



# Behavioral Health Association of Providers

NATIONAL

MEMBERSHIP

EDUCATION

ADVOCACY

[www.bhap.us](http://www.bhap.us)



WALTER BOONE

wboone@balch.com

(601)965-8179

balch.com/wboone

---

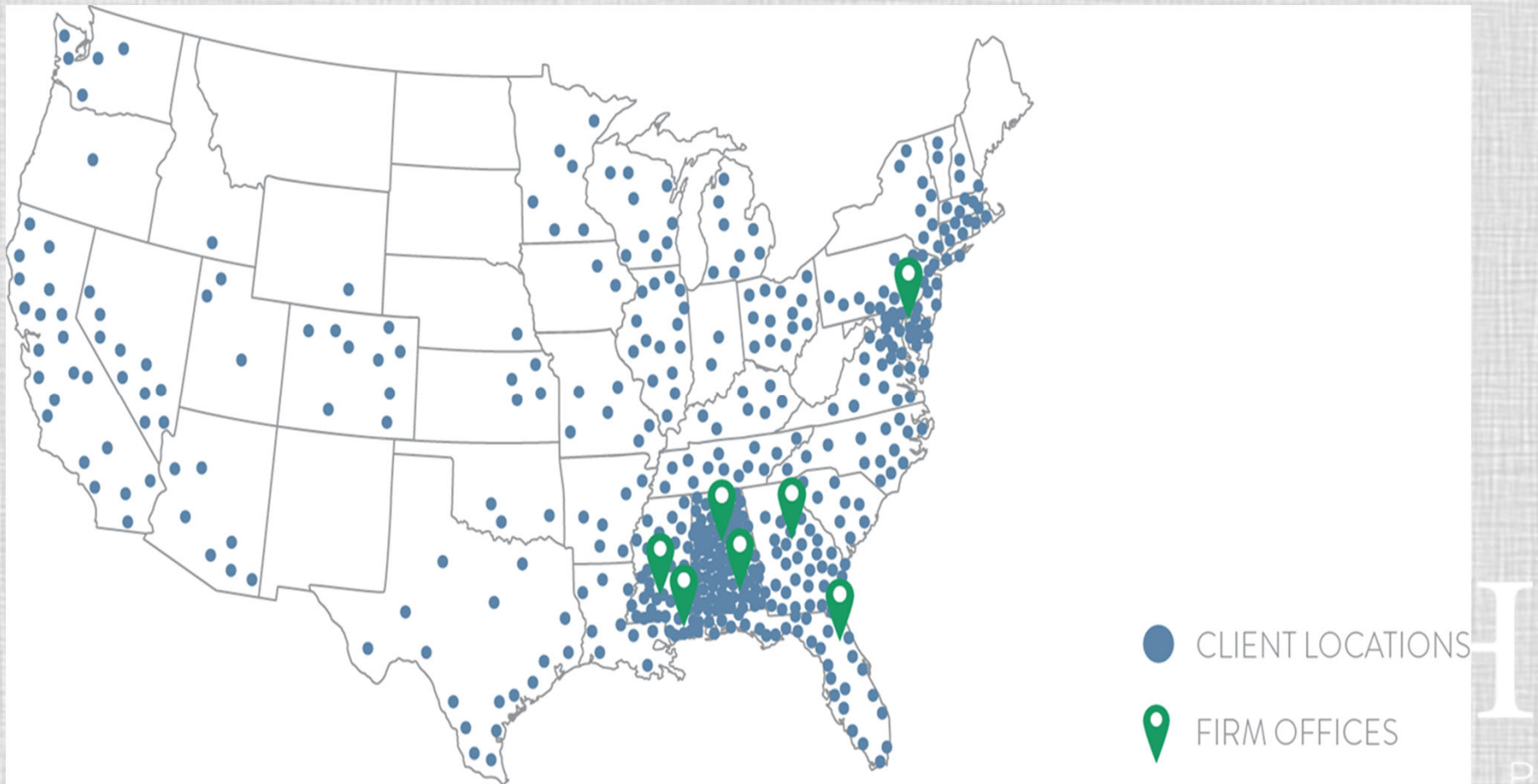
## Impact of COVID-19 on Behavioral Health Industry: News and Views You Can Use

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC

# BALCH & BINGHAM LLP

---



ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC

**YOU**

risk

risk

risk

risk

risk

risk

risk

risk

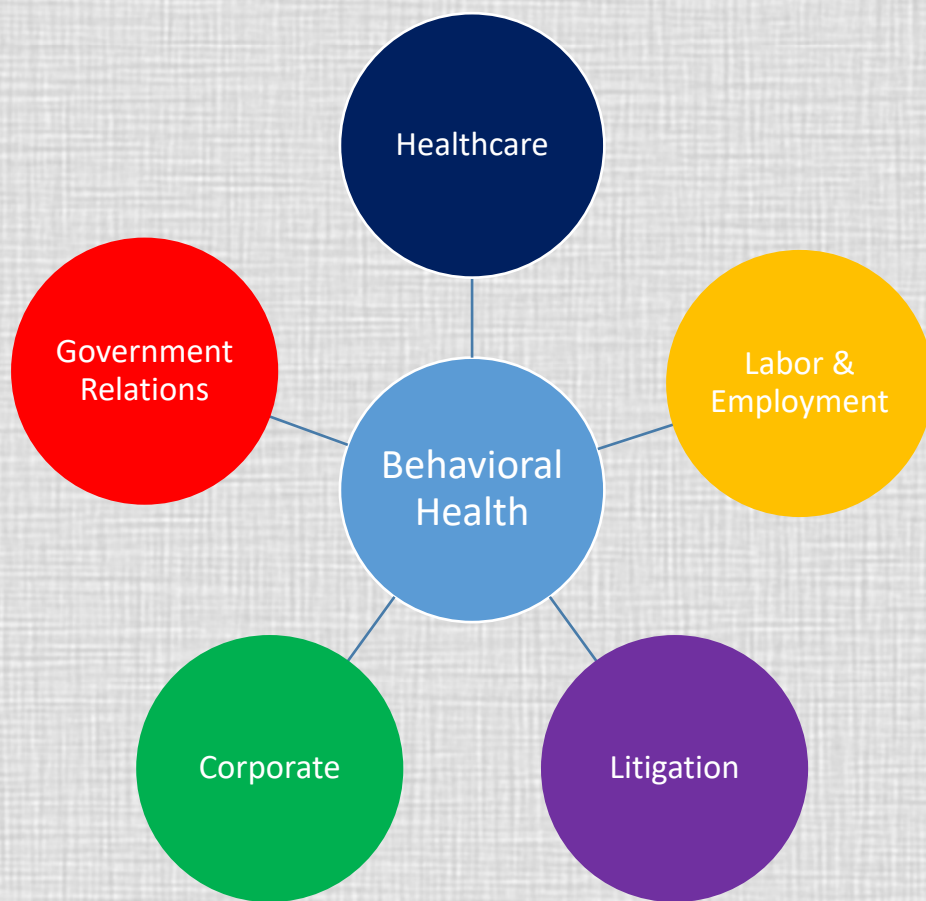
risk

risk

risk

risk





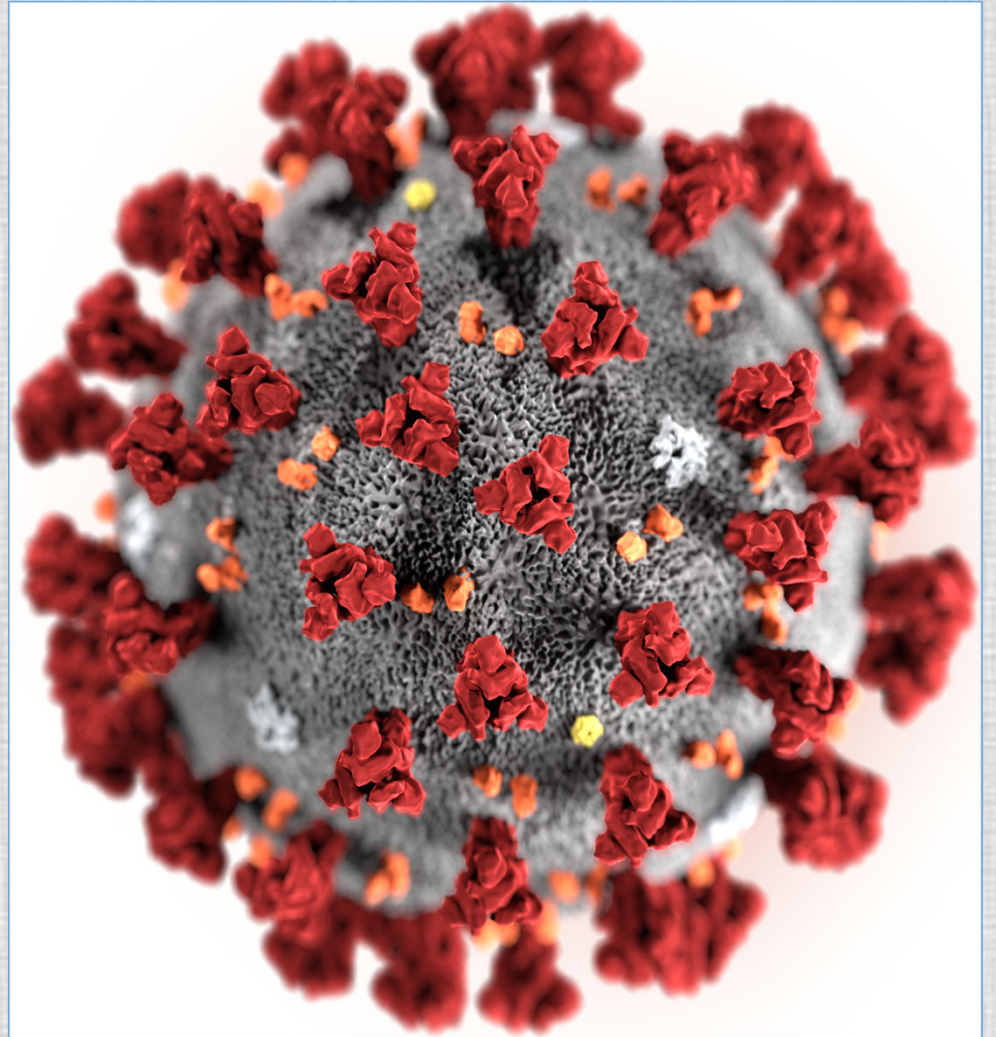
BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC

---

## Impact of COVID-19:

- As a healthcare provider
- As a behavioral healthcare provider
- As an employer
- As a business
- As a citizen





## STAY UP TO DATE WITH BALCH & BINGHAM LLP

---

Balch's COVID-19 Focus Group is available to support the immediate and long-term needs of businesses, as COVID-19 impacts workforces, companies and communities.

<https://www.balch.com/services/practices/covid-19-focus-group>.

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC

## PROGRAM TODAY

---

- **Second Coronavirus Response Act: What You Need to Know as an Employer**
- **Current State of Telehealth Regulations and Requirements**
- **Business Interruption Insurance Claims**
- **Businesses in Crisis: Practical Steps You Can Take Now**
- **Phase 3 Stimulus Package: Current Update and Answers**

**BALCH**  
& BINGHAM LLP



## THE NOT-SO-FINE PRINT

---

- Information, not legal advice.
- Things are changing rapidly.
- State by state variations may be significant.
- These issues are complex – our presentation is a summary.

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC



PEPPER CRUTCHER

[pcrutcher@balch.com](mailto:pcrutcher@balch.com)

(601)965-8158

[balch.com/pcrutcher](http://balch.com/pcrutcher)

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC



## The Second Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. 116-127: Employer Obligations and Opportunities

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC



## THE EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS ACT OF 2020

---

- To get part of the new federal funds, beginning mid-May, states must:
  - Require employers to give UC availability notices at termination;
  - Waive work requirements;
  - Waive the waiting week;
  - Non-charge employers for claims due to workplace illness or quarantine/isolation orders.
- To get full federal funding of Short-Time Compensation programs through Dec. 31, states without programs must enact them.

# THE EMERGENCY FMLA EXPANSION ACT

---

- 4/1/20 – 12/31/20
- Employers of 50 to 500
- Employees on payroll at least 30 days (not laid off; not a health care provider or first responder)
- “unable to work (or telework) due to a need for leave to care for the son or daughter under 18 ... if the school or place of care has been closed, or if the child care provider ... is unavailable, due to a public health emergency.”

BALCH  
& BINGHAM LLP



## FMLA “HEALTH CARE PROVIDER”

---

- M.D. or D.O
- Podiatrist
- Dentist
- Clinical Psychologist
- Optometrist
- Chiropractor
- Nurse Practitioner
- Nurse Midwife
- Clinical Social Worker
- Physician Assistant
- Any other person from whom the employer’s group health plan would accept a medical certification

BALCH  
& BINGHAM LLP



## FMLA EXPANSION ACT

---

- 1<sup>st</sup> 10 days unpaid
- 2/3 of regular rate of pay thereafter, up to the lesser of FMLA maximum or \$200/day and \$10k total.
- For employees on varying schedules, average the prior 6 months.
- Not expressly integrated with new paid sick leave benefit.
- FICA tax credit capped at \$200/day and \$10k total.

BALCH  
& BINGHAM LLP

# THE EMERGENCY PAID SICK LEAVE ACT

---

- 4/1/20 – 12/31/20 (DOL will not enforce for first 30 days)
- All government employers + private employers <500
- All FLSA employees
- Full-time get 80 hours of paid sick leave; part-time get % based on avg. of “a two-week period.”
- A new hire’s reasonable expectation at time of hire governs (put it in writing).
- Caps: \$511/day, \$5,110 total for reasons 1-3; \$200 daily, \$2,000 for reasons 4-6 (2/3 rate).

BALCH  
& BINGHAM LLP



## SIX NEW FMLA REASONS

---

1. Fed, state or local isolation or quarantine *order*;
2. Health care provider advice to self-quarantine;
3. COVID-19 symptoms + seeking diagnosis;
4. Caring for another covered by reason 1 or 2;
5. Caring for employee's own son or daughter due to closure of school or daycare or child care provider unavailability (same as expanded FMLA)
6. Any similar condition identified in DOL/HHS/IRS rules.

BALCH  
& BINGHAM LLP



## DOL DOUBLE-DIP GUIDANCE (3/24)

---

**If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?**

You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive 2/3 of your regular rate of pay for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.

Please note that you can only receive the additional ten weeks of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act for leave to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

BAIGH  
& BINGHAM LLP

## EARLY TAX CREDIT GUIDANCE (3/20)

---

- *Federal* income, Soc. Sec. and Medicare payroll taxes (both employee and employer shares)
- Employer retains the credit amount deducted from employee pay.
- If short of the required sick leave paid, file a “request for accelerated payment” with the IRS (2 weeks or less, IRS says).
  - Example 1: \$8k payroll taxes owed and \$5k sick leave paid; retain \$5k and remit \$3k.
  - Example 2: \$8k payroll taxes owed but \$10k sick leave paid; retain the \$8k and file claim for \$2k.





BEA TOLSDORF

[btolsdorf@balch.com](mailto:btolsdorf@balch.com)

(601)965-8168

[balch.com/btolsdorf](http://balch.com/btolsdorf)

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC





## Providing Telehealth Services During COVID-19



ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC

## WHAT IS TELEHEALTH?

---

- The definition of “Telehealth” varies from state to state, but generally speaking, Telehealth means the provision of certain health care services by a physician or other practitioner, through the use of an authorized telecommunications system, to an individual that is not in the same location as the physician or practitioner.

BALCH  
& BINGHAM LLP



# COVID-19 AND TELEHEALTH

---

- On March 6, 2020, the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 was signed in to law.  
<https://www.congress.gov/116/bills/hr6074/BILLS-116hr6074enr.pdf>
- This Act authorized the Secretary for Health and Human Services to temporarily waive certain Telehealth requirements for Medicare Beneficiaries during the COVID-19 health crisis.
- On March 17, 2020, CMS announced the expansion of Telehealth services.  
<https://www.cms.gov/newsroom/press-releases/president-trump-expands-telehealth-benefits-medicare-beneficiaries-during-covid-19-outbreak>



- 
- Removal of geographical limitations with regard to location of the beneficiaries
    - Beneficiaries may utilize Telehealth Services at their home.
    - Beneficiaries do not have to be located in a rural area.
  - An audio and video telecommunications systems permitting real-time communications must be used; however, the waiver authorizes the use of telephones with these capabilities.
  - FAQs regarding the Telehealth waiver are addressed at <https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>

# WHAT ABOUT HIPAA?

---

- Telecommunications systems used to conduct Telehealth services are required to be HIPAA compliant.
- However, the Office of Civil Rights at HHS has announced that in light of the health emergency associated with COVID-19, it will “exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with good faith provision of Telehealth during the COVID-19 nationwide public health emergency.”
- <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html#.XnjSYre7paZ.mailto>
- This does not impact the other aspects of HIPAA and the confidentiality of patient records.

BATCH  
& BINGHAM LLP



# WHAT ABOUT STATE TELEHEALTH REQUIREMENTS?

---

- How each state regulates and reimburses for Telehealth Services depends on the laws, rules, and regulations applicable in that state.
- Where to start looking for state specific rules related to Telehealth:
  - The state medical licensure board
  - The state Medicaid office
  - The State Department of Health/Mental Health
  - The state Department of Insurance or other regulator of insurance.
  - Directly with private insurance plans

BALCH  
& BINGHAM LLP



# CALIFORNIA

---

- On March 18, 2020, California's Department of Managed Health Care required that insurance plans reimburse for Telehealth services in the same way as if the service had been provided in person.

[http://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-009%20\(OPL\)%20-%20Reimbursement%20for%20Telehealth%20Services%20\(3 18 20\).pdf?ver=2020-03-18-105612-547](http://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-009%20(OPL)%20-%20Reimbursement%20for%20Telehealth%20Services%20(3%2018%2020).pdf?ver=2020-03-18-105612-547)

- The same requirement applies to California Medi-Cal managed care plans. <https://www.dhcs.ca.gov/Documents/COVID-19/APL19-009-Supplement-Telehealth-031820.pdf>

<https://www.dhcs.ca.gov/Documents/COVID-19/APL19-009-Supplement-Telehealth-031820.pdf>

## FLORIDA

---

- On March 16, 2020, the Florida Department of Health issued Emergency Order 20-002 related to COVID-19.
- Among other things, this Order authorized healthcare professionals not licensed in Florida can provide Telehealth services in Florida for a thirty day period.
- <http://www.flhealthsource.gov/pdf/emergencyorder-20-002.pdf>

BALCH  
& BINGHAM LLP





**STEVEN CORHERN**

[scorhern@balch.com](mailto:scorhern@balch.com)

(205)226-8765

[balch.com/scorhern](http://balch.com/scorhern)

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC





## Business Interruption Insurance

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC

# BUSINESS INTERRUPTION INSURANCE

---

## Types of Business Interruption Coverage

- Standard Business Interruption
- Contingent Business Interruption / Supply Chain Disruption
- Event Cancellation Coverage

Other coverages you should be thinking about:

- Worker's Compensation
- General Liability

BALCH  
& BINGHAM LLP



# BUSINESS INTERRUPTION INSURANCE

---

FIRST RULE: READ YOUR POLICY!

SECOND RULE: EACH STATE IS DIFFERENT

## TYPICAL TRIGGERS FOR COVERAGE

- “Direct Physical Loss” to property
- Order of Civil Authority
- Ingress / Egress

BALCH  
& BINGHAM LLP



# BUSINESS INTERRUPTION INSURANCE

---

## TYPICAL BARRIERS TO COVERAGE:

- Loss to Covered Property – “direct physical loss”
  - Is Contamination Enough?
  - Can contamination be easily remedied?
- Covered Cause of Loss
- Suspension of Operations
  - Partial vs. Complete Cessation
- Virus Exclusion
- Pollution Exclusion

BALCH  
& BINGHAM LLP

# BUSINESS INTERRUPTION INSURANCE

---

## EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY

- A.** The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B.** We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.  
However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- C.** With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".
- D.** The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
  - 1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
  - 2. Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- E.** The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.



# BUSINESS INTERRUPTION INSURANCE

---

I think I might have a claim, what should I do:

- Notify your insurance carrier ASAP
  - Your Broker should assist you in filing a claim
- Document everything
  - Ask your broker for any templates they might have for documenting losses
  - Example: <https://epicbrokers.com/wp-content/uploads/2020/03/COVID-19-EPIC-Procor-Event-Template.xlsx>
- Mitigate your losses to the extent possible

BALCH  
& BINGHAM LLP

# BUSINESS INTERRUPTION INSURANCE

---

## Things you should document:

- Contamination Clean-up
- Any additional expenses related to your shut down
- Lost revenue or business
- Inventory lost or spoiled
- Payroll
- Any additional expenses incurred

BALCH  
& BINGHAM LLP



## POSSIBLE LEGISLATIVE ACTIONS

---

### New Jersey

- Considering bill to require insurers to cover any business interruption losses caused by COVID-19.
- Insurers could apply for reimbursement from the New Jersey DOI but then DOI would charge back total costs to insurers

BALCH  
& BINGHAM LLP

# POSSIBLE LEGISLATIVE ACTIONS

---

## Congressional Interest

- Bipartisan group of Representatives sent letter to insurers asking them to cover COVID-19 losses.
- The American Property Casualty Insurance Association, National Association of Mutual Insurance Companies, Independent Insurance Agents and Brokers of America, and Council of Insurance Agents and Brokers responded saying:

Business interruption policies “do not, and were not designed to, provide coverage against communicable diseases such as COVID-19.”



## CONCLUSION

---

1. Read your policy
2. Talk to your Broker
3. Check the law in your state
4. DO NOT GIVE UP!

BALCH  
& BINGHAM LLP



JEREMY RETHERFORD

[jretherford@balch.com](mailto:jretherford@balch.com)

(205)226-3479

[balch.com/jretherford](http://balch.com/jretherford)

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC





Businesses in Crisis: Practical Steps You Can Take Now.



ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC

BUSINESS IN CRISIS: PRACTICAL STEPS YOU CAN TAKE NOW.

---

**DON'T PANIC!!!!!!**

BALCH  
& BINGHAM LLP



## BUSINESS IN CRISIS: PRACTICAL STEPS YOU CAN TAKE NOW.

---

- Assess your cash situation.
- Cut expenses where you can.
- Prioritize your payments.
- Consider a sale of assets

BALCH  
& BINGHAM LLP

## BUSINESS IN CRISIS: PRACTICAL STEPS YOU CAN TAKE NOW

---

- Communicate with your creditors.
- Know what payment deferment options exist.
- Understand the implications of a deferment.
- Consider a refinance.

BALCH  
& BINGHAM LLP



## BUSINESS IN CRISIS: PRACTICAL STEPS YOU CAN TAKE NOW

---

- Respect corporate formalities.
- Handle bonuses and distributions carefully.
- Intercompany transfers must be properly documented.

BALCH  
& BINGHAM LLP

## BUSINESS IN CRISIS: PRACTICAL STEPS YOU CAN TAKE NOW

---

- Bankruptcy Considerations:
  - Chapter 7 vs. Chapter 11
  - The automatic stay
  - The Chapter 7 Trustee
  - The Chapter 11 Plan
  - Preferences
  - Fraudulent Transfers

BALCH  
& BINGHAM LLP





**CONRAD ANDERSON**

[canderson@balch.com](mailto:canderson@balch.com)

(205)226-3415

[balch.com/canderson](http://balch.com/canderson)

**BALCH**  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC



# Coronavirus Aid, Relief, and Economic Security (CARES) Act



ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC



## “THE LARGEST RESCUE PACKAGE IN AMERICAN HISTORY”

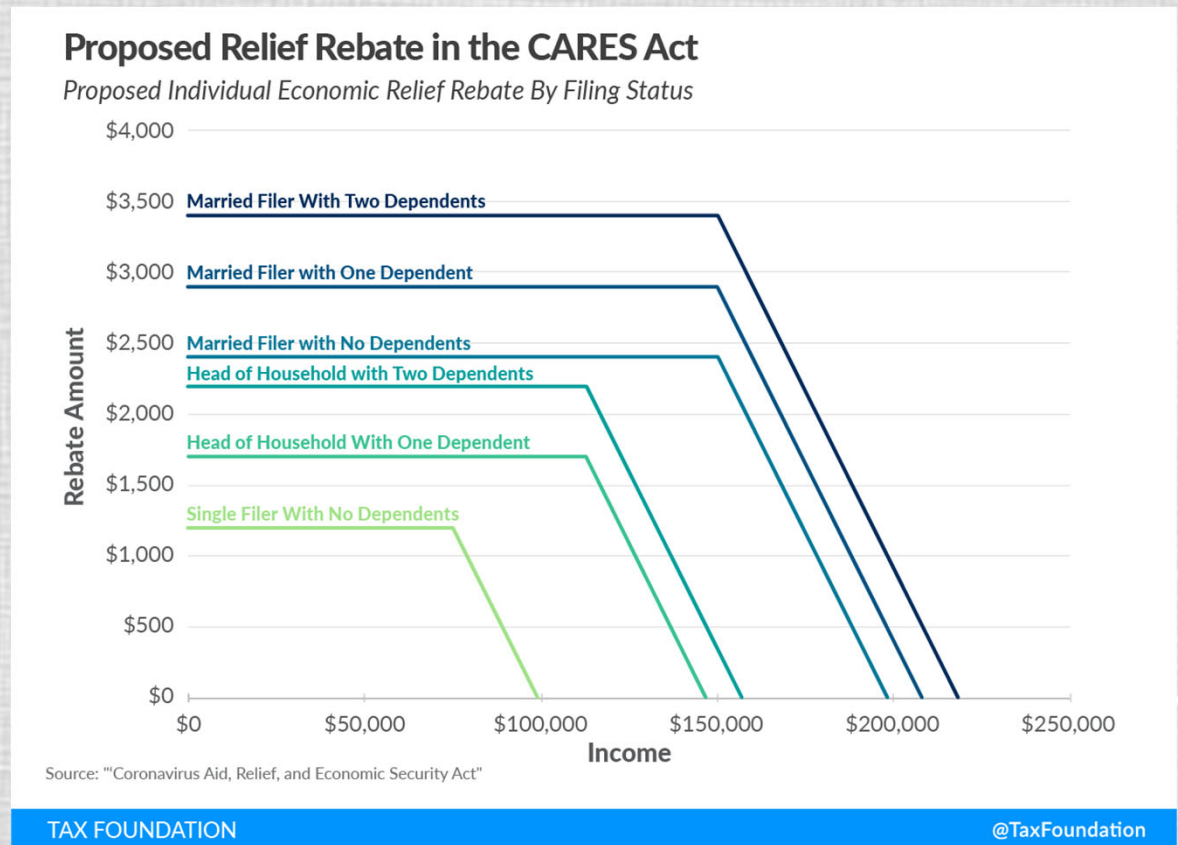
---

- \$250 billion → direct payments
- \$250 billion → supplemental unemployment benefits
- \$350 billion → small business loans
- \$500 billion → Treasury Department for loans, loan guarantees and investments
- \$100 billion → hospitals
- \$240 billion → health-care relief
  - Group health plans and insurance providers must cover without cost-sharing any coronavirus preventive services
- \$150 billion → state and local governments

BALCH  
& BINGHAM LLP

# CASH PAYMENTS TO INDIVIDUALS

- Up to \$1,200 for individuals, \$2,400 for married couples and \$500 per child
- Phased out at \$75,000/\$150,000



& BINGHAM LLP

<https://files.taxfoundation.org/20200322190526/REVISED.png>



## SMALL BUSINESS LOANS

---

**\$350 billion**

- Quick + Easy Loans
- 2 and ½ months of payroll
- Forgivable if used to cover payroll, interest on debt, rent or utilities

BALCH  
& BINGHAM LLP

## GENERAL LOAN PROGRAM

---

**\$500 billion** (Treasury Dept)

- No stock buy backs
- Limitations on executive bonuses
- Oversight, reporting and accountability
- Not available to businesses controlled by the President, Vice President, Members of Congress, and heads of Executive Departments

BALCH  
& BINGHAM LLP



## HEALTHCARE

---

- More than **\$150 billion** for the healthcare system (health care providers, community health centers, and hospitals) including:
  - Funding for hospitals,
  - Research,
  - Treatment, and
  - Strategic National Stockpile to raise supplies of ventilators, masks and other equipment

BALCH  
& BINGHAM LLP

## HEALTHCARE FUNDING - BROKEN DOWN

---

- **\$100 billion:** direct aid to hospitals, public entities, nonprofits, and Medicare and Medicaid enrolled suppliers and institutional providers
- **\$16 billion:** replenish the Strategic National Stockpile supplies of pharmaceuticals, personal protective equipment and other medical supplies
- **\$3.5 billion:** Biomedical Advanced Research and Development Authority

BALCH  
& BINGHAM LLP



## HEALTHCARE FUNDING - BROKEN DOWN

---

- **\$4.3 billion** to support federal, state and local public health agencies to prevent, prepare for and respond to the coronavirus
- **\$1 billion** to bolster domestic supply chains, enabling industry to quickly ramp up production of personal protective equipment, ventilators and other urgently needed medical supplies
- **\$250 million** to expand the Hospital Preparedness Program's support of emergency preparedness

BALCH  
& BINGHAM LLP

## MENTAL HEALTH FUNDS

---

- **\$425 million** to increase access to mental health services in communities
  - **\$250 million** to Certified Community Health Clinics (increase access to mental health care services)
  - **\$50 million** to suicide prevention
  - **\$100 million** to SAMHSA Emergency Response Grants (flexible funding to address mental health, substance use disorders, and provide resources and support to youth and the homeless during the pandemic)

BALCH  
& BINGHAM LLP



# UNEMPLOYMENT

---

**\$250 billion**

- +\$600/week for 4 months
- +13 weeks extended benefits
- Waiting weeks waived
- Independent contractors & gig economy workers

BALCH  
& BINGHAM LLP

## BALCH COVID-19 FOCUS GROUP

---

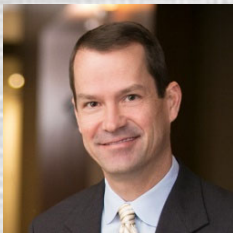
Balch's COVID-19 Focus Group is available to support the immediate and long-term needs of businesses, as COVID-19 impacts workforces, companies and communities.

<https://www.balch.com/services/practices/covid-19-focus-group>.

BALCH  
& BINGHAM LLP

ALABAMA • FLORIDA • GEORGIA • MISSISSIPPI • TEXAS • WASHINGTON DC





**WALTER BOONE**  
wboone@balch.com  
(601)965-8179  
balch.com/wboone



**CONRAD ANDERSON**  
canderson@balch.com  
(205)226-3415  
balch.com/canderson



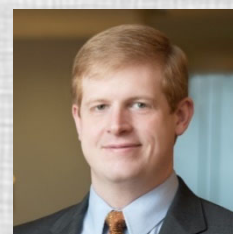
**PEPPER CRUTCHER**  
pcrutcher@balch.com  
(601)965-8158  
balch.com/pcrutcher



**JEREMY RETHERFORD**  
jretherford@balch.com  
(205)226-3479  
balch.com/jretherford



**BEA TOLSDORF**  
btolsdorf@balch.com  
(601)965-8168  
balch.com/btolsdorf



**STEVEN CORHERN**  
scorhern@balch.com  
(205)226-8765  
balch.com/scorhern

CH  
& BINGHAM LLP