AFSCME Facts

CARES Act – Summary of Provisions Relevant to AFSCME
March 31, 2020

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American Federation of State, County and Municipal Employees, AFL-CIO
1625 L Street, NW, Washington, DC 20036-5687 afscme.org TEL (202) 429-1215 FAX (202) 223-3255

Direct Grants to State and Local Governments

- Provides $150 billion in grants to state, tribal and local governments through a Coronavirus Relief Fund administered by the Treasury Secretary. It supports increased costs due to the pandemic. Unfortunately, funds may not be used to address reduced revenue due to the economic recession. Funds are allocated to each state based on population, and a portion of each state's allocation is reserved for large local governments (over 500,000 in population). For example, California receives $15 billion, of which up to $8.6 billion may go to local governments. New York receives $7.5 billion, with up to $3.4 billion going to large local governments. Pennsylvania receives $5 billion, with up to $2.2 billion for large local governments. A full list of state allocations and local caps is available at https://www.ncsl.org/Portals/1/Documents/statefed/COVID_Relief_Fund.pdf.

Federal Reserve Support for Municipal Bond Liquidity

- Establishes a loan program capitalized by $454 billion for states and municipalities, as well as businesses. In addition, under criteria developed by the Treasury Department and applied by the Federal Reserve Bank, governments and businesses may receive direct loans, the Fed may purchase bonds directly from issuers or in the secondary market and collateralized loans will be available. The $454 billion allocation will be leveraged to provide as much as $4.5 trillion in loans to support liquidity in the public and private sectors. Details on how the various programs under the law will operate should be available soon.

- Directs the Treasury Secretary to "endeavor to implement a program" that provides liquidity to the financial system to support lending to states and municipalities. It is unclear how this program will operate.

Higher Education Provisions

- Allows employers to provide a student loan payment up to $5,250 annually on a tax-free basis. The $5,250 cap covers both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee before Jan. 1, 2021.

- Waives the institutional aid matching requirement for campus-based aid programs. Allows institutions to transfer unused work-study funds to be used for supplemental grants.

- Allows institutions to award additional SEOG funds to students impacted by COVID-19.

- Allows institutions to issue work-study payments to students who are unable to work due to workplace closures as a lump sum or in periodic paychecks.

- Excludes the current term from counting toward lifetime subsidized loan and Pell Grant eligibility for students who dropped out of school as a result of COVID–19.

- Waives the requirement to return Pell Grants or federal student loans to the Education Secretary for students who dropped out of school as a result of COVID–19. The requirement that institutions calculate the amount of grant or loan assistance that it must return to the Education Secretary in the case of students who dropped out of school as a result of COVID-19, is also waived.

- Grades do not affect a student's federal academic requirements to continue to receive Pell Grants or student loans for students who dropped out of school as a result of COVID-19.

- Permits foreign institutions to offer distance learning to U.S. students receiving Title IV funds for the duration of the COVID-19 declaration of disaster.

- Provides the Education Secretary with waiver authority to provide waivers from the Elementary and Secondary Education Act, except civil rights laws, that are necessary and appropriate due to the COVID-19 declaration of disaster.

- Authorizes the Education Secretary to defer payments on current HBCU capital financing loans during the national emergency period so HBCUs can devote financial resources to COVID-19 efforts.

- Requires the Education Secretary to defer student loan payments, principal, and interest for 6 months, through Sept. 30, 2020, without penalty to the borrower for all federally owned loans. This provides relief for over 95 percent of student loan borrowers.

- Authorizes the Education Secretary to waive certain outcome requirements for FY 2021 grant programs for HBCU and other minority serving institutions.

- For teachers not able to finish their year of teaching service as a result of COVID-19, their partial year of service shall be counted as a full year of service toward TEACH grant obligations or Teacher Loan Forgiveness. Waives a requirement that teachers must serve consecutive years of teaching service for Teacher Loan Forgiveness eligibility, if a teacher's service is not consecutive as a result of COVID-19.

Nursing Workforce Development

- Reauthorizes and updates Title VIII of the Public Health Service Act pertaining to nurse workforce training programs.

- Title VIII addresses national nursing needs through supporting training and education of nursing students and professional nurses.

- The CARES Act reduces funding for Title VIII programs from $338,000,000 in appropriation for each fiscal year from 2011 through 2016 to $117,135,000 for each fiscal year from 2021 through 2025.

- Extends the Health Professions Opportunity Grants (HPOG) program through Nov. 30, 2020. The program provides eligible, low-income individuals the opportunity to obtain education and training for well-paid occupations in the health care field where there are expected labor shortages or high demand.

Health Care Facilities

- Appropriates $1.32 billion for detection, prevention, diagnosis, and treatment of COVID-19 in health centers.

- Makes technical corrections to the telehealth network and resource center grant programs, extends one year, adds substance abuse to mental health sections.

- Changes rural health care services outreach, rural health network development, and small health care provider quality improvement grant period from 3 to 5 years; modifies eligible entity receiving grant/funding.

- Makes various technical corrections to Reserve Corps language the United States Public health Service Modernization.

- Sets forth that volunteer health professionals aren't liable for many/most actions of omission or commission while helping with COVID-19 public health emergency.

- Allows HHS Secretary to assign members of Natl. Health Service Corps to alternate locations during emergency.

- Within 180 days of passage, will provide guidance on privacy regulations for protected health data.

- Describes grants for workforce enhancement and training projects related to geriatric healthcare.

Importance of the Blood Supply

- Requires the Health and Human Services Secretary to direct a public awareness campaign to increase blood donations and promote safety of the blood supply.

- Requires the HHS Secretary to consult with other federal health agencies, including FDA, CDC and NIH, on the campaign.

- Requires submission of a report to Senate HELP committee within two years. It must include a description of the campaign, an evaluation of the impact and description of trends in blood supply donation, with specific mention of variations in geography or population.

Older Americans Act Programs

- Waives nutrition requirements for Older Americans Act (OAA) meal programs during the public health emergency related to COVID-19 to ensure seniors can get meals in case certain food options are not available.

- Allows the Secretary of Labor to extend older adults' participation in community service projects under OAA and make administrative adjustments to facilitate their continued employment under the program.

Workforce Response Activities

- Provides local workforce boards with additional flexibility to use funds received under the Workforce Innovation and Opportunity Act (WIOA) for administrative costs, including for online resources. Allows governors to utilize reserved workforce funds on rapid response activities in response to COVID-19.

Temporary Assistance for Needy Families

- Extends TANF and related programs through Nov. 30, 2020.

Graduate Medical Education Programs

- Extends mandatory funding for community health centers, the National Health Service Corps, and the Teaching Health Center Graduate Medical Education Program at current levels through Nov. 30, 2020.

Recovery Rebates for Individuals

- All U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full $1,200 ($2,400 married) rebate. In addition, they are eligible for an additional $500 per dependent child.

- The rebate is reduced for those whose income exceeds the phase-out threshold and is completely phased-out for single filers with incomes exceeding $99,000, $146,500 for head of household filers with one child, and $198,000 for joint filers with no children.

Paid Leave

Limitations on Paid Leave

- Clarifies that an employer's obligation created under the Emergency Family and Medical Leave Expansion Act to provide paid leave for emergency family leave is capped at $200 per day and $10,000 in total for each employee; and that its obligation under the Emergency Paid Sick Leave Act to provide for emergency paid sick leave is capped at $511 per day and $5,110 in total for each employee taking leave for self-care and $200 per day an $2,000 in total for each employee taking leave to care for another individual.

- This is a technical correction to the Families First Coronavirus Response Act (H.R. 6201 enacted on March 18, 2020) and reflects our understanding of Congress's intent in the earlier legislation.

OMB Waiver of Paid Family and Paid Sick Leave

- Amends the Family and Medical Leave Act to give the OMB Director the authority to exclude "for good cause" from the new emergency family and emergency paid sick leave requirements certain categories of executive branch employees. This could be done at the department or agency level. For emergency family leave, this will affect only the relatively small segment of executive branch employees who are potentially eligible for that leave, including those at the Federal Aviation Administration. For emergency paid sick leave, this could affect many executive branch employees since generally all federal employees are eligible for it.

Paid Leave for Rehired Employees

- Amends the FMLA to create a special rule for counting the service time of employees who were laid off on or after March 1, 2020, and later rehired when determining eligibility for emergency family leave. This change creates a more favorable rule for these individuals. Under the general rule, an employee must be on the payroll for 30 calendar days to be eligible. Under this provision, an employee who has been rehired is eligible for this leave if the employee had worked for the employer for not fewer than 30 of the last 60 calendar days prior to the employee's layoff.

Advance Refunding of Credits

- Amends the employer refundable tax credits for the costs of providing required emergency leave to make them advanceable.

Federal Contractors

- Provides authority to federal agencies to reimburse federal contractors (for contracts or other agreements already in effect) for any paid leave, including sick leave, that a contractor provides (through Sept. 30, 2020) to keep its employees or subcontractors in a ready state, including to protect the life and safety of government and contractor personnel. This applies only to a contractor whose employees or subcontractors cannot perform work on a site approved by the federal government, including a federally owned or leased facility or site, due to facility closures or other restrictions, and who cannot telework because their job duties cannot be performed remotely. The maximum payment to a contractor is reduced by the amount of any emergency leave tax credit the contractor receives.

Private Pensions

- Expansion of DOL Authority to Postpone Certain Deadlines—Amends the Employee Retirement Income Security Act (ERISA) to include a public health emergency declared by the Secretary of Health and Human Services in the list of circumstances in which the Secretary of Labor is authorized to postpone statutory deadlines for private-sector pension plans and health and welfare plans to take certain actions, such as filing annual reports with the Department of Labor.

- Delay in Required Contribution for Single-Employer Pension Plans—Postpones until Jan. 1, 2021, the due date for private-sector, single-employer defined benefit pension contributions that are otherwise required to be made during calendar year 2020.

- Employer Flexibility in Applying Funding Related Benefit Restrictions—Allows, but does not require, employers to use a single-employer defined benefit plan's funded ratio for the last plan year ending before Jan. 1, 2020, as the ratio used to determine whether certain benefit restrictions (e.g., freeze in benefit accruals if funded ratio is less than 60%) apply for plan years which include calendar year 2020.

Medicare and Medicaid

Increased Flexibility for Medicare Providers

- Allows physician assistants, nurse practitioners and other professionals to order home health services for Medicare beneficiaries.

- Suspends Medicare rules governing inpatient rehabilitation facilities and long-term care hospitals so that acute care hospitals have greater flexibility to transfer patients out of their facilities and into alternative care settings in order to prioritize resources needed to treat COVID-19 cases.

Extended, Increased or Accelerated Medicare and Medicaid Payments to Providers and Others

- Lifts the Medicare sequester, which reduces payments to providers by 2 percent, from May 1 through Dec. 31, 2020. This has the effect of increasing payments for hospital, physician, nursing home, home health and other care. The Medicare sequester would be extended by one year beyond current law to pay for this change.

- Increases by 20% the Medicare payment that would otherwise be made to a hospital for treating a patient admitted with COVID-19 by 20 percent. This add-on payment will be available through the duration of the COVID-19 emergency period.

- Delays scheduled reductions in Medicaid disproportionate share hospital (DSH) payments through Nov. 30, 2020.

- Extends the Medicaid Community Mental Health Services demonstration that provides coordinated care to patients with mental health and substance use disorders, through Nov. 30, 2020. It would also expand the demonstration to two additional states.

- Prevents scheduled reductions in Medicare payments for durable medical equipment through the duration of the COVID-19 emergency period.

- Prevents scheduled reductions in Medicare payments for clinical diagnostic laboratory tests furnished to beneficiaries in 2021; and delays by one year the upcoming reporting period during which laboratories are required to report private payer data.

- Expands, for the duration of the COVID-19 emergency period, an existing Medicare accelerated payment program. Qualified facilities will be able to request up to a six- month advanced lump sum or periodic payment, based on net reimbursement represented by unbilled discharges or unpaid bills, and would not be required to start paying down the loan for four months, and would also have at least 12 months to complete repayment without a requirement to pay interest.

- Increases payments for the work component of physician fees in areas where labor cost is determined to be lower than the national average, through Dec. 1, 2020.

Medicare and Medicaid Benefits Coverage

- Allows Medicare Part B beneficiaries to receive a COVID-19 vaccine with no cost-sharing (once a vaccine is available).

- Requires Medicare Part D plans to provide up to a 90-day supply of a prescription medication if requested by a beneficiary during the COVID-19 emergency period. This allows a beneficiary to ensure an adequate supply of maintenance drugs in the event access to prescription drugs is disrupted.

- Allows state Medicaid programs to pay for direct support professionals, caregivers trained to help with activities of daily living, to assist disabled individuals in the hospital.

- Amends the Families First Coronavirus Relief Act's requirements related to the 6.2 percentage point increase in FMAP to allow a state to qualify for the increase during the 30-day period beginning on the date of enactment of the CARES Act even if the state still charges a premium during that period.

- Extends the Medicaid spousal impoverishment protections program through Nov. 30, 2020 to help a spouse of an individual who qualifies for nursing home care to live at home in the community.

- Extends the Medicaid Money Follows the Person demonstration that helps patients transition from the nursing home to the home setting through Nov. 30, 2020.

Unemployment Insurance

Accessibility of Applications and Assistance

- Amends the conditions a state must meet to receive its share of the first $500 million in emergency administration grants provided for in the Families First Coronavirus Response Act (H.R. 6201 enacted on March 18, 2020).

- Under the earlier legislation, a state is required to ensure that applications for unemployment compensation, and assistance with the application process, are accessible in at least two of the following ways: in-person, by phone or online. The CARES Act weakens this requirement by requiring accessibility through at least two of these ways only "to the extent practicable."

Pandemic Unemployment Assistance

- Creates a temporary Pandemic Unemployment Assistance program through Dec. 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.

- Paid at one-half of state average benefits plus $600/week.

- Excludes individuals who have the ability to telework with pay, and those receiving sick leave or UI benefits. Such assistance should be either disregarded or treated as "earned income" in means-tested programs, including SSI and SNAP.

Emergency Unemployment Relief for Governmental entities and nonprofit organizations

- This section provides payment to states to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur through Dec. 31, 2020 to pay unemployment benefits.

Emergency Increase in Unemployment Compensation Benefits

- This section provides an additional $600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months (expiring 7/31/2020).

<u>Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week</u>

- Provides funding to pay the cost of the first week of unemployment benefits through Dec. 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.

<u>Emergency State Staffing Flexibility</u>

- Provides states with temporary, limited flexibility to hire temporary staff, rehire former staff, or take other steps to quickly process unemployment claims. "The emergency flexibility for personnel standards on a merit basis shall only apply through Dec. 31, 2020, and is limited to engaging of temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims."

  AFSCME Impact: This appears to eliminate the merit staffing requirement for UI, on a non-competitive basis, only for the new staff required to process new UI applications—and only through Dec. 31, 2020. The "engaging of temporary staff" could mean that states contract these positions to private entities. This will have a negative impact on AFSCME members in UI and ES positions and UI applicants and beneficiaries. We will have to stay in close contact with affiliates on how the relaxing of merit standards is affecting AFSCME members in UI and ES positions.

<u>Pandemic Emergency Unemployment Compensation</u>

- Provides an additional 13 weeks of unemployment benefits through Dec. 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.

<u>Short-time Compensation</u>

- Provides funding to support "short-time compensation" (i.e., workshare) programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs employers incur in providing this short-time compensation through Dec. 31, 2020.

- Provides funding to support states which begin "short-time compensation" programs. This provision would pay 50 percent of the costs that a state incurs in providing short-time compensation through Dec. 31, 2020.

- Provides $100 million in grants to states that enact "short-time compensation" programs to help them implement and administer these programs.

- Requires the Department of Labor to disseminate model legislative language to states, provide technical assistance, and establish reporting requirements related to "short-time compensation" programs.

Inspector General Funding for Oversight of Unemployment Provisions

- Provides the Department of Labor's Inspector General with $25 million to carry out audits, investigations, and other oversight of the provisions of this subtitle.

COVID-19 Testing, Pharmaceuticals and Protective Equipment

- No patient cost for COVID-19 testing.

- For this COVID-19 testing - requires an insurer to pay either the rate specified in a contract between the provider and the insurer, or, if there is no contract, a cash price posted on the internet by the provider.

- No patient cost for COVID-19 vaccine within 15 days of vaccine gaining recommended status.

- Allows a HDHP with an HSA to cover telehealth services prior to a patient reaching the deductible.

- Allows patients to use funds in HSAs and FSAs for the purchase of OTC medical products, including those needed in quarantine and social distancing, without a prescription from a physician.

- Prior Medicare telehealth requirement that physician/other professional had treated patient in last 3 years is eliminated (during the COVID-19 emergency period) providing beneficiaries broader access to telehealth.

- Allows, during the COVID-19 emergency period, Federally Qualified Health Centers and Rural Health Clinics to serve as a distant site for telehealth consultations so they can provide telehealth services to beneficiaries in their home. Medicare would reimburse for these telehealth services based on payment rates similar to the national average payment rates for comparable telehealth services under the Medicare Physician Fee Schedule. It would also exclude the costs associated with these services from both the FQHC prospective payment system and the RHC all-inclusive rate calculation.

- Eliminates a requirement (during the COVID-19 emergency period) that a nephrologist conduct some of the required periodic evaluations of a patient on home dialysis face-to-face, allowing more care in the safety of their home.

- Allows (during the COVID-19 emergency period) qualified providers to use telehealth technologies in order to fulfill the hospice face-to-face recertification requirement (this is not currently allowed).

- Requires HHS to issue clarifying guidance encouraging the use of telecommunications systems, including remote patient monitoring, to furnish home health services consistent with the beneficiary care plan during the COVID-19 emergency period.

- Clarifies that an OTC drug that does not comply with the monograph requirements is misbranded.

- Clarifies that nothing in this bill applies to drugs previously excluded by the FDA from the Over-the-Counter Drug Review under a specified Federal Register document.

- Establishes a new FDA user fee to allow the agency to hire additional staff members to ensure there is adequate agency oversight to approve changes to OTC drugs.

- Provides permanent liability protection for manufacturers of personal respiratory protective equipment to incentivize production and distribution.

- Requires the FDA to prioritize and expedite the review of drug applications and inspections to prevent or mitigate a drug shortage.

- Requires drug manufacturers to submit more information when there is an interruption in supply when active pharmaceutical ingredients are the cause of the interruption, maintain contingency plans to ensure back up supply of products, and requires manufacturers to provide information about drug volume.

- Clarifies a medical device manufacturer is required to submit information about a device shortage or device component shortage upon request of the FDA.

Foreclosure Moratorium

- Prohibits foreclosures on all federally backed mortgage loans for a 60-day period beginning on March 18, 2020.

- Allows borrowers with federally backed mortgage loans experiencing financial hardship due, directly or indirectly, to the COVID-19 emergency, to request for forbearance on federally backed mortgage loans, regardless of delinquency status, for up to 180 days.

Eviction Moratorium

- For 120 days beginning on the date of enactment, prohibits landlords, whose mortgage on that property is insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994, from initiating legal action to recover possession of a rental unit or to charge late fees, penalties, or other charges to tenants related to nonpayment of rent.

Special Rules for Use of Retirement Funds

- Waives the 10-percent early withdrawal penalty for distributions up to $100,000 from qualified retirement accounts for coronavirus-related purposes made on or after Jan. 1, 2020.

- Income attributable to those distributions is subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions.

- Provides flexibility for loans from certain retirement plans for coronavirus-related relief.

- Waives required minimum distribution rules for certain defined contribution plans and IRAs for 2020.

- Provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

Safeguards on Bailouts for Corporations

- Bans stock buybacks and dividends for the term of the federal government assistance to corporations plus 1 year on any company receiving a government loan from the bill.

- Establishes robust worker protections attached to all federal loans for businesses, including a ban on outsourcing or offshoring of jobs and abrogating of collective bargaining agreements.

- In an important precedent, medium sized businesses (500 to 10,000 workers) who receive loans must commit to organizing neutrality for the life of the loan and cannot abrogate collective bargaining agreements.

- Executives at companies receiving direct loans cannot receive pay increases during the term of the loan if their pay exceeds $425,000 per year. If an executive's pay last year exceeded $3 million, it must be cut halfway to $3 million from last year's level.