

States Advisory 20-19: Families First Coronavirus Response Act Provisions Relating to State-Operated Programs

March 16, 2020

The House of Representatives has passed the [Families First Coronavirus Response Act](#), H.R. 6201 (“H.R. 6201” or “the Act”), after negotiations with the White House, and the President has indicated he would sign it if enacted by the Senate. The Senate is expected to vote early this week.

The legislation builds off the \$8.3 billion emergency coronavirus spending bill enacted on March 6, 2020, *see* Advisory 20-16, and includes numerous provisions related to Medicaid, SNAP, WIC, and the free and reduced price school lunch program, as well as provisions regarding paid sick leave, and increased unemployment benefits.

The provisions of H.R. 6201 are in effect for the time period for which the President has declared a public health emergency related to the COVID-19 virus, which President Trump did on [March 13, 2020](#). Shortly after the President’s announcement, the Secretary of HHS issued an accompanying waiver of various health law provisions pursuant to his authority under [Section 1135 of the Social Security Act](#). (*See* Advisory 20-17 for more on the waivers that are implemented under Section 1135 authority).

Coverage of COVID-19 Testing

H.R. 6201 requires Medicaid, CHIP, Medicare, Medicare Advantage, and private health plans to cover the full cost of COVID-19 diagnostic testing, including covering the costs of the provider visit, emergency room visit, or urgent care center visit resulting in the order or administration of a COVID-19 diagnostic test. This means there would be no cost sharing (including deductibles, copayments, and coinsurance) for beneficiaries. The Act also eliminates prior authorization and other forms of medical management. These requirements would apply throughout the duration of the COVID-19 public health emergency declared by the President.

State Option to Expand Medicaid Coverage to Uninsured Solely for COVID-19 Testing, at 100% Federal Medical Assistance Percentage (FMAP)

For those without insurance, the Act allows States to extend Medicaid eligibility to “uninsured individuals” for the purposes of COVID-19 diagnostic testing, including services furnished during the visit associated with the testing. § 6004(a)(3).

An “uninsured individual” is defined as one who is “not described” in Section 1902(a)(10)(A)(i), which is the list of mandatory eligibility categories, and who is not enrolled in a Federal health care program, a group health plan, or group or individual health insurance. § 6004(a)(3)(C).

Note that the reference to Section 1902(a)(10)(A)(i) means that individuals who would fall within the definition of the ACA expansion population, which is described at Section 1902(a)(10)(A)(i)(VIII), would not be considered uninsured, even if the State has not expanded Medicaid. This appears to be a drafting error but it is not clear if it will be corrected before enacted by the Senate.

State expenditures for medical and administrative costs for the diagnostic testing and related services for these uninsured individuals would be matched by the federal government at 100 percent. § 6004(a)(3)(D).

The Act does not include any provisions that would extend coverage for *treatment* of COVID-19 to the uninsured.

Enhanced FMAP

Section 6008 of the Act would provide a temporary 6.2 percent increase to each States' FMAP for the duration of the COVID-19 public health emergency (beginning March 13, 2020, and extending through the last day of the calendar quarter in which the emergency period occurs). The increase would not be available if a State:

- makes eligibility standards more restrictive than the standards in place on January 1, 2020;
- increases premiums beyond amounts in place as of January 1, 2020;
- terminates or denies enrollment for a reason other than a failure to satisfy financial, categorical, and State residency requirements;
- does not provide coverage without cost sharing for any testing and treatments for COVID-19; or
- conducts periodic income checks or eligibility redeterminations more frequently than once every 12 months.

§ 6008(b).

The Act also amends Section 1905(cc) of the Act to provide that the 6.2% increase to the FMAP is not available if the State requires that political subdivisions pay a greater percentage of the non-Federal share of Medicaid expenditures, or a greater percentage of the non-Federal share of DSH payments under section 1923, “than the respective percentages that would have been required by the State under the State plan under this title, State law, or both,” as in effect on March 11, 2020

This provision is similar to the restrictions on increased FMAP that were part of the American Recovery and Reinvestment Act (ARRA) of 2009, and that were continued in the Affordable Care Act. This provision has been complicated in its implementation and can affect state

arrangements for intergovernmental transfers and certified public expenditures, among other things.

Provisions Related to Food Security Programs

The Act has several provisions designed to assure adequate nutrition to those affected by quarantine or school closures.

Ability to Adjust SNAP Eligibility/Benefits to Reflect Loss of School Lunch Availability

Section 1101(b) of the Act would permit States to amend their Supplemental Nutrition Assistance Program (SNAP) plans to include “temporary emergency standards of eligibility and levels of benefits.” The intent is to address the needs of households with a child or children whose school has been closed for a minimum of five days due to a public health emergency, if the child would otherwise qualify for free or reduced price school meals while at school. The temporary emergency standards would permit supplemental allotments to households already receiving benefits, and to extend eligibility to households not already receiving benefits. The level of additional benefits per eligible child “shall be determined by the Secretary [of Agriculture] in an amount not less than the value of meals at the free rate over the course of 5 school days” under the federal school lunch program.

The Act further provides for the exchange of information between the SNAP program and school lunch programs, and “to facilitate implementation” of these provisions, the Secretary of Agriculture may approve waivers of the limits on certification periods, reporting requirements, and “other administrative requirements otherwise applicable to State agencies under” the SNAP program.

Ability to Waive of School Lunch and Child Nutrition Act Provisions

Section 2101 of the Act implements the “Maintaining Essential Access to Lunch for Students Act,” or “MEALS Act.” This provision permits the Secretary of Agriculture to approve a State request to waive any requirements or regulation of the School Lunch Act or the Child Nutrition Act “for purposes of providing meals and meal supplements under such Acts during a school closure due to COVID–19.” Among the possible waivers are ones related to the nutritional content of meals (if there is a food supply issue) and ones that would permit “non-congregate feeding.”

Ability to Waive WIC “Physical Presence” and Other Administrative Requirements

Section 2203 of the Act permits the Secretary to approve a State request to waive the requirement in the Women, Infant, and Children (WIC) that recipients be “physically present” at their certification appointments, and to defer “anthropometric and bloodwork requirements necessary to determine nutritional risk.” This authority expires September 30, 2020.

Section 2204 of the Act gives the Secretary the authority to waive any administrative requirement that he determines cannot be met by a State agency due to COVID-19 if the waiver is necessary to provide WIC assistance. This authority also expires September 30, 2020.

Suspension of SNAP Work Requirements

Section 2301 of the Act amends the Food and Nutrition Service Act to provide that, during a public health emergency related to COVID-19, an individual cannot lose SNAP benefits for failure to comply with the statute’s work requirements, unless the individual has failed to comply with certain training programs offered by the State.

Additional SNAP Flexibilities

Section 2302 of the Act requires the Secretary of Agriculture to provide, “at the request of a State agency” that has provided sufficient data, “for emergency allotments to households” participating in the SNAP program, in order to address “temporary food needs” not greater than the applicable maximum monthly allotment for the household size. Among the factors that may be considered is the availability of state personnel in state agencies, the ability to add benefits to EBT cards, any “disruptions of transportation or communication facilities,” and other health-related considerations.

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