



Special Legislative Update ■ March 27, 2020

Governor Newsom Issues Statewide Eviction Moratorium

Today, Governor Newsom issued Executive Order [N-37-20](#), establishing a statewide moratorium on evictions. This action comes after more than 40 legislators asked the Governor to do so and after he attempted to lift barriers to allow local governments to more easily approve local tenant protections in a previous Executive Order ([N-28-20](#)).

The order takes effect immediately and applies through May 31. Landlords may not evict tenants and courts and sheriffs are prohibited from enforcing eviction notices. Tenants must declare in writing, within seven days of their rent coming due, that they cannot pay all or part of the amount because they had to miss work, lost their jobs or had their hours cut because of the pandemic and provide documentation that supports their claim. Renters must repay the full amount due in "a timely manner" and could still be evicted after the moratorium lifts.

Comprehensive Summary of Federal CARES Act

The National Association of Counties has issued a helpful [summary](#) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. In addition to an executive summary along with a section-by-section synopsis of the Act, the document also contains links to previous federal actions taken in response to the pandemic since early March.

Judicial Council Calls Emergency Meeting to Approve Additional Measures to Maintain Essential Court Operations; Governor Signs Executive Order

The Judicial Council announced this afternoon that it will convene a special teleconference meeting tomorrow – Saturday, March 28 – at 12 noon to consider and approve action to give the additional branch additional tools to respond to and operate during the COVID-19 outbreak.

Courts remain open as "essential services" under the statewide shelter-in-place order, and the Chief Justice has already taken a number of steps to facilitate local court operations while complying with social distancing directives and assuring the health and safety of judicial officers and court staff. As outlined in the meeting [agenda](#) and [materials](#), the council will consider a range of actions, including extending certain court deadlines and expanding the use of technology for remote proceedings, among others. Details for joining the meeting and providing public comment can be found [here](#).

In related news, the Governor just issued Executive Order [N-38-20](#), which suspends statutory limitations on the Chief Justice's authority that would otherwise impede her in managing the business of the branch during the period of the pandemic.

LAO Offers Update on Paid Leave for Workers Impacted by COVID-19

The Legislative Analyst's Office posted a new [update](#) this afternoon on the federal paid workers provisions of the Families First Coronavirus Response Act, which becomes effective on April 1, 2020. This update covers two forms of paid leave, outlines how they interact with other state benefit programs, and identifies issues for the Legislature to consider in the context of the overall COVID-19 response.

Special Health Care Update

Public and private hospitals and health systems, community clinics, and other health care providers are experiencing significant challenges during the COVID emergency. The following provides an overview of the issues and discusses some of the resources that may be available to help address these challenges.

Fiscal Impacts – As health care providers delay and cancel elective and non-emergent procedures, they are seeing a decline in revenues. Many of the revenue generating activities at hospitals have come to a near halt as they prepare for surge capacity. Clinics and health centers are seeing a drop in primary care visits. Dental practices (that may be operated by community clinics or county health systems) are closed for non-emergency visits. With visits down 25-50 percent at Federally Qualified Health Centers and Rural Health Centers, the clinic's payment system, which relies on face-to-face encounters, is being impacted. Both the California Hospital Association and the California Primary Care Association are working with their members on estimating the fiscal impacts and losses as they work with their state and federal partners to demonstrate the need for additional resources.

Federal activities aimed to assist health care providers include:

General

- \$100 billion for the Public Health and Social Services Emergency Fund to reimburse providers for expenses or lost revenue due to COVID-19. The Public Health and Social Services Emergency Fund cannot be used to reimburse expenses or losses that are reimbursable from other funds. Public entities are included as eligible providers. The Secretary of Health and Human Services will determine the reimbursement methodology and process, which has not yet been detailed.
- A one-year delay to Disproportionate Share Hospital (DSH) cuts, delaying the \$4 billion national cut scheduled for FY 19-20 until December 1, 2020.

Medicaid

The Families First Coronavirus Response Act includes a 6.2 percent Federal Medicaid Assistance Percentage (FMAP) increase, which will provide more Medicaid funding to states. The increase is retroactive to January 1, 2020 and will terminate at the end of the quarter when the national emergency status lifts. The payments will be distributed first in grants for reimbursements from January 1, 2020 through March 31, 2020. From April 1, 2020 through June 30, 2020, the funding will be based on the state's budget and checked against expenditure reports. California's estimated share of the FMAP increase is estimated to be \$4.46 billion ([source](#)). Please note that there are calls for an additional increase to the FMAP; for reference, during the Great Recession, the federal government increased the FMAP by 10 percent. Look for this to be a topic of discussion if there is a fourth stimulus package.

Medicare

- A temporary suspension of the Medicare sequester payment reduction from May 1 through December 31, 2020.
- A 20 percent increase to the Medicare DRG code for discharged COVID-19 patients during the coronavirus emergency.
- An elimination of the requirement that Medicare patients must have been treated by a Medicare provider in the past three years to qualify for expanded Medicare telehealth coverage under the Section 1135 waiver authority.
- An expansion of the Medicare Accelerated Payment Program during the COVID-19 emergency such that eligible hospitals could apply for lump sum or periodic interim payments to cover a six-month period.

State and Local Governments

\$150 billion for state, local, and tribal governments through the Coronavirus Relief Fund for specific relevant expenditures. These funds will be distributed to states in proportion to their population (with a minimum set aside for smaller states/DC/territories/tribal governments). The Governor said publicly that he estimates California will receive \$10 billion. Up to 45% of state funds will be available to local governments, in proportion to its population as a portion of the state's population. It is unclear whether these funds will be used to reimburse health care related expenses and revenue losses.

Surge Capacity and Response – The Governor announced this week that based on updated modeling, California is projecting a need for 50,000 additional hospital beds. The hospital system has committed to providing 30,000 beds through flexing existing beds and facilities. The State is planning to acquire 20,000 additional beds — approximately 3,000 of which are addressed through the state's acquisition of Seton Medical Center (San Mateo), St. Vincent's (Los Angeles), and Community Medical Center Long Beach. The state is looking at convention centers, fairgrounds, hotels and motels to address the remaining 17,000 beds.

The state has spent the following from SB 89 funds related to surge capacity and response:

- \$30 million to pay for the acquisition of the three hospitals referenced above.
- \$1.4 million to expand the state's public health laboratory in Richmond.

- \$2 million to contract with American Medical Response to provide patient transportation.

Personal Protective Equipment (PPE) – All health care providers – hospitals and clinics – are reporting difficulty in acquiring sufficient personal protective equipment (PPE). The Governor announced plans to scope and procure additional protective gear, including 1 billion pairs of gloves, 595 million masks, and 200 million shields. California has engaged several private sector partners, who are looking at manufacturing needed equipment, as well as opening up supply chains from China. Service Employees International Union United Healthcare West (SEIU-UHW) announced securing 39 million N95 masks this week, as well. The national shortage of PPE was a topic of conversation between all 50 state Governors and the Trump Administration this week. It is unclear whether the states will form some sort of cooperative arrangement (such as group purchasing or procurement) in response to the lack of federal intervention on PPE.

The state has spent \$8.6 million from SB 89 funds to purchase new ventilators, IV fusion pumps, and refurbished ventilators.

The second stimulus package includes liability protections on personal respiratory protective devices.

Telehealth and Telephonic Care – The federal Section 1135 waiver approved by CMS earlier this week did not include approval of a variety of provisions, including telephonic care and flexibilities for telehealth services. The Department of Health Care Services remains engaged on how to obtain federal approval, perhaps through a different vehicle, and are encouraging health centers to move forward with telehealth and telephonic visits. DHCS issued [guidance](#) on payment for telehealth and telephonic visits earlier this week.

Other Issues

- *Medicaid Federal Accountability Regulation (MFAR)*. The federal MFAR proposed regulation, which would have significant impacts to state Medicaid programs and funding, continues to be pending. Medicaid experts noted that the Centers for Medicaid and Medicare Services (CMS) withdrew a proposed Medicaid eligibility rule this week. There was an unsuccessful effort to include a moratorium on MFAR in the third stimulus package, which would prohibit the Administration from implementing the proposed rule. The issue is likely to be discussed in the context of a fourth stimulus package.
- *California's 1115 Waiver*. Public hospitals and counties are encouraging an extension of California's 1115 waiver that expires on December 31, 2020. Many of the reporting deadlines and measurements will be difficult to meet as hospitals focus on COVID-19 and surge capacity. There was also an unsuccessful effort to include a requirement that CMS approve extensions of any state 1115 waivers that expire in 2020, if a state requests an extension. This issue will continue to be discussed.
- *Graduate Medical Education State Plan Amendment (CA-17-009)*. While unrelated to COVID, there was some good news about federal funding in the last week. DHCS received approval on March 19th from CMS for California's Graduate Medical Education (GME) State Plan

Amendment (SPA), retroactive to January 1, 2017. The SPA provides for \$132 million in 2017 and \$185 million in 2018 in federal payments to support GME at designated public hospitals. The funds will be allocated as follows:

Hospital	% Distribution of Total Pool
UC Davis Medical Center	7.3%
UC Irvine Medical Center	4.3%
UCLA Medical Center	5.4%
UC San Diego Medical Center	4.7%
UC San Francisco Medical Center	8.3%
Santa Monica UCLA Medical Center	0.6%
LA County-USC Medical Center	20%
LA County Harbor/UCLA Medical Center	11.1%
LA County Rancho Los Amigos National Rehabilitation Center	0.3%
LA County Olive View Medical Center	5.0%
Alameda Health System – Highland Hospital	4.1%
Arrowhead Regional Medical Center	3.3%
Contra Costa Regional Medical Center	1.9%
Kern Medical	1.5%
Natividad Medical Center	0.5%
Riverside University Health System Medical Center	2.2%
San Joaquin General Hospital	0.9%
San Mateo Medical Center	0.4%
Santa Clara Valley Medical Center	7.9%
Ventura County Medical Center	0.7%
Zuckerberg San Francisco General Hospital	9.6%