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NATIONAL RURAL HEALTH ASSOCIATION

Coronavirus Aid, Recovery, and Economic Security (CARES) Act & related legislation and administrative action impacting rural health

Throughout the fall and winter, rural America was disproportionately impacted by the COVID-19 pandemic. At the height of the pandemic more than 94 percent of nonmetropolitan counties were considered 'red-zone' counties, those with a new COVID-19 infection rate of 100 or more per 100,000 residents per week. Unfortunately, while rural America was addressing the pandemic head-on, relief stalled. From July until December 2020, rural providers were facing a disproportionate share of COVID-19 cases without relief equitable to what their urban counterparts were afforded earlier in the pandemic. The COVID-19 relief packages passed in December 2020 and March 2021 were helpful to rural providers, but NRHA strongly believes more relief is needed.

This document highlights NRHA's priorities for COVID-19 relief for rural health care and serves as a guidepost for legislative and administrative action in response to the COVID-19 pandemic.

NRHA COVID-19 Priorities

In the 117th Congress, rural providers need additional support to get through the remainder of the pandemic. This Congress, lawmakers must:

- Make **permanent *CARES Act* telehealth flexibilities.**
- Allow struggling rural PPS hospitals to **transition to critical access hospital (CAH) designation** by passing the Rural Hospital Closure Relief Act, S. 644/H.R. 1639.
- **Enhance** the U.S. Department of Health and Human Services (HHS) **Office for the Advancement of Telehealth** (Section 330I(c)3 and 4 of PHSA).
- Make sure rural providers are part of any infrastructure package signed into law.

Legislative Activity Summary

- **Public Health Emergency Declaration:** On January 27, 2020, former HHS Secretary Alex Azar signed a public health emergency (PHE). Through the declaration of the PHE, HHS and the Centers for Medicare and Medicaid Services (CMS) were able to utilize Section 1135 waiver authority to waive certain provisions for the duration of the PHE. These include Critical Access Hospital (CAH) length of stay requirements and certain Medicare telehealth flexibilities. Currently, the PHE is effective through April 21, 2021.

- **Coronavirus Preparedness and Response Supplemental Appropriations Act**: On March 6, 2020, Congress passed and the President signed H.R. 6074, the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020. This bill provided $8.3 billion in emergency supplemental appropriations for fiscal year (FY) 2020 to combat the spread of COVID-19.

- **Families First Coronavirus Response Act**: On March 18, 2020, Congress passed and the President signed H.R. 6201, the Families First Coronavirus Response Act. This act provided funding for COVID-19 testing, 14-day paid leave for American workers affected by the pandemic, and funding for SNAP benefits.

- **Coronavirus Aid, Relief, and Economic Security (CARES) Act**: On March 27, 2020, Congress passed and the President signed H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This, and the American Rescue Plan Act of 2021, are the most comprehensive COVID-19 response packages. The CARES Act created programs such as the Provider Relief Fund (PRF) and the Paycheck Protection Program (PPP), as well as several flexibilities as they pertain to telehealth.
- **Paycheck Protection Program and Health Care Enhancement Act (PPPHCEA):** On April 24, Congress passed and the President signed H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act (PPPCHEA). This was a $484 billion package that provided additional funding to the PPP and PRF.
- **Paycheck Protection Program Flexibility Act**: On June 5, 2020, Congress passed and the President signed H.R. 7010, the Paycheck Protection Program Flexibility Act of 2020. This legislation provided modifications to the PPP in relation to forgiveness of the loans and repayment timelines.
- **Extended PPP Authority:** On July 4, 2020, Congress passed and the President signed S. 4116, a bill to extend the authority for commitments for the PPP. This bill simply extended the application timeline to August 8, 2020.
- **Consolidated Appropriations Act (CAA), 2021:** On December 21, 2020, Congress passed, and on December 27, 2020, the President signed H.R. 133, the Consolidated Appropriations Act, 2021. This legislation provided discretionary funding for the remainder of FY 2021 and included $800 billion toward additional COVID-19 relief.
- **American Rescue Plan Act:** On March 6, 2021, Congress passed, and on March 11, 2021, the President signed H.R.1319, the American Rescue Plan Act of 2021. This legislation provided an additional $1.9 trillion in COVID-19 relief funding.
- **Medicare sequestration relief and technical corrections to the provider-based rural health clinic (RHC) program:** On April 13, 2021, Congress passed, and on April 14, 2021, the President signed H.R. 1868, a bill to continue relief from Medicare sequestration and to provide technical corrections to changes to the provider-based RHC program that were enacted in the CAA, 2021.

Section 1135 Waivers Flexibilities of Note

A full list of the COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers put together by CMS can be found here.

- **Critical Access Hospital (CAH) length of stay.** CMS has waived the requirements that CAHs limit the number of beds to 25, and that the length of stay be limited to 96 hours under the Medicare conditions of participation for number of beds and length of stay requirements.
- **Flexibility for Medicare Telehealth Services**
  - ***Eligible practitioners***. 1135 waivers expanded the types of health care professionals that can furnish distant site telehealth services to include all those that are eligible to bill Medicare for their professional services. This allows health care professionals who were previously unable to bill for Medicare telehealth services, including physical therapists, occupational therapists, speech language pathologists, and others, to receive payment for Medicare telehealth services.
  - ***Audio-only telehealth for certain services***. This waiver allows the use of audio-only equipment to furnish services described by the codes for audio-only telephone evaluation and management services, and behavioral health counseling and educational services.

- ***Telemedicine.*** CMS waived provisions related to telemedicine for hospitals and for CAHs, making it easier to be furnished to the hospital's patients through an agreement with an off-site hospital. This allows for increased access to necessary care for hospital and CAH patients, including access to specialty care.

Families First Coronavirus Response Act

Full text of the Families First Coronavirus Response Act can be found here.

- **COVID-19 Testing Coverage.** *Sections 6001-6007* requires private health plans, Medicare Part B, Medicare Advantage, Medicaid, TRICARE, VA, and IHS to provide coverage for COVID-19 testing.
- **Federal Medical Assistance Percentages (FMAP)**
  - *Section 6008* provides a temporary increase to states' FMAP for the duration of the PHE for COVID-19. Provides states and territories with a temporary 6.2 percent increase in the regular federal matching rate for the emergency period.
  - *Section 6009* provides an increase to the territories' Medicaid allotments for 2020 and 2021. Ensures that territories that receive an FMAP increase under *Section 6008* have the necessary funds for their Medicaid programs.
- **Telehealth**
  - *Section 6010* makes a technical change to the Medicare telehealth provisions of previous COVID-19 relief efforts ensuring new Medicare beneficiaries are able to access telehealth services.

Coronavirus Aid, Relief, and Economic Security (CARES) Act

Full text of the CARES Act can be found here.

- **Public Health and Social Services Emergency Fund (PHSSEF) (PRF)**
  - Within the CARES Act, $100 billion was allocated to the newly created PRF. In subsequent pieces of legislation, the PPPCHEA added an additional $75 billion to the PRF and the CAA, 2021, added an additional $3 billion. In the months since the enactment of CARES, PPCHEA, and CAA, there have been the following allotments of note:
    - $10 billion carve-out specifically for rural providers;
    - $1 billion to rural hospitals that were previously excluded.
  - Throughout the fall, HHS began releasing the auditing and reporting requirements related to this fund. The most up-to-date information regarding reporting requirements are here.
- **PPP provisions**
  - The CARES Act created the PPP to be administered by the Small Business Administration (SBA). The CARES Act allocated $349 billion to the PPP initially. In subsequent legislation, the PPPCHEA, an additional $310 billion was added to the pot after the initial $349 billion was distributed in just 13 days.
  - On April 24, the Treasury Department and SBA released an interim rule for the program which allowed for small, publicly owned rural health care facilities to qualify for the funding.
  - In December 2020, through passage of the CAA, Congress provided additional funding to the PPP and extended the application window for funds through March 31, 2021. The application window for PPP funding was closed from August 8, 2020, until enactment of the CAA. It was extended to August 8, 2020, in S. 4116, which became law on July 4, 2020.
  - The American Rescue Plan Act of 2021 included increased eligibility for rural providers affiliated with a larger hospital system and additional program funding.
  - Eligibility to apply for the PPP is set to expire on March 31, 2021.

- **Medicare Accelerated and Advanced Payment (AAP) Program**
  - The Medicare AAP provision of the CARES Act enabled hospitals to request up to a six-month advanced lump sum or periodic payment from Medicare an advance on Medicare payments. CAHs were able to secure up to 125 percent.
  - Section 2501 of H.R. 8337, the Continuing Appropriations Act, 2021 and Other Extensions Act provided technical fixes to the repayment terms of the Medicare AAP. The provisions of H.R. 8337 change the repayment terms for all Part A and Part B providers to the following:
    - One year (12 months) before recoupment begins;
    - During the first 11 months of recoupment withholding will be at the rate of 25 percent of the payment amount;
    - During the next six months of recoupment withholding will be at the rate of 50 percent of the payment amount;
    - Total of 29 months from when providers received the funding to repay the balance in full;
    - Interest rate on extended repayment plans will be four percent.
- **Funding for Rural Health Care Providers**
  - The CARES Act provided $185 million to the Health Resources and Services Administration (HRSA) to support rural CAHs, rural tribal health and telehealth programs, and poison control centers. Of that, $150 million was allocated to hospitals through the Small Rural Hospital Improvement and another $11.5 million for telehealth resource centers to assist rural and underserved areas.
- **Funding for Public Health and Rural Workforce Programs**
  - *Section 3211* provided $1.32 billion in supplemental funding for community health centers.
  - *Section 3212* reauthorized HRSA grant programs promoting the use of telehealth technologies for health care delivery.
  - *Section 3213* reauthorized the Rural Health Care Services Outreach, Rural Health Network Development, and Small Health Care Provider Quality Improvement Grant Programs.
  - *Section 3216* allows the Secretary of HHS to reassign members of the National Health Service Corps (NHSC) to sites close to where they were originally assigned.
  - *Section 3401* reauthorizes until 2025 Title VII of the Public Health Service Act (PHSA), which pertains to programs to support clinician training and faculty development.
  - *Section 3403* reauthorizes until 2025 the section of the PHSA related to education and training relating to geriatrics.
  - *Section 3404* reauthorizes until 2025 Title VIII of the PHSA pertaining to nurse workforce training programs.
  - *Section 3831* extended mandatory funding for programs crucial to rural areas: Community Health Centers; NHSC; Teaching Health Center Graduate Medical Education Program (THCGME). With passage of the CAA, 2021, these programs were again extended.
- **Telehealth**
  - *Section 3701* allows high-deductible health plans (HDHPs) with health savings accounts (HSAs) to cover telehealth services prior to a patient reaching the deductible.
  - *Section 3703* gives additional authorities to the Secretary of HHS to waive telehealth requirements during the COVID-19 PHE. This enables Medicare beneficiaries to access telehealth, including in their homes, from a broader range of health care providers.
  - *Section 3704* allows Federally Qualified Health Centers (FQHC) and RHCs to furnish telehealth services to Medicare beneficiaries, including in their homes.
  - *Section 3706* allows qualified providers to use telehealth technologies in order to fulfill the hospice face-to-face recertification requirement.

- **Other Medicare and Medicaid Provisions**
  - *Section 3709* suspended the Medicare sequester through December 31, 2020. This was extended in the CAA, 2021.
  - *Section 3714* enables beneficiaries to receive a COVID-19 vaccine in Medicare Part-B and Medicare Advantage with no cost-sharing.
  - *Section 3801-3814* extended various Medicare and Medicaid programs through November 20, 2020. In September, through passage of H.R. 8337, these Medicare extenders were again extended through December 11, 2020. These provisions were again extended in the CAA, 2021. These include line items such as the delay of scheduled reductions in Medicaid Disproportionate Share Hospital (DSH) payments (*Section 3813).*

Paycheck Protection Program and Health Care Enhancement Act (PPPHCEA)

Full text of the PPPHCEA can be found here.

- **PHSSEF and PRF provisions**
  - The PPPHCEA provided an additional $100 billion for the PHSSEF.
    - $75 billion for the PRF (this brought the total to $175 billion for this fund between CARES and the PPPHCEA).
    - $25 billion for expenses to research, develop, validate, manufacture, purchase, administer, and expand capacity for COVID-19 testing.
- **PPP provisions**
  - The PPPHCEA provided an additional $310 billion for the PPP.

Paycheck Protection Program Flexibility Act and a bill to extend PPP authority

Full text of the Paycheck Protection Program Flexibility Act can be found here. Full text of the bill extending PPP authority can be found here.

- **PPP provisions**
  - Both pieces of legislation had to do extensively with the PPP. The Paycheck Protection Program Flexibility Act modified loan forgiveness provisions and the bill to extend authority moved the final date for applications to August 8, 2020.

Consolidated Appropriations Act (CAA), 2021

Full text of the CAA, 2021, can be found here.

- **PHSSEF and PRF provisions**
  - Included in the CAA, 2021, was an additional $69 billion for the PHSSEF, including:
    - $9 billion for the Centers for Disease Control and Prevention (CDC) and to states for the distribution of the COVID-19 vaccine.
    - $22 billion for testing, tracing, and COVID-19 mitigation programs that included a $2.5 billion set aside for rural and underserved communities.
    - $3 billion for the PRF (bringing the cumulative to $178 billion from COVID-19 related relief packages).
      - Additionally, the text included language clarifying that reimbursement for eligible health providers for related expenses that are attributed to coronavirus should be calculated using the Frequently Asked Questions (FAQ) guidance released by HHS in June 2020.

- **Extensions, moratoriums, and other provisions of note**
  - Extended the Medicare sequestration relief from CARES Act Section 3709 (through December 31, 2020) and extended it until March 31, 2021.
  - Provided a moratorium on Disproportionate Share Hospital (DSH) reductions through FY 2023.
  - Provided a moratorium on cuts in the most recent Physician Fee Schedule until 2024.
  - Included a three-year extension for important public health provisions such as the Special Diabetes Program, Community Health Centers, NHSC, etc.
  - Included a five-year extension of the rural community hospital demonstration program.
  - Included an extension of the Frontier Community Health Integration Project Demonstration.
  - Included an injection of $3 billion into the current Physician Fee Schedule for enhanced reimbursement until the funding runs out.
  - Included an additional $250 million for the Federal Communications Commission (FCC) COVID-19 Telehealth Program.
- **Surprise Medical Billing**
  - The text included an agreement to handle 'surprise' medical and air ambulance bills through the independent dispute resolution (IDR) methodology. Additionally, there was clarifying language that acknowledged that public payor rates, such as Medicare and Medicaid, should not be considered when determining the payment of the medical bill.
- **Rural Emergency Hospital**
  - The text created the Rural Emergency Hospital (REH) model that is expected to launch January 1, 2023.
    - The creation of the REH model applies only to current CAHs and rural-PPS hospitals with less than 50 beds.
    - The model will provide payment for services at Outpatient Prospective Payment System (OPPS) amounts, likely coinsurance rates at that amount as well, and will provide supplemental payments at a "cost-based" amount.
- **Provider-based RHC changes**
  - The text included changes to the RHC program impacting reimbursement terms for both provider-based and free-standing RHC's.
    - The language increases limits for payment for RHC services starting at $100 in 2021 and rising gradually to $190 by 2028. While NRHA is supportive of the change for free-standing RHC's, unfortunately provider-based RHC's are subject to the new cap as well.
    - The text says that any hospital certified after December 31, 2019, will be subject to the new caps.
    - NRHA has conducted a large advocacy blitz attempting to modify the provisions surrounding RHC's so that provider-based clinics created in 2020, or in the construction or application phase, can be exempt from the cap which will decrease reimbursement rates.
- **Graduate Medical Education Rural Training Tracks**
  - The language also made changes to the Medicare Graduate Medical Education (GME) rural training tracks (RTT) programs providing greater flexibility for urban and rural hospitals to partner, expands Medicare telehealth to allow mental health services to be furnished, and allows for the direct payment under Medicare to physician services furnished to beneficiaries beginning in 2022.

American Rescue Plan Act of 2021

Full text of the American Rescue Plan Act of 2021, can be found here.

- **Health Care Heroes Sustainability Fund (HCHSF)**
  - *Section 9911* created an $8.5 billion fund for rural providers called the HCHSF. The funding is modeled after the PRF but could not be explicitly added to the fund due to the nature of the legislation going through the reconciliation process.
- **COVID-19 programs**
  - *Section 2301* included $7.5 billion in funding for COVID-19 vaccine activities at CDC.
  - *Section 2401* included $47.8 billion in funding for COVID-19 testing, tracing, and mitigation activities.
  - *Section 2302* included $1 billion in funding for vaccine confidence activities.
- **Workforce provisions**
  - *Section 2703* included $80 million in funds for mental health training with a nod to rural and underserved populations.
  - *Section 2705* included $40 million to providers to support mental health among their workforce with a nod to rural and underserved populations.
  - *Section 2501* included $7.66 billion in funding for public health workforce.
  - *Section 2602 and 2603* included $1 billion in funding for the NHSC ($800 million) and the Nurse Corps Loan Repayment Program ($200 million).
- **Emergency Grants for Rural Health Care**
  - *Section 1002* created the 'Emergency Grants for Rural Health Care' program through the United States Department of Agriculture. Because of the nature of the legislation going through the reconciliation process, this program had to be created.
- **PPP eligibility and provisions**
  - *Section 5001* increased eligibility to the PPP for rural hospitals affiliated with a larger hospital system. For example, if a small provider with 100 employees is part of a larger hospital system bringing their total employee amount over 500, they would be able to apply stand alone for funds as the individual facility.

H.R. 1868, Medicare sequestration relief and RHC corrections

Full text of H.R. 1868, can be found here.

- **Continued Medicare sequestration relief**
  - The text extends the Medicare sequestration relief from CARES Act Section 3709 (through December 31, 2020, and subsequently extended through March 31, 2021, in the CAA, 2021) until December 31, 2021.
- **Technical Corrections to the provider-based RHC program changes made in the CAA, 2021.**
  - Moves the enactment date of provider-based RHC's subjected to the new cap from December 31, 2019, to December 31, 2020.
  - Also allows provider-based RHC's that had submitted an 855A application by December 31, 2020, to also be eligible for the grandfathered rates.