

TO: Ann Gergen
FROM: David Farber and Scott Dziengelski
DATE: March 30, 2020
RE: Covid19 Legislation and Potential Impact on AGRiP Members

This memorandum provides a brief summary of the first two Covid19 related bills that became law and an explanation of the provisions that could potentially impact AGRiP members. In short:

- 1) **Under HR 6074**, the main impact for is to local public health agencies. Pools with these types of members should review legislative parameters.
- 2) **Under HR 6021 (The Families First Coronavirus Response Act)** there are several relevant provisions that may impact pools and their underlying public entity members:
 - a. Emergency expansion of FMLA for employees unable to work due to Coronavirus; and the ability for employers of healthcare workers or emergency responders to exclude employees from such eligibility.
 - i. The expansion includes three new categories of FMLA eligibility.
 - b. Prohibited cost sharing requirements for beneficiaries receiving a Covid19 test and/or diagnosis, under any health benefits program.
 - c. Waivers for providing free or reduced-priced meals through schools where facilities are closed for more than five days.

The Coronavirus Preparedness & Response Supplemental Appropriations Act (HR 6074)

The first bill in response to the Coronavirus pandemic was an \$8.3 billion bipartisan legislative package signed by the President on March 6th. Among other provisions, the bill appropriates funding to support the federal response to the outbreak.

There is likely limited impact of HR 6074 directly on AGRiP member pools or their respective local public entity members. Local public health agencies, some of which may participate in public entity risk pools, may be eligible for a portion of the funding, which may help offset some costs.

Within the funds provided to the Centers for Disease Control and Prevention by the legislation, almost \$950 million is allocated to support state and local health agencies prepare for and

respond to the Covid19 outbreak. These funds are for the reimbursement of state and local agencies and health care providers who “carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities” related Covid19 outbreak.¹ Some local public health agencies may be eligible to receive funding support if they are activated in the ways outlined.

However, most of the funds provided to the CDC in the legislation will flow through the CDC’s Public Health Emergency Preparedness (PHEP) cooperative agreements. The entities that are eligible to apply (also known as eligible applicants) for PHEP cooperative agreements and grants are all 50 states, 4 directly-funded localities (Washington DC, New York City, Chicago, and Los Angeles), and 8 territories and freely associated states. In turn, the eligible applicants for PHEP funds can make funds available to eligible beneficiaries, which include state, county, and local health departments.

Additional notes regarding potential funding for public entity pool members:

- The legislation stipulates that “every grantee that received a Public Health Emergency Preparedness grant for fiscal year 2019 shall receive not less than 90 percent of that grant level.” For pool members that have previously received PHEP funds this legislation is designed so that they will have priority access to these new funds.
- \$475 million of the \$950 million provide to the CDC must be allocated within 30 days of enactment. Local public health agencies that have previously received PHEP funds can expect to receive the new funds quickly.
- No state would receive less than \$4 million in funding. Regardless of prior funding, some level of funding should be available in all states.

The Families First Coronavirus Response Act (HR 6201)

The second bill in response to the Coronavirus pandemic was signed by the President on March 18th. There are three provisions in the legislation that may impact AGRiP pools and their members: a program to provide sick and quarantined workers (including pool and public sector employees) with emergency paid leave, a prohibition on beneficiary cost sharing for Covid19 testing, and changes to the certain food security initiatives.

¹ HR 6074: <https://www.congress.gov/116/plaws/publ123/PLAW-116publ123.pdf>

Emergency Paid Leave

The bill provides employees who have been on the job for at least 30 days with the right to take up to 12 weeks of job-protected leave under the Family and Medical Leave Act (FMLA) if they are “unable to work (or telework)” as a result of Coronavirus.² This provision applies to employers with fewer than 500 employees and government employers, including local public entities.

These provisions will take effect on April 2, 2020 and terminate on December 31, 2020. An important note for local public entities is that the legislation provides employers of health care providers or emergency responders with the authority to exclude an employee from this requirement. (See FAQ published by DOL at <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> esp. questions 56 and 57 for definitions of health care workers and emergency responders.)

Passed in 1993, the Family and Medical Leave Act (FMLA) requires covered employers to provide employees with job-protected and unpaid leave for qualified medical and family reasons. The FMLA permits employees to take up to 12 work weeks of unpaid leave during any 12-month period to care for a new child, care for a seriously ill family member, or recover from a serious illness.

HR 6021 adds three new categories of eligibility under the FMLA that are related to Coronavirus and apply to all employers, including public entities and pools:

- An employee is eligible for two weeks (up to 80 hours) of paid sick time at the employee’s regular rate of pay if they are unable to work or telework because they are:
 - in quarantine or isolation (which includes sheltering-in-place) pursuant to a Federal, State, or local government order or advice of a health care provider; and/or
 - experiencing Covid19 symptoms and seeking a medical diagnosis.
- An employee is eligible for two weeks (up to 80 hours) of paid sick time at two-thirds the employee’s regular rate of pay if they are unable to work or telework because:
 - of a bona fide need to care for an individual subject to or isolation (which includes sheltering-in-place) pursuant to a Federal, State, or local government order or advice of a health care provider; or

² HR 6201: <https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>

- to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to Covid19.
- An employee is eligible for up to an additional 10 weeks of paid sick leave at two-thirds the employee's regular rate of pay if they are unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to Covid19.

Although the legislation provides tax credits for employers who provide time off under this provision there is an explicit prohibition on state and local governments receiving those tax credits.

Cost Sharing for Covid19 Testing

This component of the legislation is important for health pools and for advising local public agencies about employee benefits, in general.

The legislation prohibits cost sharing requirements for beneficiaries receiving a Covid19 diagnoses and test. This provision does not exempt government health plans. Therefore, AGRiP members offering group health plans or pools, and underlying local public entities offering employee benefits, will be impacted by this provision.

The legislation specifically requires that all group health plans and group or individual health insurance issuer provide coverage and not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or medical management requirements, for the duration of the emergency period, on:

- Diagnostic products for the detection or diagnosis of Covid19 that are approved, cleared, or authorized by the FDA.
- Items and services furnished to an individual during a health care provider office visits, urgent care center visits, and emergency room visits for the detection or diagnosis of Covid19.

Food Security Initiatives

The bill authorizes the Agriculture Department to provide additional nutrition assistance to families with children who are eligible but unable to receive free or reduced-priced meals because their schools are closed for more than five days due to the COVID-19 emergency. Pool

members that are schools, and also preschools and perhaps daycares, involved with the free and reduced meal programs will be impacted.

The National School Lunch Program, the School Breakfast Program, the Child and Adult Care Food Program, and the Summer Food Services Program provide nutritious foods to preschool children and children in elementary and secondary schools.

These programs have provisions allowing them to provide meals to children who are not in school during unanticipated school closures. In those situations, meals are still provided, by the law, in a congregate setting, either in the school cafeterias or at a non-school site. However, if such gatherings are prohibited in response to Covid19 HR 6201 authorizes USDA to grant waivers to state that allow meals and snacks to be provided in a non-congregate or non-group setting.

The details of how and where the meals would be provided is left to the state to address via their waiver application. This provision only applies if a school is closed for at least 5 consecutive days.