



Health Policy Briefing

August 3, 2020

Senate GOP Releases COVID Proposal

Last week, Senate Republicans introduced a series of bills that comprise the latest pandemic relief plan known as the **Health, Economic Assistance, Liability Protection and Schools (HEALS) Act**. While the \$1 trillion stimulus package was drafted through negotiations between Senate Republicans and the White House, internal disagreements remain about the total scope of additional federal spending.

The legislation includes \$306 billion in emergency coronavirus relief funding, with \$16 billion in grants to states for testing, contact tracing, and surveillance and \$20 billion for vaccine, therapeutic, and diagnostic development. It would establish state stockpiles of medical products and items needed during a public health emergency with technical assistance provided by the federal government. HEALS also includes \$53 million for the Cybersecurity and Infrastructure Security Agency (CISA) to protect federal networks engaged in COVID-19 vaccine research and development against hackers. The legislation would create tax credits to incentivize domestic manufacturing of personal protective equipment (PPE), with the goal of reaching 100 percent domestic sourcing within five years.

It would also establish a congressional review board to examine the long-term solvency of the Medicare trust fund. The board would be tasked with drafting bipartisan legislation to restore trust fund solvency, with the bill receiving fast-track consideration in each chamber. The HEALS Act would extend and make changes to the Paycheck Protection Program (PPP), adding \$60 billion for small business loans. Businesses with fewer than 300 people would be permitted to apply for a second PPP loan if they can show revenue losses of 50 percent or more since the pandemic began. The HEALS Act

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includes a second tranche of stimulus payments to individuals which would be structured in the same way as the previous payments distributed in March. The plan would cut enhanced unemployment aid to \$200 a week – down from the \$600 a week that expired on July 31. The HEALS Act also includes the liability protections championed by Majority Leader Mitch McConnell (R-Ky.). The bill would shield entities from COVID-19-related lawsuits through October 1, 2024 as long as they make “reasonable” efforts to follow public health guidelines and do not commit acts of “gross negligence” or “intentional misconduct.” Medical liability claims that arise from virus-related care would be moved to federal courts. In negotiating with congressional Democrats, McConnell has stated his insistence that the liability changes be included wholesale in the next aid package.

While Democrats are demanding significantly more funding than was included in the HEALS Act, there has also been some intra-party push back against the package from certain Senate Republicans who have signaled that they will not support the plan because of concerns about deficit spending. Negotiations on the next broad pandemic relief package continued over the weekend but remain stalled as lawmakers of each party blame each other for failing to bridge the differences between the HEALS Act and House Democrats’ \$3.5 trillion Heroes Act, which was passed two-months ago. The main points of contention remain the liability shield provisions, extension of supplemental unemployment payments, and the level of aid to state and local governments. The two sides were unable to reach an agreement on a short-term extension of the enhanced \$600-a-week supplemental unemployment benefit and the moratorium on evictions, which expired as of Friday. McConnell has moved to force debate this week on a clean, temporary extension of unemployment insurance, but Democratic leadership have said they will only support a short-term extension if agreement on a comprehensive package appears imminent. House Speaker Nancy Pelosi (D-Calif.) has promised that Congress will not adjourn for August recess without a deal.

House Passes Second FY21 Minibus

The House of Representatives passed, by a vote of 217-197, its second appropriations minibus (H.R. 7617) last week. The \$1.3 trillion package would fund Defense, Commerce, Justice, Science, Energy and Water Development, Financial Services and General Government, Homeland Security, Labor, Health and Human Services, Education, Transportation, Housing, and Urban Development for fiscal year 2021 (FY21). The bill includes \$210 billion in emergency funding to respond to the coronavirus pandemic, and lawmakers adopted an amendment that would require several federal agencies to establish and keep up to date a list of 300 to 400 medications necessary during a public health emergency. The GOP-controlled Senate is not expected to consider the legislation, which has received a veto threat from President Trump. The White House’s veto statement cites a provision in the bill that would prohibit the administration from enforcing a conscience rule permitting health care providers to refuse care because of religious or moral objections.

HHS Surprise Medical Billing Report Calls for Passage of Legislative Fix

The U.S. Department of Health and Human Services (HHS) released a [report](#) last week calling on lawmakers to pass legislation to address surprise medical billing. The report describes the issue of surprise billing and the actions that have been taken by the administration to increase price transparency, but does not recommend whether a fix should use independent dispute resolution (IDR) or set a payment rate to settle out-of-network billing disputes between providers and payers. HHS has said that the three main surprise billing proposals being debated in Congress would meet their criteria of protecting patients from out-of-network charges from providers not chosen by the patient. White House officials have stated their support for the inclusion of a surprise billing measure in the next coronavirus response package. No such provision is included in the latest Senate GOP proposal or in the House Heroes Act. Following the release of the HHS report, bipartisan leadership of the House Energy and Commerce Committee, House Education and Labor Committee, and Senate Health, Education, Labor, and Pensions (HELP) Committee released joint statements endorsing quick passage of a surprise billing fix. Sens. Bill Cassidy (R-La.), Maggie Hassan (D-N.H.), and Michael Bennet (D-Colo.), who previously introduced the ***STOP Surprise Medical Bills Act***, have also echoed their support for inclusion of a fix in the next COVID response bill.

House of Representatives Institutes Mask Mandate

The House of Representatives has moved to impose a mask mandate following the news that Rep. Louie Gohmert (R-Texas) tested positive for COVID-19. The directive was issued by House Speaker Nancy Pelosi (D-Calif.) on Wednesday and will require that any person entering the House office buildings or the Hall of the House in the Capitol wear a face covering. Exceptions are permitted for children age two or under, persons with disabilities preventing the wearing of a mask, or someone eating or giving a speech. Gohmert has questioned the need for face coverings and has been seen on the Hill without a mask in recent weeks. After coming in contact with Gohmert, Rep. Kay Granger (R-Texas) is self-quarantining, Rep. Raul Grijalva (D-Arizona) has tested positive for the virus, and Attorney General William Barr is getting tested. At least 81 front-line workers in the Capitol complex have tested positive since the start of the pandemic, and a longtime staff member for Rep. Vern Buchanan (R-Fla.) died last week from COVID-19. House Majority Leader Steny Hoyer (D-Md.) has [written](#) to the Director of the Office of Employee Assistance (OEA) asking if it has sufficient resources to meet the increased demand for staff counseling stemming from the current stressful working conditions. Majority Leader Mitch McConnell (R-Ky.) has stated that a mask mandate is not necessary in the Senate because all members are already wearing face coverings.

Lawmakers Probe Remdesivir Price, Government Contributions

House Oversight and Reform Committee Chair Carolyn Maloney (D-N.Y.) and Sen. Debbie Stabenow (D-Mich.) have [written](#) to the Government Accountability Office (GAO) requesting information about the discovery and development of the COVID-19 treatment remdesivir. The drug, which is made by Gilead, will cost government programs \$390 per vial. The lawmakers ask that GAO investigate what legal rights federal agencies have related to their spending on and contributions to the discovery and development of remdesivir because of its high price tag.

Two House Panels Investigate Change to COVID-19 Data Reporting

House Ways and Means Committee Chair Richard Neal (D-Mass.) has sent a [letter](#) to U.S. Department of Health and Human Services (HHS) Secretary Alex Azar requesting information about the department's decision to change the reporting process for COVID-19 data previously submitted to the Centers for Disease Control and Prevention (CDC). New guidance from HHS directs COVID-19 data to now be reported to a database administered by a private contractor, TeleTracking, as well as state websites and electronic health record (EHR) portals. Neal asks for details on the type of training or outreach provided to hospitals given the short five days' notice of the change in reporting protocol and how HHS is working to ensure no gaps in reporting. House Select Subcommittee on the Coronavirus Chair Jim Clyburn (D-S.C.) sent a related [letter](#) to the CEO of TeleTracking last week, asking the company to explain how it won its contract and to provide more details about its relationship with the administration. Earlier this month, a [letter](#) to the Coronavirus Task Force leadership was sent by more than 100 public health, science, research and medical organizations urging that the administration reverse its decision.

Democrats Request Additional Community Health Center Support

A group of 50 congressional Democrats and Independents have sent a [letter](#) to the Trump administration asking for additional support for community health centers to counter the impact of the COVID-19 pandemic on providers caring for underserved communities. The letter, which was led by Rep. Ayanna Pressley (D-Mass.) and Sens. Elizabeth Warren (D-Mass.) and Bernie Sanders (I-Vt.), notes that community health centers have received a total of \$2 billion from Congress to support COVID-19 testing and treatment but have not received a specific allocation from the Provider Relief Fund. The lawmakers also express support for including funding for health centers in the next coronavirus stimulus bill.

Provider Relief Fund Deadlines Extended

The CARES Act Provider Relief Fund has provided funding to assist providers who have increased expenses or revenue losses due to the COVID-19 pandemic. On Friday, the U.S. Department of Health and Human Services (HHS) [announced](#) the extension of key deadlines for the Fund. Specifically, Medicaid, CHIP, and dental providers, who previously had until August 3 to apply, now have an application deadline of August 28. In addition, starting the week of August 10, providers who previously missed the June 3 deadline for applying for the additional \$20 billion distribution from the General Distribution can once again apply, with an application deadline of August 28. Finally, for providers who had a change of ownership such that they did not have tax documents for 2019 but have provided care to a potential COVID-19 case since the start of the public health emergency, those providers will also be eligible to apply for funding starting the week of August 10, with a deadline for the application of August 28. HHS also noted in its announcement that additional providers slated to receive funds include those that “may only bill commercially, or do not directly bill for the services they provide under the Medicare and Medicaid programs and thus did not receive any funding yet.”

HHS Clarifies Audit Requirements for the CARES Act Provider Relief Fund

In implementing the CARES Act Provider Relief Fund, the U.S. Department of Health and Human Services (HHS) has clarified key policies in a series of frequently asked questions ([FAQs](#)). Recently, HHS updated its FAQs to provide clarity regarding the audit requirements for certain entities who received funds under the program.

In June 2020, the American Institute of Certified Public Accountant’s Governmental Audit Quality Center (GAQC) issued a document to summarize how Uniform Guidance applies (“Single Audit” or other audit requirements) to new federal programs established due to the COVID-19 pandemic (the [Summary](#)). In recent updates to the FAQs, HHS has clarified the application of the Single Audit for the Provider Relief Fund payments. Specifically, HHS notes that for all entities other than commercial, for-profit entities, the Single Audit applies if the entity otherwise **expends \$750,000 or more in federal awards**. For the commercial, for-profit entities, the entity has two options – (1) Single Audit; or (2) “a financial audit conducted in accordance with Generally Accepted Government Auditing Standards (45 CFR 75.216).”

In general, the objectives of a financial audit conducted in accordance with Generally Accepted Government Auditing Standards are to provide an opinion on whether an entity’s financial statements are presented fairly and to report on the adequacy of internal controls. Single Audits have additional objectives, including a determination that the auditee has complied with federal statutes, regulations, and terms and conditions of federal awards.

In reviewing the audit processes, if a provider is subject to the requirements, it would be best to consult with an accountant about whether the audit should be limited to entity that received the funds or encompass the entire organization (i.e., parent and subsidiaries), given that the Provider Relief Fund FAQs are not clear on that matter.

CMS Announces the Creation of New COVID Treatment Codes, Payment for Counseling

The Centers for Medicare and Medicaid Services (CMS) [announced](#) the creation of new procedure codes to allow the Medicare program and other insurers to track the use of remdesivir and convalescent plasma for treating COVID-19. The new codes will go into effect August 1 and will enable real-time surveillance on the effectiveness of the therapies. CMS also [announced](#) that reimbursement is now available for health care providers who counsel their patients on isolation, quarantine, and contact tracing when testing for COVID-19. Providers who already bill CMS for counseling services are eligible for the new payments and will use existing payment codes to bill for the services.

Medicare's 55th Anniversary

Last Thursday marked the 55th anniversary of the Medicare and Medicaid programs being signed into law by President Lyndon Johnson. Democrats marked the occasion by calling attention to their efforts to continue expanding and securing access to high-quality and affordable health care. In a [post](#) on Medium, Democratic presidential candidate Joe Biden stated “It is our charge to further the underlying promise of Medicare and Medicaid by ensuring that health care is a right for all Americans...If I have the honor of becoming President, I look forward to fulfilling that promise — and to fighting to protect and expand Medicare and Medicaid for the next generation, and those to come.”

Hart Health Strategies COVID-19 Resources

Hart Health Strategies Inc. continues to update the following resources related to the coronavirus pandemic. Please remember to clear your cache to ensure you download the most recent documents.

- [COVID-19 Testing](#)
- [Disaster Primer](#)
- [Federal Relief Overview](#)
- [Health Care Workers on the Front Lines](#)
- [Hospice and Palliative Care](#)
- [Nursing Resources](#)
- [Personal Protective Equipment](#)
- [Physician Provisions](#)
- [Re-Opening America](#)
- [Small Business Resources](#)
- [Small Business - Paycheck Protection Program](#)
- [Small Business – PPP FAQ](#)
- [State Resources](#)
- [Tax Provisions](#)
- [Telehealth Overview](#)
- [Timeline for Implementation](#)

Recently Introduced Health Legislation

H.R.7776 — *To permit child care providers that receive payment for services provided under the of the Child Care and Development Block Grant Act of 1990 to use a portion of such payment to purchase mental health supports necessary to protect the health of participating children and child care workers; Sponsor: Rep. Horn, Kendra S. [D-OK-5]; Committees: House - Education and Labor*

H.R.7777 — *To provide automatic forgiveness for paycheck protection program loans under \$150,000, and for other purposes; Sponsor: Rep. Houlahan, Chrissy [D-PA-6]; Committees: House - Small Business*

H.R.7780 — *To authorize the Secretary of Health and Human Services, acting through the Director of the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration, to award grants to facilitate the funding of community-based mental health and substance use disorder services and peer support programs, and for other purposes; Sponsor: Rep. Kennedy, Joseph P., III [D-MA-4]; Committees: House - Energy and Commerce*

H.R.7783 — *To amend the CARES Act to expand a national awareness and outreach campaign to address the importance and safety of plasma donation, and for other purposes; Sponsor: Rep. Peters, Scott H. [D-CA-52]; Committees: House - Energy and Commerce*

H.R.7791 — To direct the Secretary of Health and Human Services to revise certain regulations in relation to the Medicare shared savings program and other advanced alternative payment arrangements to encourage participation in such program, and for other purposes; Sponsor: Rep. Welch, Peter [D-VT-At Large]; Committees: House - Ways and Means; Energy and Commerce

H.R.7801 — To direct the Secretary of Health and Human Services to award grants to State, local, and Tribal public health departments to train and equip Federal public health reserve corps personnel to assist with testing, contact tracing, and treatment of COVID-19, and for other purposes; Sponsor: Rep. Fudge, Marcia L. [D-OH-11]; Committees: House - Transportation and Infrastructure; Energy and Commerce; Education and Labor; Armed Services

S.4317 — A bill to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits relating to COVID-19 while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief; Sponsor: Sen. Cornyn, John [R-TX]; Committees: Senate - Judiciary

S.4318 — A bill to provide assistance to American workers, families, and employers during the COVID-19 pandemic; Sponsor: Sen. Grassley, Chuck [R-IA]; Committees: Senate - Finance

S.4320 — A bill making emergency supplemental appropriations for the fiscal year ending September 30, 2020, and for other purposes; Sponsor: Sen. Shelby, Richard C. [R-AL]; Committees: Senate - Appropriations

S.4321 — A bill to establish the Paycheck Protection Program Second Draw Loan and amend 7(a) loan guaranty program for recovery sector business concerns, and for other purposes; Sponsor: Sen. Rubio, Marco [R-FL]; Committees: Senate - Small Business and Entrepreneurship

S.4322 — A bill to help Americans safely get back to school and back to work, and for other purposes; Sponsor: Sen. Alexander, Lamar [R-TN]; Committees: Senate - Health, Education, Labor, and Pensions

S.4324 — A bill to facilitate the availability, development, and production of domestic resources to meet national personal protective equipment and material needs, and ensure American leadership in advanced research and development and semiconductor manufacturing; Sponsor: Sen. Graham, Lindsey [R-SC]; Committees: Senate - Finance

S.4329 — A bill to provide premium assistance for COBRA continuation coverage, church plan continuation coverage, and furloughed continuation coverage for individuals and their families; Sponsor: Sen. McSally, Martha [R-AZ]; Committees: Senate - Finance

S.Res.662 — A resolution supporting the goals and ideals of National Public Health Week; Sponsor: Sen. Udall, Tom [D-NM]; Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Voice Vote.

S.4334 — A bill to amend title 10, United States Code, to improve the process by which a member of the Armed Forces may be referred for a mental health evaluation; Sponsor: Sen. McSally, Martha [R-AZ]; Committees: Senate - Armed Services

S.4339 — A bill to provide, manufacture, and distribute high quality face masks for every individual in the United States during the COVID-19 emergency using the Defense Production Act and other means; Sponsor: Sen. Sanders, Bernard [I-VT]; Committees: Senate - Homeland Security and Governmental Affairs

S.4343 — A bill to direct the Government Accountability Office to evaluate appropriate coverage of assistive technologies provided to patients who experience amputation or live with limb difference; Sponsor: Sen. Blackburn, Marsha [R-TN]; Committees: Senate - Health, Education, Labor, and Pensions

S.4348 — A bill to provide for the conduct of a GAO study and report on rural health access during the COVID-19 pandemic; Sponsor: Sen. Cassidy, Bill [R-LA]; Committees: Senate – Finance

H.Res.1069 — Declaring racism a public health crisis; Sponsor: Rep. Hayes, Jahana [D-CT-5]; Committees: House - Judiciary; Energy and Commerce

H.R.7816 — To amend the Foreign Assistance Act of 1961 to authorize the use of funds for comprehensive reproductive health care services, and for other purposes; Sponsor: Rep. Schakowsky, Janice D. [D-IL-9]; Committees: House - Foreign Affairs

H.R.7819 — To provide that CARES Act Provider Relief Fund payments are not includible in gross income, and for other purposes; Sponsor: Rep. Axne, Cynthia [D-IA-3]; Committees: House - Ways and Means

H.R.7825 — To amend the Internal Revenue Code of 1986 to create increased opportunities for savings to HSA, MSA and FSA plans, to mitigate the financial strain on families caused by COVID-19, to provide for child nutrition, and for other purposes; Sponsor: Rep. Buck, Ken [R-CO-4]; Committees: House - Ways and Means

H.R.7838 — To provide for certain temporary waivers with respect to the 340B drug discount program due to the COVID-19 public health emergency, and for other purposes; Sponsor: Rep. Matsui, Doris O. [D-CA-6]; Committees: House - Energy and Commerce

H.R.7839 — To amend the Medicare IVIG Access and Strengthening Medicare and Repaying Taxpayers Act of 2012 to extend the Medicare Patient IVIG Access Demonstration Project; Sponsor: Rep. Matsui, Doris O. [D-CA-6]; Committees: House - Ways and Means; Energy and Commerce

H.R.7841 — To require the purchase by the Federal Government of certain medical supplies and protection equipment be from the United States, and for other purposes; Sponsor: Rep. McHenry, Patrick T. [R-NC-10]; Committees: House - Ways and Means; Veterans' Affairs; Natural Resources; Energy and Commerce; Homeland Security; Education and Labor; Armed Services

H.R.7853 — To require the Secretary of Commerce to establish a task force to identify vulnerabilities in supply chains for United States entities, and for other purposes; Sponsor: Rep. Stevens, Haley M. [D-MI-11]; Committees: House - Energy and Commerce

S.4349 — A bill to address behavioral health and well-being among health care professionals; Sponsor: Sen. Kaine, Tim [D-VA]; Committees: Senate - Health, Education, Labor, and Pensions

S.4350 — A bill to provide immediate relief for patients from certain medical debt collection efforts during and immediately after the COVID-19 public health emergency; Sponsor: Sen. Van Hollen, Chris [D-MD]; Committees: Senate - Health, Education, Labor, and Pensions

S.4351 — A bill to require States and hospitals to report COVID-19 health data directly to the Centers for Disease Control and Prevention; Sponsor: Sen. Whitehouse, Sheldon [D-RI]; Committees: Senate - Health, Education, Labor, and Pensions

S.4355 — A bill to amend title XXVII of the Public Health Service Act to require group health plans and health insurance issuers offering group or individual health insurance coverage to provide benefits for lung cancer screenings for certain individuals without the imposition of cost sharing; Sponsor: Sen. Smith, Tina [D-MN]; Committees: Senate - Health, Education, Labor, and Pensions

S.4358 — A bill to amend title XIX of the Social Security Act to allow States to provide coverage under the Medicaid program for vaccines and treatment for COVID-19 for uninsured individuals without the imposition of cost sharing requirements, and for other purposes; Sponsor: Sen. Bennet, Michael F. [D-CO]; Committees: Senate – Finance

S.4359 — A bill to require the Secretary of Commerce to establish a task force to identify vulnerabilities in supply chains for United States entities, and for other purposes; Sponsor: Sen. Coons, Christopher A. [D-DE]; Committees: Senate - Commerce, Science, and Transportation

S.4365 — A bill to clarify licensure requirements for contractor medical professionals to perform medical disability examinations for the Department of Veterans Affairs, and for other purposes; Sponsor: Sen. Boozman, John [R-AR]; Committees: Senate - Veterans' Affairs

S.4367 — A bill to amend the Internal Revenue Code of 1986 to eliminate limitations on contributions to health savings accounts; Sponsor: Sen. Paul, Rand [R-KY]; Committees: Senate – Finance

S.4368 — A bill to prepare the Strategic National Stockpile for a public health emergency and require the maintenance of a domestic supply chain for countermeasures in the stockpile, and for other purposes; Sponsor: Sen. Brown, Sherrod [D-OH]; Committees: Senate - Health, Education, Labor, and Pensions

H.R.7859 — To amend the Public Health Service Act to establish in the Substance Abuse and Mental Health Services Administration a Center for School Behavioral Health Technical Assistance, and for other purposes; Sponsor: Rep. Cardenas, Tony [D-CA-29]; Committees: House - Energy and Commerce

H.R.7873 — To amend the Public Health Service Act to give a preference, with respect to project grants for preventive health services, for States that allow trained individuals to carry and administer epinephrine, and for other purposes; Sponsor: Rep. Grothman, Glenn [R-WI-6]; Committees: House - Energy and Commerce

H.R.7877 — To amend title XVIII of the Social Security Act to provide Medicare part D beneficiaries with certain offset payments and reduce the growth rate of the Medicare part D out-of-pocket cost threshold, and for other purposes; Sponsor: Rep. Katko, John [R-NY-24]; Committees: House - Ways and Means; Energy and Commerce

H.R.7879 — To direct the Secretary of Veterans Affairs to establish a grant program to expand and improve the provision of telehealth services to veterans; Sponsor: Rep. Lee, Susie [D-NV-3]; Committees: House - Veterans' Affairs

H.R.7885 — To amend the CARES Act to clarify authorized uses of provider relief funds, and for other purposes; Sponsor: Rep. Porter, Katie [D-CA-45]; Committees: House - Energy and Commerce

H.R.7892 — To amend title XIX of the Social Security Act to extend the duration of presumptive eligibility periods under the Medicaid program to allow presumptively eligible individuals to have more time to file applications for enrollment under State plans under such program, and for other purposes; Sponsor: Rep. Watson Coleman, Bonnie [D-NJ-12]; Committees: House - Energy and Commerce

S.4375 — A bill to amend title XVIII of the Social Security Act to make permanent certain telehealth flexibilities under the Medicare program related to the COVID-19 public health emergency; Sponsor: Sen. Alexander, Lamar [R-TN]; Committees: Senate – Finance

S.4388 — A bill to address mental health issues for youth, particularly youth of color, and for other purposes; Sponsor: Sen. Menendez, Robert [D-NJ]; Committees: Senate - Health, Education, Labor, and Pensions

S.4390 — A bill to establish a grant program to support schools of medicine and schools of osteopathic medicine in underserved areas; Sponsor: Sen. Kaine, Tim [D-VA]; Committees: Senate - Health, Education, Labor, and Pensions

S.4393 — A bill to improve the provision of health care and other benefits from the Department of Veterans Affairs for veterans who were exposed to toxic substances, and for other purposes; Sponsor: Sen. Tillis, Thom [R-NC]; Committees: Senate - Veterans' Affairs