

COVID-19 Public Policy Group Report

April 23, 2020

The U.S. House of Representatives, with a sufficient number of its members back in Washington temporarily to cast votes, will meet today to give approval to the [Paycheck Protection Program and Health Care Enhancement Act](#), the \$484 billion interim coronavirus relief bill that was approved by the U.S. Senate on Tuesday. President Donald Trump will sign the legislation into law quickly after receiving the measure from Congress later today.

House Speaker Nancy Pelosi (D-CA) had planned to have the House vote today as well on an internal [rules change](#) that would have permitted proxy voting by representatives unable or unwilling to be physically present in the U.S. Capitol. Plans for such a vote have now been set aside in favor of the formation of a bipartisan task force that will examine potential steps that can be taken by the chamber to ensure its functionality in the coming weeks and months as COVID-19 prevention protocols challenge the House's ability to operate under regular order.

The House will, however, vote today on a Pelosi-backed measure to establish a special select investigative subcommittee of the House Committee on Oversight and Reform to examine the distribution of coronavirus relief funds and other COVID-19 actions by the federal government. Republican leaders oppose the select subcommittee, arguing it will be weaponized by Democrats for use against the president in an election year.

The Speaker also on Wednesday doubled down on congressional Democrats' determination to proceed in the coming weeks with assembly of a new large-scale COVID-19 relief and economic "stimulus" package that could exceed even the size of the massive [CARES Act](#) signed into law last month. Pelosi indicated additional relief to states, territories and local governments, sought by Democrats unsuccessfully during the negotiations over the interim bill being finalized this week, will be included in the forthcoming legislation.

Senior Republican officials in Washington, for their part, continued to send a somewhat mixed message with respect to the outlook for the presumed next bill. Senate Majority Leader Mitch McConnell (R-KY) suggested in a radio interview that states and local governments in need of additional money should look to the bankruptcy process rather than to Congress for help, and repeated concerns he expressed earlier in the week about the record debt being accumulated as the federal government spends trillions of dollars to combat the health and economic crisis of COVID-19. But Treasury Secretary Steven Mnuchin, speaking on behalf of the Trump Administration, told the Fox Business Network: "I think we're all sensitive to that this is a war and we need to win this war and we need to spend what it takes to win the war."

Tax and Economic Development Updates

Yesterday, the Treasury Department issued guidance related to the \$150 billion Coronavirus Relief Fund, which was established by the CARES Act to be used to make payments for specified uses to states and certain local and other governments. Pursuant to the CARES Act, payments from the Fund may only be used to cover costs that: (1) are necessary expenditures incurred due to COVID-19; (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the

CARES Act) for the state or local government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020. The [guidance](#) and [FAQs](#) provide additional detail on how Treasury will interpret these limitations on the permissible use of Fund payments. Notably, this guidance also comes as Senate Majority Leader Mitch McConnell (R-KY) has expressed a wariness of further adding to the national debt by providing more financial assistance to state and local governments, suggesting instead that he would “certainly be in favor of allowing some states to use the bankruptcy route.”

According to Mr. Daleep Singh, Executive Vice President of the New York Federal Reserve, the central bank “is listening to feedback from the public about the design of the Main Street facility.” As we have previously reported, the Federal Reserve is said to have received approximately 2,000 comments on its Main Street Lending Program. Mr. Singh yesterday acknowledged that “[t]here is no chance that we have designed everything correctly in the first instance,” and also suggested that “[m]ore information is likely to become available in terms of eligibility, in terms of pricing, in terms of where it’s going to be directed.” Note, too, even as the Federal Reserve works to set up its Main Street Lending Program, there continue to be calls from a wide variety of stakeholders as to the need for additional financial assistance to specific sectors of the economy. For example, in addition to calls for supporting the mortgage servicing industry, we are beginning to hear reports that oil and gas companies may need direct support from the Federal Reserve – support which at least President Trump has already expressed he is open to.

Earlier this week, the Internal Revenue Service (IRS) released [FAQs](#) to provide further guidance surrounding the extension of payroll support to US air carriers and contractors as provided under the CARES Act. You will recall that the Treasury Department has previously [announced](#) that the following airlines have indicated that they plan to participate in the Payroll Support Program: Alaska Airlines, Allegiant Air, American Airlines, Delta Air Lines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, SkyWest Airlines, Southwest Airlines, and United Airlines. From our [current understanding](#), negotiations are still negotiating with some airlines to reach an agreement on final terms and conditions.

Health Updates

On Wednesday, the Department of Health and Human Services (HHS) [announced](#) several allocations for the CARES Act’s \$100 billion Public Health and Social Services Emergency Fund – which was established for hospitals, providers, and other entities to cover lost revenues and unreimbursed expenses attributed to the pandemic.

(1) The [general allocation](#), totaling \$50 billion, is for general distribution to Medicare facilities and based on eligible providers’ 2018 net patient revenue. This allocation includes the \$30 billion distributed earlier this month proportionate to providers’ share of Medicare fee-for-service reimbursements in 2019. HHS said some providers will be sent an advance payment automatically, based off the revenue data they submit in Centers for Medicare and Medicaid Services cost reports. Entities without adequate cost report data will need to submit revenue information to a portal. Payments will go out on a rolling basis beginning this week. Providers who receive funds from this allocation must sign an [attestation](#) and agree to [terms and conditions](#) of payment.

(2) The [allocation for COVID-19 high impact areas](#), totaling \$10 billion, will be targeted to hospitals in hot spots. HHS announced hospitals “should apply for a portion of the funds by

providing four simple pieces of information via an authentication portal before midnight PT, Thursday, April 23.” The hospitals must provide their Tax Identification Number, National Provider Identifier, total number of Intensive Care Unit beds as of April 10, 2020, and total number of admissions with a positive diagnosis for COVID-19 from January 1, 2020, to April 10, 2020. HHS also explains, “The distribution will take into consideration the challenges faced by facilities serving a significantly disproportionate number of low-income patients, as reflected by their Medicare Disproportionate Share Hospital (DSH) Adjustment.” America’s Essential Hospitals has [called](#) on HHS to extend this application deadline due to technical problems and the need for complete and accurate data.

(3) The [allocation for rural providers](#), totaling \$10 billion, will be targeted to rural health clinics and hospitals. HHS states that the allocation “will be distributed as early as next week on the basis of operating expenses, using a methodology that distributes payments proportionately to each facility and clinic.”

(4) The [allocation for the Indian Health Service](#), totaling \$400 million, “will be allocated for Indian Health Service facilities, distributed on the basis of operating expenses.”

HHS announced it will distribute additional allocations for certain providers, including skilled nursing facilities, dentists, and providers that solely take Medicaid; it did not disclose further details on these allocations. As previously announced by President Trump and HHS, another allocation will go towards reimbursements to providers, at Medicare rates, for treatment of uninsured COVID-19 patients. Further information on the uninsured allocation, including how it will work, the program timeline, and what is covered, is available [here](#). Of note, HHS has not yet announced how much of the Fund will be allocated towards treatment for the uninsured; provider reimbursement will be “subject to available funding.”

HHS, through the Health Resources and Services Administration (HRSA), also [awarded](#) almost \$165 million to 1,779 small rural hospitals and 14 HRSA-funded Telehealth Resource Centers to combat the coronavirus pandemic. This funding will be used in part to further telehealth expansions, purchase additional personal protective equipment, and boost testing capacity. The list of award recipients is available [here](#).

Dr. Rick Bright, former director of the Biomedical Advanced Research and Development Authority (BARDA), has announced he will file a whistleblower complaint with HHS’s Office of Inspector General over his dismissal from his position. Dr. Bright has [stated](#) the administration removed him from his role in part as retaliation for his questioning the use of hydroxychloroquine as a treatment for COVID-19. BARDA is involved in developing a coronavirus vaccine, and Dr. Bright says he was reassigned to a narrower job at the National Institutes of Health after he pressed for additional vetting of the drug. In a statement, Dr. Bright said, “I believe this transfer was in response to my insistence that the government invest the billions of dollars allocated by Congress to address the Covid-19 pandemic into safe and scientifically vetted solutions, and not in drugs, vaccines, and other technologies that lack scientific merit. I am speaking out because to combat this deadly virus, science – not politics or cronyism – has to lead the way.” As we previously reported, members of President Trump’s team have disagreed over the use of hydroxychloroquine as a treatment for the coronavirus. Earlier this month, President Trump expressed enthusiasm for hydroxychloroquine during press briefings, and the Food and Drug Administration posted chloroquine phosphate and hydroxychloroquine sulfate tablets to its drug shortages [website](#), attributing

the action to a surge in demand. The International Society of Antimicrobial Chemotherapy has now [questioned](#) a French study published in a society-run journal that suggested the drug could be beneficial for COVID-19 patients. On Wednesday, President Trump stated that he does not know Dr. Bright.

Trade Updates

Two days after teasing a temporary halt to U.S. immigration, on Wednesday, President Trump issued the first of what may be multiple Presidential Proclamations aimed at stemming U.S. immigration in response to the COVID-19 pandemic. The [Proclamation](#), which is more limited than many expected, centers on a 60-day US entry ban for certain foreign nationals applying to [permanently](#) enter the US on “immigrant visas” (AKA green cards), but does not directly affect “nonimmigrant visas” used to temporarily visit, study, or work in the U.S., such as the popular H-1B, TN, F-1, or B-1/B-2 visas. For more information, see SPB’s analysis [here](#).

Oversight Updates

Yesterday, the Congressional Oversight Commission established by the CARES Act itself got a taste of what oversight feels like, following the [admission](#) by Representative Donna Shalala (D-FL) that she failed to disclose 2019 stock sales after she was elected to Congress in 2018. Representative Shalala, who was appointed to the panel in recent days by Speaker Pelosi, told the *Miami Herald* that she sold a variety of stocks but did not report the transactions as required by the STOCK Act, which prohibits members of Congress from using information learned in their official positions for personal benefit and requires them to report stock sales and purchases within 45 days. Representative Shalala’s aides characterized her failure to report as an honest mistake. *The Washington Post* quotes Speaker Pelosi’s spokesman as saying that Representative Shalala continues to have “the Speaker’s complete confidence.”

On April 21, Senator Elizabeth Warren (D-MA) wrote a [letter](#) to Michael E. Horowitz, the chair of the Council of Inspectors General on Integrity and Efficiency’s (CIGIE) and the U.S. Department of Justice Inspector General (IG), asking him to ensure that the Pandemic Response Accountability Committee (PRAC) investigates President Trump’s “politicization” of the response to the economic crisis caused by the pandemic. Under the CARES Act, Horowitz is charged with appointing PRAC’s chair. His original pick, Glenn Fine, became ineligible for that role after the President removed him from his position as the Pentagon’s Acting IG. Senators Edward J. Markey (D-MA) and Richard Blumenthal (D-CT) joined Warren in signing the letter. Notably, PRAC, which has no chair but has 20 members, has been silent [since April 1](#), when Horowitz and then-Chair Fine announced the appointment of 11 new PRAC members. PRAC is a consortium of existing IGs that constitutes an additional oversight mechanism under the CARES Act.

Additionally, the House [plans](#) to vote to approve a new panel focused on the coronavirus today. Speaker Pelosi announced the creation of this subcommittee of the Committee on Oversight and Reform earlier this month to serve as yet another watchdog over the government’s coronavirus spending. The “Select Subcommittee on the Coronavirus Crisis” will be modeled after the WWII-era committee chaired by then-Sen. Harry Truman to call attention to wartime profiteering.

Also yesterday, Senator Warren and nine other Democratic Senators sent a [letter](#) to the IGs of HHS and the Department of Homeland Security, requesting a joint investigation into the management and distribution of coronavirus-related medical supplies by HHS and the Federal Emergency Management



Agency. The Senators highlighted three issues for the IGs’ attention: (1) the slow speed and inconsistency in the medical supply distribution; (2) the states’ concern that the distribution “may be improperly influenced by political considerations;” and (3) the reported seizure of medical supplies by federal authorities that may be “tainted with political interference.”

Finally, bowing to mounting political pressure, Harvard, Princeton, and Stanford yesterday all decided to forego money to which they were legally entitled under a separate program to help colleges that have a significant number of students on financial aid. In reporting the development, CNN referred to it as the “Shake Shack principle” at work - just because you can take coronavirus-related money doesn’t mean you should.

Contacts

David B. Stewart

Principal, Washington DC

T +1 202 457 6054

E david.stewart@squirepb.com

Beth L. Goldstein

Senior Associate, Washington DC

T +1 202 457 5129

E beth.goldstein@squirepb.com

Kristina V. Arianina

Senior Associate, Washington DC

T +202 457 5139

E kristina.arianina@squirepb.com

David Schnittger

Principal, Washington DC

T +1 202 457 6514

E david.schnittger@squirepb.com

Brandon C. Roman

Senior Associate, Washington DC

T +1 202 457 5330

E brandon.roman@squirepb.com

Ludmilla L. Kasulke

Senior Associate, Washington DC

T +1 202 457 5125

E ludmilla.kasulke@squirepb.com