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Capital Minute

Tune into our newly formatted Capital Minute webinar as we continue to bring you updates on our latest efforts to support and protect emergency physicians in the fight against COVID-19.

[Click here](#) to view the Capital Minute or click on the blue box below.

[Click here](#) to register for the next live ACEP Capital Minute on Thursday, May 28.



Fifth COVID Relief Package Expected to Receive Approval in the House

As of this writing, the House of Representatives is expected to narrowly approve the \$3 trillion "Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act" (H.R. 6800). In addition to the health care provisions to supplement the nation's response to the COVID-19 pandemic, it also includes a wide range of assistance programs for the U.S. Postal Service, agriculture, election security, aviation, rail workers, homeowners, unemployment benefits, work visas for immigrants, and a second round of direct payments from the government to Americans.

The 1,800-page bill was introduced on Tuesday by the House Democratic leadership, but has run into difficulties with both Democratic liberals, who didn't get as much assistance as they sought for certain

programs, and moderates, who have expressed concern about the overall cost of the bill. The Trump Administration opposes the package as do almost all Republicans, stating they would like to study the effects of the \$3 trillion allocated so far before proceeding with a fifth relief package.

ACEP is carefully reviewing the proposal and has identified numerous provisions, some that still need modifications, which would be helpful to emergency physicians as they work to treat COVID-19 patients, including, among other things:

- \$100 billion more for the Provider Relief Fund that provides grants to health care providers and hospitals (ACEP continues to pursue \$3.6 billion in dedicated reimbursement funds for emergency physicians and their practices);
- \$75 billion for testing, contact tracing, and other activities to monitor and suppress COVID-19;
- Reforms to the Medicare Advance Payment Program (APP) to reinstate the initiative, reduce the interest rate, and expand the repayment timeline from four to 12 months;
- Continued cost-sharing protections for patients, although ACEP is seeking explicit language stating that insurers are required to cover the cost-sharing amounts that have been waived for patients;
- Improvements to the Small Business Administration's Paycheck Protection Program (PPP),
- \$915 billion in direct assistance to state and local governments (\$500 billion to states, \$375 billion to local governments, \$20 billion to tribal governments, and \$20 billion to U.S. territories);
- Establish \$200 billion "Heroes' Fund" to provide hazard/premium pay to essential workers (\$13 per hour add-on payment up to \$10,000 per essential worker (those who make less than \$200,000) and \$5,000 per "highly compensated" essential worker (those who make \$200,000 or more);
- Requires the Occupational Safety and Health Administration (OSHA) to issue an emergency, temporary standard to protect health care and other workers at-risk of exposure to COVID-19, which would prohibit employers from retaliating against workers who report or publicize health and safety hazards, or for using their own more protective PPE if not provided by employer);
- Important public health provisions to improve the supply chain, Strategic National Stockpile (SNS), testing and testing infrastructure, collection of demographic data, supply reporting related to COVID-19, and establishment of the COVID-19 National Testing and Contact Tracing (CONTACT) Initiative.

However, H.R. 6800 does not include several major provisions that ACEP, along with the AMA, all medical state societies, and nearly 90 other medical specialty organizations sought, including:

- No liability protections for emergency physicians and other frontline personnel to guard against future liability actions against them for sensible medical decisions made during the COVID-19 pandemic when they had to provide treatment in extraordinary circumstances and without adequate access to supplies, tests, and medications;
- No assistance to waive budget neutrality for the Medicare payment changes for evaluation and management (E/M) services that will be implemented on Jan. 1, 2021; and
- No extension of sequestration relief through Dec. 31, 2021 to continue providing financial relief as physicians resume normal operations.

When and whether Congress enacts a fifth relief package remains unclear at this time. As stated previously, this has become the most partisan and controversial of all the relief efforts to date by Congress to address the COVID-19 crisis. ACEP will continue to work with House, Senate, and Administration to secure additional support for emergency physicians during this difficult time.

Congressional Hearings This Week

On Tuesday, the Senate Health, Education, Labor & Pensions (HELP) Committee held a hearing entitled, "COVID-19: Safely Getting Back to Work and Back to School." The witnesses, who participated via teleconference, included Anthony Fauci, MD, Director of NIH's National Institute of Allergy and Infectious Diseases; Robert Redfield, MD, Director of the CDC; ADM Brett Giroir, MD, HHS Assistant Secretary for Health; and Stephen Hahn, MD, FDA Commissioner. While Dr. Fauci and other agency heads offered guidelines to allow re-opening and expressed cautious optimism that it is indeed possible, Ranking Member Patty Murray (D-WA) remained frustrated that specifics have not yet been published, warning that the Administration has not shown that it is capable of stemming the pandemic. To view the hearing, [click here](#).

Also on Tuesday, the Senate Judiciary Committee held a hearing "Examining Liability During the COVID-19 Pandemic." The hearing focused primarily on the request by businesses to obtain liability protections during COVID-19. Witnesses included Kevin Smartt, CEO of Kwik Chek Convenience Stores; Marc Perrone, International President of United Food and Commercial Workers International Union; Rebecca Dixon, Executive Director of National Employment Law Project; Leroy Tyner, General Counsel of Texas Christian University; David Vladeck, Professor, Georgetown University Law Center; and Helen Hill, CEO of Explore Charleston. To view the hearing, [click here](#).

On Wednesday, the House Oversight and Reform Select Subcommittee on the Coronavirus Crisis held its first "Member Briefing on Testing, Tracing, and Targeted Containment." Witnesses included Scott Gottlieb, MD, former FDA Commissioner; Mark McClellan, MD, PhD, former FDA Commissioner and former CMS Administrator; Ashish Jha, MD, MPH, Director, Harvard Global Health Institute; Tom Inglesby, MD, Director, Johns Hopkins Center for Health Security; and Georges Benjamin, MD, Executive Director, American Public Health Association. To view the briefing, [click here](#).

On Thursday, the House Energy and Commerce Health Subcommittee held a hearing entitled, "Protecting Scientific Integrity in the COVID-19 Response." The main witness was Rick Bright, PhD, NIH Senior Advisor (and formerly Director of the Biomedical Advanced Research and Development Authority, BARDA). Much of the hearing focused on Dr. Bright's whistleblower complaint that he was involuntarily and improperly removed as the Director of BARDA for making protected public disclosure. The Office of Special Counsel has stated it is an open investigation and HHS has stated is strong disagreement with the allegations and characterizations made in the complaint. To view the hearing, [click here](#).

Medicare Telehealth Flexibilities...Are They Here to Stay?

We are seeing an expansion of telehealth that we have never seen before, and it is hard to imagine ever going back to where we were before. However, for us to keep up the momentum and not return to the pre-pandemic telehealth world, a few things need to happen---read this week's [Regs & Eggs blog](#) to find out what.

President Trump Announces Restocking of Nation's Strategic National Stockpile (SNS)

On Thursday, President Trump announced that the Administration will be restocking and improving the nation's Strategic National Stockpile (SNS). Instead of one-to-three weeks' worth of supplies, the U.S. Government will now stockpile three months' worth and ensure that it evolves to meet new threats. The President also signed an [Executive Order](#) to strengthen domestic production of needed SNS supplies. Further, the Administration is releasing a [plan](#) to restructure the SNS, implementing lessons learned from recent pandemics.

CDC Releases "Decision Trees for Reopening"

On Thursday, the CDC released the long-awaited guidance (in the form of decision trees) for reopening camps, schools, childcare facilities, restaurants/bars, mass transit, and workplaces with employees at higher risk for severe COVID-19 illness. The purpose of the decision trees is to assist leaders of these entities in thinking through health considerations and making operational decisions during the COVID-19 pandemic. The specific information and decision trees can be found below for: [Schools, Camps, and Childcare Programs](#); [Restaurants, Bars and Workplaces](#) and [Mass Transit](#).

CMS Releases Information on Price Transparency for COVID-19 Testing

On Wednesday, CMS released a new [frequently asked questions \(FAQ\)](#) document on Price Transparency: Requirements for Providers to Make Public Cash Prices for COVID-19 Diagnostic Testing. The Coronavirus Aid, Relief, and Economic Security Act (CARES) Act requires providers of diagnostic tests for COVID-19 to make public the cash price for a COVID-19 diagnostic test on the provider's public internet website. **This requirement to post prices does not extend to providers of "testing-related services."** These providers of testing-related services do however have the option of posting cash prices on their websites. Testing-related services include evaluation and management services during an emergency department visit, where the visit results in an order of or the administration of a COVID-19 test. Under the Families First Coronavirus Response Act (FFCRA), health plans must reimburse providers of tests and testing-related services an amount that equals the negotiated rate for those services. If the plan does not have a negotiated rate with the

provider, the plan must pay the provider the cash price for such service that is listed by the provider on its public website. The plan or issuer may negotiate a rate with the provider that is lower than the cash price.

CMS Releases Detailed Breakout of Medicare Accelerated and Advance Payments

CMS recently [suspended](#) the Medicare Advanced Payment Program, which is a loan program expanded under the CARES Act meant to help Medicare providers with their cash flow during the pandemic. Between the time that CMS initiated the program at the end of March and suspended it at the end of April, the agency had given out over \$100 billion in loans to Medicare providers, including hospitals and other facilities under Medicare Part A and physicians and other health care professionals under Medicare Part B.

This week, CMS released a [breakout](#) of these payments by state and by provider type. Around 92 percent of the funds (\$92 billion) went to hospitals and facilities and only 8 percent (8.3 billion) to physicians and other health care professionals. Health care professionals that bill under the specialty of emergency medicine received \$15.9 million, or 0.016% of the total \$100 billion that was distributed.

Updates to Provider Relief Fund

This week, there were numerous updates to the [Provider Relief Fund](#), the \$175 billion fund appropriated by Congress to help health care providers with health care related expenses or lost revenues due to COVID-19. HHS is currently distributing the second "tranche" of payments from its initial \$50 billion "general allocation" of funds.

HHS has released an extensive set of [frequently asked questions \(FAQs\)](#), which is continually being updated. In the FAQs, HHS provides additional information on determining how much funding from the "general allocation" providers should expect to receive. The total you are expected to receive from tranche 1 and tranche 2 combined is the lesser of 2% of your 2018 (or most recent complete tax year) net patient revenue or the sum of incurred losses for March and April. If you received equal to or more than 2 percent of your total 2018 revenue in tranche 1, you will not receive additional funding in tranche 2. Those who submitted all the required information for the second tranche by April 29 should be starting to receive tranche 2 payments.

HHS also states that if you do not have or anticipate having COVID-related lost revenues or increased expenses equal to or in excess of the relief payments received, you should return the funds. HHS does not intend to recoup funds as long as your lost revenue and increased expenses exceed the amount of Provider Relief funding you have received. HHS reserves the right to audit Relief Fund recipients in the future to ensure that this requirement is met and collect any Relief Fund amounts that were made in error or exceed lost revenue or increased expenses due to COVID-19. Failure to comply with other terms and conditions may also be grounds for recoupment.

Finally, HHS provides additional clarification on the confusing balance billing prohibition that is tied to the receipt of the provider relief funds. The prohibition on balance billing applies to "all care for a presumptive or actual case of COVID-19." HHS now defines a "presumptive case of COVID-19" as a case where a patient's medical record documentation supports a diagnosis of COVID-19, even if the patient does not have a positive test result in his or her medical record. HHS also now states there are no limitations on the ability of a provider to submit a claim for payment to the patient's insurance company and that "most health insurers have publicly stated their commitment to reimbursing out-of-network providers that treat health plan members for COVID-19-related care at the insurer's prevailing in-network rate."

CMS Releases Major Annual Medicare Hospital Inpatient Proposed Rule

On Monday, CMS issued its fiscal year 2021 Inpatient Prospective Payment System proposed rule. Of note, CMS is doubling down on its prior [hospital price transparency policy](#) (which is currently tied up in litigation) by proposing to require hospitals to report their median negotiated inpatient services charges for Medicare Advantage organizations and commercial payors. CMS is seeking comment on potentially using this information to set hospitals' Medicare payment rates in the future.

CMS is also proposing policy changes to how residency slots are calculated when hospitals close (this is primarily in response to the closure of Hahnemann University Hospital). Specifically, CMS is proposing to expand the definition of a displaced resident to include those who may not be physically present at the hospital when it closes. [According to CMS](#), this change would provide “greater flexibility for the residents to transfer while the hospital operations or residency programs were winding down.”

Joint Commission Issues Statement on Removing Barriers to Mental Health Care

A few weeks ago, ACEP met with the Joint Commission to discuss the issue of physicians being penalized by state licensing boards and other entities for seeking mental health treatment. This is a serious barrier to physicians pursuing treatment-- and now even more than ever, it is essential for physicians to seek help when needed.

On Tuesday, the Joint Commission released a [statement](#) strongly encouraging organizations to not ask about past history of mental health conditions or treatment and supporting “the removal of any barriers that inhibit clinicians and health care staff from accessing mental health care services, including eliminating policies that reinforce stigma and fear about the professional consequences of seeking mental health treatment.”

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