

COVID-19 Legislative Updates

To: State Aging and Disability Directors

From: Martha Roherty, Executive Director & Damon Terzaghi, Senior Director

Re: COVID-19: Third Disaster Relief Package Update

Date: March 26, 2020

Background

In the early hours of Wednesday morning, Congressional leaders announced they reached agreement on an expansive bill that is intended to provide economic relief to individuals and businesses impacted by COVID-19. The bill text was officially released yesterday evening, and the Senate passed the legislation shortly before midnight. The disaster package now heads to the House, where it is expected to pass but the process and timing remains a bit unclear. Although House leadership hopes to pass via unanimous consent, which would allow them to clear the bill without having a record vote, some Representatives have signaled unease with the provisions. If one or more Representative registers an objection, the House would have to hold a session and take a record vote, which would require members to return from their districts and delay the bill passage.

This legislation includes funding for a wide range of services, supports, and relief for communities, families, and individuals impacted by the pandemic. The proposal would amount to the largest emergency spending bill in United States history and could end up costing more than \$2 trillion. A wide range of programs and policies are included in the COVID-19 relief bill, including many that have been discussed extensively in news headlines. Some of these include:

- Direct payments of \$1,200 for most adults and \$500 for most children across the country;
- A \$500 billion loan program for impacted industries and governments;
- Interest free deferrals on student loan payments;
- Additional child care funding;
- Increased appropriations for the Supplemental Nutrition Assistance Program (SNAP); and
- Increases for unemployment insurance above the previously enacted changes.

These are just a few small examples, since the legislation is expansive and impacts a significant portion of the Federal government. We will focus this memorandum on issues specifically notable for Aging, Disability, and Long-term Services and Supports (LTSS) services.

Additional Funding for Older Americans Act (OAA) Programs

The bill appropriates an additional \$820 million for OAA programs which, coupled with the \$250 million from the prior COVID relief package, results in over a billion dollars of additional OAA funding. The \$820 million in this bill is divided into:

- \$200 million for OAA Title III-B Supportive Services;
- ~~\$500~~ 480 million for OAA Title III-C Nutrition Services;
- \$100 million for Title III-E Family Caregiver Supports;
- \$20 million for Title VI Tribal Nutrition Services; and
- \$20 million for Elder Justice Activities, including the Long-Term Care Ombudsman (LTCO) program.

In addition to this \$820 million, the bill also includes \$50 million for Aging and Disability Resource Centers (ADRCs).

Earlier versions of this legislation included a drafting error that allocated \$500 million to nutrition services; however, the final senate-passed bill provides \$480 for nutrition programs.

This legislation includes a waiver of the state matching requirements for OAA programs. The legislation also contains a provision ensuring that LTCOs have access to residents of facilities throughout the emergency.

Flexibility for OAA Nutrition Programs

The legislation also includes language that provides significant flexibility for state agencies and area agencies on aging (AAAs) to respond to local needs during the crisis. The bill would allow state agencies and AAAs to transfer all of the state's OAA nutrition funding (including both the standard appropriation amount as well as the additional funding allocated for COVID) between congregate and home delivered meals programs without prior ACL approval. The legislation also deems any individual who must stay home due to COVID social distancing as meeting a nutrition services program's "homebound" definition, which would therefore qualify them for home-delivered meals.

The legislation also includes authority for ACL to issue a waiver of the USDA nutritional requirements contained within the OAA during the COVID emergency.

Centers for Independent Living

The legislation includes \$85 million of additional funding for CILs.

Increased Funding for Nursing Home Survey and Certification Visits

The legislation provides CMS with \$200 million of additional program management funding for domestic and international responses to the coronavirus. Of this funding, at least \$100 million must be used for survey and certification activities, with an emphasis on areas with community transmission of coronavirus.

Allowing Home and Community Based Services (HCBS) in Hospital Settings

The bill includes a permanent change to Medicaid that would enable HCBS services to be delivered in an acute care hospital if:

- 1) They are part of a plan of care;
- 2) They meet needs of the individual that are not addressed by hospital services;
- 3) They do not substitute services that the hospital is required to provide; and
- 4) They are designed to provide smooth transitions to home and community-based settings and to preserve functionality.

Extensions of Existing Aging, Disability, and Medicaid Programs

Extensions of several existing programs are embedded into this legislation. These programs are all extended through November 30, 2020. The bill does not provide exact dollar amounts for each of the extensions, but instead fully funds the programs until the end of FY2020 (ie: September 30). The bill then allocates all these programs a prorated amount equal to what they received in FY2020 for October and November. This essentially means that they are all funded at their current levels until November 30. Extended programs include:

- 1) The Money Follows the Person Grants;
- 2) Additional funding for Medicare outreach and enrollment, originally authorized by the Medicare Improvements for Patients and Providers Act (MIPPA) legislation that is provided to:
 - a. State Health Insurance Counseling Programs (SHIPs);
 - b. AAAs;
 - c. ADRCs; and
 - d. The National Center for Benefits Outreach and Enrollment.

The legislation also contains an extension of the Affordable Care Act Spousal Impoverishment Protections and delays the ACA's Medicaid Disproportionate Share Hospital (DSH) Reductions until November 30, 2020.

Lastly, the legislation includes an extension of the Community Mental Health Services Demonstration Program as well as allowing two additional states to participate in the demonstration.

Senior Community Service Employment Program (SCSEP) Flexibilities

The legislation does not appear to provide additional funding for SCSEP; however, it makes several changes to the program to increase flexibility. Specifically, it allows waivers for individuals to extend their SCSEP participation periods; to increase the average length of time cap for grantees; and to increase the administrative costs for a project up to 20% from the current authority to provide a 15% limit.

Grace Period for the Increased Medicaid Match

The bill includes a 30-day period where a state would not be ineligible for the increased FMAP provided by the Families First Coronavirus Response Act (FFCRA) (ie: the 6.2% increases passed last week) if it is in violation of the prohibition on increasing premiums over the levels in place on January 1, 2020, provided that the premium increase had already occurred at the time of the bill's passage. Ostensibly, this would provide a state with a 30-day grace period to align their premiums with the requirements in the FFCRA in order to continue receiving the FMAP increase.

Increased Housing Funds

The bill provides \$15 million of additional funding for section 811 housing for persons with disabilities programs and \$50 million for section 202 housing for the elderly programs.

Establishment of a Geriatrics Workforce Enhancement Program

The legislation creates a grant program and provides approximately \$40.7 million for each of fiscal years 2021-2025 (a total of \$203.7 million) to enhance training for geriatrics workforce enhancements. The goals of the program include clinical and interprofessional training with an emphasis on patient and family engagement, integration of geriatrics with primary care and other appropriate specialties, and collaboration with community partners to address gaps in health care for older adults.

Community Services Block Grant

The legislation provides an additional \$1 billion for CSBG.

Low Income Home Energy Assistance

The bill allocates \$900 million for LIHEAP.

Next Steps

Congress has already begun discussing further relief packages, though the timing for each of them is unclear. At this point, our understanding is both chambers intend to take recess for at least several

weeks after this bill is passed. This is particularly pressing in light of members of both the Senate and the House testing positive for COVID-19 and the resulting need for social distancing and/or self-isolation protocol.

We continue to advocate for several important legislative priorities, including a delay in administrative requirements such as Electronic Visit Verification and the HCBS Settings rule. We will keep the membership informed of any further actions in Congress that are relevant to state aging, disabilities, and LTSS programs. As always, please feel free to contact anyone on the Advancing States team with questions, concerns, or requests for assistance.