

MEMORANDUM

To: Powers Clients and Friends
From: Legislative Practice Group
Date: March 22, 2021
Re: Summary of Key Provisions in the American Rescue Plan Act of 2021

On March 11, President Joe Biden signed the *American Rescue Plan Act of 2021*, a \$1.9 trillion COVID-19 relief and economic stimulus package that passed in the Senate by a simple majority vote under the budget reconciliation process. This package includes a wide range of additional funding for previously enacted COVID-19 public health and fiscal programs, including funds to improve testing, tracing, and vaccinations; expanded benefits for unemployed workers; direct payments to individuals making less than \$75,000 annually; and aid to state and local governments.

The bill passed the Senate on March 6 on a party-line vote of 50-49, and was approved by the House four days later by a vote of 220-211. All House Democrats voted for the bill except one, Rep. Jared Golden (D-ME), and all House Republicans voted against the bill. President Biden signed the bill into law on March 11, 2021.

The full text of the new law can be found [here](#). The following is a summary of key legislative provisions in the relief package, focusing on the impact for the health care sector and on broadly applicable stimulus provisions.

Vaccine Development, Testing, Contact Tracing, and Treatment

The bill includes several funding provisions that improve research, testing, tracing, and vaccination to address and prevent the spread of COVID-19. These include:

- **\$10 billion** for the purposes of carrying out activities under the Defense Production Act, including manufacturing and procuring medical supplies and equipment for combatting COVID-19.
- **\$1.75 billion** for activities related to genomic sequencing, analytics, and disease surveillance.
- **\$6.05 billion** to research, develop, manufacture, produce, and purchase medical products and supplies to respond to COVID-19 and any new variants.
- **\$500 million** for the Food and Drug Administration (FDA) to evaluate emerging COVID-19 variants, vaccines, therapeutics, and diagnostics authorized to treat COVID-19, and for supply chain oversight and vaccine shortage mitigation.

- **\$7.5 billion** for the Centers for Disease Control and Prevention (CDC) to plan, prepare for, promote, distribute, administer, monitor, and track COVID-19 vaccinations. Funds can be used to award grants to state and local public health departments for COVID-19 vaccine distribution and administration.
- **\$1 billion** to provide information on COVID-19 vaccines and strengthen public confidence.
- **\$47.8 billion** to carry out activities to detect and trace COVID-19 infections, including implementing a national strategy, awarding grants to state and local health departments to respond to COVID-19, and purchasing the necessary supplies.
- **\$7.6 billion** for community health centers to sustain the necessary workforce and conduct COVID-19 mitigation activities, including vaccination, community outreach, and education.
- **\$7.7 billion** to establish, expand, and sustain a public health workforce, including making awards to state, local, and territorial public health departments to recruit, hire, and train individuals as case investigators and contact tracers.
- **\$500 million** for the CDC to improve and modernize the public health data surveillance and analytics infrastructure.

Rural Health Care During COVID-19

The bill provides **\$500 million** to the Department of Agriculture to award grants through an emergency pilot program to support rural communities' health care needs during the COVID-19 pandemic. The grants will support eligible facilities, including hospitals, that primarily serve rural areas in covering costs such as vaccine distribution, increasing telehealth capabilities, and constructing temporary or permanent structures to provide health care services. Awardees may also use grant funds to cover lost revenue due to COVID-19.

Mental and Behavioral Health

The bill includes several mental and behavioral health funding provisions including:

- **\$3 billion** for block grants to address mental health and substance use disorders.
- **\$140 million** for mental and behavioral health training and education for the health workforce.
- **\$100 million** for behavioral health workforce education and training.
- **\$80 million** for community-based funding for local substance use and behavioral health needs.
- **\$60 million** to address youth mental health needs.

Skilled Nursing Facilities

The bill provides **\$450 million** to support Skilled Nursing Facilities (SNFs) in protecting against COVID-19, including:

- **\$250 million** to states and territories to deploy strike teams that can assist SNFs experiencing COVID-19 outbreaks.

- **\$200 million** for the development and dissemination of COVID-19 prevention protocols in conjunction with quality improvement organizations.

Paycheck Protection Program

This bill provides an additional **\$7.25 billion** for the Paycheck Protection Program (PPP), making the total appropriated for the program \$813.7 billion. Provisions in the bill also update the PPP size requirements for non-profits and clarify that non-profit organizations that employ not more than 500 employees per physical location of the organization are eligible for PPP loans. The bill expands PPP loan forgiveness to include payments made for premiums on behalf of individuals who qualify for COBRA. Notably, the bill does not extend the authorization date for the PPP, which is currently set to expire on March 31. Some PPP lenders have already stopped accepting new applications in order to allow sufficient time to process existing applications and loans before the program expires.

Affordable Care Act Tax Credits

The bill expands refundable Affordable Care Act (ACA) credits for two years for households with income between 100% and 400% of the federal poverty level (FPL). The bill also eliminates ACA premiums for individuals at 150% of the FPL or less and applies a premium cap of 8.5% to households whose income is 400% of the FPL or above. This represents the most significant expansion of the ACA since its enactment in 2010, and the Congressional Budget Office (CBO) estimates that more than 1.7 million uninsured people would obtain insurance in 2022 (the first full year in which the expansion will be in effect) as the result of these provisions.

Medicaid Updates

The relief package includes a number of provisions that ensure COVID-19 coverage for individuals enrolled in Medicaid and further expands the Medicaid program overall. The new law's Medicaid provisions:

- Grant states the option to extend Medicaid and Children's Health Insurance Program (CHIP) eligibility to pregnant individuals for 12 months postpartum, for a period of five years. Prior to the law's enactment, these benefits only lasted 60 days postpartum.
- Temporarily increase the state's Federal Medical Assistance Percentage (FMAP) base by five percentage points for two years as an incentive for states, who have not already done so, to expand Medicaid. This impacts the *full* Medicaid population, not just the expansion population, resulting in a federal contribution that covers significantly more than just the costs of expansion for those two years. The increased match does not apply to the federal matching rates for Medicaid Disproportionate Share Hospital (DSH) payments.
- Temporarily increase state FMAPs specifically for the provision of home- and community-based services (HCBS) by 10 points for one full year.
- Require Medicaid and CHIP coverage of COVID-19 vaccines and treatment without beneficiary cost sharing. Vaccines and vaccine administration costs will be matched at 100% FMAP until one year after the end of the PHE. States can also provide coverage to the uninsured for COVID-19 vaccines and treatment without cost sharing at 100% FMAP.

- Eliminates the Medicaid drug rebate cap (under current law, set at 100% of the average manufacturer price), until Jan. 1, 2024. This provision also allows outpatient drugs used for COVID-19 prevention or treatment to be included in the Medicaid Drug Rebate Program.

Unemployment Insurance Coverage

The bill subsidizes health insurance for individuals if they lose their job due to COVID by covering 100% of the premiums of individuals who are eligible for continued COBRA coverage through Sept. 30. The bill also extends the \$300/week federal boost to unemployment insurance (Federal Pandemic Unemployment Compensation), which was set to lapse on March 14, through September 6, 2021. Pandemic Unemployment Assistance (PUA) benefits, which cover individuals who don't qualify for regular state benefits, will also be extended for as long as 79 weeks. Finally, the first \$10,200 of unemployment benefits received will generally be excluded from adjusted gross income for taxpayers making less than \$150,000, to reduce the risk of "surprise" tax bills for unemployed workers.

Additional Economic Provisions

- The bill provides another round of direct payments to individuals and families, totaling **\$1,400** for individuals making less than \$75,000. The "phase-out" of the direct payments was sped up compared to previous rounds, with individual earners over \$80,000 receiving no payment. Families will also receive an additional \$1,400 for each dependent.
- The bill appropriates nearly **\$123 billion** for grants to states to support elementary and secondary education-related expenses, specifically programs to address learning loss, provide mental health services, and improve COVID-19 safety of school facilities. **\$39 billion** is appropriated for the Higher Education Emergency Relief Fund
- The bill includes approximately **\$360 billion** in aid to state and local governments, which can be used for a variety of fiscal needs relating to COVID-19. Each state and the District of Columbia will receive a minimum of **\$500 million**, with an additional **\$169 billion** distributed proportionately based on each state's unemployment share.
- The bill also significantly increases the child tax credit through tax year 2021, a key provision which the Biden Administration has asserted will cut the rate of child poverty in half, and expands the earned income tax credit.

Key Exclusions from the American Rescue Plan Act

While this massive legislation included a range of key priorities for the Biden Administration and Congressional Democrats, several notable provisions impacting the health care industry were not included in the final text.

- *Federal Minimum Wage*: The original bill drafted in the House of Representatives included language that would gradually raise the federal minimum wage to \$15 an hour by 2025. This proposal would also phase out the tipped minimum wage, the youth subminimum wage, and the subminimum wage for people with disabilities. However, the provision was stripped from the bill in the Senate, due to procedural constraints inherent in the budget

reconciliation process collectively known as the “Byrd Rule.” While President Biden and Democratic leadership have reaffirmed their support of an increased minimum wage, any congressional action will likely need Republican support in order to advance through regular order.

- *Provider Relief Fund:* The final legislation does not include additional general funding for the Provider Relief Fund, first created by the CARES Act and used to distribute funds to health care providers impacted by the COVID-19 pandemic. However, the bill does include **\$8.5 billion** specifically directed to hospitals and facilities defined as “rural providers or suppliers” in rural areas and in metropolitan statistical areas with populations of less than 500,000. These facilities may include rural clinics, along with those that furnish home health, hospice, or long-term services and supports in an individual’s home located in a rural area, all to be administered by the Secretary of Health and Human Services.
- *Medicare Sequester/PAYGO Cuts:* The legislation does not include any delays to implementation of the looming 2% Medicare sequester cut. The Medicare sequester has been consistently postponed by Congress, most recently with the Consolidated Appropriations Act of 2021, which instituted a three-month moratorium on the sequester through March 31, 2021. In addition, the fiscal impact of the American Rescue Plan Act on the Statutory Pay-As-You-Go Act of 2010 (PAYGO) scorecard could mean a significant additional cut to Medicare (of approximately \$36 billion or an additional 4%) in Fiscal Year 2022, if Congress does not separately act to offset the deficit increase or otherwise mitigate these requirements. House Democrats recently introduced legislation to address both the extension of the 2% sequester moratorium and the PAYGO scorecard. It remains to be seen whether there will be sufficient bipartisan support to enact legislation to avoid these potential Medicare cuts, but senior Congressional staff has professed confidence that Congress will act to prevent reimbursement cuts of this magnitude during the pandemic.

For further questions regarding the American Rescue Plan Act or any other COVID-19 related issues, please contact any Powers professionals with whom you normally work. Contact information for all professionals and practice groups can be found at <https://www.powerslaw.com/professionals/>.

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