who qualifies for insurance under Medicaid, CHIP, ACA
- Immigrants with "qualified status" can receive federal Medicaid
  - Excludes LPRs with status < 5 years, recipients of DACA and TPS, undocumented persons
- Immigrants who are "lawfully present" can get ACA
  - Includes those with "qualifies" status, as well as humanitarian entrants, trafficking victims
  - Excludes DACA, undocumented persons

Immigrants – State/Local Coverage

- Some states or localities provide health coverage programs for additional groups of immigrants

- National Immigration Law Center has a table explaining eligible immigrants in every state: https://www.nilc.org/wp-content/uploads/2015/11/med-services-for-imms-in-states.pdf

Undocumented immigrants (and others who don't qualify for coverage)

- Emergency Medicaid (if low income)
- Non-emergency care at Community Health Centers or Safety-net hospitals

Emergency Medicaid

- Some states have defined COVID-19 testing and treatment as emergency services covered by Emergency Medicaid

- But applicants must meet state's other Medicaid eligibility requirements – e.g. in a state that has not expanded Medicaid to adults without children, an adult without a child would not be eligible

Community Health Centers (CHCs)

- CARES Act increases funding for CHCs, which provide primary and preventive health care to everyone
- Increases FY20 funding by $1.3 billion and provides over $668 million for part of FY21
- To find nearest health center, go to https://findahealthcenter.hrsa.gov/

Public Charge Implications

- Fear of accessing care due to “public charge” test

- USCIS announced that testing, prevention, treatment for COVID-19 will not be used against immigrants in a “public charge” test (being a “public charge” can be a bar to receiving certain visas and becoming a permanent resident)

VETERANS

Veterans

- $17.2 billion allocated directly to Veterans Health Administration
  - Recruit medical personnel who will focus exclusively on COVID-19 triage and care
  - Buy pharmaceuticals, ventilators, PPE for VA staff, add more beds, provide overtime pay
  - Provide telehealth resources for veterans seeking in-home care and homeless veterans, including mental health

RACIAL AND ETHNIC MINORITIES

African Americans

- CDC found that African Americans were hospitalized at higher rates than whites for COVID-19
- States have released data showing that African Americans dying of COVID-19 at disproportionately high rates
  - In Michigan, African Americans make up 14% of population but 41% of COVID-19 deaths

Reasons?

- Underlying medical conditions (e.g. heart disease, hypertension, diabetes, asthma)
- Essential service jobs - <20% of black workers and 16% of Hispanic workers can telecommute
- Less likely to have health insurance
- Doctors may be less likely to refer minority patients for testing despite COVID-19 symptoms

Importance of Data

- Most states are either not actively collecting race/ethnicity data or not releasing it

- Data can help determine whether to increase testing among certain communities for earlier, more effective quarantining and quicker medical intervention

Native Americans

- CARES Act allocates $500 million in direct appropriation to Indian Affairs (part of U.S. Dept of Interior) and **$8 billion for Tribal governments, to be distributed by April 26, 2020**

- Tribal leaders are being consulted to come up with a method for allocating the $8 billion

INCARCERATED POPULATIONS

Bureau of Prisons

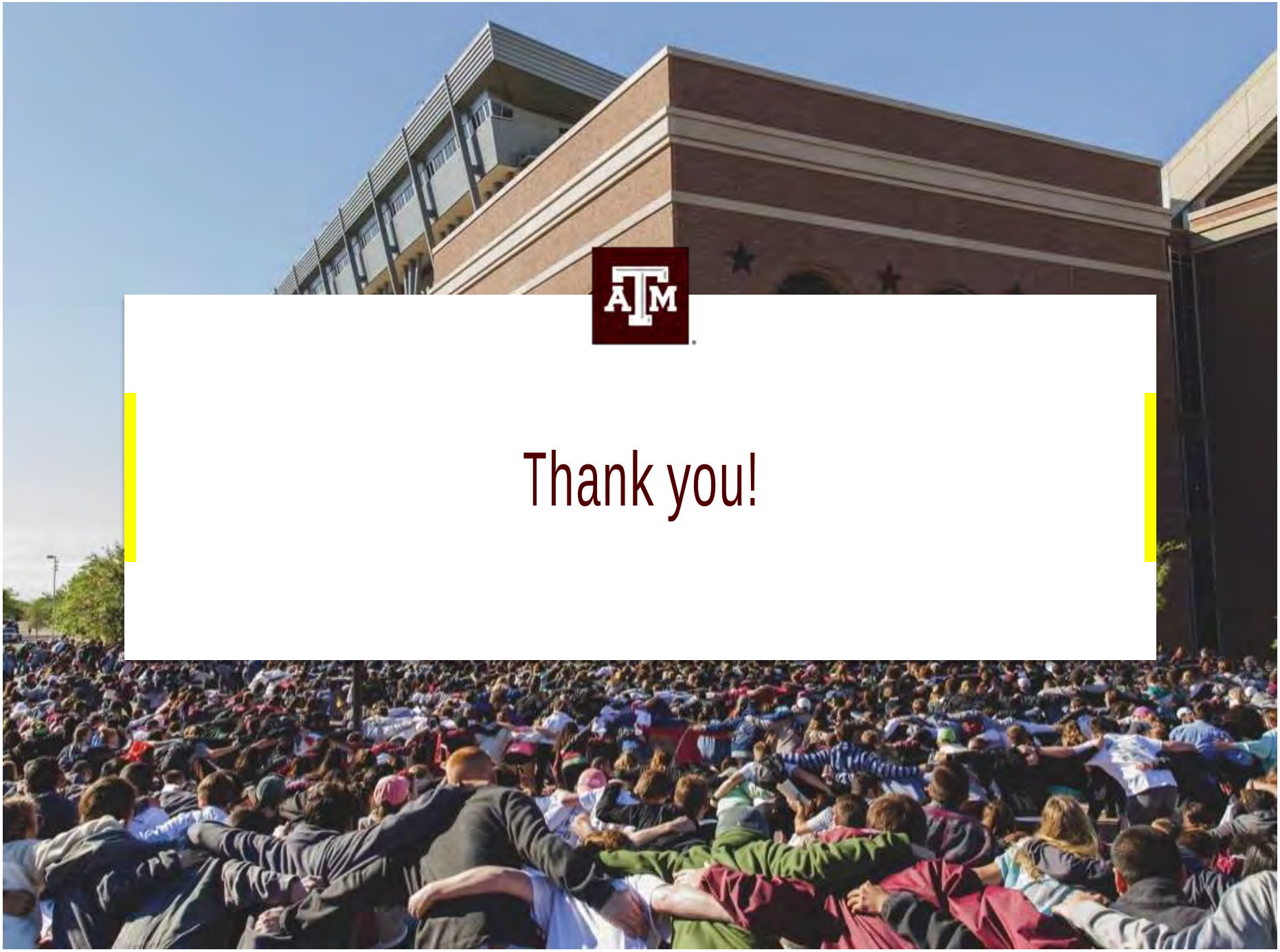
- Provides $100 million to BOP to respond to pandemic with resources such as PPE, medical equipment, funding overtime, cleaning facilities

- Greater flexibility with home confinement (expands maximum period)

Immigration Detainees

- Immigration detainees comprise the largest population of detained persons in the US (around 35,000 per day)

- No provisions made for them in the CARES Act



Thank you!

TEXAS A&M UNIVERSITY
SCHOOL OF LAW

NEED ADDITIONAL ASSISTANCE? The Tarrant County Bar Association offers free advice on “LegalLine”

LegalLine is a community service program offered twice a month by the Tarrant County Bar Association. Volunteer attorneys from the Tarrant County Bar Association offer free advice to Tarrant County residents on the 2nd and 4th Thursday of every month from 5–7pm.

As part of the Tarrant County Bar Association’s commitment to the public, local lawyers volunteer two hours of their time to answer questions covering a broad range of topics.

Anyone interested can sign up for an appointment time at **tarrantbar.org**