

# What You Need to Know: State and Federal Updates Related to COVID-19

April 03, 2020 || By [R. Neal Martin](#), [Taylor C. Shepherd](#)

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As the coronavirus pandemic spreads across the nation, your team at ML Strategies continues to monitor legislative and regulatory updates at the federal and state level. Each week, ML Strategies will provide weekly updates from Massachusetts and Washington, DC to keep you informed and aware of relief opportunities and guidance for your businesses and companies. If you have any questions, please don't hesitate to reach out to ML Strategies professionals who are closely monitoring developments as they happen.

Please contact our COVID-19 Response Team Leads should you have any questions:

Federal Lead: [Frank C. Guinta](#) - Senior Vice President

Massachusetts Lead: [Steven A. Baddour](#) - Senior Vice President of Government Relations

## FEDERAL UPDATE

### CONGRESS LOOKING AHEAD TO NEXT PHASE OF COVID-19 RESPONSE

On Monday, House Speaker Nancy Pelosi, Majority Whip James Clyburn, Transportation & Infrastructure Committee Chairman Peter DeFazio, and Energy & Commerce Committee Chairman Frank Pallone held a press conference on a House Democratic proposal to go forward with a phase IV COVID package. Speaker Pelosi emphasized infrastructure as the focus of a long-term, 5 year bill. The various House committees are working on the sections of a package that are within their jurisdiction. The phase IV package would cover a broad range of infrastructure initiatives, from health care to transportation to broadband. Reauthorization of the Highway Trust Fund, which traditionally serves as the linchpin for a comprehensive surface transportation bill, would likely be folded into an infrastructure package. Moreover, as reflected in earlier comments by the Speaker, the package could also include numerous spending and regulatory provisions on a host of issues, such as voting, workplace safety, and pensions. Given that House and Senate Republicans have generally expressed skepticism on the urgency of another legislative package, House Democrats are likely going alone on crafting a package. However, President Trump has announced his support for a \$2 trillion infrastructure package, and the partisan dynamics may change.

House Majority Leader Steny Hoyer has told Members to be prepared to return from recess on April 20. However, given current projections on the spread of the coronavirus, sometime in May is likely a more realistic return date. Given that bills can only be dropped when Congress is in session, a formal concrete package for House deliberation will not be available until then, though something more informal – such as a discussion staff draft or a statement of principles – could be circulated earlier.

### SBA PAYCHECK PROTECTION PROGRAM

The Small Business Administration (SBA) began accepting applications on April 3 for the Paycheck Protection Program created by the Coronavirus Aid, Relief and Economic Security (CARES) Act, otherwise referred to as Phase 3 of the federal response to the COVID-19 pandemic. Funded at \$349 billion, the Paycheck Protection Program was created for small businesses with fewer than 500 employees (including sole proprietorships, independent contractors and self-employed persons), private non-profit organization or 501(c)(19) veterans organizations affected by coronavirus/COVID-19. There are certain allowances for businesses with more than 500 employees. Applications can be submitted through any SBA 7(a) lender or federally insured depository institution, federally insured credit union, or participating Farm Credit System institution. Applications will be accepted through June 30, although widespread interest in the program is expected so ML Strategies encourages any business interested in the program to apply as soon as possible. Loans made through the program are eligible for full forgiveness if the funds are used for payroll costs, interest on mortgages, rent, and utilities.

For details on the program, including the application, please click [HERE](#).

## **FEDERAL FUNDING & REGULATORY SUPPORT FOR COVID-19 TREATMENTS**

Billions of dollars of federal funding appropriated for developing COVID-19 medical products (drugs, vaccines, and devices) are being administered through the Biomedical Advanced Research and Development Authority (BARDA). There is a four-step process to request funding and BARDA is generally looking for information to support that a requestor has the capability to manufacture a safe medical product that has a reasonable likelihood of success.

In addition to automobile manufacturers turning to ventilator manufacturing, we are also seeing textile companies look to manufacture personal protective equipment (PPE; e.g., masks and gowns). In the life sciences realm, drug and biologic manufacturers are also considering whether their candidates could be used to treat, mitigate, or prevent some of the effects of COVID-19.

ML Strategies has helped clients shape regulatory and funding submissions and elevated client projects and activities to the highest levels of the federal government, including the White House. In addition to providing funding for trials and medical product manufacturing, the Administration has removed some regulatory barriers to getting products to the market. ML Strategies has been working directly with our contacts at FDA to help them shape policies related to exercising enforcement discretion (i.e., not enforcing certain requirements of the law during the public health emergency) and otherwise adopting more flexible authorization standards for certain products.

## **IRS GUIDANCE ON TAX CREDITS FOR PAID LEAVE**

The IRS has posted an overview and FAQs for the COVID-19-related tax credits for required leave provided by small and mid-sized business in the Families First Coronavirus Response Act (FFCRA) – otherwise referred to as Phase 2 of the federal response to the pandemic. The FFCRA provides these employers refundable tax credits that reimburse them, dollar-for-dollar, for the cost of providing paid sick and family leave wages to their employees for leave related to COVID-19. Please click [HERE](#) to read the overview and FAQs.

## **IRS LAUNCHES EMPLOYEE RETENTION CREDIT**

The CARES Act created the Employee Retention Credit to enable employers to keep their employees on the payroll during the pandemic. The refundable tax credit is 50% of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19. On March 31, the IRS released guidance on eligibility and the process for receiving the credit. Click [HERE](#) for details.

## **TREASURY GUIDANCE ON AIRLINE INDUSTRY LOAN PROGRAM**

The Treasury Department has issued guidance on the CARES Act lending program for air carriers and national security businesses. The bill provided that:

1. up to \$25 billion is available for passenger air carriers; eligible businesses certified to perform inspection, repair, replace, or overhaul services; and ticket agents;
2. up to \$4 billion is available for cargo air carriers; and
3. up to \$17 billion is available for businesses critical to maintaining national security.

With the funds to be quickly subscribed, Treasury advised applicants to submit their completed application materials no later than 5:00 PM on Friday, April 3. Applications submitted after that time will be considered, but Treasury advised they could not guarantee they would be approved as quickly. Applications submitted after April 27 may not be considered, although the Treasury Secretary may exercise discretion in considering late applicants.

Additional details can be found [HERE](#).

ML Strategies expects that the Treasury Department will release guidance on loans for mid-size and large businesses in the coming days.

## **ML STRATEGIES WASHINGTON INSIGHTS ON COVID-19**

Read more of what ML Strategies and Mintz are saying in our COVID-19 Insights Center:

**[What FDA Has Done So Far In Response to COVID-19](#)** – Mintz Member Joanne Hawana, Senior Director of ML Strategies Aaron Josephson, and Mintz Associate Benjamin Zegarelli co-authored **an [article](#)** published in Law360 discussing the latest actions from the U.S. Food and Drug Administration (FDA) in response to COVID-19.

**[Tackling False Claims Being Made for COVID-19 Treatments and Products](#)** – ML Strategies Vice President Christian Tomotsu Fjeld and Senior Director Aaron Josephson join Mintz colleagues in updating on recent developments at the Federal Trade Commission, the Food and Drug Administration, the Department of Health and Human Services, and the Department of Justice related to false or deceptive

claims about their products' ability to treat COVID-19.

#### **UPCOMING WEBINARS**

**Everything Life Science Companies Need to Know to Navigate the COVID-19 Pandemic** – On Tuesday, April 7, ML Strategies and Mintz will host a webinar on a spectrum of issues companies in the life sciences industry are facing during this complicated period. Topics covered will include Employment Law, FDA, Clinical Trials, Capital Markets, and Federal Legislation.

# **MASSACHUSETTS UPDATE**

#### **FEDERAL SUPPORT, PROCUREMENT/DONATION OF PPE & COVID-19 TREATMENT SERVICES**

On Monday, March 30th Governor Baker outlined the major steps Massachusetts is taking to meet the growing needs of the health care community as positive cases continue to rise in the state. As of Monday, the federal government was set to send 1,400 ventilators to the Commonwealth, which is coupled with \$50 million of supplies on order by the Baker Administration for personal protective equipment ("PPE") and other necessary items. In preparation for the anticipated April 7 to April 17 surge, the COVID-19 Response Command Center created a **Command Center Portal** to procure PPE from local manufacturers, as well as accept any donations of supplies hospitals desperately need. From the start of this crisis, Governor Baker has prioritized ensuring the coverage of telehealth services to keep people at home and relieve pressure in already consumed hospitals and urgent care facilities. Residents, however, needed a resource to check symptoms, ask questions and seek assistance. To answer this call, the Baker Administration created an online platform to allow residents to check symptoms and connect to services if needed. The **Buoy** platform is a 24/7 service, free for Massachusetts residents to assist in identifying COVID-19 symptoms and identifying resources and services for concerning cases.

#### **ESSENTIAL PROVIDER RATES ADJUSTMENT**

On Tuesday, March 31st the Executive Office of Health and Human Services ("EOHHS") has been authorized by way of COVID-19 Order No. 20 to adjust essential provider rates during the public health emergency. To do so, EOHHS is tasked with designating classes of human services providers determined to be facing increased demand, those necessary to keep vulnerable individuals in their residences to protect against added pressure on critical health care providers, and human services providers forced to respond to the unique demands of COVID-19, which has precipitated the need to adjust modalities of service deliveries and the rate structures attributed to these new modalities. EOHHS has been authorized to issue temporary rates and supplemental payments, as well as establish new rate and payment methodologies to reflect these new modalities. To read the Governor's order, click [HERE](#).

#### **MASSHEALTH COVERAGE AND ADDITIONAL GUIDANCE**

MassHealth has issued guidance to ensure members understand they will not lose coverage during this public health emergency. All coverage types and health plans are covering COVID-19 testing and treatment for members exhibiting symptoms and in need of services. As previously mentioned, to ease the pressures on hospitals and urgent care facilities, MassHealth is covering telehealth services for physical and behavioral health when appropriate. Additional guidance has been issued for families and children receiving behavioral health services in their homes. Lastly, during this crisis, MassHealth members may receive early refills for medications, 90 day supplies and medication delivery. Additional information relative to MassHealth coverage during the COVID-19 crisis can be found [HERE](#).

#### **MASSACHUSETTS COVID-19 LEGISLATION PENDING**

The Massachusetts Legislature has been very active during this period of uncertainty. Specifically, this week the House and Senate passed House bill 4598 (An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19). Contrary to its title, this bill contains many provisions beyond those that impact municipalities. One provision would allow Massachusetts publicly traded companies to conduct shareholder meetings remotely during the state of emergency, as long as certain conditions are met. Another provision in the bill relates to allowing restaurants to sell beer and wine for off-premises consumption. On Thursday evening, the bill was signed by Governor Baker shortly after being laid before him.

In addition to the bill noted above, there are over 65 bills that have been filed that impact almost every industry sector, including:

- Housing
- Business Relief
- Municipal and Local Government
- Elections
- Unemployment Insurance, Student Loans and Individual Relief
- Public Health

- Education
- Incarceration

Legislative leaders continue to review all legislation that may have a direct and immediate impact on people and businesses in Massachusetts. In addition, the Legislature is grappling with the inevitable downturn in the fiscal health of the state and will be making decisions on how to proceed with formulating the state budget for fiscal year 2021, which begins on July 1, 2020.

Other than the financial realities that will disrupt the normal budget writing process, a challenge exists with regard to how legislators will conduct business if the COVID-19 situation does not quickly improve. There are 200 legislators who, under normal circumstances, gather at the State House to deliberate and vote on important legislation, like the state's budget. But, with social distancing and various orders and advisories in place, it is unlikely that the Legislature will be able to meet in person for many weeks to come. As a result, legislative leaders are considering extending the July 31st deadline for the conclusion of formal sessions. This means that far-reaching and controversial bills will continue to be debated whereas, under the current rules, it would be likely that these onerous bills would all but die on July 31st.

While the uncertainty of the legislative landscape will continue for the foreseeable future, what is certain is that many businesses throughout Massachusetts and beyond will need assistance from the state and federal government. ML Strategies will continue to stay on top of all issues arising from Beacon Hill.

#### **ML STRATEGIES MASSACHUSETTS INSIGHTS ON COVID-19**

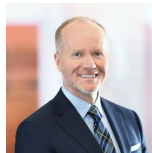
Read more of what ML Strategies and Mintz are saying in our COVID-19 Insights Center:

**UPDATED: Massachusetts Mandates Closure of All Non-Essential Businesses Effective Tuesday, March 24th at Noon** – Here's the ML Strategies team's coverage of COVID-19 Order No. 13 and additional guidance for Massachusetts businesses.

**BREAKING NEWS: Governor Baker Extends Non-Essential Business Closures until Monday, May 4th** – The ML Strategies team outlines the Baker Administration's extension on non-essential business closures, restrictions on gatherings with ten or more people and school and non-emergency childcare programs.

**Massachusetts: Corporate Board of Directors and Shareholders Meetings Changes as a Result of COVID-19** – ML Strategies highlights COVID-19 Order No. 19, which allows publicly traded companies to hold remote shareholder meetings.

#### **Authors**



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As Vice President of Government Relations, Taylor C. Shepherd has extensive experience developing and organizing service teams and strategic plans to help clients achieve their legislative and regulatory goals.