

First Coronavirus Response Package

H.R. 6074, the Coronavirus Preparedness and Response Supplemental Appropriations

Act of 2020: On March 6, President Trump signed into law H.R. 6074, the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020, an \$8.3 billion emergency funding bill that provides almost \$6.5 billion to the Department of Health and Human Services, nearly \$1.3 billion to the State Department and \$20 million to the Small Business Administration. The legislation cleared the House on March 5 in a vote of 96-1, and the U.S. House of Representatives on March 4 in a vote of 415-2.

Prior to H.R. 6074's passage, on Feb. 28, the University shared with the California congressional delegation [its requests for the legislation](#), specifically requesting that the bill address:

- Reimbursements to state and local governments;
- The need for rapid diagnosis;
- Shortages in the Nation's Medical Supplies Stockpile;
- Additional funding for the National Institutes of Health/National Institute of Allergy and Infectious Disease, the Centers for Disease Control and Prevention's Emerging and Zoonotic Infectious Disease program, and the USAID Global Health Security zoonotic and zoonotic and infectious disease surveillance and forecasting program;
- Enhancements to the use of Other Transaction Authorities to enable the fast distribution of research funding;
- The ability for Health and Human Services to exercise the fast-tracking of research, development and deployment of vaccines, therapeutics and diagnostics; and
- Students and researchers who are abroad in countries that are impacted.

Because the first supplemental spending bill was considered an "initial down-payment" primarily designed to fund diagnostic, prevention, protection of medical workers and the development of vaccines, not all of UC's priorities have yet been addressed. However, included in the final bill were a number of funding measures important to the University of California, specifically:

Health, Research and Clinical Affairs

- Provides the Centers for Disease Control and Prevention (CDC) \$950 million in grants and cooperative agreements for state/local surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications and other preparedness and response, including \$475 million that would be available within 30 days of enactment.
- Provides the CDC with \$300 million for the Infectious Diseases Rapid Response Reserve Fund, which allows the CDC to use such funds to support grants for construction, alteration, or renovation of non-federally owned facilities to improve state/local preparedness and response capability.
- Provides the National Institutes of Health (NIH) \$826 million for the National Institute of Allergy and Infectious Diseases (NIAID) to prevent, prepare for and respond to coronavirus domestically or internationally.

- Provides the NIH \$10 million transferred from NIAID to the National Institute of Environmental Health Sciences for worker-based training to prevent and reduce exposure of hospital employees and other first responders.
- Provides the Public Health and Social Services Emergency Fund with \$3.1 billion to support the development of necessary countermeasures and vaccines; purchase of vaccines, diagnostics, therapeutics and other necessary medical supplies; construction, alteration and renovation of non-Federal facilities to improve state and local response capability.
- Provides the Food and Drug Administration (FDA) with \$61 million for development of medical countermeasures and vaccines and the monitoring of medical supply chains.
- Waives certain Center for Medicare and Medicaid Services (CMS) requirements to administer telehealth in emergencies.
- Provides the Biomedical Advanced Research and Development Authority \$2 billion to support advanced research in the development of vaccines, therapeutics and diagnostics.
- Provides the U.S. Agency for International Development's (USAID) Global Health Security program \$500 million.
 - Of note: UC Davis' PREDICT program, which is a zoonotic infectious disease surveillance and forecasting program, resides under the Global Health Security portfolio, which means that some of this funding could be transferred to this important initiative.
- Provides \$490 million to expand Medicare spending on telehealth services, without any restriction on where the beneficiary is physically located while being cared for.

Second Coronavirus Response Package

H.R. 6201, the Families First Coronavirus Response Act: After ongoing negotiations between House Speaker Nancy Pelosi and Treasury Secretary Steve Mnuchin, early in the morning on Saturday, March 14, they announced an agreement acceptable to both Democrats and the White House. The House proceeded to vote on the legislation just before 1:00 am ET on March 14, which passed in a 363-40 vote.

While the legislation hit a snag following House passage, an agreement was reached on the outstanding issues and the House passed fixes to it Monday March 16 by unanimous consent. The legislation is now with the Senate for consideration.

Included in the bill – as it stands as of March 17 at 3:00 pm ET – are a number of funding measures important to the University of California, specifically:

Health and Clinical Affairs

- Would provide an increase to states in their Federal Medical Assistance Percentage (FMAP) of 6.2 percentage points, retroactive to March 13, 2020, and lasting through the last day of the calendar quarter in which the emergency ends.
- Would provide flexibility for employers that employ healthcare workers or emergency personnel.
- Would not require the Occupational Safety and Health Administration (OSHA) to establish overly burdensome workplace safety requirements associated with coronavirus infections.
- Requires group health plans (including self-insured ERISA plans) and health insurance issuers in the individual and group markets (including grandfathered plans) to cover, without cost sharing, COVID-19 testing and items and services related to testing and

screening furnished during provider office visits, urgent care center visits, and emergency room visits that result in testing for COVID-19.

- Waives cost-sharing under Medicaid and CHIP for visits related to COVID-19 testing. Gives states the option to extend Medicaid eligibility to uninsured individuals for COVID-19 diagnostic testing and testing-related services during the public health emergency.
- Waives cost-sharing under Medicare for visits related to COVID-19 testing and related administration or service costs. Claims reimbursed would be limited to those for uninsured individuals not eligible for other COVID-19 testing and service assistance included in the bill.
- Clarifies that the emergency waiver of federal rules applies to four specific kinds of rules: work search, waiting periods, "good cause" to leave employment, and employer experience rating.
- Permits coverage of telehealth services for a Medicare beneficiary who had been seen by a provider within the past three years and had received a service that could have been paid for by Medicare if the person had been enrolled in Medicare. This provision is effective upon enactment.
- Appropriates \$1 billion to the Public Health and Social Services Emergency Fund, specifically for the National Disaster Medical System (NDMS). Funding is directed to pay claims for providers for reimbursement of COVID-19 testing and testing-related visits for uninsured individuals.
- Declares some personal respiratory protective devices to be "covered countermeasures" for purposes of the Public Readiness and Emergency Preparedness (PREP) Act. The bill specifically includes the N95 respirators for which the Food and Drug Administration (FDA) issued an emergency use authorization on March 4, 2020, and leaves room for HHS to include others, thereby allowing these items to have PREP Act protection from liability.
- Appropriates a second round of funding to several agencies and offices within HHS, including:
 - \$64 million for the Indian Health Service for health services related to SARS-CoV-2 or COVID-19 (available until Sept. 30, 2022).
 - \$250 million for Aging and Disability Services Programs provided by the HHS Administration for Community Living, including Home-Delivered Nutrition Services, Congregate Nutrition Services, and Nutrition Services for Native Americans (available until September 30, 2021).

H.R. 6275 and S. 3489, the Supporting Students in Response to Coronavirus Act

With one bill signed into law, and action on the other expected soon, Congress and the Administration are already looking at what a third package might include. In both the House and Senate, bills have been introduced ([H.R. 6275](#) and [S. 3489](#)) that would alleviate a number of financial aid concerns expressed by our campuses.

These bills would:

- Provide resources to help schools plan for closures, including planning for how to provide meals, how to provide technology to all students and how to ensure other educational services for students can continue.
- Support efforts to clean and sanitize educational facilities, including providing training to educators and staff on how to ensure buildings are safe for students' return and to coordinate response efforts with public health departments.
- Ensure early childhood programs stay operational, including helping with emergency staffing needs.

- Provide emergency financial aid for college students in need of food, housing, and child care, following abrupt school closures. This would include a one time grant to purchase a laptop and have internet services set up.
- Provide students with relief from paying back Pell Grants or repaying student loans for disrupted terms.
- Allow American students enrolled in foreign colleges abroad to continue their studies without disruption.

Emergency Declaration

With President Trump's declaration of a national emergency (March 13) under the Stafford Act, CMS issued several blanket waivers that will further facilitate UC Health medical centers' capacity to respond to the COVID-19 pandemic. These include waivers around the delivery of telehealth and ensuring Emergency Medical Treatment and Labor Act (EMTALA) compliance when we screen patients presenting with COVID-19 symptoms outside our emergency departments but within our hospital campuses.

Ongoing Challenges

While the two emergency supplemental bills are helpful and important, there are still several issues that UC is working with Congress to address. UC's Office of Federal Governmental Relations (FGR) – in coordination with UC Office of the President, UC Health, campuses and other stakeholders – is in the process of finalizing a second request letter to share with the California congressional delegation outlining our ongoing challenges and needs. A summary of those is included below.

Medical Care

- **Provide federal funding to reimburse hospitals for costs accruing as a consequence of treating patients lacking insurance coverage, including people experiencing homelessness, who may be referred by public health authorities to our hospitals for screening, testing and treatment.** Once the virus spreads, UC expects direct and indirect costs could reach \$500 million over the course of six months. This number is an estimate based on the latest information and data available at the early onset of this pandemic. At present, the University is unable to seek reimbursements for a number of these indirect and direct costs, potentially jeopardizing our safety-net provider position. As the pandemic grows and more communities are impacted, the federal government should expect costs to grow and we will need to reassess.
- **Prevent the Centers for Medicare and Medicaid's (CMS) from moving forward on the Medicaid Fiscal Accountability proposed rule,** which, if finalized, would severely undermine the financing that is critical to supporting the health care safety net at the same time as those systems are striving to address the public health crisis related to this pandemic.
- **Delay implementing cuts to Medicaid Disproportionate Share Hospital (DSH) payments** when the current funding extension is set to expire on May 22, 2020. Medicaid DSH funds constitute a critical source of funding for health care safety net hospitals like UC Health.
- **Suspend the 2 percent reduction in Medicare payments,** referred to as the "Medicare sequester," and restore those payments, so hospitals, physicians, nurses and other Medicare partners have greater flexibility to respond to the evolving circumstances of the COVID-19 pandemic. The Medicare Payment Advisory Commission (MEDPAC) has documented recently in its March Report to Congress that Medicare payments to

hospitals fall well below the actual cost of delivering health care to Medicare beneficiaries. The Medicare sequester contributes greatly to these underpayments.

- **Reimburse for hiring of highly skilled lab officials.** As the nation continues to struggle to ensure that diagnostic testing is available for those who need it, it is necessary to ensure that we have skilled individuals staffing these labs. Additionally, we are requesting that the Administration confirm that we can open temporary satellite sites relying on our CLIA-certified laboratories during this pandemic/public health emergency, so that we can quickly bring online our research labs to support expansion of testing efforts.
- **Address shortages of the nation's medical supplies stockpile.** The Defense Production Act provides the Administration with broad authority to ensure the timely availability of essential domestic industrial resources to support national defense and homeland security requirements, which may be necessary to ensure the safety and security of the nation's medical personnel and citizens. The Act provides the Administration the authority to prioritize production of necessary supplies, incentivize the production and enter into voluntary agreements with private companies to ensure such production. Invoking this Act is necessary to ensuring that our country has access to lifesaving medical equipment and supplies – such as personal protective equipment, including appropriate masks, facial visors, and gowns, ventilators, drugs, and vaccines. With a dwindling number of necessary supplies at our medical centers and within the country's National Strategic Stockpile, our healthcare workers risk being exposed to the highly infectious COVID-19 and pulled off of the front lines serving patients. We are already seeing our supplies of PPE being diminished at an alarming scale – which are not being replenished sufficiently due to shortages. It is critical that the Administration utilize its full powers under the Defense Production Act to fight this pandemic and to ensure that the medical supplies needed to combat COVID-19 are on the approved list. As an interim measure, the Administration should consider releasing some of the PPE that is in greatest need from our strategic stockpiles while manufacturing capacity is increased.
- **Delay deadlines under the 2010 Affordable Care Act and similar laws and regulations.** The 2010 Affordable Care Act in combination with the 2009 Fraud Enforcement & Recovery Act created a 60-Day Overpayment Rule extending liability under the False Claims Act for failure to repay certain overpayments in 60 days. UC urges Congress to allow for suspension of these deadlines during the pandemic so that our health care professionals can focus on prioritizing delivery of emergency services and be accountable for substantiating their work when there is less urgency.
- **Focus of compliance oversight and enforcement activities.** The Administration should order that federal agencies responsible for health care compliance oversight and enforcement should: (a) focus on providing technical assistance and supporting compliance with core health and safety requirements for providers and patients, (b) immediately identify and redirect resources to health and community care facilities and other sites housing populations that are particularly vulnerable to COVID-19, and (c) focus compliance oversight and enforcement activities where there are allegations of the most serious violations impacting health and safety.
- **Preemption Legislation to Facilitate Telehealth.** On March 17, the Administration announced the significant expansion of Medicare telehealth coverage including reimbursement for office, hospital and other visits, expansion of the range of allowable telehealth providers and flexibility for providers to reduce or waive cost sharing. However, various states have restrictions that impair the ability of a provider to furnish telehealth services to Medicare beneficiaries, such as furnishing services across state

lines. Such restrictions should be removed now rather than waiting for the states to implement appropriate changes. Thus, as with the preemption legislation passed by Congress in 2018 related to VA telehealth services, Congress should pass preemption legislation giving CMS the needed authority to override state restrictions that would inhibit providers from treating patients outside of their state and clarifying that providers may provide healthcare to Medicare beneficiaries through the use of telehealth, notwithstanding any State laws, rules, licensure, registration or certification requirements to the contrary.

Student and Student Aid Issues

- **Pass the Supporting Students in Response to Coronavirus Act.** The University commends Congress for introducing the Supporting Students in Response to Coronavirus Act, which would provide \$1.2 billion in mandatory funding for emergency grant aid to students in higher education to help students access basic needs such as food, housing, technology, health care and child care, needs which were created or exacerbated by unexpected college closures and COVID-19-related disruptions. The legislation also provides students with flexibility to continue to access federal financial aid to help reduce the financial stress associated with a temporary leave of absence related to COVID-19. Additionally, the legislation would exempt students from paying back Pell Grants or repaying student loans that were taken out for a disrupted term by providing a temporary waiver of 'Return of Title IV' rules. Students would also have flexibility related to satisfactory academic progress, Pell Grant lifetime eligibility and subsidized loans.
- **Expand distance flexibility to all students**, not only those who were already enrolled, as discussed in the U.S. Education Department's March 5, 2020 Electronic Announcement. This change would help students whose semester was canceled before it started as well as students who planned to return from a leave of absence.
- **Give temporary relief on state authorization requirements** for institutions that are attempting to make temporary distance education arrangements to minimize COVID-19 related disruptions to students.
- **Provide additional flexibility that would exempt students who had to withdraw from their institutions** due to COVID-19 from having to use their one-time loan grace period. Such flexibility could come in the form of deferring reporting of such a student to the National student Loan Data System for Students.
- **Grant relief on deadlines and timeframes on Return of Title IV Funds calculations.**
- **Provide an exemption of aid received during COVID-19 pandemic-related closures from Lifetime Eligibility Used.**
- **Allow students to keep all their Title IV funds**, including grants, in instances where they were unable to complete their coursework due to COVID-19 pandemic-related closures.
- **Allow students to continue to receive 100 percent of their Veterans Affairs (VA) Chapter 33 housing benefits** (because they were enrolled in classroom instruction) to continue participating in the program even if COVID-19 pandemic-related closures required them to shift to 100 percent on-line instruction.
- **California's certifying agency is now the VA, so as most programs transition to online platforms we will need flexibility** from the VA to not have any disruptions for our students as the VA reviews changes to the course catalog and mode of delivery.
- **Provide institutions of higher education with the flexibility to allow students who have withdrawn from suspended programs to re-enroll in terms that overlap** with the payment period of the canceled program. This would allow semester abroad

students whose programs were canceled to enroll in a quarter term. All “unearned” aid under the Return to Title IV rules would still be returned.

Research

- **Provide federal research grantmaking agencies with additional funding for administrative supplements** to assist research institutions address unforeseen or prohibitive costs due to the forced suspension or slowdown of federally supported research activity.
- **Provide additional research** funding into diagnostics, vaccine and/or therapies to the Department of Defense and National Science Foundation to complement the work at the Department of Health and Human Services
- Provide federal departments that grant research funds to **use expedited contracting models**—including Other Transaction Authority—when possible.
- **Provide additional funding** to the National Institutes of Health’s I-Corps, the Department of Defense’s Defense Innovation Unit, and the National Science Foundation’s RAPID and EAGER programs to fund the innovation at start-up companies which could address the immediate needs for COVID-19 testing and recovery efforts.