Key Provisions of New Senate COVID-19 “Phase 3” Package

Memorandum
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Introduction and Chronology
Senate Republicans and Democrats will vote shortly on a new COVID-19 economic relief and health care package Wednesday (“Phase 3”), which is likely to be expeditiously passed in the House by unanimous consent. The new Senate Phase 3 bill, H.R. 748, *Coronavirus Aid, Relief, and Economic Security Act*, comes days after the House released a different Phase 3 bill Monday evening, detailing a different approach, but was not taken up by the Senate. The new Senate Phase 3 package will provide significant relief to hospitals and build on the previous Phase 2 legislation, H.R. 6201, *American Families First Coronavirus Act*.

Below we highlight the key (not all) health provisions of the new Senate Phase 3 package, how the new Senate Phase 3 package differs from the previous Senate package, and then discuss areas still to be addressed in future legislation. The new Senate Phase 3 bill is largely the same as the previous bill text.

Summary of Key Health Provisions for NCHC Members in the New Senate Phase 3 Package

**Commercial**

- **Coverage of Diagnostic Testing for COVID-19.** Requires and clarifies that all private insurance (including grandfathered plans) will cover broad range of diagnostic tests for COVID-19 with no cost-sharing, along with the items and services during a provider visit that led to the order or administration of the diagnostic test.

- **Pricing of Diagnostic Testing.** Requires group health plans and health insurance issuers to pay for COVID-19 diagnostic tests either at a rate already specified in a contract between the provider and the insurer or if there is no contract, a cash price posted by the provider.

- **Rapid coverage of preventive services and vaccines for coronavirus.** Requires group health plans and issuers of group or individual coverage to cover a vaccine for COVID-19 as a preventive service 15 days after a vaccine receives A or B rating from the United States Preventive Services Task Force or the Advisor Committee on Immunization practices.
Medicare

• **Medicare Sequester Delay.** The Bill proposes to delay the 2% Medicare sequestration beginning May 1, 2020, for the duration of the COVID-19 Emergency Period. As a result, provider rates will overall increase by 2%, including such items as Hospice per diem. However, similar to the waiving of cost-sharing obligations related to COVID-19, there will be implications for future Medicare Advantage rate setting.

• **Increasing Medicare Telehealth Flexibilities During Emergency Period.** Amends recent changes to Section 1135 waiver authority and further expands the scope of that authority related to telehealth services. Specifically, the Secretary can waive or adjust any of the existing telehealth requirements found in Section 1834(m) of the Social Security Act.

• **Increases Medicare payments for inpatient hospital stays related to COVID-19 by 20 percent** (the previous bill included a 15% bump).

• **Requires Medicare PDPs and MA-PD plans to allow for fills and refills of covered part D drugs for up to a 3-month supply.**

• **Coverage of COVID-19 Vaccine Under Part B of Medicare Without Any Cost Sharing:** Requires the Medicare program to cover the COVID-19 vaccine in the same way that the flu vaccine is paid for – without cost sharing, pre-deductible.

Medicaid and Extenders

• **Extenders Packages.** The bill would extend the Money Follows the Person demonstration to Fall 2020, the Spousal Impoverishment program through November, 2020, and delays cuts to payments to Disproportionate Share Hospitals (DSH) into 2021 and 2022. The bill also extends community health centers and teaching hospital funding. These delays are items that were expected to be in a large healthcare package developed before the May 22nd deadline.

• **Special rules related to Temporary Increase in Medicaid FMAP.** Congress has included more leeway to receive the additional FMAP in the Families First Coronavirus Act and would allow them more time to conform their Medicaid program to the new requirements.

• **Removes Medicaid-funded non-profit exclusion from Paycheck Protection Program.** An earlier version of the bill would have categorically excluded non-profit entities that receive Medicaid dollars through claims from this program. This version does NOT include such an exclusion. However, such entities may still be subject to totally employee restrictions included in the package.
Providers and Miscellaneous

- **Increased Funding for Personal Protective Equipment (PPE).** Furthermore, under defense authority, requires the stockpiling of PPE and allows other agencies to purchase such equipment.

- **Waiver of Hospice Face-to-Face Recertification Visits.** Unlike yesterday’s proposed House package, the compromise package in the Senate includes hospice groups to use telehealth services in lieu of face-to-face recertifications.

- **Improving Care Planning for Medicare Home Health Services.** Allows NPs, CNS, and PAs to prescribe and certify home health services and be reimbursed for such services under Medicare Parts A & B, as well as establish the plan of care and fulfill plan review requirements (among other technical amendments to related definitions). This section also applies such requirements to Medicaid and must be implemented within 6 months after the date of enactment.

- **Nutrition Services:** State agencies may classify individuals who are practicing social distancing as “homebound” for the purposes of meeting the qualifying criteria to be able to receive home-delivered meals. These new flexibilities would provide state agencies the ability to address potential food insecurity that arises as a result of the COVID-19 emergency.

Other changes to Senate COVID-19 “Phase 3” package compared to old Senate Phase 3 package:

Early Wednesday morning, Senator Schumer released a [Dear Colleague](#) detailing key differences between the Senate Republican bill released last week and the one released today, as negotiated with Democratic leaders. The key health and social services bullets include:

- $30 billion for the Disaster Relief Fund to provide financial assistance to state, local, tribal, and territorial governments, as well as private nonprofits providing critical and essential service
- $55 billion increase in the “Marshall Plan” for our Health Care System
- $150 billion for a state, tribal, and local Coronavirus Relief fund
- More than $10 billion for the Indian Health Services, and other tribal programs

The new Senate Phase 3 package does not address key areas of the pandemic response

The package leaves out provisions we highlighted in our [letter to Congress released on March 19](#). We will urge Congress to consider these provisions in future COVID-19 legislation, to mitigate the short- and long-term impacts of COVID-19.

- **Drug pricing** – Legislation could include either the Prescription Drug Pricing Reduction Act or, at least, restraints on prices for pending COVID-19 immunizations covered under Part B.

- **Surprise billing** – in our letter to Congress, NCHC highlighted the need to make clear that out-of-network, surprise medical bills should be prohibited during the COVID-19 outbreak, at least with respect to COVID-19 testing and treatment. Waiving cost-sharing and treatment costs for cost-
sharing and treatment may not be sufficient to prevent the type of surprise bills that have been reported extensively in the last 18 months. Patients should be held harmless for seeking COVID care immediately, including protection against surprise medical bills related to COVID-19 testing and related treatment. We also urge Congress to take this opportunity to find a compromise on surprise billing for all services.

- **Direct financial assistance for non-hospital based, primary care physicians** – the package provides significant relief to hospitals, but does little to nothing to address independent physicians and group practices. Given commonly cited recommendations to first contact your primary care physician if you develop symptoms, America’s family physicians are on the frontlines of the COVID-19 outbreak as well. Current capitation and fee-for-service rates will not sufficiently compensate these critical professionals in the short term. These professionals must balance their role as initial responders to the exponentially increasing medical needs of their patients, as small business owners with duties to their employees, and as caregivers and financial providers to their own families. Currently, physician groups on the ground report having only 60 days of cash available to stay in business while they test and treat patients with COVID at rates higher than hospitals.

- **Enhanced Medicaid** – the new package maintains that states have the option to cover currently uninsured through Medicaid but provides no additional federal participation than already passed. Lack of coverage poses a significant risk to the public health of this country as the uninsured population is far less likely to seek testing and treatment. Reducing financial barriers via cost-sharing would only impact those who have coverage already. Medicaid should serve as a backstop for those who are currently un-insured. As a point of comparison, the House Phase 3 bill released on Monday assessed that Medicaid would play a larger role to reduce the spread of COVID-19 and mitigate the economic downturn. The House bill would increase FMAP to 2014 levels (100%) for the expansion population and automatically bump FMAP for the traditional population as a state’s unemployment increases. In our letter to Congress we asked lawmakers to go even further to extend presumptive eligibility and retroactive coverage during national emergencies. Also, the new Senate phase 3 package does not include a provision to extend eligibility for Medicaid 30 days prior to release for incarcerated individuals. The justice involved population are significantly more likely to have and to spread infectious diseases, and a gap in coverage can pose a significant risk to the public’s health. This provision speaks directly to social determinants of health.

- **Coverage for costs of treatment** – the Senate package focuses on costs associated with testing for COVID-19 and does not comprehensively or clearly waive treatment costs associated with COVID-19 or its complications. Given the stage of the disease spread, there is an immediate public health imperative to unequivocally signal that patients will also not be responsible for cost-sharing associated with testing or treatment of COVID-19. Furthermore, such changes should extend beyond federal programs and should also include individual market plans, plans regulated by ERISA, short-term limited-duration plans, association health plans, and other forms of health.
The Senate package also leaves significant room to improve our long-term preparedness against future pandemic threats, including:

- **Increased funding for public health infrastructure** – In the short run, the public health infrastructure in the United States is or will quickly be overstretched. We urge Congress to substantially increase funding for personnel down to local health departments to fill in current crisis needs, with a plan to keep these employees in the long run as to expedite future pandemic responses. In addition, any policymaking in the face of a crisis is slowed without the ability to receive, share, and process data. Create a CDC grant program to allow for better coordination and information flow between local public health departments, state health departments, and schools.

- **Bolstered community health center (CHC) funding** – the bill extends funding for CHCs, but we continue to recommend a 25% increase to CHC funding through the end of FY2020. The House proposed Phase 3 bill included a boost to DSH payments for 2 years, and cut DSH cuts in the future.

- **Medicare telehealth only extended through an emergency.** Telehealth services address gaps in access to health care for rural and underserved populations, which will continue to persist after the emergency declaration.

- **Does not expand funding for social services, beyond the American Families First Coronavirus Act** – COVID-19 is likely to undermine social safety net programs and further exacerbate disparities. A comprehensive package to address the economic and health consequences of the pandemic should include expanded funding for programs that provide housing and other direct assistance to vulnerable populations. We applaud the inclusion of SNAP funding in the bill passed by the Senate on March 18.

- **Fund mental health services to address social isolation and loneliness** – recent flexibilities for telehealth will be important, but we urge Congress to consider additional federal funds to address the social isolation and loneliness as we continue to practice social distancing and, later, recover from the losses suffered. Congress could institute an Inter-Departmental and Agency National Coordinator of Social Isolation and Loneliness to lead and coordinate administrative efforts, identify and leverage current federal resources, and make recommendations to cabinet officials and the White House to address the emerging epidemic of health consequences as the result of isolation.
Political Outlook

In the short-term, both the House and Senate have indicated the possibility of more health legislation in response to COVID-19. Long-term, the inclusion of extenders adds an important political dimension to future legislative efforts. If President Trump is defeated and Democrats take over control of the Senate and maintain their majority in the House, efforts to address drug pricing and surprise medical billing will likely be pushed to early 2021. If divided government remains, we will see more legislative activity during the ‘lame-duck’ session at the end of this year.