

Review of Provisions Regarding Coverage of Coronavirus (COVID-19) Testing and Treatment in Recently Enacted Relief Bills¹

May 28, 2020—expanded and updated

This issue brief from the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC) provides Tribes and Tribal organizations information about funding provisions to cover the costs of coronavirus (COVID-19) testing and treatment. On March 18, 2020, the Families First Coronavirus Response Act (Families First Act) was signed into law, with provisions to 1) promote expanding Medicaid eligibility for coronavirus testing; 2) provide enhanced reimbursement to states (e.g., higher FMAP rates) for Medicaid program costs generally; 3) reimburse health care providers for the cost of coronavirus testing for uninsured individuals; 4) require private health insurance to cover coronavirus testing; and 5) require the federal Department of Health and Human Services (HHS) to provide funding for coronavirus testing for American Indians and Alaska Natives (AI/ANs).²

A second coronavirus relief bill—the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), signed into law on March 27, 2020—revised and clarified the Medicaid and private health insurance coverage provisions in the Families First Act. The CARES Act also included \$100 billion to reimburse providers for costs related to coronavirus. HHS in early April announced an initial distribution of \$30 billion of this funding, and a second distribution of \$20 billion began on April 24.

A third coronavirus relief bill—the Paycheck Protection Program and Health Care Enhancement Act (Paycheck Protection Act), enacted on April 24, 2020—provides an additional \$75 billion to reimburse providers for costs related to coronavirus and \$25 billion for coronavirus testing.4

Possible Actions to Take:

- Document all COVID-19-related testing and treatment services provided since February 4, 2020, for potential reimbursement, including indicating the absence of third-party coverage.
- Advocate for IHS-eligible individuals not being excluded from eligibility for Medicaid and HHS / HRSA "testing" and "treatment" reimbursement for uninsured patients.
- Encourage states to adopt optional Medicaid eligibility group for COVID-19-related testing.

HHS appears to have interpreted the definition of "uninsured individuals" to exclude uninsured IHSeligible individuals from (a) the optional Medicaid eligibility for coronavirus testing for uninsured individuals and (b) an HHS program reimbursing providers for coronavirus testing for uninsured individuals, when those individuals receive services through an Indian health care provider.

See Table 1 below for a summary of funding available for coronavirus testing and treatment for Medicaid enrollees and uninsured individuals under the recently enacted relief bills.

May 28, 2020 Page 1 of 8

¹ This brief is for informational purposes only and is not intended as legal advice. For questions on this brief, please contact Doneg McDonough, TSGAC Technical Advisor, at DonegMcD@Outlook.com.

² See H.R. 6201 at https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf.

³ See H.R. 748 at https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf.

⁴ See H.R. 266 at https://www.congress.gov/116/bills/hr266/BILLS-116hr266eas.pdf.

It is important to note that, beyond the funding mechanisms outlined below, additional funding vehicles to enable significant lump sum payments authorized to be expended from the \$100 billion CARES Act Provider Relief Fund are being implemented by HHS and the federal Centers for Medicare and Medicaid Services (CMS).⁵

Medicaid Coverage

The Families First Act includes several Medicaid coverage provisions that will continue to apply for the duration of the public health emergency declared by the HHS secretary on January 31, 2020, in response to the coronavirus outbreak (emergency period). These provisions include:

- A <u>requirement</u> that states provide Medicaid coverage with no cost-sharing to currently eligible Medicaid populations for coronavirus testing, including administration of this testing and any associated (i.e., testing-related) medical visit "for which payment may be made under the State plan."⁶
- An <u>option</u> for states to extend to uninsured individuals Medicaid coverage for coronavirus testing, with the federal government covering 100% of the cost.
 - The Families First Act defined "uninsured individuals" as individuals who 1) do not qualify for Medicaid under a mandatory eligibility category and 2) are not enrolled in a federal health care program, a federal plan, or private health insurance coverage.
 - o The CARES Act clarified that individuals who live in non-Medicaid expansion states and would qualify for Medicaid if their state had adopted the expansion, as well as individuals who are enrolled in limited Medicaid coverage (e.g., individuals with tuberculosis or breast or cervical cancer), could qualify as "uninsured individuals" under this definition.
 - As mentioned above, HHS appears to have interpreted the definition of "uninsured individuals" to exclude otherwise uninsured IHS-eligible individuals."
- A 6.2 percentage point increase in the standard federal medical assistance percentage (FMAP) for Medicaid services, provided that a state⁹:
 - Maintains eligibility standards, methodologies, or procedures no more restrictive than those in place as of January 1, 2020¹⁰;

May 28, 2020 Page 2 of 8

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⁵ The Paycheck Protection Act provided additional funding for the Provider Relief Fund.

⁶ See new paragraph (a)(2)(G) in section 1916 of the Social Security Act (SSA).

⁷ See new paragraph (ss) in SSA section 1902.

⁸ See paragraph (f) in SSA section 1128(b). Under this definition, an uninsured individual is someone who is not "enrolled in" a "federal health care program" or other health insurance coverage. A federal health care program includes "any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government." Despite that AI/ANs do not "enroll in" the Indian Health Service (IHS) to access services, and that the IHS does not provide guaranteed access to services as is provided under state- and federally-regulated health insurance coverage, it appears nonetheless that CMS defined otherwise uninsured IHS-eligible individuals, when they receive services through an I/T/U, as not included as "uninsured individuals" under this definition.

⁹ This 6.2 percentage point increase applies to services funded under the state-specific FMAP rates and, as such, does not apply to the 100% FMAP for services furnished by IHS and Tribal providers to IHS-eligible individuals.

¹⁰ This likely will block, at least temporarily, efforts to impose work requirements and to impose coverage or other restrictions pursuant to a Medicaid block grant, if not in place on January 1, 2020.

- o Does not charge premiums that exceed those in place as of January 1, 2020¹¹;
- o Provides Medicaid coverage with no cost-sharing for any coronavirus testing and treatment, including vaccines, specialized equipment, and therapies; and

Does not terminate individuals from Medicaid if these individuals were enrolled in the
program as of the date of the enactment of the Families First Act (March 18, 2020), or
become enrolled subsequent to that date during the emergency period, unless these
individuals voluntarily terminate eligibility or leave the state, through the last day of the
month in which the emergency period ends.

Coverage of Coronavirus Testing for Indians

The Families First Act requires HHS to cover, during the emergency period, without imposing cost-sharing, coronavirus testing, including administration of this testing and any associated (*i.e.*, testing-related) items or services furnished during a medical visit that results in administration of, or an order for, this testing, for Indians who receive this testing from an IHS, Tribal or Tribal organization, or urban Indian organization (I/T/U) provider or from a non-I/T/U provider through the Purchased/Referred Care (PRC) program.¹² The Families First Act defined "Indian" as an individual who is 1) a member of a Tribe (or other organized group of Indians, including groups terminated since 1940 and those recognized by a state) or a descendant of a member; 2) an Alaska Native; 3) considered an Indian by the Department of the Interior for any purpose; or (4) considered an Indian under regulations issued by HHS.¹³ A \$64 million fixed appropriation was provided for this purpose, to be allocated to I/T/Us at the discretion of the IHS director.¹⁴ The IHS distributed this funding on March 27, 2020.^{15,16}

Funding for Testing and Treatment for Uninsured Individuals

HHS has announced a new Health Resources and Services Administration (HRSA) program (HRSA program) that provides reimbursement for COVID-19-related testing and treatment services for uninsured individuals. The HRSA program uses two definitions of "uninsured individuals" (one for the testing portion and one for the treatment portion of the program), but based on an FAQ document issued by HRSA, in both cases, otherwise uninsured IHS-eligible individuals are excluded when receiving COVID-19-related testing or treatment services through an I/T/U provider; I/T/U providers,

May 28, 2020 Page 3 of 8

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¹¹ The CARES Act delayed the imposition of this requirement by 30 days to enable states that had increased premiums to modify (*e.g.*, cancel) the premium increase in order to comply with this requirement.

¹² Per section 6007 of the Families First Act, HHS "shall cover, without the imposition of any cost sharing requirements, the cost of providing any COVID-19 related items and services... (or the administration of such products) or visits [as allowed by this law] ... furnished during any portion of the emergency period ... beginning on or after the date of the enactment of this Act to Indians ... receiving health services through the Indian Health Service, including through an Urban Indian Organization, regardless of whether such items or services have been authorized under the purchased/referred care system funded by the Indian Health Service or is covered as a health service of the Indian Health Service."

¹³ See 25 U.S.C. 1603.

¹⁴ See Title IV of the Families First Act.

¹⁵ *See* the Dear Tribal and Urban Indian Organization Leader Letter dated April, 13, 2020, at https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2020_Speeches/RADM_Weahkee_Weekly_Email_04132020.pdf.

¹⁶ For more information on the IHS response to coronavirus, see the Congressional Research Service report titled "COVID-19 and the Indian Health Service" and dated April 14, 2020, at https://crsreports.congress.gov/product/pdf/IN/IN11333.

however, can receive reimbursement for COVID-19-related testing or treatment services furnished to uninsured non-IHS-eligible individuals.¹⁷

The Families First Act, as part of a Public Health and Social Services Emergency Fund, provided to HHS \$1 billion, to remain available until expended, to reimburse providers for coronavirus **testing**, including administration of this testing and any associated (*i.e.*, testing-related) items or services furnished during a medical visit that results in administration of, or an order for, this testing, ¹⁸ for uninsured individuals. In addition, on April 3, 2020, the HHS secretary announced that the department will use a portion of the \$100 billion in the CARES Act Provider Relief Fund ¹⁹ to cover the cost of coronavirus **treatment** for uninsured individuals. ²⁰

The Families First Act provision that established the coronavirus "testing" program specified a definition of eligible uninsured individuals. In contrast, the HHS-announced coronavirus "treatment" program was created at the discretion of the HHS secretary and draws funding from the Provider Relief Fund, which does not impose a definition of eligible uninsured individuals for whom providers can secure reimbursement for COVID-19 treatment services. In late April, HHS announced details on a new program that combines the \$1 billion in funding for coronavirus testing for uninsured individuals and

May 28, 2020 Page 4 of 8

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¹⁷ Per the HRSA program Web page titled "Frequently Asked Questions for the COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured Program: "HHS considers such individuals, when they receive services through an I/T/U, to be enrolled in a federal health care program, as that term is defined in Social Security Act § 1128B(f). That is, they are not considered Uninsured Individuals for the Families First Coronavirus Response Act (FFCRA) Relief Fund (*i.e.*, the Testing Distribution) because the FFCRA defines who is uninsured, and the statute excludes individuals who are enrolled in a federal health care program, as that term is defined in Social Security Act § 1128B(f). Individuals who are I/T/U beneficiaries are also not considered Uninsured Individuals for the CARES Act Provider Relief Fund (*i.e.*, the Treatment Distribution). However, the FFCRA appropriated a separate fund to cover, without the imposition of any cost-sharing requirements, the cost of providing COVID-19 Testing and Testing-Related Items and Services for individuals who are I/T/U beneficiaries. In addition, I/T/Us may submit claims for reimbursement for testing and/or treatment they provide to non-I/T/U beneficiaries who otherwise meet the definition of "uninsured individuals" in the Terms and Conditions for the Testing (Testing Attestation HRSA Exit Disclaimer) and Treatment (Treatment Attestation HRSA Exit Disclaimer) of the Uninsured Distribution." See https://www.hrsa.gov/coviduninsuredclaim/frequently-asked-questions.

¹⁸ Specifically, reimbursement is available for coronavirus testing and associated items and services "furnished to an individual during health care provider office visits (which ... includes in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product ..., but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such individual for such product." *See* section 6001(a) of the Families First Act.

¹⁹ This funding, provided to HHS as part of a Public Health and Social Services Emergency Fund, will remain available until expended for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care-related expenses or lost revenues attributable to coronavirus. (The legislation defines "eligible health care providers" as "public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit entities and not-for-profit entities not otherwise described in this proviso as the Secretary may specify, within the United States (including territories), that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.") Under the legislation, providers seeking this funding must apply to the HHS secretary, providing a statement justifying their need and a valid tax identification number; providers receiving funding must submit reports and maintain documentation as deemed necessary by the HHS secretary to ensure compliance with all associated requirements.

²⁰ For a complete transcript of the announcement, *see* https://www.hhs.gov/about/leadership/secretary/speeches/2020-speeches/remarks-white-house-coronavirus-press-briefing-4-03-20.html.

portion of the \$100 billion for coronavirus treatment for uninsured under a single HRSA COVID-19 Uninsured Program (i.e., the HRSA program). ²¹

- Under the HRSA program, providers can enroll and submit claims for both coronavirus testing and treatment for uninsured individuals through a portal established by HRSA.^{22,23}
- For purposes of reimbursement for coronavirus <u>treatment</u>, the HRSA program defines "uninsured individuals" as patients who "do not have any health care coverage at the time the services were provided" (e.g., individual, employer-sponsored, Medicare, or Medicaid coverage).²⁴ HHS has indicated that that otherwise uninsured IHS-eligible individuals would not qualify as "uninsured individuals" under this definition.
 - o In addition, the HRSA program Web site indicates that, to receive reimbursement, providers will have to attest, among other things: "You have verified that the patient does not have coverage such as individual, employer-sponsored, Medicare, or Medicaid coverage, and no other payer will reimburse you for COVID-19 testing and/or care for that patient." 25
- For purposes of reimbursement for coronavirus <u>testing</u>, the HRSA program defines "uninsured individuals" as individuals who are "not enrolled in—(1) a federal health care program (as defined under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f) …" or "(2) a group health plan or health insurance coverage offered by a health insurance issuer in the group or individual market …" ²⁶ HHS has indicated that that otherwise uninsured IHS-eligible individuals would not qualify as "uninsured individuals" under this definition.

See the HRSA program Web site at https://www.hrsa.gov/coviduninsuredclaim.

May 28, 2020 Page 5 of 8

²¹ Specifically, reimbursement is available for "qualifying testing for COVID-19 and treatment services with a primary COVID-19 diagnosis, including the following:

[•] Specimen collection, diagnostic and antibody testing.

Testing-related visits including in the following settings: office, urgent care or emergency room or via telehealth.

[■] Treatment, including office visit (including via telehealth), emergency room, inpatient, outpatient/observation, skilled nursing facility, long-term acute care (LTAC), acute inpatient rehab, home health, DME (e.g., oxygen, ventilator), emergency ground ambulance transportation, non-emergent patient transfers via ground ambulance, and FDA approved drugs as they become available for COVID-19 treatment and administered as part of an inpatient stay.

[•] When an FDA-approved vaccine becomes available, it will also be covered.

[•] For inpatient claims, date of admittance must be on or after February 4, 2020."

²² The HRSA program portal is accessible at https://coviduninsuredclaim.linkhealth.com/. UnitedHealth Group will administer the HRSA program under a contract with HRSA.

²³ The Families First Act provision that provided the \$1 billion for coronavirus testing for uninsured individuals had directed HHS to distribute this funding through the National Disaster Medical System (NDMS), described at 42 U.S.C. 300hh-11. *See* Title V of the Families First Act. This reimbursement mechanism no longer applies under the HRSA program.

²⁴ *See* the document titled "HRSA COVID-19 Uninsured Program Terms and Conditions—Treatment Services" at https://coviduninsuredclaim.linkhealth.com/static/HRSA%20COVID-19%20Uninsured%20Program%20Terms%20and%20Conditions Treatment%20Services.pdf.

²⁵ Emphasis added. See the HRSA program Web site at https://www.hrsa.gov/coviduninsuredclaim.

²⁶ See Title V of the Families First Act. See also the document titled "HRSA COVID-19 Uninsured Program Terms and Conditions—Testing Services" at https://coviduninsuredclaim.linkhealth.com/static/HRSA%20COVID-19%20Uninsured%20Program%20Terms%20and%20Conditions Testing%20Services.pdf.

 In addition to patients needing to meet this definition of uninsured individual, a provider, as noted above, must attest that no other payer will reimburse the provider for the COVID-19related testing services furnished to these patients.

Table 1: Funding Available for Coronavirus Testing and Treatment for Medicaid Enrollees and Uninsured Individuals Under Recently Enacted Relief Bills						
Population	Covered Services	Legislation	Funding Source	Available Funding	Provider Payments	
					Mechanism	Rate
Medicaid eligibility groups in place as of 1/1/2020	Any coronavirus testing and treatment , including vaccines, specialized equipment, and therapies	Families First Act	CMS	Coverage (with no cost-sharing) required to be provided by state to receive 6.2 percentage point increase in FMAP for health services (for most Medicaid eligibility groups)	State Medicaid programs	Medicaid
New optional Medicaid eligibility group for "uninsured" individuals	Coronavirus testing , including administration and any associated (i.e., testing-related) medical visit for which reimbursement is available under the State Plan	Families First Act	CMS	100% FMAP	State Medicaid programs	Medicaid
"Uninsured" individuals	Coronavirus testing , including administration of this testing and any associated (i.e., testing-related) items or services furnished during a medical visit that results in administration of, or an order for, this testing	Families First Act	ннѕ	\$1 billion appropriated to Public Health and Social Services Emergency Fund	HRSA	Medicare
	Coronavirus treatment (as determined by HHS)	CARES Act (per HHS Secretary)		Undetermined portion of \$100 billion appropriated to Public Health and Social Services Emergency Fund		
Privately insured individuals	Coronavirus testing , including administration of this testing and any associated (i.e., testing-related) items or services furnished during a medical visit that results in administration of, or an order for, this testing	Families First Act		No federal funding, but coverage (with no cost-sharing) required to be provided by group health plans and issuers offering group or individual health insurance coverage	Health plan claims system	Negotiated health plan rates
American Indians and Alaska Natives (AI/ANs)	Coronavirus testing , including administration of this testing and any associated (i.e., testing-related) items or services furnished during a medical visit that results in administration of, or an order for, this testing	Families First Act (Section 6007)	IHS	Coverage (with no cost-sharing) required to be provided by HHS for testing furnished to IHS eligible individuals by an I/T/U provider or by a non-I/T/U provider. \$64 million allocated by the IHS Director	IHS	Proportionate allocation
"Uninsured" individuals	Coronavirus testing , including administration of this testing and any associated (i.e., testing-related) items or services furnished during a medical visit that results in administration of, or an order for, this testing	Paycheck Protection Act	HHS	Up to \$1 billion appropriated to Public Health and Social Services Emergency Fund	As determined by HHS	As determined by HHS

Under the HRSA program, subject to available funding, any provider that has furnished coronavirus testing or treatment for uninsured individuals on or after February 4, 2020, can seek reimbursement by filing an electronic claim. The program will reimburse providers at current Medicare rates, with payments made via direct deposit. Providers could enroll in the program as of April 27 and can submit claims beginning on May 6.

To receive reimbursement under the new program, providers must:

 Attest that a patient is uninsured (as defined above) and that no other payer will reimburse the provider for coronavirus testing and/or treatment for the patient;

May 28, 2020 Page 6 of 8

 Submit complete and final claims and meet the same timely filing requirements that apply under Medicare;

- Accept reimbursement by the program as payment in full;
- Not impose balance billing charges on patients; and
- Agree to all program terms and conditions, with the possibility of a post-reimbursement audit review.

Presumably, if a state fails to authorize coverage of coronavirus *testing* under the new Medicaid optional eligibility group for uninsured individuals (making payment using applicable Medicaid rates), the HRSA program will be available to reimburse providers (using applicable Medicare rates), assuming the funding is adequate, for 1) the cost of coronavirus *testing* (including administration of this testing and any associated (*i.e.*, testing-related) items or services furnished during a medical visit that results in administration of, or an order for, this testing) for uninsured individuals in a state; and 2) the cost of coronavirus *treatment* services for uninsured individuals in a state.

Private Health Insurance Coverage of Coronavirus Testing

The Families First Act also specifies that group health plans and health insurance issuers offering group or individual health insurance coverage must provide coverage, during the emergency period, without imposing cost-sharing or prior authorization requirements, for coronavirus testing, including administration of this testing and any associated (*i.e.*, testing-related) items or services furnished during a medical visit that results in administration of, or an order for, this testing.²⁷ The CARES Act expanded the type of testing included under this requirement from only FDA-approved testing to FDA-approved testing and 1) testing provided by labs on an emergency basis; 2) state-developed testing; and 3) any other testing determined appropriate by HHS.

Additional Funding for Coronavirus-Related Costs

The Paycheck Protection Act provides an additional \$75 billion to HHS, to remain available until expended, for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care-related expenses or lost revenues attributable to coronavirus (in addition to the \$100 billion provided under the CARES Act). In addition, the Paycheck Protection Act provides \$25 billion to HHS, to remain available until expended, for costs needed to research, develop, validate, manufacture, purchase, administer, and expand capacity for coronavirus testing. Of this \$25 billion, the Paycheck Protection Act would make available:

- At least \$11 billion for states, territories, localities, I/T/Us, and "health service providers to tribes," with at least \$750 million of this funding allocated to I/T/Us or health service providers to Tribes in coordination with the IHS, for coronavirus testing-related items and services; and
- As much as \$1 billion for coronavirus testing for uninsured individuals, using the same definitions of "coronavirus testing" and "uninsured individuals" as the Families First Act.²⁹ [As

May 28, 2020 Page 7 of 8

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²⁷ See section 6001(a) of the Families First Act.

²⁸ See footnote 23.

²⁹ It is unclear whether the Paycheck Protection Act requires use of the same payment mechanism as the provision that provided \$1 billion for coronavirus testing for uninsured individuals under Title V of the Families First Act (*i.e.*, the NDMS).

noted previously, HHS appears to have established a definition of uninsured individuals that excludes otherwise uninsured IHS-eligible individuals from this funding for COVID-19-related testing.]

Additional Resources

- Guidance from CMS titled "COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies," which addresses eligibility and enrollment flexibilities and other issues related to coronavirus, is available at https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf.
- CMS guidance titled "Families First Coronavirus Response Act—Increased FMAP FAQs" is available at https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-faqs.pdf.
- A CMS fact sheet titled "Coverage and Benefits Related to COVID-19: Medicaid and CHIP" is available at https://www.cms.gov/files/document/03052020-medicaid-covid-19-fact-sheet.pdf.
- Guidance from HRSA titled "Frequently Asked Questions for Coronavirus Aid, Relief, and Economic Security (CARES) Act Provider Relief Fund: Claims Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured" is available at https://www.hrsa.gov/coviduninsuredclaim/frequently-asked-questions.
 - Additional details about the coronavirus testing portion of the HRSA program are available at https://coviduninsuredclaim.linkhealth.com/static/HRSA%20COVID-19%20Uninsured%20Program%20Terms%20and%20Conditions Testing%20Services.pdf.
 - Additional details about the coronavirus treatment portion of the HRSA program are available at https://coviduninsuredclaim.linkhealth.com/static/HRSA%20COVID-19%20Uninsured%20Program%20Terms%20and%20Conditions Treatment%20Services.pdf.
- A Web page that includes links to all HHS resources related to coronavirus is available at https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/covid19/index.html.
- A House Appropriations Committee report titled "H.R. 6201, FAMILIES FIRST CORONAVIRUS RESPONSE ACT, Title-by-Title Summary" is available at https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Families%20First%20Summary%20FINAL.pdf.
- A Kaiser Family Foundation report titled "The Families First Coronavirus Response Act: Summary of Key Provisions" is available at https://www.kff.org/global-health-policy/issue-brief/the-families-first-coronavirus-response-act-summary-of-key-provision.

May 28, 2020 Page 8 of 8