Coronavirus Relief Package

There has been a lot of activity on the state and federal level to identify ways to provide financial and regulatory relief to hospitals and health care providers. Chad Austin introduced Landon Fulmer, KHA's contract lobbyist in Washington, DC, and Kyle Christian, who is the health care advisor to Senator Jerry Moran. Both individuals have been instrumental in working with KHA and our congressional representatives.

Some highlights to the COVID-19 package were shared by KHA. In addition to providing financial relief to individuals, families and businesses that have been impacted by COVID-19, the latest package includes significant funding to health care providers. Highlights of the package include:

- Creates an emergency fund for hospitals and health systems. This is anticipated to be worth approximately $100B. Details are not available right now, but they will follow.
- Removes the Medicare Sequestration from May through December 2020 (Based upon historical data, we estimate that this may amount to approximately $25 million to Kansas hospitals).
- Creates a Medicare add-on payment of 20% for rural and urban inpatient hospital COVID-19 patients.
- Expands the existing option for hospitals to receive “accelerated” Medicare payments.
- Delays the Medicaid DSH cuts for an extended period of time.
- It also includes clarification that non-expansion states can use the Medicaid program to cover COVID-19 “related services” for uninsured adults who would have qualified for Medicaid if the state had chosen to expand. According to Pat Roberts' office, it is meant to allow states to cover the test, administration of the test, and the visit to get the test for uninsured people during the emergency period. KDHE is working on a policy to define “related services” and will publish a Kansas Medical Assistance Policy soon.
- Lastly, it provides new telehealth flexibilities under Medicare.

Here is a link to AHA summary of the bill. The bill has now passed the Senate and the House and is expected to be signed by the President.

Leading up to this final package, there have been several member questions asked raised to KHA concerning provisions dealing with telemedicine and rural health clinics as well as public hospitals and FMLA eligibility. As the Phase 1 and Phase 2 bills were passed and problems were identified, Congress attempted to address the outstanding issues as part of the Phase 3 negotiations to correct some of those.

- Rural health clinics (RHCs) and Federally Qualified Health Clinics (FQHCs). Previous COVID-19 relief bills did not allow Medicare reimbursement for RHCs and FQHCs as a distant site for telehealth for COVID patients. In the Phase 3, those restrictions have been lifted.

- Labor provisions related to FMLA and FLSA requirements under Phase 2 version of COVID-19 relief. Phase 2 bill stated that employers with under 500 employees (small to medium businesses) are required to give up to 12 weeks leave under FMLA and FLSA sections of labor law. The costs incurred would be reimbursed by payroll tax credit that would be refundable. One of the concerns expressed was because government entities are excluded from the tax credit program, there would be a number
of government hospitals that would not be included in the tax credit and would not be reimbursed. Advocates started working with congressional offices to fix it. The Senate addressed it, not through the tax credit portion, but through the small business loan portion of the bill. The bill provides $350 billion for forgivable loans through SBA 7(a) loan program. Hospitals and 501(c)3s that receive Medicaid funding were not eligible in Phase 2. That provision was struck in the Phase 3 bill. So all hospitals are now eligible for SBA 7(a) loans. In Phase 3, loans would be available much more quickly. Other lenders will lend the money, but the federal government would pay it off. There is an overview of how the SBA loan program works. If you employ more than 500 people, the bills allow you to follow your current FMLA and FLSA policies, and there is no mandate. If you have less than 500 employees, the mandate applies, and you can apply for the loans to help pay for the federal mandate. $100 billion will be coming through states. In addition, there is an allocation of funds that is available for emergency preparedness for COVID-19 through FEMA. KHA has been in contact with KDEM, and they are putting together the application requirements and how the money would flow. KDEM recognizes this is reimbursement that takes a long time to process. Getting the applications in quickly will help expedite refunds for equipment and overtime pay in direct response to COVID-19. Some will be funded, but some will be part of reimbursement process. That can take time. May want to include things that are going to be reimbursed through FEMA on an SBA application as well. Going to keep working on how the applications will be processed.

Kyle Christian of Senator Moran’s office added that they have been working on making sure the tax credit SBA loan program would have eligibility for hospitals. The idea is that if they provide tax credits on the back end, would cause small businesses to close their business, due to cash flow. Regarding FEMA-related relief, Kyle will get more information to KHA to distribute to hospitals. Hospitals can also connect with Moran’s state offices. Details on the FEMA relief include $117 billion for hospitals and veteran health care; $100 billion of that is designated for hospitals. $45 billion is for FEMA disaster relief. $16 billion to the strategic stockpile, including expanding the requirements of the stockpiles. When the stockpile is rerouted, KDHE can provide assistance to facilities. $4.3 billion is going to CDC for increasing capacity. $11 billion for vaccines, therapeutics, diagnostics and other medical needs. It is not just a stimulus bills, but a disaster relief bill with large side of stimulus to make sure businesses do not close.

In addition to the $100 billion direct assistance to hospitals, there are other changes that will benefit hospitals. Medicare sequestration cuts are removed for the year. Further delay of DSH cuts. Increase in CAH payments for the next six months. Opportunity for add-on payments for COVID patients. Telehealth making sure rural health clinics are eligible was a large commitment for Senator Moran. Happy that everyone saw the need and worked through it. Receiving communication that a number of legal teams have a different opinion regarding whether public employers of more than 500 employees of public would not be exempt. If that is the case, that is a drafting error and not intention. They are trying to get guidance on the bill. Waiting for answers on how people apply for SBA loans. In the case that public employers of 500+ employees are not exempt, they are already working on clarifications. House has been notified that this is a potential issue. The FMAP increase of 6.2% can help free up state resources. Could have other implications, but not more to report.

Here is a link to AHA summary of the bill. The bill has now passed the Senate and the House and is expected to be signed by the President.

Additional Federal and State Support Updates
Chad Austin discussed several items.

- The KDHE 1135 waiver was approved earlier this week. We are reviewing that waiver to see what flexibilities will be provided to Kansas providers.
• In addition, KHA is working with LeadingAge Kansas and the Kansas Health Care Association on submitting a joint 1135 waiver. This will include request that range from more flexibilities under EMTALA to permitting other health care provider locations to treat COVID-19 patients. We expect this waiver to be submitted later today.
• KHA also will be developing our own 1135 waiver with a handful of other hospital specific requests. This is likely to be submitted in the next day or so as well.
• Lastly, we are working with KDHE and the governor’s office for some additional relief to hospitals. These conversations are fluid, and we will hopefully have some additional information in the coming days.

Status in Kansas, Supply Issues, State Lab, ASPR Grant
Ron Marshall stated that as of March 25, Kansas has 168 confirmed cases. That is not a real time number, due to the amount of testing done in commercial labs. As commercial labs are used, their numbers are submitted to the state and then the state compiles the public report. Secretary of KDHE Dr. Lee Norman is predicting 400 confirmed cases by April 1, and that we will continue to see a steady increase in the number of cases after that. There is no prediction on when the peak will occur.

There are concerns regarding the supply of N-95 masks and hand sanitizer. Many hospitals are receiving emails from companies who promise to deliver those supplies, but require a 50-75% down payment. These companies are not considered legitimate, and Dennis George of APS is working with known vendors to make the supplies available to Kansas hospitals. Some hospitals have received hand sanitizers, and others are on allocation. A reminder that hand sanitizers can be compounded in the pharmacy. Also, some distillers in the area have started producing hand sanitizer from their production lines. The state lab is short of supplies to do testing. They are encouraging hospitals and local health departments to use commercial labs to obtain test results, unless it meets the criteria for high-risk patients. The state lab reports that their results are obtained in 1-2 days, but commercial labs may take up to 10 days. They may be dealing with supply issues as well. The state lab is working on another testing platform to help improve turnaround time.

KHA was notified by ASPR that they are releasing grants of $100 million for COVID testing, including $50 million to state hospital associations and local jurisdictions, to distribute to hospitals within 30 days of receiving the grant money. The funding opportunity announcement was delayed, but it was to be due by Monday, March 30. There is a call at 1 pm today to discuss the grant and the state hospital associations. At this time, it is unknown when the notice of funding opportunity will be posted.

Landon Fulmer mentioned that confusion exists regarding whether the federal government is covering all expenses concerning COVID-19. The government is covering preventative and testing services, but not treatment services. The expectation of the public that everything related to COVID-19 is 100% covered is not true. Treatment should be covered by personal insurance and is the responsibility of patient and insurance. It was noted that other tests done prior to COVID-19 tests are not currently covered.

Questions
Q1: What kind of approval for hand sanitizers from distilleries and N-95 masks is being done?
A1: The Food and Drug Administration published a guidance on the temporary compounding of hand sanitizer by pharmacies and outsourcing facilities during this emergency period. The Kansas Board of Pharmacy COVID-19 guidance notes that during the emergency period, the board will allow over-the-counter compounding of hand sanitizer without a prescription only when the FDA guidance document, including the information regarding formulation and labeling, is being followed exactly. This allowance is in effect until
rescinded by the Board of Pharmacy as published and noticed on the board website. Many hospital and community pharmacies are compounding hand sanitizer at this time. Additionally, several distilleries in Kansas have begun manufacturing hand sanitizer, including Dodge City’s Boot Hill distillery that publicized on March 24 that they are manufacturing hand sanitizer that meets standards set by the World Health Organization.

Q2: On the tax credits, are some government agencies going to be excluded (i.e. VA hospitals or county hospitals)? Could you clarify that, please?
A2: The way the bill is currently structured, the intent was that any employer that has 500+ employees does not have the federal mandate to pay FMLA or FLSA up to 12 weeks’ leave time. There is a possible drafting error in the bill. If you are a hospital that has less than 500 employees, the mandate applies. The way the mandate is being covered for certain organizations, they are able to apply for a refundable tax credit on the payroll taxes they pay with their tax filings, but government entities are not eligible for the tax credit. In order to make it so government-owned hospitals could make these leave payments, they are included in SBA7A loan program. Now, instead of covering federal FMLA and FLSA expansions through the tax credit, it would be covered in forgivable SBA 7(a) loans. That’s the way that the bill takes care of smaller hospitals. As a reminder, SBA 7(a) loans typically have a guarantee is 80% by fed government. For these loans, that has been increased to 100%... federal government backing these 100%. [Here is a link to AHA summary of the bill.]

Q3: There is a waiver allowing patients to be in a CAH longer than 96 hours. Does it need a prior approval? Does it have to be a COVID-19 case?
A3: KHA will look at this, but we believe it is covered in a blanket waiver that was provided by the federal government. If you go over 96 hour average annual length of stay, you should notify the CMS regional office and KDHE.

Q4: With the emergency leave act, does that leave have to be extended, or could a person take it intermittently?
A4: KHA will research this more. Kyle mentioned the bill set a maximum of 80 hours for a financial amount, but it does not specify when or how it can be used.

Q5: When do we think widespread testing will be available?
A5: The state lab is ramping up with another set of analyzers to expand testing. Reagents are in short supply. Several larger hospitals in Kansas and Missouri are ramping up to test in house. It is a complex test and rapid point of care testing currently used for influenza testing will take some time before being available for COVID-19 testing. Shortage of swabs and reagents will extend in time.

Q6: If you are a CAH with 12 beds, do you have to report to CMS if you increase beds as well?
A6: If a CAH goes over 25 beds, that needs to be communicated to KDHE and CMS regional office. KHA has asked KDHE what needs to happen and who needs to be notified, and they are waiting on response.

Q7: On the previous Hospital Huddle call, it was mentioned that hospitals should keep track of expenses. Any further update on that?
A7: Tish Hollingsworth held a call with accounting firms in Kansas, and discussed it. Hospitals need to reach out to the firm that helps them with their Medicare cost report to ask them. It was suggested to create a cost center for COVID-related activities or create a job code related to COVID activities. Your accounting firm knows what is best for your situation. KHA has scheduled a Webinar on Thursday, April 2, at 10:00 a.m., for Hospital CFOs to provide a review of funding sources available during the COVID crisis.
Q8: Hospitals are getting flooded with emails regarding PPE. Is there a mechanism to address price gouging?
A8: Dennis George of APS said 99% of those solicitations are not real. APS is developing list of approved vendors and will get an updated list to hospitals soon. KHA also has been working with the Attorney General’s office. Please review Attorney General Derek Schmidt’s release on the state price-gouging law now in effect for virus-response supplies... https://ag.ks.gov/media-center/news-releases/2020/03/13/ag-derek-schmidt-state-price-gouging-law-now-in-effect-for-virus-response-supplies

Q9: Numerous hospitals are looking for additional funding.
A9: KHA has scheduled a Webinar on Thursday, April 2, at 10:00, for Hospital CFOs to provide a review of funding sources available during the COVID crisis. Those with specific concerns or thoughts should reach out to Tish Hollingsworth. FEMA and others will be on call.

Q10: Could someone from the Kansas Bankers’ Association be on the call?
A10: KHA is planning to include them. It was suggested that CEOs in small towns should contact their local bank ... they are your best resource for information about SBA.

Q11: Financial and tracking comment ... through emergency operations plan and HICS forms, we are able to do real-time tracking (expenses, cancelled procedures, employee staff time) just a suggestion if you have deployed your hospital emergency plan - there is a mechanism through that for tracking.
A11: Great suggestion.

Q12: Has the three-midnight rule been waived for allowing patients to move to swing bed status? Do we have to file a waiver for each patient?
A12: The Medicare coverage requirement for a 3-day qualifying stay prior to a skilled hospital stay is part of the blanket waiver however, clarification is needed. It appears the waiver includes transfers to a Skilled Nursing Facility (SNF), but does not clarify that it includes transfers to swing beds. Some general interpretation has been received that small rural PPS hospitals (less than 100 beds) could transfer patients to their own swing bed or a CAH swing bed without the 3-day qualifying stay. KHA has reached out to the AHA and the CMS Region 7 Office in Kansas City, but no clarification has been received yet.

Q13: One hospital commented that they submitted a blanket waiver request a few days ago. CMS responded to them and asked them to resubmit to another place. Wanted to let KHA know.
A13: This member is going to forward communication to KHA so we can look into this and follow up.

Q14: What are the qualifications for SBA 7(a) loan?
A14: Fewer than 500 employees. Not for profit entities, sole proprietors. Expanded to include payroll support. Payroll costs March 1 through June 30. Must have been operational on Feb. 15. Make declaration that you have been substantially impacted by COVID-19. There should be additional guidance from federal agencies, especially SBA.

Q15: If CAHs are required to pay employees for 80 hours and then get a loan or tax credit, will there be a reduction at a later date?
A15: No.

THANK YOU
Please continue to share your COVID-19 questions with us by emailing Cindy Samuelson. Our next call will be Tuesday, March 31 at 10:00 a.m. We also encourage our members to join the weekly KDHE calls for providers on Thursdays at 10:00 a.m.