

# compliance ALERT

## \$900B COVID-19 Relief Package Signed into Law; Includes Rules to End Surprise Medical Billing

December 28, 2020

On December 27, 2020, President Trump signed into law a \$900 billion COVID-19 [relief bill](#) (the “Law” or “Relief Package”) that includes much-needed relief and stimulus funds for employees and businesses suffering from the impact of the pandemic. The Law also includes provisions designed to end surprise medical billing.

### How Does the Relief Package Change the Law?

The Relief Package changes the law in the following ways (including by providing additional funding for the following programs):

- \$600 stimulus checks per adult and child, and \$300 per week in enhanced unemployment insurance benefits for 11 weeks (discussed in more detail below).
- \$319 billion for small business assistance, including \$284 billion for loans given through the Small Business Administration’s (SBA) Paycheck Protection Program (PPP), \$20 billion in Economic Injury Disaster Loan grants, and \$15 billion for live venues, independent movie theaters and cultural institutions.
- \$25 billion in rental assistance and an extension of the eviction moratorium.
- \$13 billion in increased SNAP and child nutrition benefits.
- \$82 billion in education, with \$10 billion dedicated to childcare.
- \$7 billion to increase access to broadband.
- Billions for vaccine distribution and COVID-19 testing, including \$4 billion for GAVI, the international vaccine alliance.
- A tax credit for employers offering paid sick leave, an extension of the Employee Retention Tax Credit, a temporary amendment to the Internal Revenue Code (Code) removing the 50% limit on deductions for business meals paid or incurred in 2021 and 2022, and language permanently setting the threshold for deductible medical expenses to 7.5% of adjusted gross income.
- Language amending the definition of educational assistance under Code § 127 to extend a temporary provision that allows employers’ qualified educational assistance programs to repay qualified education loans (generally, loans for higher education expenses) that were incurred by employees for their own education. The current provision (added by the CARES

### SYNOPSIS

- The Relief Package will impact government benefits available to employees that have been furloughed or laid off due to the ongoing COVID-19 pandemic, likely impacting many employers’ benefits and insurance offerings.
- Employers and plan sponsors should review how the Law affects furloughed or laid-off workers.
- Employers and plan sponsors should evaluate how to accommodate the new FSA flexibility and the new surprise medical billing rules for 2022.
- The Relief Package did not include any kind of employer liability shield, immunity protection or other liability protections from COVID-19-related lawsuits.

Act) was set to expire January 1, 2021. As extended, the provision applies to amounts paid under a qualified educational assistance program before January 1, 2026.

- Disaster-relief provisions applicable to retirement plans which, among other provisions, allow retirement plans to provide “qualified disaster distributions” of up to \$100,000 that will not be subject to the 10% additional tax on early distributions.
- Language requiring group health plans and health insurance issuers offering coverage in the individual or group markets to conduct comparative analyses of the nonquantitative treatment limitations (NQTLs) used for medical and surgical benefits as compared to mental health and substance use disorder benefits, and specifically, requiring the agencies implementing the Law to request comparative analyses of at least 20 plans each year that involve potential violations of, or complaints regarding noncompliance with, the mental health parity rules. The Law also requires these agencies to provide certain guidance and regulations on mental health parity rules, including a process and timeline for filing mental health parity complaints.
- Language ending surprise medical billing for emergency and non-emergency/scheduled care, including air ambulance services, and language requiring greater transparency of health plan costs and compensation received by health plan service providers (discussed in more detail below).
- Language providing more flexibility for Health and Dependent Care Flexible Spending Accounts (FSAs) (discussed in more detail below).

### **What are the New Rules for Stimulus Checks? How does the Relief Package Impact Unemployment Benefits?**

The Relief Package offers another round of direct economic impact payments that are commonly referred to as “stimulus checks.” The CARES Act provided the first round of stimulus checks for eligible U.S. citizens. Under the CARES Act, tax filers with an adjusted gross income of up to \$75,000 for individuals and up to \$150,000 for married couples filing joint returns were eligible to receive the full payment of \$1,200 per individual or \$2,400 per married couple. Parents were also eligible to receive \$500 for each qualifying child.

The new Law follows the same eligibility guidelines as the CARES Act, but the amount of the stimulus check is less this time around. Instead of being eligible for a \$1,200 payment, qualifying taxpayers are eligible for a payment of \$600 per individual or \$1,200 per married couple. Parents will also be eligible to receive \$600 for each qualifying child.

The new Law’s relief also includes funding for unemployment benefits, and specifically, allows unemployed Americans to receive \$300 per week in federal funding in addition to the existing unemployment aid that they may be collecting from their state (if those state-level benefits have not already run out). The additional unemployment benefits and extensions included within the Relief Package would provide aid for 11 weeks from their expiration at the end of December 2020 through at least March 14, 2021.

Initial COVID-19 relief for unemployment benefits was introduced by the CARES Act, which was enacted on March 27, 2020. The CARES Act provided funding for states to waive any waiting week requirements for unemployment income (UI) benefits during the COVID-19 pandemic and to provide an additional \$600 per week to all individuals receiving UI benefits for weeks of unemployment ending before July 31, 2020. President Trump signed a Memorandum to extend a portion of unemployment wages after the initial \$600 per week of federal relief expired.

Additionally, the Relief Package includes an extension of Pandemic Unemployment Assistance (PUA). PUA is a program that allows employees who are not traditionally eligible to receive unemployment benefits, including the self-employed and gig workers, to do so. An 11-week extension in base benefits through this program is also included within the new Law.

### **What are the New Rules Designed to End Surprise Medical Billing? What are the other Rules on Healthcare Transparency and Disclosure?**

The new Law includes rules designed to help protect insured patients from large unexpected medical bills (or “balance” bills) when they unknowingly receive out-of-network (OON) care. Beginning in 2022, when these new rules go into effect, patients won’t get balance bills when they:

- Receive emergency services performed by an OON provider and/or at an OON facility (and when they receive post-stabilization care after an emergency if the patient cannot be moved);
- Receive non-emergency services performed by an OON provider at an in-network facility (including hospitals, ambulatory surgical centers, labs, radiology facilities and imaging centers), with certain exceptions (discussed below); and
- Receive air transportation by an OON provider of air ambulance services.

As a result of these new rules, hospitals and other medical providers providing OON services won’t be allowed to hold patients responsible for the difference between those in-

network amounts and the higher fees that they would otherwise be able to charge. Instead, those providers will have to work out with insurers and other health plan payors acceptable payments referred to in the Law as a “qualifying payment amount,” which is the median price of the payments they have contracted to make for the same item or service in the same geographic region to in-network providers. When disputes arise between the provider and the payor as to the proper amount to be charged, the determination will be decided by an arbitrator. The arbitrator’s decision on the payment will be unappealable.

There is an exception to the balanced billing prohibition for non-emergency services performed by OON providers at in-network facilities (the second bullet point above) if the providers do not provide “ancillary services,” which are defined to include:

- Emergency medicine, anesthesiology, pathology, radiology and neonatology;
- Items and services provided by assistant surgeons, hospitalists and intensivists;
- Diagnostic services unless they are exempted by rule; and
- Items and services provided by non-participating providers if there are no participating providers at the same facility who can furnish such items or services.

The rule prohibiting balanced billing applies for non-“ancillary services” providers unless the patient receives oral and written notification at least 72 hours in advance of the appointment (or for appointments made within the 72 hour window, on the same day on which the appointment is made). This notification must include the following:

- Notification of the provider’s OON status;
- A statement that consent to receive such services from an OON provider is optional and that the services may be received from a provider that can do so under the in-network cost structure;
- A good faith estimate of the amount the patient will be charged if he/she consents; and
- With respect to any OON facility, a list of any in-network providers at that facility who can provide the same item or service.

The patient also must sign the notice to consent to the treatment by the OON provider and the patient must be provided a copy of the signed consent form. Notably, states may impose other OON provider obligations that go above and beyond these federal statutory requirements. Additionally, states are charged with enforcing the federal provider requirements and providers are subject to penalties of up to

\$10,000 per violation. The U.S. Department of Health and Human Services (HHS) has authority under the statute to enforce the provider requirements in any state in which the state opts not to do so itself. The U.S. Department of Labor (DOL) also has enforcement authority if it identifies patterns of balanced billing violations under a group health plan or group insurance coverage offered by a health insurer.

It should also be noted that while the new Law prohibits balance billing for air ambulance transportation, which can be among the most expensive types of emergency medical services (sometimes costing tens of thousands of dollars), it does not extend its patient protections to the more commonly used ground ambulance services. However, the Law does call for an advisory committee to recommend how to take this step. For uninsured patients, for whom everything is considered “out of network,” the bill requires the Secretary of HHS to create a provider-patient bill dispute resolution process.

In addition to these new rules on surprise medical bills, the Law also contains several provisions requiring additional transparency and disclosure of health plan costs and requirements, and among other requirements, requires health plan service providers, including brokers and consultants, to provide plan fiduciaries with additional disclosure about their services and any direct and indirect compensation they receive. These service provider disclosure rules will go into effect in 2022.

### **How does the Relief Package Impact COVID-19 Vaccine Rules for Employers? Can Employers Require Employees to Take the COVID-19 Vaccine?**

The Relief Package provides additional funding for vaccine distribution in the U.S. and abroad, but it doesn’t contain any vaccine-related rules specific to employers and their employment policies. However, recently-updated [guidance](#) issued by the Equal Employment Opportunity Commission (EEOC) has clarified that employers can require employees to take the COVID-19 vaccine prior to returning to work, so long as appropriate protections and reasonable accommodations are in place for employees with disabilities, and so long as the employer provides a reasonable accommodation for an employee’s sincerely held religious belief, practice, or observance that would prevent them from taking the vaccine.

### **What are the New Rules Designed to Give More Flexibility to Health FSAs and Dependent Care FSAs?**

The Relief Package provides five new temporary rules that give sponsors of Health and Dependent Care FSAs the option to be more flexible when dealing with their participants’ unused funds in these account-based plans. Specifically, these new temporary rules:

- Allow plans to permit Health and Dependent Care FSAs to carry over unused benefits up to the full annual amount from 2020 to 2021, and from 2021 to 2022.
- Allow plans to permit a 12-month grace period for participants to use any remaining unused benefits or contributions in Health and Dependent Care FSAs for plan years ending in 2020 or 2021.
- Allow plans, for plan years ending in 2021, to allow employees to make a prospective election change to modify their Health or Dependent Care FSA contributions without a change in status.
- Allow Health FSAs to allow employees who ceased participation during the 2020 or 2021 calendar year to continue to receive reimbursements from unused benefits or contributions through the end of plan year in which participation ceased (including any grace period).
- Allow Dependent Care FSAs to extend the maximum age from “12” to “13” for eligible dependents who aged out of eligibility during the last plan year with a regular enrollment period ending on or before Jan. 31, 2020, and may allow employees with unused balances for that plan year to apply this rule to claims for reimbursement of the unused balance in the following plan year.

While there is no requirement to amend plans to make them more flexible in these ways (that is, these rules are “optional” or “voluntary”), given the fact that the pandemic has resulted in so many employees not being able to use these FSA funds, many employers will likely take advantage of these temporary rules to help their employees utilize these benefits and will amend their plans to do so. Plan amendments to make these changes can be made retroactively for the 2020 plan year. Specifically, the Law allows an amendment to be made by the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective. For example, for an amendment applicable to a 2020 calendar-year plan, plan sponsors will have until December 31, 2021 to make the amendment.

### When does the Relief Package Go into Effect?

The Relief Package went into effect when it was signed into law on December 27, 2020, but the rules applicable to surprise medical billing and service provider compensation go into effect in 2022.

### How Does the Relief Package Impact Employers and Plan Sponsors? What was Not Included in the Relief Package?

The Relief Package’s stimulus checks and unemployment benefits are going to have a very significant impact on the government benefits available to employees that have been furloughed or laid off due to the ongoing COVID-19 pandemic,

and this will, in turn, likely impact many employers’ benefits and insurance offerings. The Law will also provide much-needed relief in the form of funding for PPP loans to employers that have been hit the hardest by the pandemic.

Importantly, employers and plan sponsors should evaluate whether they want to amend their plans to offer more flexibility for their Health and Dependent Care FSAs, and also, should begin the process of evaluating how they will need to adjust their health plans’ administrative procedures to best take into account the new surprise medical billing rules which go into effect in 2022.

Notably, the Relief Package did not include any kind of employer liability shield, immunity protection or other liability protections from COVID-19-related lawsuits. This was something that Republican members of the House and Senate were pushing for. Additionally, while the new Law extended paid leave tax credits, it did not extend the period of paid leave that is available under the FFCRA (for employers with less than 500 employees) beyond December 31, 2020.

### What Should Employers and Plan Sponsors Do Next?

Employers and plan sponsors should review and discuss with their advisors the Law’s new rules applicable to unemployment benefits and stimulus to understand how furloughed or laid-off workers will be affected in the weeks and months ahead during this health emergency, and to better understand the benefits available to them. They should also review and discuss with their advisors the new surprise medical billing rules, transparency and disclosure rules, and rules permitting additional flexibility for FSAs.

The government agencies tasked with implementing the new Law will likely soon release new regulations and guidance designed to assist employers and plan sponsors with putting these new rules into effect. We will continue to provide updates on those developments as they arise.

**If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.**