

May 12, 2020

House Democrats Unveil \$3 Trillion COVID-19 Relief Package

House expects to vote on Friday; Senate not expected to take it up in its current form

House Democrats today unveiled the [Health and Economic Recovery Omnibus Emergency Solutions \(HEROES\) Act](#) – a \$3 trillion COVID-19 relief package. The House is expected to vote on the bill on Friday, and the Senate is not expected to take up the bill in its current form.

Among other provisions in the more than 1,800-page bill are:

- Nearly \$1 trillion for states and local governments to respond to COVID-19;
- \$175 billion for the Public Health and Social Services Emergency Fund. Specifically, \$100 billion would be for hospital and health care providers to be reimbursed for health care related expenses or lost revenue directly attributable to the public health emergency, and \$75 billion to bolster testing and contact tracing efforts; and
- Numerous changes to Medicare, Medicaid and other health programs.

Highlights of the provisions important to hospitals and health systems follow.

Key Takeaways

Among other health care-related provisions, the package would:

- Increase the amount of funding available to providers through the Public Health and Social Services Emergency Fund and establish a new distribution methodology.
- Modify the terms of the accelerated and advanced payments available through the Medicare program.
- Eliminate cost-sharing for COVID-19 treatment in most forms of health care coverage.
- Temporarily increase funding to states by increasing their Federal Medical Assistance Percentage (FMAP) by 14%, and Medicaid disproportionate share hospital (DSH) allotments by 2.5%.
- Take a number of steps to increase COVID-19 testing capabilities.
- Provide additional resources for front-line workers, including through access to bonus pay and child care.
- Expand and extend certain paid sick and medical leave provisions.
- Expand access to certain loans available through the Main Street Lending Program to nonprofits, as well making some of those loans eligible for forgiveness.

HIGHLIGHTS OF PROVISIONS RELEVANT TO HOSPITALS & HEALTH SYSTEMS

Public Health and Social Services Emergency Fund. The bill would increase the fund by \$175 billion. From the fund, it would provide \$100 billion, plus any unobligated funds from the Health Care Provider Relief Fund, for the Department of Health and Human Services (HHS) Secretary to reimburse providers for eligible expenses or lost revenues due to COVID-19 based on an application process on a quarterly basis. Providers would be reimbursed an amount equal to 100% of their expenses and 60% of their lost revenue, less any funds received under the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, or the Paycheck Protection Program and Health Care Enhancement Act. Lost revenue would be calculated as net patient revenue in 2019 less net patient revenue for the corresponding quarter in 2020, less any savings attributable to foregone wages, payroll taxes and benefits of personnel who were furloughed or laid off by the provider during the same quarter. The law defines net patient revenue as equal to two times the provider's Medicaid reimbursement, plus 1.25 times their Medicare reimbursement, plus all other reimbursement. As a condition of receiving these funds, providers may not balance bill either insured or uninsured individuals. In the case that funds are not sufficient to reimburse health care providers for all expenses and lost revenues claimed during a quarter, the law directs the HHS Secretary to prioritize expenses and reduce the percentage of lost revenues that are reimbursed.

Medicare COVID-19 Reimbursement and Financing Provisions. The bill would modify certain parameters of the Medicare accelerated and advanced payment programs, including providing repayment terms such as a 1% interest rate, rather than the current rate of approximately 10%. It also would increase inpatient prospective payment system (IPPS) outlier payments for patients diagnosed with COVID-19.

Medicaid. The legislation includes a number of Medicaid provisions. It would increase each states' FMAP, or the federal share of Medicaid payments, by a total of 14 percentage points starting July 1, 2020 through June 30, 2021. From July 1, 2021 through the end of the public health emergency, FMAP would revert to the 6.2 percentage point increase implemented under the Families First Coronavirus Response Act. It also would temporarily increase Medicaid DSH allotments by 2.5%. The legislation would prevent the HHS Secretary from finalizing the Medicaid Fiscal Accountability Regulation (MFAR) until the end of the public health emergency and prohibit the promulgation of rules similar to MFAR during the emergency period. Other Medicaid provisions include a time-limited increase in the state FMAPs for activities to strengthen the home and community based services (HCBS) program, automatic extension of section 1115 waivers that expire on or before Feb. 28, 2021 to Dec. 31, 2021, and expansion of Medicaid eligibility to incarcerated individuals 30 days prior to their release.

Skilled Nursing Facilities (SNFs) and Nursing Homes. The legislation includes several provisions that would impact SNFs and nursing homes. It would require that SNFs provide a means for residents to conduct "televisitation" with loved ones while in person visits are not possible during the COVID-19 public health emergency. It also would provide a per diem increase for SNFs that establish themselves as COVID-19

treatment centers, including criteria for patient safety and quality protections. The draft legislation also would direct HHS to allocate money to the states to create strike teams to help nursing homes and SNFs manage outbreaks when they occur, and provide additional funding to Medicare's Quality Improvement Organizations to support long-term care facilities struggling with infection control. Finally, it would require HHS to collect data on COVID-19 cases in nursing homes and to publicly report demographic data on COVID-19 cases in nursing homes on CMS's webpage, Nursing Home Compare.

Private Insurance Provisions. The bill contains a number of provisions related to private health insurance coverage, including nine months of full premium subsidies for COBRA coverage, following layoffs, furloughs or hour reductions. The bill also would establish an eight week Special Enrollment Period for the individual health insurance exchanges and appropriates \$25 million for outreach and enrollment activities.

Patient Cost-sharing for COVID-19 Treatment. The bill would disallow cost-sharing for COVID-19 treatment in nearly all forms of coverage, including Medicaid; Medicare Parts A, B, D, as well as Medicare Advantage, Tricare, Veterans Affairs coverage, the Federal Employee Health Benefits Program, and group and individual market plans.

Public Health Provisions and COVID-19 Testing. Title V of the legislation includes important public health provisions including improvements in the supply chain, the Strategic National Stockpile, and testing and testing infrastructure. Further, this title includes a COVID-19 National Testing and Contact Tracing (CONTACT) Initiative, as well as provisions on demographic data and supply reporting related to COVID-19.

With respect to testing, it would provide \$7.6 billion to the Health Resources and Services Administration (HRSA) so that it can increase testing, triage and care at the 1,000 health centers around the country that are serving the underserved. It also would provide \$75 billion to the Centers for Disease Control and Prevention (CDC) for testing and contact tracing. This money would be distributed to state and local public health entities so that they can test, trace, monitor and suppress COVID-19 waves. The draft bill also would require that the CDC update the national testing strategy by June 15 and provide more detail in the strategy than is currently available, including the types of tests to be used and benchmarks and timelines for achieving various benchmarks in testing. It also would require more public information on testing, including a listing of approved tests and facts about those tests and how they should be used; information from states on the testing they have authorized; and approved testing sites. Finally, it calls on CDC to provide guidance and technical assistance on testing and to conduct research in collaboration with the National Institutes of Health to identify the best testing methods.

Health Care Heroes. The legislation includes a number of provisions targeted at front-line workers. It would increase the Social Services Block Grant allotment to states for child care to \$12.15 billion, with \$850 million allocated specifically to essential workers and provide payroll tax credits for certain pandemic-related employee benefit expenses paid by employers. In addition, it would provide nearly \$200 billion for a fund to make certain payments to essential workers and their families, including COVID-19 "bonus payments" of between \$5,000 and \$10,000, which could be converted to a death benefit for surviving family. The legislation identifies a number employees who would be eligible for these payments, including health care workers in inpatient and outpatient

facilities, as well as grocery store workers, warehouse employees, taxi cab drivers, food production workers, journalists, and others. As part of the legislation, \$180 billion of the fund would be directed to states, tribal governments, and private employers; an additional \$10 billion would be available for federal employees.

COVID-19 Every Worker Protection Act of 2020. The legislation would require, within seven days of enactment of the Act, that the Secretary of Labor, in consultation with CDC, National Institute for Occupational Safety and Health (NIOSH), professional associations and representatives of employees in health care, emergency medical system, and other first responders, to develop an emergency temporary standard on occupational exposure to the virus that causes COVID-19. The temporary standard would remain in effect until a final permanent standard was in place. The Occupational Safety and Health Administration (OSHA) would have two years to develop the permanent standard.

Both the temporary and permanent standards would:

- Require health care, EMS and other first responder employers and other applicable employers to develop a comprehensive infectious disease exposure control plan, with the input and involvement of employees or representatives of employees, to address the risk of occupational exposure.
- Record and report each work-related COVID-19 infection and death.
- Provide protection for novel pathogens that is no less than the precautions mandated by an OSHA approved state plan.
- Incorporate, as appropriate, (1) the guidelines issued by CDC, NIOSH and OSHA designed to prevent transmission of infectious agents in health care and other occupational settings and (2) Relevant scientific research on novel pathogens.

Both the temporary and permanent standard requires employers to adopt a policy prohibiting discrimination and retaliation. The Secretary of Labor would have enforcement discretion if employer compliance with the standard is not feasible, as long as the employer can demonstrate that they exercised due diligence to comply and is implementing alternative employee protection methods/measures.

Medical School Grants. The bill would authorize \$1 billion to HRSA for grants to institutions of higher education for establishment, improvement or expansion of medical schools in underserved areas.

Behavioral Health Care. The legislation includes provisions to increase research of the impact of COVID-19 on behavioral health, including the impact on health care providers. It also would provide grants to help address substance use disorder and behavioral health needs due to the COVID-19 crisis, as well as provide technical assistance to entities looking to provide access to such services.

Health Care Broadband. The legislation would authorize \$2 billion for a temporary expansion of the Federal Communications Commission's (FCC's) Rural Health Care Program to partially subsidize eligible health care providers' broadband service. This provision also increases the broadband subsidy rate from 65% to 85%. In addition, it

would provide \$9 billion to the FCC to reimburse internet service providers for discounts (\$50 or a \$75 benefit on tribal lands) they would be required to provide to eligible households in which a family member has been laid off or furloughed due to the COVID-19 emergency.

Paid Sick and Medical Leave. The legislation would expand the types of employees eligible for the new paid sick leave and expand Family and Medical Leave Act benefits to part-time workers and those who have worked a minimum of 90 days, as well as extend those benefits through 2021, along with the corresponding payroll tax credits for employers. It also would expand employer eligibility for these credits to federal, state, and local governments. However, it would eliminate the provisions in the Families First Coronavirus Response Act that allowed employers of health care providers and emergency responders the ability to exclude their employees from paid leave and would invalidate regulations issued by the Department of Labor that exempted health care providers and emergency responders from access to paid leave.

Paycheck Protection Program (PPP), the Main Street Lending Program, and Debt Collection. The legislation would extend the covered period for the PPP, explicitly make eligible critical access hospitals regardless of bankruptcy status, and waive the affiliation rules for any nonprofit. It also would expand the Main Street Lending Program to nonprofits, and would offer loan forgiveness for nonprofits predominantly serving low-income communities and that were ineligible for a PPP loan. Finally, it would restrict debt collection for small businesses and nonprofits during the public health emergency and for 120 days after.

Other Financial Resources for Employers. To help employers with various costs, the legislation would provide a payroll tax credit for certain fixed expenses, such as rent or mortgages, for qualifying employers with fewer than 1,500 full-time equivalent employees. It also would allow employers to both have a PPP loan forgiven and defer the employer portion of the FICA payroll taxes.

Consumer Protections. For the duration of the public health emergency and for 120 days after, the bill would suspend negative consumer credit reporting and establish a temporary moratorium on consumer debt collection during public health emergency plus 120 days. It also would permanently ban reporting of medical debt arising out of COVID-19 treatments to credit agencies and prohibit price gouging.

FURTHER QUESTIONS

If you have questions, please contact AHA at 800-424-4301.