

Review of Federal and State Response to the COVID-19 Pandemic

March 31, 2020

DEVELOPED BY:



On Behalf of the NC Academy of Family Physicians

The information contained in this report was compiled from multiple, credible, publicly available resources after extensive research in our effort to provide you with the most easily digestible, accessible information in a timely manner. This information should not be considered legal advice. Additionally, summaries are not intended to be comprehensive and do not include a review of every item contained in the legislation referenced. If you need additional information, we will be happy to provide you with additional resources.

Federal Response

***Phase III – Signed into Law on March 25, 2020**

After many long hours of negotiations between the White House and Democratic leadership in Congress, the [Coronavirus Aid, Relief, and Economic Security Act \("CARES Act"\)](#) was signed into law by President Trump just a few hours after receiving it. The law will pump an unprecedented \$2.2-trillion into our nation's economy. Here is a high-level overview of some key items in the legislation:

Employment Assistance

The CARES Act creates a Pandemic Emergency Unemployment Compensation program for workers who have lost their jobs due to the COVID-19 pandemic. Here is an overview:

- Provides an additional payment of \$600 per week in benefits in addition to existing state benefits. These extra benefits will expire on July 31, 2020.
- Expands eligibility for unemployment compensation to those who have exhausted unemployment insurance benefits, independent contractors, temporary contract workers, self-employed, and part-time workers. This expansion will cover the period from January 27, 2020 to December 31, 2020.

In addition to the emergency unemployment compensation program, eligible employers will receive an employee retention credit against employment taxes. The retention credit is subject to caps and has very specific eligibility and utilization guidelines.

Small Business Assistance Programs

The law creates a Paycheck Protection Program (PPP) to allow participating banks/lenders to provide loans to small businesses, self-employed individuals and independent contractors, for purposes of meeting payroll obligations, paying rent/mortgages, utilities and other operating expenses.

Additionally, the CARES Act also expands further a U.S. Small Business Administration (SBA) provision to not only offer Economic Injury Disaster Loans (EIDLs) to small businesses and non-profit organizations facing economic losses related to coronavirus, but it now allows Emergency Economic Injury Grants while the applicant awaits a decision on the EIDL loan. Emergency Economic Injury Grants can be up to \$10,000 and can be requested during the EIDL application process. If approved, funds are distributed and are not repaid regardless of decision on the EIDL application.

According to Thomas Stith, District Director, North Carolina District Office, U.S. SBA, business owners can apply for both the Paycheck Protection Program and Economic Injury Disaster Loans; however, beginning April 1, 2020, applicants cannot receive money from both programs and instead will have to decide which program better serves their needs.

Health Care Provisions

The CARES Act establishes the “Public Health and Social Services Emergency Fund” to provide \$100 billion to health care providers for health care related expenses/lost revenues related to the pandemic. In addition, the law also addresses the following (list is not comprehensive):

- Coverage for COVID-19 Testing
- Liability Protection for Volunteer Health Workers
- Expanding Medicare Telehealth Flexibilities
- Expanding Medicare Telehealth for Home Dialysis Patients
- Allowing Federally Qualified Health Centers and Rural Health Clinics to Furnish Telehealth in Medicare
- Enabling Physician Assistants and Nurse Practitioners to Order Medicare Home Health Services
- Increasing Provider Funding through Immediate Medicare Sequester Relief
- Preventing Medicare Durable Medical Equipment Payment Reduction
- Eliminating Medicare Part B Cost-Sharing for the COVID-19 Vaccine
- Allowing Up to 3-Month Fills and Refills of Covered Medicare Part D Drugs
- Extension of Physician Work Geographic Index Floor
- Extension and Expansion of Community Mental Health Services Demonstration
- Extension of Demonstration Projects to Address Health Professions Workforce Needs

***Phase II – Signed into Law on March 18, 2020**

In addition to imposing two new COVID-19 related employment mandates on employers with fewer than 500 employees, the ***Families First Coronavirus Response Act*** also allows employers to recover the cost of complying with these mandates through refundable Social Security tax credits. Below we have a brief overview of both the employer mandates and tax credits:

Employer Mandates

- The Family Medical Leave Act (FMLA) Expansion Act requires employers with fewer than 500 employees to provide eligible employees with up to twelve weeks of protected leave if the employee is unable to work because the employee needs to be home to care for a minor child whose school/day care has been closed due to the pandemic. (There are caps on what is to be paid and guidance for how to calculate the payments.)
- Similarly, the Paid Sick Leave provision requires employers to provide eligible employees with ten days of sick pay if unable to work due to quarantine, the employee is symptomatic and is awaiting test results, to care for someone who is subject to quarantine, to care for a child if their school/place of care has been closed due to the

pandemic. (Like the FMLA Expansion provision, there are caps on what is to be paid and guidance for how to calculate the payments.)

Social Security Tax Credits

- The Families First Coronavirus Response Act permits employers making FMLA and sick leave mandated payments, as noted above, to claim credits equal to 100% of such payments against the employer's Social Security tax.
- In addition to the Social Security tax credits, the legislation also provides an increase in credits for Medicare tax payments and Health Plan costs.

Emergency Unemployment Insurance Stabilization and Access

The law provides funding to states for activities related to processing and paying unemployment insurance (UI) benefits. Half of this funding is allocated to all states for staffing, IT, and other administrative costs. (This assumes the state meets new federal requirements for providing UI benefits.) The second half of the funding is reserved for emergency grants to states that experience a 10% or greater increase in unemployment claims.

Group Health Plans

The law provides that group health plans will be required to pay the full costs of COVID-19 testing for plan members without imposing any cost-sharing requirements or prior authorizations.

***Phase I – Signed into Law on March 6, 2020**

Coronavirus Preparedness and Response Supplemental Appropriations Act was passed by Congress on March 5, 2020 and signed into law the following day. Among other things, this legislation includes a provision for the U.S. Small Business Administration (SBA) to offer Economic Injury Disaster Loans (EIDLs) to small businesses and non-profit organizations facing economic losses related to coronavirus. Once a state has been declared eligible, the SBA activates its EIDL program, making low-interest federal disaster loans available to be used for working capital, payment of debts, payroll, and other operating expenses that cannot be paid due to the impact of the outbreak. *The EIDL program became available for North Carolina businesses on March 18, 2020, following a request from Governor Roy Cooper and approval by the federal government.

Loan amounts would be capped at \$2-million and will be determined by the SBA based on impact. Interest rates are fixed at 3.75% for small businesses and 2.75% for non-profit organizations.

For additional information, please refer to the [SBA Disaster Assistance website](#).

North Carolina's Response

Below is a timeline of Governor Cooper's Executive Orders in response to COVID-19:

- **March 27:** [Executive Order 121](#) issues a statewide Stay-at-Home Order beginning Monday, March 30, 2020 at 5 p.m. until April 29, 2020, directing people to stay at home except to visit essential businesses, to exercise outdoors or to help a family member. Specifically, the order bans gatherings of more than 10 people and directs everyone to physically stay at least six feet apart from others. [FAQ](#).
- **March 23:** [Executive Order 120](#) extends school closure to May 15, bans gatherings over 50 people and asks for [health care volunteers](#) to assist with COVID-19.
- **March 21:** [Executive Order 119](#) waives restrictions on child care and elder care, provides DMV flexibilities.
- **March 17:** [Executive Order 118](#) closes restaurants and bars for dine-in service, makes unemployment benefits more widely available. [FAQ](#).
- **March 14:** [Executive Order 117](#) closes K-12 public school statewide. [FAQ](#).
- **March 10:** [Executive Order 116](#) **declares State Of Emergency to respond To Coronavirus COVID-19**

Governor's Stay-At-Home Order:

Governor Roy Cooper ordered people in the state of North Carolina to stay at home until April 29, 2020, in another step to slow the spread of the COVID-19 coronavirus. Governor Cooper's Executive Order No. 121 took effect on Monday, March 30 at 5:00 PM and also reduces the size of gatherings to 10 people. The Order provides for essential businesses to continue to operate while prioritizing social distancing measures. The Order has the force of law and will be enforced in all 100 counties statewide.

For the latest information on the State's response along with a listing of additional resources, proceed to the [NC Department of Health and Human Services' webpage](#).

Moving Forward

Now that President Trump has signed into the law the \$2.2-trillion CARES Act, Governor Cooper and state legislative leaders can move forward with efforts to augment and complement action taken at the federal level.

With this in mind, Speaker of the House Tim Moore, created the House Select Committee on COVID-19 along with four Working Groups of the Committee. Those Working Groups are Health Care, Continuity of State Operations, Economic Support, and Education. To date, three of the four Working Groups (Health Care, Economic Support, and Education) have met remotely to discuss their charge and to begin to discuss what may need to be included in any COVID-19 response legislation from the state. Below is a review of the recent meetings of both the Health Care and Economic Support Working Groups, respectively.

House Select Committee on COVID-19, Health Care

The Health Care Working Group held their first meeting remotely on March 26 to hear from representatives from the North Carolina Healthcare Association (NCHA) and the North Carolina Medical Society (NCMS) on the needs and concerns of the medical community in the face of the ongoing COVID-19 pandemic. They outlined the significant challenges their respective members are facing from shortages of personal protective equipment to the lack of testing supplies and the subsequent need to prioritize who will be tested to the extreme financial strains many hospitals and physicians' offices are already feeling across the state.

Representatives from NCHA, outlined several legislative requests in their [PRESENTATION](#) to the committee. Here is a review of those requests:

- Legislation allowing Medicaid eligibility expansion for uninsured individual for COVID 19 testing per the emergency period as allowed by Families First Coronavirus Response Act
- Emergency Medicaid rate increases funded via FMAP increase
- Creation of a fund at the state level to help financially distressed hospitals during the time of the emergency period
- Relief of regulatory burden, such as inspections in our facilities that are regularly scheduled and not an emergency
- Work with teaching institutions to ensure students will complete clinical hours outside of hospital

They also spent a few minutes discussing some of issues facing hospital personnel, such as child care, the burdens of regulatory things like expired car registration or expired driver's license, requirements to quarantine when exposed and low staff morale.

At this point, representatives from the N.C. Medical Society presented their [REPORT](#) to the committee. Chip Baggett, Senior Vice President and Associate General Counsel, NCMS, provided the committee with an extensive overview of the challenges the medical community is facing and also identified a number of primary goals to guide our analysis of these challenges:

- Maintain access to uncontaminated, community, outpatient practices for the treatment of ongoing illness as well as the remote management of mild to moderate COVID-19 symptomatic patients.
- Maintain vital healthcare infrastructure (physical & mental health) across NC to prevent overwhelming the healthcare system due to COVID-19 or other related illnesses.

Mr. Baggett then outlined a number of challenges their members are facing.

- Need for Personal Protective Equipment (PPE)
- Need for more COVID-19 Test kits and resources to conduct the testing
- Need for financial support to maintain Community Outpatient Services
- Need to enforce social distancing protocols to slow the spread of the disease in order to maintain emergency and inpatient capacity
- Need to require both public and private payers to drastically reduce any and all administrative burdens felt by providers
- Concerns over medical malpractice during these unprecedented times

Also, included in the report are the following short-term responses:

- Support the effort in Congress to include direct stimulus for physician and other health care practices. We estimate that the roughly 8,000 independent practices in NC will need \$4 billion in stimulus money over the next six months to maintain essential staffing, facility rental and supply purchase.
- Require the following payments by health care practices be deferred for the next three months in order to assist in cash flow management; a. Utilities bills b. Business, mortgage and student loan payment principal c. Taxes
- Mandate uniform telehealth policies in-line with those adopted by Medicaid for administrative simplification and equal treatment for all patients.
- Assure patients have access to care by mandating all insurance companies to reimburse without regard to network status during the State of Emergency.
- Allow presumptive eligibility for all COVID-19 related tests and services.
- Provide blanket immunity from civil liability for the duration of the State of Emergency unless a medical provider acts with willful and wanton behavior (the same standard as currently in NC for an emergency scenario)

NCMS is also considering several additional recommendations and they can be found on pages 11-15 of the [REPORT](#).

In conclusion, Baggett summarized the NCMS Board recommendations for the committee. Here are those recommendations:

- Cash flow assistance for medical practices through deferral of utilities, loan payment principal and taxes for up to six months
- Low interest or no interest loans for struggling practices in addition to Medicaid hardship payments
- Require alignment across insurer policies for the duration of the State of Emergency to reduce administrative burden and confusion of patient treatment
- Presume Medicaid eligibility for those who are without or have lost insurance because of COVID-19
- Assure timely access to care by temporarily waiving network status as a condition of reimbursement so that patients may see available healthcare providers
- Expand the scope of emergency medical services to include care delivered during the COVID-19 State of Emergency and specifically include COVID-19 as a part of the God Samaritan Statute

The Health Care Working Group is scheduled to meet again on Thursday, April 2 at 9:30am.

House Select Committee on COVID-19, Economic Support

Co-Chaired by Reps. Jason Saine (R-Lincoln), Julia Howard (R-Davie) and Michael Wray (D-Halifax), the working group met on March 25 to hear a presentation from staff on the federal response to the pandemic and State fiscal implications focused on unemployment insurance and tax changes. Prior to the presentations, Speaker Moore outlined the committee's purpose and said the group will need to examine tax relief for businesses through extensions, deferments or moving filing dates to match changes made by the federal government. He also noted the possibility of economic support for businesses across the state.

Speaker Moore also outlined the funds set aside by the General Assembly that would be available – \$3.9 billion in the Unemployment Trust Fund, \$1.1 billion in the Savings Reserve Fund, \$2.2 billion cash on hand/unappropriated funds, \$184 million in the Medicaid Contingency reserve and \$74 million in disaster relief fund.

The Working Group then received a presentation from fiscal staff on recent federal legislation, the extension of the tax filing deadline to July 15 to match the federal change and the potential impact of these changes on the State's cash flow and revenue. Additionally, staff reviewed the

various loan programs available to small businesses through both federal and state resources. Here is an overview:

- Federal Small Business Administration (SBA)
 - All 100 counties in North Carolina under SBA disaster declaration
 - Small businesses can apply for Economic Injury Disaster Loans
 - Maximum \$2 million
 - Interest rate: 3.75% (2.75% for non-profits)
 - Long-term repayments
 - For additional information, please refer to the [SBA Disaster Assistance website](#).

- Nonprofit/State Resources
 - Rapid Recovery Loan Program
 - Zero-interest loans for up to six months, up to \$50,000
 - Funding: \$15 million by Golden LEAF
 - Nonprofit lending partners
 - More info available here: [NC COVID-19 Rapid Recovery for Small Businesses](#)

Finally, staff also outlined the State's Unemployment Insurance (UI) system and potential changes that could be made in response to COVID-19. A bill draft was presented that would finalize some of the temporary changes already made through one of Gov. Cooper's executive orders. Here are the potential changes presented in the [BILL DRAFT](#):

- Eliminates the one week waiting period
- Eliminates the work search requirements
- Does not charge employer accounts
- Benefits allowed for partial unemployment
- Eliminates in-person interviews
- Allows employer to file claims on behalf of employees
 - "Attached claim"
 - Easier to administer
- Eliminates the first quarter employer payroll tax
 - Due May 1
 - ~ \$200 million impact

In regards to the "attached claim" provision, it would only apply to COVID-19 related claims. It would not change the general restrictions on the use of attached claims. The intent of the bill draft would be to allow employers, even those with a negative balance, to file attached claims for their unemployed workers without having to pay the claim in advance in those cases related to COVID-19. It would not change the general law.

The bill draft was not voted on and at this point it is not known when action will be taken on this bill or any other emergency relief legislation. Discussions are ongoing around the possibility of convening a Special Session ahead of the planned April 28 start date of the 2020 Short Session. The concern being, of course, having all 120 House members and 50 Senators come back into town during the pandemic. The State Constitution does not allow lawmakers to vote remotely.

The Economic Support Working Group met again on Tuesday, March 31 and we will provide additional update later this week.