

# Memorandum

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## The Families First Coronavirus Response Act

March 17, 2020

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On March 14, 2020, the House of Representatives overwhelmingly passed the Families First Coronavirus Response Act on a bipartisan basis, 363-40. The multi-billion dollar legislation aims to temper the financial impact of the coronavirus disease 2019 (“COVID-19”) on states, territories, the uninsured, the unemployed, workers, and individuals who rely on food assistance, such as children and low-income seniors. To ensure swift passage, the legislation does not include more contentious measures, such as tax cuts or plans to assist specific types of affected industries.

On March 16, 2020, the House approved a technical corrections package which reportedly made a number of substantive changes to the earlier legislation; the resolution that made these changes has not been officially published. The Senate is expected to take up the emergency package this week or include the House bill as part of a broader stimulus spending package.

Lawmakers have committed to continue providing immediate and significant assistance as the pandemic progresses, including a broader economic stimulus package.

### **Sick Leave and Family Medical Leave Act Provisions**

Two of the most significant provisions of the bill address (1) two-week emergency paid sick leave and (2) 12-week paid Family Medical Leave Act (“FMLA”) leave. The two-week emergency sick leave provision requires that employers with fewer than 500<sup>1</sup> employees provide all of their employees with two weeks of paid sick leave in order for employees to (x) quarantine or seek a diagnosis or preventive care for COVID-19 or (y) care for a family member for the same reasons or to care for a child whose school has closed or whose child care provider is unavailable due to COVID-19. For an employee who is quarantining or seeking a diagnosis or preventive care, the sick leave pay rate is at the employee’s full regular rate (*e.g.*, a full time employee would be paid full pay, and a 20-hour-per-week part-time employee would be paid for 20 hours per week of sick leave). For an employee who is caring for a family member or a child, the sick leave pay rate is reduced to two-thirds of the employee’s regular rate of pay. Importantly, for employers that already provide paid sick leave, the paid sick time under the bill must be made available in addition to the existing employer-provided paid sick leave (and employers may not change any existing employer-provided paid leave policy to reduce entitlements).

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<sup>1</sup> In a press conference on March 16, President Trump indicated that this provision may be expanded to employers with 500 or more employees as well.

The separate FMLA amendments operate independently of the two-week emergency paid sick leave rule. These amendments provide for partial pay during leave and only apply to employees who have been employed by the employer for at least 30 calendar days. Under these provisions, an employer with fewer than 500 employees must pay eligible employees at two-thirds of the employee's regular rate for weeks 3 through 12 of their FMLA leave (the first two weeks of FMLA leave remain unpaid, but this period overlaps with the two weeks of mandated emergency full paid sick leave). The FMLA leave standard is slightly different than the emergency leave test, with eligible employees entitled to take leave to (x) comply with a recommendation or order to quarantine from a public official or health care provider because of exposure to the virus or exhibition of COVID-19 symptoms, (y) care for a family member who is subject to such a recommendation or order, or (z) care for a child whose school is closed, or whose care provider is unavailable, because of COVID-19.

The measure would provide capped payroll tax credits to employers to cover wages paid to employees while they are taking time off under the bill's sick leave and family leave programs, subject to several limitations. Similar credits are provided to certain self-employed individuals.

## Health Provisions

The bill would temporarily increase, by 6.2 percentage points, the federal government's share of most Medicaid costs, which is known as the Federal Medical Assistance Percentage, and would also increase Medicaid grants for U.S. territories. The bill would also expand coverage for the uninsured and the insured, as described below, and waive cost-sharing requirements that may otherwise prevent individuals from seeking needed testing for severe acute respiratory syndrome coronavirus 2 ("SARS-CoV-2"), the virus responsible for causing COVID-19.

### CARE FOR THE UNINSURED

The bill would also provide \$1 billion to reimburse health care providers for COVID-19-related tests and services provided to those without health insurance. The funds would pay claims for in vitro diagnostic testing for the detection or diagnosis of SARS-CoV-2 for uninsured individuals. The funds would also reimburse providers for certain items and services furnished to an uninsured individual during health care provider office visits, urgent care center visits or emergency room visits that result in an order for or administration of such test.

The bill would also provide states with the option of expanding Medicaid coverage to uninsured individuals for SARS-CoV-2 testing and any related health care provider visit.

### REQUIRED HEALTH PLAN COVERAGE FOR TESTING

The bill would require group health plans and health insurance issuers offering group or individual health insurance coverage to provide coverage of in vitro diagnostic testing for SARS-CoV-2, provided that the in vitro diagnostic products are approved or cleared by the U.S. Food and Drug Administration ("FDA") or authorized by the FDA under the agency's authority to authorize unapproved medical products for use in emergencies. Such health plans and health insurance issuers would also be required to provide coverage for health care items and

services furnished during a visit to a health care provider, urgent care center or emergency room, if the visit resulted in an order for or administration of a SARS-CoV-2 test. The bill would require both tests and related health care items and services to be offered without any requirements for prior authorization, medical management or cost sharing, including deductibles, copays, and coinsurance.

### **COST-SHARING WAIVERS FOR FEDERAL HEALTH CARE PROGRAMS AND CERTAIN INDIVIDUALS**

The bill would waive cost-sharing requirements for beneficiaries or individuals covered under the following federal health care programs or other laws for tests, services or both:

- Medicare Part B: Certain health care visits that result in an order for or administration of a SARS-CoV-2 test.
- Medicare Advantage: Tests, the administration of those tests, and specified COVID-19 testing services. Additionally, Medicare Advantage plans would not be able to impose prior authorization or utilization management requirements with respect to such tests or services.
- Medicaid: Tests, the administration of such tests, and specified COVID-19 testing services.
- Children's Health Insurance Program: Tests.
- TRICARE: Tests and related visits.
- Veterans: Tests and related visits.
- Federal Civilians: Tests and related visits.
- American Indians and Alaskan Natives receiving health services through the Indian Health Service ("IHS") or authorized under the care system funded by the IHS: Tests, COVID-19-related items and services, and visits.

### **Other Provisions**

The bill is designed to provide assistance to those most directly affected by the COVID-19 outbreak, such as the uninsured, low-income workers, children who depend on school being in session to receive meals and meal supplements, and low-income seniors who receive home-delivered meals or meals through adult care centers. The bill would provide over \$1 billion in food security assistance and would authorize the purchase of agricultural commodities for emergency distribution. The bill's Emergency Unemployment Insurance Stabilization and Access Act would provide another \$1 billion in emergency grants to states for unemployment compensation administration activities.

### **Technical Corrections**

On Monday, March 16, the House considered a resolution regarding technical corrections to the bill by unanimous consent and agreed to the resolution without objection.

For further information regarding this memorandum, please contact one of the following:

NEW YORK CITY

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**Bryce L. Friedman**  
+1-212-455-2235  
[bfriedman@stblaw.com](mailto:bfriedman@stblaw.com)

**Gregory T. Grogan**  
+1-212-455-2477  
[ggrogan@stblaw.com](mailto:ggrogan@stblaw.com)

**William T. Russell**  
+1-212-455-3979  
[wrussell@stblaw.com](mailto:wrussell@stblaw.com)

**Andrew M. Kofsky**  
+1-212-455-7437  
[andrew.kofsky@stblaw.com](mailto:andrew.kofsky@stblaw.com)

**Daniel J. Venditti**  
+1-212-455-7387  
[daniel.venditti@stblaw.com](mailto:daniel.venditti@stblaw.com)

WASHINGTON, D.C.

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**Vanessa K. Burrows**  
+1-202-636-5891  
[vanessa.burrows@stblaw.com](mailto:vanessa.burrows@stblaw.com)

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