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ATTORNEYS AT LAW

MEMORANDUM

To: Powers Clients and Friends

From: Legislative Practice Group

Date: April 24, 2020

Re: **Summary of Paycheck Protection Program and Health Care Enhancement Act ("COVID 3.5")**

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Over the last month, Congress and the Trump Administration have taken several key steps to address the expanding public health crisis caused by the coronavirus, officially known as COVID-19. This memo summarizes Congress' actions to date with a focus on its most recent activity, today's enactment of the Paycheck Protection Program and Health Care Enhancement Act.

I. Summary of March Legislation

On March 6, 2020, the President signed an emergency supplemental appropriations bill, marking the first major effort to address the coronavirus pandemic. The full text of the Coronavirus Preparedness and Response Supplemental Appropriations Act can be found here, and our memo summarizing the major provisions can be found here. This "Coronavirus 1.0" package includes more than $8 billion in emergency funding for federal agencies, state and local governments, and community health centers to fund the pandemic response, as well as a series of provisions to expand access to telehealth for Medicare patients.

On March 18, the second package (the Families First Coronavirus Response Act) was signed into law. The full text of the legislation can be found here, and our memo on the bill can be found here.

On March 25, the Senate unanimously approved a third measure, encompassing more than $2 trillion in emergency relief to address the crisis and bolster the economy. The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by voice vote in the House on March 27 and was signed by the President soon thereafter. The following is a summary of key legislative provisions in this third emergency bill, focusing on their impact on the nation's economic sector. A separate memorandum summarizing the key health care-related provisions in Title III of the CARES Act can be found here. The full text of the legislation can be found here.

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II. Paycheck Protection Program and Health Care Enhancement Act

On April 24, President Trump signed into law the Paycheck Protection Program and Health Care Enhancement Act. The law, passed by the Senate on April 21 and the House on April 23, provides an additional $484 billion in funding for the Paycheck Protection Program and the Small Business Administration (SBA)'s Economic Injury Disaster Loans and emergency advance grants, as well as funding for health care providers and national COVID-19 testing. The full text of this legislation can be found here. While some funding for State, local and tribal governments to implement COVID-19 testing is included in this measure, other economic relief is not provided for those entities but may be part of the next package enacted by Congress to address the coronavirus, perhaps as soon as May.

Small Business Administration Funding
The "COVID 3.5" package increases funding for new SBA Paycheck Protection Program (PPP) applicants by $310 billion and provides $2.1 billion for salaries and expenses incurred by the SBA to administer its programs related to COVID-19. The SBA is directed to use at least $60 billion of the PPP funding to guarantee loans, with $30 billion of that amount reserved for community-based lenders, small banks, and credit unions, and $30 billion for use by medium-sized banks and credit unions. The new provisions also increase the SBA's Economic Injury Disaster Loan (EIDL) account by $50 billion and provide another $10 billion for the EIDL's $10,000 emergency advance grants, which need not be repaid by grantees. The law further expands eligibility for SBA disaster loans and emergency advances to agricultural enterprises with fewer than 500 employees.

SBA and the U.S. Treasury Department issued further guidance to restrict the use of PPP funds by larger corporations on April 23. The guidance at Question #31 states that, "before submitting a PPP application, all borrowers should review carefully the required certification that '[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.'" The guidance notes that public companies with "substantial" market value and access to capital markets are unlikely to be able to make this certification in good faith, and states that any such borrowers who received a loan prior to this guidance must repay its loan in full by May 7, 2020 in order to maintain this good faith certification.

Health Care Enhancement Funding
The legislation appropriates a total of $100 billion in FY 2020 supplemental funding to the Public Health and Social Services Emergency Fund. These funds are split between supplemental funds for the Provider Relief Fund for hospitals and other health care providers that was initially authorized in the CARES Act and additional funding to various entities for supporting COVID-19 testing.

Provider Relief Fund
In addition to the $100 billion originally appropriated in the CARES Act for provider relief, the COVID 3.5 package appropriates $75 billion more for this fund. These funds are slated for reimbursement of health care providers for health care-related expenses or lost revenues that are attributable to the coronavirus outbreak. The Department of Health and Human Services (HHS)

already distributed the first round of funding from this fund, sending out $30 billion in total to almost all Medicare providers and suppliers, distributed proportionately by their Medicare Fee-for-Service billing in 2019. On April 22 HHS announced a plan for distribution of the remaining $70 billion originally added to the Fund, including another $20 billion in general distributions as well as targeted allocations for areas particularly impacted by COVID-19, rural providers, the Indian Health Service, and additional providers who serve only Medicaid patients. HHS is expected to develop further plans for the distribution of the additional funds appropriated by this new legislation.

Funding for COVID-19 Testing
The legislation also appropriates $25 billion for expenses to research, develop, validate, manufacture, purchases, administer, and expand capacity for COVID-19 tests to effectively monitor and suppress the virus. Specifically, these sums are allocated as follows:

- $11 billion for states, localities, territories, and tribes, including:
    - $2 billion for states and localities to be distributed according to the formula set by the Public Health Emergency Preparedness agreement;
    - $4.25 billion for states and localities to be distributed proportionally by their relative number of COVID-19 cases; and
    - $750 million for distribution to tribes and tribal organizations, coordinated by the Director of the Indian Health Service.
- $1 billion to the Centers for Disease Control and Prevention (CDC) for CDC-wide activities relating to surveillance, epidemiology, contact training, and workforce support relating to testing;
- $1.8 billion for the National Institutes of Health (NIH), including:
    - $306 million for the National Cancer Institute (NIH), specifically for activities related to serological testing;
    - $500 million to the National Institute of Biomedical Imaging and Bioengineering (NIBIB) to accelerate research, development, and implementation of rapid testing;
    - $1 billion to the Office of the Director for distribution across the Institutes and Centers at NIH for testing and related technologies.
- $1 billion for the Biomedical Advanced Research and Development Authority (BARDA);
- $22 million for the Food and Drug Administration (FDA);
- $600 million for the Health Resources and Services Administration (HRSA) for grants to Community Health Centers and Federally Qualified Health Centers;
- $225 million for grants to Rural Health Clinics; and
- $1 billion to be used to cover expenses related to testing for the uninsured.

Reporting Requirements
The law also establishes several reporting requirements, including the following:

- Each state, locality, and tribal entity that receives funding must submit a COVID-19 testing plan within 30 days of enactment, including goals for 2020, monthly testing requirements, and a plan for using the resources distributed under the legislation;

- HHS must submit a report on nationwide testing within 21 days of enactment, including demographic characteristics on all those receiving testing;
- HHS must submit a report within 180 days on positive diagnoses, hospitalizations, and deaths nationwide, disaggregated by demographic characteristics;
- HHS must submit a report on a strategic testing plan within 30 days, which must be updated every 90 days until funds are exhausted.

For further questions regarding the CARES Act, additional funding provided in the PPP, or any other COVID-19 related issues, please contact any Powers professionals with whom you normally work. Contact information for all professionals and practice groups can be found at https://www.powerslaw.com/professionals/.

For the latest news, information, and insights on COVID-19, please visit our resource hub at https://www.powerslaw.com/covid-19/.