

# PANDEMIC RELIEF DOLLARS: TO WHOM MUCH IS GIVEN, MUCH IS EXPECTED

32<sup>nd</sup> Annual Health Law Conference

Susan Feigin Harris, Partner  
Morgan Lewis & Bockius, LLP

Kenya S. Woodruff, Partner  
Katten Muchin Rosenman, LLP

April 7, 2021

1

## Today's Agenda

- **Public Health Emergency Declarations**
  - Regulatory Flexibilities and Waivers
- **Congressional Action**
  - Federal Legislative Response
- **Principal Funding Mechanisms**
  - Medicare / Medicaid Payment Changes
  - Provider Relief Fund (PRF)
  - Provider Stimulus Beyond the PRF
  - Paycheck Protection Program
  - Economic Injury Disaster Loans
- **Enforcement Initiatives**
- **Scenarios and Questions**



2

2

# Public Health Emergency (PHE) Declarations

## • Timeline

- **Jan. 27, 2021 – HHS Secretary Determines a PHE Exists**
  - HHS declares a PHE exists under § 319 of the Public Health Service Act which provides the legal authority for HHS to respond to public health emergencies
- **Mar. 11, 2020 – WHO Declares COVID-19 a Pandemic**
  - World Health Organization (WHO) Director-General Tedros Adhanom: “We have rung the alarm bell loud and clear”
- **Mar. 13, 2020 – President Trump Declares a National Emergency**
  - President Trump’s proclamation coupled with the HHS determination permits activation of Social Security Act § 1135 waiver authorities

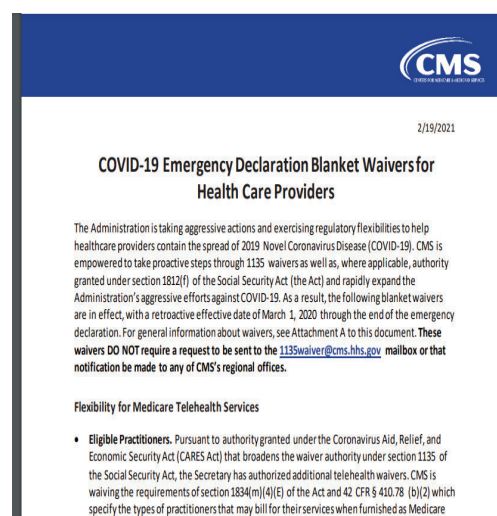
3

3

# PHE Regulatory Flexibilities and Waivers

## • SSA § 1135 Waiver Authority


- Permits HHS to temporarily waive or modify the following Medicare, Medicaid, CHIP and HIPAA requirements for duration of the PHE:
  - Conditions of Participation (CoPs)
  - Certification and similar requirements
  - Licensure (including out-of-state licensure requirements)
  - Emergency Medical Treatment and Active Labor Act (EMTALA)
  - Physician self-referral (Stark Law) prohibitions
- Authorizes emergency blanket waivers for healthcare providers
  - Includes flexibility for telehealth services



4

4

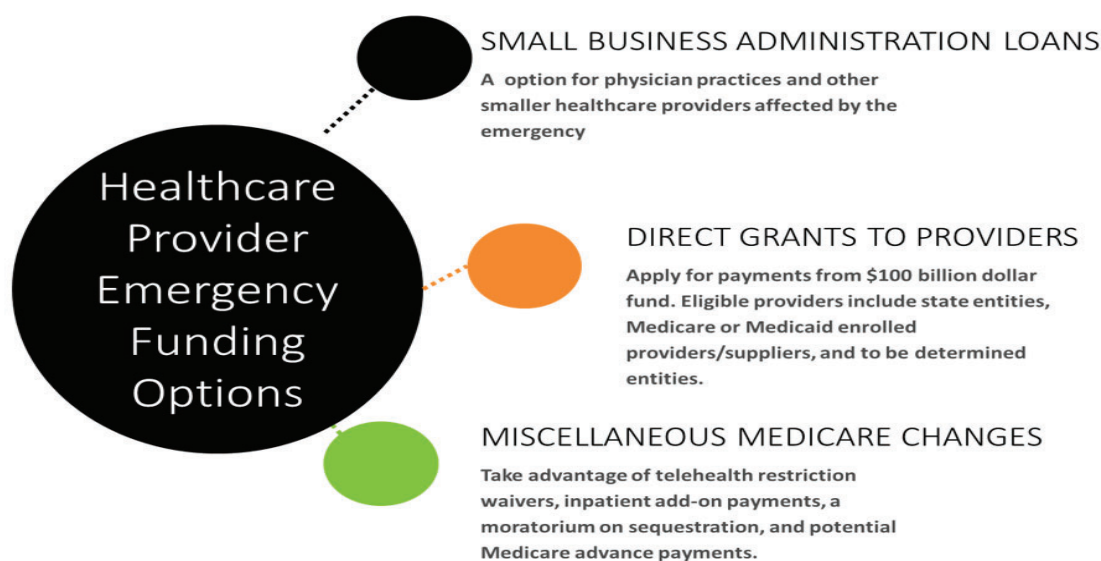
# Congressional Actions – One Year In

- 
- A vertical timeline with a blue line and circular markers at each date, ending in a downward-pointing arrow.
- 3/6/20 • **PL 116-123 / HR 6074 — Coronavirus Preparedness and Response Supplemental Appropriations Act**
    - Initial support and vaccine development
  - 3/18/20 • **PL 116-127 / HR 6201 — Families First Coronavirus Response Act (FFCRA)**
    - Paid leave, PREP Act liability protections, COVID-19 testing/treatment coverage for Medicaid and uninsured
  - 3/27/20 • **PL 116-136 / HR 748 — Coronavirus Aid, Relief and Economic Security Act (CARES Act)**
    - Paycheck Protection Program (PPP), SBA loans, Provider Relief Fund (PRF), direct grants
  - 4/24/20 • **PL 116-139 / HR 266 — Paycheck Protection Program and Health Care Enhancement Act**
    - Additional funding for PPP, PRF, small businesses, COVID-19 research, vaccines and testing
  - 7/24/20 • **PL 116-147 / S 4116 — A bill to extend the authority for commitments for the PPP...**
    - Extends application period for the PPP
  - 12/27/20 • **PL 116-260 / HR 748 — COVID-19 Relief and Consolidated Appropriations Act**
    - Additional funding for vaccine effort, PRF and PPP; extends moratorium on Medicare sequester
  - 3/11/21 • **PL 117-7 / HR 1319 — American Rescue Plan Act (ARPA)**
    - Funds rural health, public health, mental health/SUD, Medicaid coverage, COVID-19 vaccines and testing

5

5

## How Providers Obtained Relief



6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Pandemic Relief Dollars: To Whom Much is Given, Much is Expected

First appeared as part of the conference materials for the  
32<sup>nd</sup> Annual Health Law Conference session

"Pandemic Relief Dollars: To Whom Much is Given, Much is Expected"