President Signs Legislation to Fund Coronavirus Response; Health Insurers to Waive Co-Pays

by Practical Law Employee Benefits & Executive Compensation

Published on 06 Mar 2020 • USA (National/Federal)

Congress has passed, and the President has signed, legislation to provide more than $8 billion in funding for the US government's response to COVID-19 (the disease that results from the 2019 Novel Coronavirus). In related developments, a trade association of major health insurers and several states, including New York, have pledged to waive cost-sharing requirements for health plan participants regarding COVID-19 testing.

On March 6, 2020, the President signed legislation to fund the federal government's response to **COVID-19** (the disease that results from the 2019 Novel Coronavirus) (Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Pub. L. No. 116-123)). The legislation provides 2020 supplemental emergency funding to several federal agencies, including the **Department of Health and Human Services** (HHS) and the **Centers for Disease Control and Prevention** (CDC), to prevent, prepare for, and respond to COVID-19. Relatedly, a trade association of major health insurers and several states announced plans to waive cost-sharing requirements related to COVID-19 testing for health plan participants.

For a continuously updated collection of resources addressing COVID-19, see Practical Law's Global Coronavirus Toolkit; see also Legal Update, HHS Addresses HIPAA Privacy and Coronavirus.

Legislation Authorizes Funding to CDC and Other Administrative Agencies

The funding legislation authorizes nearly $1 billion in funding to the CDC, a component of HHS, to prevent, prepare for, and respond to coronavirus (which the legislation defines as SARS-CoV-2 or another coronavirus having pandemic potential). Portions of the funding are for grants to the states, localities, tribal organizations, and other entities to conduct:

- Surveillance, epidemiology, and laboratory capacity activities.
- Infection control, mitigation, and communications.
- Related preparedness and response activities.

Funding recipients must submit "spend plans" to the CDC within 45 days of the legislation's enactment, and provide periodic reports to Congress regarding their use of the funds.

In addition, some of the CDC funds are authorized for:

- Global disease detection and emergency response.

- The Infectious Diseases Rapid Response Reserve Fund.

The legislation authorizes more than $800 million in funding to the **National Institutes of Health** (NIH) to be used (among other purposes) for worker-based training to prevent and reduce exposure of hospital employees, emergency first responders, and other workers with risk of coronavirus exposure as part of their work duties.

Funding is also authorized for the Public Health and Social Services Emergency Fund, for use in:

- Developing vaccines and necessary countermeasures – prioritizing platform-based technologies with US-based manufacturing capabilities.

- Purchasing vaccines, therapeutics, diagnostics, necessary medical supplies, medical surge capacity, and conducting related administrative activities.

The legislation directs HHS to purchase vaccines developed using the legislation's funding for response to a coronavirus-related outbreak or pandemic – in quantities determined by HHS to be sufficient to meet the public health need. Under another HHS directive, vaccines, therapeutics, and diagnostics developed from the legislation's funds should be affordable in the commercial market.

Other recipients of the legislation's funding include the **Food and Drug Administration** (FDA), the State Department, and the **Health Resources and Services Administration** (HRSA) (regarding HRSA, see Practice Note, Preventive Health Services Under the ACA, Other Than Contraceptives: Evidence-Informed Preventive Care and Screenings for Infants, Children, and Adolescents).

Health Insurers Will Waive Cost-Sharing; New York Announces Co-Pays Directive

In a related coronavirus development, America's Health Insurance Plans (AHIP), a trade association of major health insurers, announced its intent to restrict out-of-pocket expenses for **participants** in its members' **insured health plans** who request testing for, and treatment of, COVID-19 (see Practice Note, Lifetime and Annual Limits, Essential Health Benefits, and Cost-Sharing Restrictions Under the ACA and Legal Update, Trump Administration Proposals Would Impose Extensive Cost-Sharing Disclosures on Health Plans and Insurers).

Specifically, AHIP indicated that it would:

- Cover needed diagnostic testing when ordered by a health provider.

- Attempt to ease health plan-related network, referral, preauthorization requirements, and waive cost-sharing for participants.

- Ensure that individuals have uninterrupted access to their regular prescription medications and do not experience drug shortages.

The association also intends to seek needed changes to health plan preventive services, benefit design, and treatment options, in coordination with federal and state administrative agencies (see Practice Note, Preventive Health Services Under the ACA, Other Than Contraceptives). The association emphasized the need for:

- Expanded use of **telehealth**, at-home care, and other technology-enabled options in addressing COVID-19.
- Continued coordination with the CDC and other federal and state agencies in responding to the disease.

Individual health insurers, including CIGNA, made similar announcements concerning cost-sharing for COVID-19.

New York State Cost-Sharing Directive for Coronavirus Testing

AHIP's announcement follows directives announced earlier this week in New York and other states regarding COVID-19 testing. Under New York's directive (and related announcement), for example:

- Health insurers in the state cannot impose cost-sharing for COVID-19 testing, including for emergency room, urgent care, and office visits.
- New York recipients of Medicaid will not incur cost-sharing for COVID-19 testing.

Health insurers in New York also must inform residents of available benefits (including **telehealth** medical advice and treatment, where available). According to the directive, health insurers will be required to cover the cost of a COVID-19 immunization, if it becomes available.

Practical Impact

The waivers for COVID-19 cost-sharing addressed above apply only to employers with insured health plans under the **Employee Retirement Income Security Act of 1974** (ERISA). ERISA's broad preemption rule includes an exception for insured health plans under which state insurance laws may indirectly regulate insured ERISA health plans (see Practice Note, ERISA Litigation: Preemption of State Laws (Overview): Saving Clause Exception and ERISA Litigation Toolkit). The New York directive, for example, does not by its terms apply to **self-funded health plans**.

At present, it should be noted, testing in the US for COVID-19 is not yet widespread.

In another coronavirus development, CMS directed health providers nationwide to ensure that they are implementing infection control and prevention procedures, which are required as a condition of the providers' participation in **Medicare** and **Medicaid**.

