SQUIRE PATTON BOGGS

# Coronavirus (COVID-19) Update: States & Municipalities

State and municipal governments and other public entities are struggling to navigate unprecedented uncertainty and mounting financial demands. An equally unprecedented flurry of activity is taking place at all levels of government in an attempt to address the far-reaching public safety and economic ramifications of the coronavirus disease 2019 (COVID-19) pandemic. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was the third – but not the last – in a series of measures passed by Congress and signed into law to help mitigate an array of impacts from the virus. Here is what we are watching.

**Federal Reserve Announces US$500 Billion in State/ Municipal Relief.** After much anticipation, the Federal Reserve yesterday announced additional actions "using its full range of authorities to provide powerful support for the flow of credit in the economy." Among these actions, the Federal Reserve will establish a Municipal Liquidity Facility that will offer up to US$500 billion in lending to states, as well as cities with over one million residents and counties with over two million residents, with the Treasury Department using US$35 billion provided by the CARES Act as credit protection for the facility. Additional information about these programs, including details about the facilities' respective term sheets, can be found here, and Federal Reserve Chair Jerome Powell's talk at Brookings shortly after the announcement yesterday can be found here. Our Financial Services team is closely monitoring developments surrounding all of these Federal Reserve programs made available under Sec. 4003 of the CARES Act. Here is their latest analysis.

**Navigating the CARES Act and Severe Liquidity Issues.** Like so many others, businesses and state/municipal governments face unprecedented strains on liquidity. While the CARES Act takes significant steps to provide funding for COVID-19 related activities, and there appears to be additional federal assistance forthcoming, the scale and scope of these mounting shortfalls are forcing affected parties to consider all tools available to navigate the financial crisis. On Monday, state transportation departments asked the federal government for US$50 billion in a letter sent to House and Senate leaders, citing falling traffic volumes and fuel tax revenues due to the pandemic. Earlier this week, along with the American Bankruptcy Institute, we hosted our colleague, former Speaker of the House John Boehner, and others for a discussion about the challenges faced by states and municipalities, some of the tools being used to mitigate that risk, and what additional assistance and guidance is around the corner.

**CARES Act: What's In It for US Education?** The CARES Act provides US$30.8 billion to the US Department of Education and relaxes statutory requirements in an effort to provide elementary and secondary schools, as well as institutions of higher education, with more flexibility to respond to COVID-19. We parse out the numerous education policy and funding components of the bill here.

**Will Trump Designate Counties as High-, Medium- or Low-Risk for COVID-19 Risk Factors?** In a letter penned by President Trump to all of the State Governor's, he alerted them that his Administration envisions labeling counties across the country as High-Risk, Medium-Risk or Low-Risk for continued risks posed by the virus. The President plans to rely on various forms of testing and Administration experts in making his determinations. Counties labeled as High-Risk may suffer from further economic harm and stigmas, but may also be well positioned to benefit from various aid programs if the Administration determines they are hardest hit. The letter fails to mention whether states or counties will be consulted prior to receiving such designations. Specifics on the program will continue to be monitored. You can read the entire letter here.

**Warning to Businesses Everywhere: Do Not Price Gouge.** Companies across the country have been warned that they are not doing enough to stop price gouging, especially of health-related products. While price-gouging statutes vary from jurisdiction to jurisdiction and are often only enforceable during an active state of emergency, they are also very powerful and can include civil damages and stiff penalties, restitution, treble damages, criminal provisions and loss of business licensure. The State Attorneys General outlined three recommendations to ensure that sellers do not take advantage of consumers attempting to purchase supplies to protect themselves and prevent the spread of COVID-19. They include (1) setting policies and enforcing restrictions on unconscionable price gouging during emergencies; (2) triggering price gouging protections independent of, or prior to, an emergency declaration; and (3) creating and maintaining a "Fair Pricing" Page/Portal where consumers can report price gouging incidents directly. More information can be found here.

**"Essential Services" Designations Pose Difficult Multijurisdictional Challenges for Business.** As state and local government leaders implement "stay-at-home" orders to address the COVID-19 pandemic, businesses face a myriad of challenges, including how to interpret different definitions by jurisdiction as to what is deemed an "essential service," and how to comply with these orders and numerous other new obligations. Looming challenges remain, such as increased enforcement of health orders, questions about inter-state commerce, and how to navigate commandeering orders and federalism conflicts. An analysis of some of these challenges can be found here. For more answers on labor and employment questions dealing with coronavirus, register for our webinar, "Addressing COVID-19 Practically and Legally – Part Three: What US Employers Need to Know" here.

**Local Governments and Public Institutions of Higher Education Left Out of Tax Benefits for FMLA and Sick Leave Expansion.** The Families First Coronavirus Response Act (FFCRA) requires private employers with fewer than 500 employees and government employers, including local governments and public institutions of higher education, provide two weeks of paid sick and paid family leave in certain circumstances resulting from the COVID-19 pandemic (the Family Medical Leave Act [FMLA] expansion applies to any agency that was covered under the Family and Medical Leave Act of 1993). While FFCRA also provides credits against payroll taxes to offset these mandates, it expressly prohibits governmental entities from receiving these tax credits. The FFCRA includes limitations on employee paid leave. More information can be found here.

**What's Next for Hospitals and Health Systems?** The CARES Act supports the health system through a US$100 billion Public Health and Social Services Emergency Fund (PHSSEF), which covers non-reimbursable expenses that can be attributed to COVID-19. Designed to provide immediate aid to hospitals and health systems, the PHSSEF can be used by all healthcare entities that provide testing, diagnoses or healthcare services. The Administration recently announced funds from the PHSSEF can also be used to cover treatment for uninsured coronavirus patients. In addition, the CARES Act allows certain facilities to request accelerated Medicare payments (with repayment stipulations) for inpatient hospital services. Qualified hospitals interested in receiving accelerated payments are encouraged to contact their Medicare Administrative Contractor (MAC). The Centers for Medicare and Medicaid Services (CMS) expanded the accelerated and advanced payment program for Medicare providers and suppliers. A CMS fact sheet on the accelerated and advance payment process and how to submit a request can be found here.







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