COVID-19 Legislative Updates

To: **State Aging and Disability Directors**

From: **Martha Roherty, Executive Director & Damon Terzaghi, Senior Director**

Re: **COVID-19: Third Disaster Relief Package Update**

Date: **April 2, 2020**

Background

On Friday, March 27, President Trump signed the CARES Act, which included a wide range of funding and policy to respond to the COVID-19 pandemic. ADvancing States sent out a memorandum last week outlining the items in the legislation that are directly applicable to State Aging and Disability, agencies. In addition to those provisions, there are a number of other items in the law that, while outside of our usual area of policy and programmatic work, we felt would be useful for you and the nonprofits and providers you work with. Below, we have included a brief list of provisions that may be helpful as well as links for additional information, when available. Please note that there are a lot of complex interactions between the different loans, deferrals, and grants included in this memorandum. We offer this list as a reference and encourage you and your network members to research any of these opportunities thoroughly before applying. Please let anyone on the ADvancing States team know if you have any questions or need assistance finding more detail.

Support for Small Businesses, Non-Profits, and Community Based Organizations:

- Paycheck Protection Program: These are small-business loans available to certain entities with fewer than 500 employees, including 501(c)(3) nonprofits. Please note that nonprofits organized under 501(c)(6) authority are not eligible. The amount of the loan can be up to the lesser of 2.5 times the monthly payroll expenses of the business or $10 million with a maximum interest rate of 4%. Importantly, loan applicants who maintain the payroll/staffing levels that were in place as of February 15th through June 20th can request loan forgiveness. The amount forgiven can be the amount spent on payroll, mortgage interest, rent, and utilities over an 8 week period. This essentially means that at least a portion of the loan can be forgiven and not repaid. Applications can begin on Friday, April 3rd. More information is available at: https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp
- Employee Retention Credit: This credit provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to

employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shutdown order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The credit is based on qualified wages paid to the employee. The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020. For more information, visit: https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act

- Subsidy for Certain Loan Payments: Requires the Small Business Administration (SBA) to pay the principal, interest, and any associated fees that are owed on certain loans for a six-month period starting on the next payment due. The loans eligible for this payment include an existing 7(a) (including Community Advantage), 504, or microloan product. Paycheck Protection Program (discussed above) loans are not covered. Loans that already on deferment will receive six months of payment by the SBA beginning with the first payment after the deferral period. Loans made up until six months after enactment will also receive a full 6 months of loan payments by the SBA. For more information, visit the SBA website at: https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources#section-header-4.

- Emergency Economic Injury Disaster Loans (EIDL): Expands eligibility to include Tribal businesses, cooperatives, and employee stock ownership plans with fewer than 500 employees, any individual operating as a sole proprietor, or an independent contractor during the covered period (January 31, 2020 to December 31, 2020). Private non-profits (including 501 c3 and c6) are also eligible for both grants and EIDLs. The law waives personal guarantees, the requirement that an applicant have been in business for 1-year before the disaster, and the "credit elsewhere" requirement on advances and loans less than $200,00 for EIDL loans made in response to COVID-19 before December 31, 2020. Instead, during the covered period, the SBA can approve and offer EIDL loans based solely on an applicant's credit score, or use an alternative appropriate alternative method for determining applicant's ability to repay.

- Emergency Grants/Advances from EIDL Loans: Establishes an Emergency Grant to allow an eligible entity who has applied for an EIDL loan due to COVID-19 to request an advance on that loan, of not more than $10,000, which the SBA must distribute within 3 days. Establishes that applicants shall not be required to repay advance payments, even if subsequently denied for an EIDL loan. In advance of disbursing the advance payment, the SBA must verify that the entity is an eligible applicant for an EIDL loan.

Support for Unemployment Insurance:

- The Legislation also contains several provisions for Unemployment Insurance:
  - <u>Pandemic Unemployment Assistance:</u> Creates a temporary pandemic unemployment assistance program through Dec 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history and others) who are unable to work as a direct result of the COVID outbreak.
  - <u>Increase in Unemployment Benefits:</u> Provides an additional $600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
  - <u>Additional Weeks of Unemployment:</u> Provides an additional 13 weeks of unemployment through December 31, 2020 to help those who remain unemployed after state unemployment benefits are no longer available.
  - <u>Immediate Relief for Workers:</u> provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.
  - <u>Support for Government Agencies, Nonprofits, and Indian Tribes</u>: provides payment to states to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur through December 31, 2020 to pay unemployment benefits.
  - For more information on the unemployment insurance provisions of the cares act, visit: https://gop-waysandmeans.house.gov/cares-act-unemployment-insurance-questions-answered/

Support for Short Time Compensation Programs:

- The legislation includes several programs that support state short time compensation programs, which are essentially programs that allow employers to reduce hours rather than lay off employees. Those employees are then eligible for prorated unemployment compensation to help replace the lost wages. According to the Department of Labor, 27 states have laws establishing these programs. More information is available at: https://oui.doleta.gov/unemploy/docs/stc_fact_sheet.pdf. The bill includes:
  - <u>Temporary Financing of Short-Time Compensation Payments in States with Programs in Law</u>: This section provides funding to support short-time compensation programs. The

bill would pay 100 percent of the costs incurred in providing this short-time compensation through December 31, 2020.

- o Temporary Financing of Short-Time Compensation Agreements: Provides funding to support states which begin a program. Provides financing for 50 percent of the costs that a state incurs in providing short-time compensation through December 31, 2020.
- o Grants for Short-Time Compensation Programs: The law provides $100 million in grants to states that enact "short-time compensation" programs to help them implement and administer these programs.
- o Assistance and Guidance in Implementing Programs: Requires the Department of Labor to disseminate model legislative language for states, provide technical assistance, and establish reporting requirements related to the short time compensation programs.

Tax Changes:

- Deferral of Payroll Taxes: allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax, which is generally 6.2-percent of wages. Employers have two years to pay the deferred amount. Half must be paid by December 31, 2021 and the other half by December 31, 2022. This essentially amounts to a no-interest loan to employers for the amount of the payroll tax they defer.
- Changes to Charitable Deductions: there are a couple of changes to charitable deduction policies, which could help 501(c)(3) nonprofits in the network access increased contributions. Nonprofit aging and disability agencies may want to include this in marketing & outreach materials. These provisions include:
  - o Allowance of partial "above the line deduction" for charitable contributions. Allows individuals to deduct up to $300 of cash contributions in tax year 2020, regardless of whether they itemize their deductions.
  - o Increase of charitable contribution limits during 2020. This increases existing limits on deductions by individuals who itemize and by corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

Support for Healthcare Providers:

- Funding for Healthcare Providers to Replace Lost Revenue and Finance COVID Expenses: The legislation includes $100 billion to reimburse providers for lost revenue or for costs they incur from treating COVID-19. Hospitals are the primary provider type that appear to benefit from

this fund; however, other eligible entities can apply for funding as well. The law specifies that eligible providers include, "public entities, Medicare or Medicaid enrolled suppliers and providers, and *such for-profit entities and not-for-profit entities not otherwise described in this provision as the Secretary may specify*, within the United States (including territories), that provide diagnoses, testing, or care for individuals with possible or actual cases COVID–19." It is presently unclear how broad HHS will make the eligibility for the program; however, LTSS providers that are caring for individuals with suspected or confirmed COVID cases could potentially qualify. More information is available at: https://www.kff.org/coronavirus-policy-watch/a-look-at-the-100-billion-for-hospitals-in-the-cares-act/

Medicare Policy Changes:

- There are substantial changes to Medicare policy in order to support providers and increase access to services. A brief summary includes:
  - A pause in reductions to Medicare payments for many providers that are required by "sequestration" policies contained in deficit reduction laws. The law pauses a 2% reduction that would otherwise be imposed on Medicare payments to hospitals, physicians, nursing homes, home health, and other providers. These reductions will not be imposed from May 2020 until December 2020.
  - A 20% increase in hospital payments (the Medicare Severity Diagnostic Related Group known as MS-DRG) when they admit a patient with COVID.
  - Changes to the Durable Medical Equipment reimbursement rate for the duration of the emergency, effectively delaying some reductions that were going to take place. Since Medicaid Upper Payment Limit policy caps DME prices, at an aggregate, by the price that Medicare would pay for the same items, this change could impact Medicaid as well.
  - Allows FQHCs and Rural Health Clinics to provide telehealth via Medicare;
  - Encourages HHS to provide guidance on telemedicine for home health delivery;
  - Expands the providers that can order Medicare Home Health services to include physician assistants, nurse practitioners, and other professionals. We also note that earlier this week, CMS promulgated an emergency regulation that allows other professionals, consistent with state scope of practice requirements, to order Home Health services (including DME) for Medicaid as well.

Next Steps:

As we mentioned in our memorandum from March 26, Congress has already begun discussing further relief packages. The timing and contents of any further relief is unclear; however, House Speaker Pelosi did state that funding for infrastructure as well as for state/local government supports would be included within the Democratic priorities for the next round. Presently, the Democratic-controlled House of Representatives is seeking to put together the fourth bill on a fairly expedited timeline, whereas the Republican-controlled Senate has indicated that they would prefer to assess the situation and impacts of prior bills before moving ahead with another bill.[1]

We continue to advocate for several important legislative priorities in the next COVID bill, including a delay in administrative requirements such as Electronic Visit Verification and the HCBS Settings rule. We will keep the membership informed of any further actions in Congress that are relevant to state aging, disabilities, and LTSS programs. As always, please feel free to contact anyone on the ADvancing States team with questions, concerns, or requests for assistance.

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[1] https://www.washingtonpost.com/powerpost/mcconnell-says-pelosi-should-stand-down-on-passing-another-rescue-bill/2020/04/01/a9ac7fbe-737f-11ea-87da-77a8136c1a6d_story.html