

September 29, 2020

## House Democrats Unveil Updated COVID-19 Relief Package

House Democrats last night unveiled a new version of the [Health and Economic Recovery Omnibus Emergency Solutions](#) (HEROES) Act – a \$2.2 trillion COVID-19 relief package. The House voted on the original HEROES Act in May, which included a number of provisions that would directly affect health care providers. A vote has not yet been scheduled in the House, but could come this week. The Senate is not expected to take action.

With respect to health care, the **original** HEROES Act would have, among other things:

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

The original legislation **did not** include a number of provisions important to hospitals and health systems, such as liability protections and more extensive provisions to support front-line health care workers. [A more detailed summary of the original legislation can be found here.](#)

The bill released yesterday retains a number of these provisions – some with changes – and eliminates others. Highlights of the provisions that were changed or removed and that are important to hospitals and health systems follow.

## HIGHLIGHTS OF SIGNIFICANT CHANGES RELEVANT TO HOSPITALS AND HEALTH SYSTEMS

**Public Health and Social Services Emergency Fund.** The bill would increase the fund by \$50 billion, whereas the original legislation included an additional \$100 billion for the fund. It would provide this \$50 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 eligible to be reimbursed up to 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. However, if a provider did not lose at least 10% of their lost revenue under this definition, they would not be eligible for any lost revenue 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 does not include changes to the Medicare accelerated and advanced payment programs that were included in the original legislation. These changes would have provided more favorable repayment terms.

**Medicaid.** The legislation no longer includes a provision from the original bill that 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. The Centers for Medicare & Medicaid Services Administrator has stated publicly that the agency is withdrawing this rule from the regulatory agenda.

**COVID-19 Every Worker Protection Act of 2020.** The updated legislation would build on the earlier provision that would implement both an emergency temporary standard as well as, ultimately, a permanent standard on occupational exposure to the virus that causes COVID-19. The original legislation laid out a number of requirements for these standards, including that impacted employers develop a comprehensive infectious disease exposure control plan 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 Occupational Safety and

Health Administration (OSHA)-approved state plan; and incorporate, as appropriate, (1) the guidelines issued by the Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (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.

The revised legislation adds additional requirements that would need to be met, expands the type of employers that would need to comply with the standards, and increases the employer reporting requirements. For example, impacted employers would now need to, among other requirements, conduct a hazard assessment to assess risks of occupational exposure to COVID-19; implement employee training on the new standards; have procedures in place to sanitize work environments and screen employees for COVID-19; maintain a COVID-19 employee infection log; notify employees and health departments of infections within 24 hours; and report to OSHA outbreaks of three or more confirmed COVID-19 diagnoses in the workplace.

The revised legislation also now includes a preemption provision, which would preempt the OSHA standard for any state/local law that provides equal or greater protection. In other words, any state or local provision that provides equal or greater protection for an employee is not considered inconsistent and not be preempted. Any such requirement would remain in effect under this bill.

**Health Care Coverage.** The bill contains a number of the same provisions intended to expand access to comprehensive health care coverage, such as opening new special enrollment periods for the Health Insurance Marketplaces. One significant change from the earlier version is that this legislation replaces COBRA subsidies for individuals losing their job-based coverage with subsidies for coverage through the Marketplaces. The bill also would increase the amount dedicated to outreach and enrollment assistance over what was in the previous version to \$200 million per year for three years (\$100 million per year for outreach and education grants to states and \$100 million per year for navigator enrollment grants).

**Health Care Heroes.** The legislation does not include all of the provisions targeted at front-line workers included in the previous version of the bill. While the bill does include several different child care-related provisions and funding for personal protective equipment to help essential workers, it does not include the COVID-19 “bonus payments” for certain essential workers of between \$5,000 and \$10,000, which could have been converted to a death benefit for surviving family.

**Paid Sick and Medical Leave.** This version of the HEREOS Act builds on changes to the paid sick and medical leave provisions that were included in the earlier version of the bill. The earlier version would have expanded the types of employees eligible for the new paid and medical leave and eliminated the ability of the Department of Labor to allow exemptions of certain health care providers and emergency responders. The updated version of the legislation also expands on which employers must offer the leave. Specifically, it removes the 500-employee eligibility threshold. In other words, employers with more than 500 employees would be required to provide these paid sick and medical leave benefits. However, most non-governmental employers with more than

500 employees would not be eligible for federal tax credits to offset the cost of this leave. The legislation also would extend these provisions through the end of February 2021, as opposed to the current end date of Dec. 31, 2020.

**Skilled Nursing Facilities (SNFs) and Nursing Homes.** The legislation includes, with modifications, several provisions that would impact SNFs and nursing homes. It would provide funding to additional Medicare Quality Improvement Organizations' support for long-term care facilities struggling with infection control. In addition, the bill would require HHS to, within 15 days of the law's enactment, establish an online portal for hospitals and long-term care (LTC) facilities to track and transmit data regarding their COVID-19-related inventory and capacity (such as key clinical personnel). Also, the Secretaries of HHS and Labor would receive \$14 million for fiscal year 2021 grants to LTC facilities for the training of direct care employees and funds to help offset the cost of certified electronic health records technology. Finally, it would require HHS to collect and publicly report COVID-19 demographic data on CMS's Nursing Home Compare webpage.

**Medical School Grants.** The bill would does not include the earlier provision that would have provided \$1 billion to the Health Resources and Services Administration (HRSA) for grants to institutions of higher education for establishment, improvement or expansion of medical schools in underserved areas.

## **FURTHER QUESTIONS**

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