American Nurses Association - Department of Policy & Government Affairs

COVID-19 Legislative, Regulatory, and Advocacy Update

The American Nurses Association’s (ANA) Department of Policy and Government Affairs is committed to providing nurses and nurse advocates with the most comprehensive and up-to-date information regarding the current legislative, regulatory, and advocacy developments related to addressing the Coronavirus Disease 2019 (COVID-19) global pandemic. Given the rapidly changing landscape associated with the COVID-19 pandemic, ANA will update this page every Monday and Friday afternoon, with the potential for updates in between. This information is current as of Noon on Friday, April 3, 2020.

Relevant COVID-19 Links:

- ANA COVID-19 Pandemic Website
- Full Text of the Coronavirus Aid, Relief, and Economic Security (CARES) Act
- Centers for Medicare & Medicaid Services (CMS) Coronavirus Resources Page
- CMS Transcripts and Podcasts of COVID-19 Stakeholder Calls
- Department of Labor Whistleblower Protection Program

Friday, April 3, 2020 Update:

Legislative

This week, ANA supported the Medical Supply Chain Emergency Act. This legislation is introduced by Senators Chris Murphy (D-CT) and Brian Schatz (D-HI) in the U.S. Senate and Representatives Elissa Slotkin (D-MI) and Tim Ryan (D-OH) in the U.S. House of Representatives. This bill would force President Trump to implement the Defense Production Act (DPA).
If enacted, the President would be required to identify private sector capacity to produce no fewer than:

- 500,000,000 N95 respirators;
- 200,000 medical ventilators;
- 20,000,000 face shields;
- 500,000,000 pairs of gloves; and
- 20,000,000 surgical gowns.

This legislation would also require the Administration to control the distribution of the supplies to avoid unnecessary competition between states and healthcare institutions.

Additionally, ANA staff is currently in communication with House and Senate staff and the Administration regarding legislative priorities in the fourth COVID-19 aid and relief package. While the House released a framework that would address the nation’s infrastructure, including money to rebuild roads, mass transit, rail systems, wireless communications networks and water projects, some Senate Republicans say it’s too soon for another package and want to see the implementation process start on the third package. President Trump has expressed support for a fourth package that would tackle infrastructure.

**Regulatory**

ANA CEO Loressa Cole and CNO Debbie Hatmaker had an opportunity to virtually share nurses’ concerns with Department of Labor Secretary Eugene Scalia. Among the topics discussed on the call was the need to ensure guidelines for whistleblower protections if a nurse needs to speak out. As a result of the call, OSHA included a box on its whistleblowers.gov landing page that highlights that whistleblower protections apply to the COVID-19 pandemic. We thank Secretary Scalia for the expediency in addressing this issue.

The Drug Enforcement Administration (DEA), in coordination with the Substance Abuse and Mental Health Services Administration (SAMHSA), issued guidance that for the duration of the public health emergency, DATA-waived practitioners can prescribe buprenorphine to new and existing patients with Opioid Use Disorder for maintenance treatment or detoxification treatment following an evaluation via telephone voice calls, without first performing an in-person or telemedicine evaluation. This may only be done if the evaluating practitioner determines that an adequate evaluation of the patient can be accomplished via the use of a phone.
Grassroots and Advocacy

As Congress begins to negotiate a fourth COVID-19 legislative aid package, please continue to visit RNAction or monitor Twitter and Facebook for our next call to action (to follow soon) as we engage with Congress and the Administration for our continued asks to support nurses and other frontline providers.

Wednesday, April 1, 2020 Update:

Regulatory

The administration has released numerous guidelines and waivers this week in response to the COVID-19 emergency, including around telehealth, provider supervision, reimbursement, and site of service requirements, among many other policy issues. These items are listed in more detail below:

- The Centers for Medicare & Medicaid Services (CMS) built on previous actions to expand reimbursement for telehealth services to Medicare beneficiaries, including via audio phones only. Eligible providers can bill for telehealth visits at the same rate as in-person visits for emergency department visits, initial nursing facility and discharge visits, home health visits and therapy sessions, all of which must be provided by a clinician who is allowed to allowed telehealth. CMS is also allowing physician supervision of clinical staff using virtual technologies when appropriate, instead of requiring in-person presence.

- CMS is waiving the requirements for a nurse to conduct an onsite visit every two weeks for home health and hospice. This includes waiving the requirements for a nurse or other professional to conduct an onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan, as this may not currently be physically possible.

- CMS is waiving the requirements that a certified registered nurse anesthetist (CRNA) is under the supervision of a physician. This will allow CRNAs to practice to the fullest extent allowed by the state, and free up physicians from the supervisory requirement and expand the capacity of both CRNAs and physicians.
• CMS is allowing communities to take advantage of local ambulatory surgery centers that have canceled elective surgeries, per federal recommendations. Surgery centers can contract with local healthcare systems to provide hospital services, or they can enroll and bill as hospitals during the emergency declaration, consistent with their state’s Emergency Preparedness or Pandemic Plan. The new flexibilities will also leverage these types of sites to decant services typically provided by hospitals such as cancer procedures, trauma surgeries and other essential surgeries.

• CMS is temporarily permitting non-hospital buildings and spaces to be used for patient care and quarantine sites, provided that the location is approved by the state and ensures the safety and comfort of patients and staff. CMS is also allowing hospitals, laboratories, and other entities to perform tests for COVID-19 on people at home and in other community-based settings outside of the hospital. This new guidance allows healthcare systems, hospitals, and communities to set up testing sites exclusively for the purpose of identifying COVID-19-positive patients in a safe environment.

• CMS issued a blanket waiver to allow hospitals to provide benefits and support to their medical staffs, such as multiple daily meals, laundry service for personal clothing, or child care services while the physicians and other staff are at the hospital and engaging in activities that benefit the hospital and its patients.

• CMS is expanding its accelerated and advanced payment program to provide needed cash flow to facilities impacted by the COVID-19 emergency. This program will now allow facilities to receive payment for services not yet rendered, based on historic spending; CMS considers these advanced payments to be loans to be reconciled at a later date and separate from the $100 billion subsidy funding provided under the CARES Act.

• CMS has approved 40 emergency Medicaid waivers under Section 1135 of the Social Security Act; the latest states to receive approval are Tennessee and South Carolina. These waivers offer states new flexibilities to focus their resources on combating the outbreak and providing the best possible care to their Medicaid beneficiaries.

• The administration has decided against reopening the Healthcare.gov marketplace for a blanket special open enrollment period for private individual health insurance through the Affordable Care Act. Individuals who are newly unemployed and have lost their employer-sponsored health insurance may still enroll through a special open enrollment window.
The administration has directed hospitals to begin daily reporting of COVID-19 information to CMS and the Centers for Disease Control and Prevention (CDC), including testing data from in-house labs, bed capacity, and supply levels. This information, which will not include personal identifying information, will be used to support federal response efforts and help direct resources according to data.

The Food and Drug Administration (FDA) announced the creation of the Coronavirus Treatment Acceleration Program (CTAP), to speed the development of safe and effective COVID-19 treatments. CTAP is a public-private approach, with streamlined processes and operations bringing together FDA staff, developers and scientists, and health care providers and researchers to test products on an emergency basis.

FDA issued guidance clarifying approvals for the expanded availability of surgical gowns and gloves, and has relaxed enforcement of certain existing regulations, for the duration of the COVID-19 emergency. FDA also announced emergency guidance on medical equipment cleaners and air purifiers.

FDA is encouraging labs to take advantage of streamlined review pathways to approval for COVID-19 tests and has empowered states to engage more directly in test development and use. Despite expedited federal review, the agency noted that few labs have taken advantage of the flexibility because they did not have a test or lacked viral samples to check accuracy.

The Federal Emergency Management Administration (FEMA) is adopting a new process to manage federal ventilator resources to ensure ventilators are shipped to the states in the amount needed to manage the immediate COVID-19 crisis. In the case of ventilators, immediate is defined as requirements necessary to sustain life within a 72-hour window. To submit a request, states and tribes will work through their FEMA/ HHS regional leadership. For a request to be processed, the state/tribe must provide detailed responses to the following five questions:

1. How many usable ventilators, ICU beds, and convertible ventilators are currently available within the state or tribe?
2. What is the current hospital bed and ICU bed occupancy rate in the state/tribe?
3. How many new ICU beds does the state/tribe estimate it can stand-up and the number of ventilators, or FDA-approved ventilator alternatives, it can or is standing up?
4. What is the decompression ability of hospitals in the state/tribe (i.e.: are there currently field hospitals or alternate care facilities established)?
5. How many anesthesia machines are in the state/tribe and have they been converted?

Grassroots and Advocacy

Congress included billions of dollars in the CARES Act toward additional personal protective equipment (PPE) that will prove critical in protecting nurses on the frontlines of this pandemic; over 112,000 nurse advocates sent over 345,000 messages with the #GetMePPE call to action! Our advocates truly helped pave the way for this vital funding package. As Congress begins to negotiate a fourth COVID-19 legislative aid package, please continue to visit RNAction or monitor Twitter and Facebook for our next call to action (to follow soon) as we engage with Congress and the administration for our continued asks.

Legislative

ANA continues to monitor discussions around a fourth COVID-19 legislative aid package and to engage with Congress with respect to ANA’s continued legislative asks.

Monday, March 30, 2020 Update:

Legislative

On Friday, March 27, the President signed the $2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act into law. This legislation provides significant additional funding for hospitals and health care providers and state and local governments for the fight against COVID-19, as well as economic relief for individuals and businesses (see the Legislative section from Friday, March 27, below for more details).

On Saturday, March 28, the administration issued an Executive Order (EO) which would delegate authority under the Defense Production Act (DPA) with respect to health and medical resources to respond to COVID-19. This EO will delegate additional authorities to cabinet departments available under DPA beyond those that were delegated to Health and Human Services in the March 18, 2020 EO. To read the full EO, please visit the www.whitehouse.gov link here.
On Sunday, March 29, the President announced that the U.S. Centers for Disease Control and Prevention’s (CDC) social distancing guidelines will remain in effect across the country through Thursday, April 30.

**Grassroots and Advocacy**

Congress included billions of dollars in the CARES Act toward additional personal protective equipment (PPE) that will prove critical in protecting nurses on the frontlines of this pandemic; over 111,000 nurse advocates sent over 342,000 messages with this call to action! Please continue to check with RNAAction as we continue to engage with Congress and the administration on the availability of PPE and other pressing issues related to COVID-19.

**Regulatory**

The U.S. Food and Drug Administration (FDA) issued non-binding guidance to provide policy to help expand the availability of surgical apparel for health care professionals, including gowns, hoods, and gloves, during the pandemic. This policy guidance is to remain in effect only during the duration of the public health emergency related to COVID-19.

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**Friday, March 27, 2020 Update:**

**Grassroots and Advocacy**

ANA encourages you to mark your calendar and join us for our upcoming Twitter chat this Monday, March 30 from 2-3 PM ET, hosted by @Phone2Action with @ANANursingWorld, @RNAction & @ANAPresident, to learn how you can support our nurses nationwide during the COVID-19 pandemic.

Thank you to all who participated in ANA’s Call to Action for Congress to increase personal protective equipment (PPE) distribution for nurses and other frontline health care providers, which generated 330,983 messages to Congress from 107,868 nurse advocates. Congress included billions of dollars in the CARES Act toward additional PPE (see Legislative section below for more details) that will prove critical in protecting nurses on the frontlines of this pandemic – your voices were truly heard! Please check back with RNAAction as we continue to engage with Congress and the administration on PPE and other pressing issues related to COVID-19.
Trending Social Media Hashtags: #GetMePPE | #COVID19 | #SupportNurses | #ThankANurse | #RNAction

Legislative

Yesterday, the United States Senate passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which is phase three of the aid and relief legislative package in response to the COVID-19 pandemic; the United States House of Representatives is widely expected to pass the CARES Act today (March 27) or tomorrow (March 28). It includes more than $2 trillion in spending and tax breaks to help the economy and health care providers respond to the pandemic.

ANA has been aggressively pushing Congress and the administration to act in response to the nation’s lack of PPE. The CARES Act provides $1.5 billion to states to obtain PPE, contact tracing to identify additional cases, and other public health preparedness and response activities. Additionally, it provides $16 billion for the Strategic National Stockpile (SNS) for critical medical supplies, including more PPE, and life-saving medicine.

Additional details of the agreement include:

- $150 billion for hospitals and health care providers
- $1,200 checks for low- and middle-income Americans
- $150 billion for states and local governments
- $500 billion for loan guarantees for businesses
- $350 billion for small businesses to maintain payroll
- Reauthorizes Title VIII Nursing Workforce Development Programs
- Authorizes NPs and CNS’ to certify home health care for their patients
- Includes United States Public Health Service Modernization – Ready Reserve Corps to respond to public health and national emergencies.

Regulatory

The Centers for Medicare & Medicaid Services (CMS) announced new telehealth guidance that broadens access to telehealth services for Medicare beneficiaries regardless of patient residence. Within that guidance, CMS relaxes HIPAA rules and waives telehealth-related penalties.
The U.S. Centers for Disease Control and Prevention (CDC) released a two-strategy guidance (test-based and non-test-based) to determine when Health Care Providers may return to work in healthcare settings. The test-based strategy required resolution of fever, improved respiratory symptoms and two negative COVID molecular assay test collected at least 24 hours apart. The second strategy, non-test-based, requires at least 72 hours since recovery (resolution of fever without the use of fever reducing medications and improved respiratory symptoms) and at least 7 days having passed since symptoms first appeared.

CMS extended deadlines for reporting 2019 quality data, and further explained how the agency will determine payment adjustments in cases of reporting hardships. CMS also shared lessons learned in Washington state from one nursing facility’s experience with COVID-19 fatalities. CMS is using this information to identify potential future COVID-19 hot spots and will target inspections accordingly. Routine nursing home inspections are being suspended.

New guidance from the American Medical Association (AMA) provides special coding advice with respect to COVID-19. One resource outlines coding scenarios designed to help qualified healthcare professionals (QHPs) apply best coding practices. These scenarios include telehealth services for all patients. Examples specifically related to COVID-19 testing include coding for when a patient: comes to the office for an E/M visit, and is tested for COVID-19 during the visit; receives a telehealth visit regarding COVID-19, and is directed to come to the QHP’s office or QHP’s group practice site for testing; receives a virtual check-in/online visit regarding COVID-19 (not related to E/M visit), and is directed to come to the QHP’s office for testing; and more.

There is also a quick-reference flowchart that outlines CPT reporting for COVID-19 testing. A new web page on the AMA site also outlines CMS payment policies and regulatory flexibilities related to COVID-19. Check the AMA COVID-19 resource center to stay up to date and for additional resources.

The U.S. Department of Health and Human Services released interim guidance on COVID-19 and caring for people with HIV. The guidance recommends “additional caution for all persons with HIV, especially those with advanced HIV or poorly controlled HIV”, acknowledging that current data is limited on the implications of COVID-19 for this population.