

FEDERAL POLICY UPDATE



**AMERICAN
SENIORS
HOUSING
ASSOCIATION**
Living Longer Better

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HOUSE DEMOCRATS PUT OUT MARKER FOR NEXT COVID-19 RELIEF BILL

On Tuesday, May 12, 2020, House Democrats released a \$3 trillion dollar stimulus plan, replacing the recently enacted 2.2 trillion CARES Act as the most expensive stimulus relief measure in history. The Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act), largely viewed as a starting point for the next debate on relief measures builds on the 4 preceding bipartisan stimulus packages with a stated goal of opening the economy safely, honoring the nations essential workers, aka “heroes” and putting more money into the pockets of Americans. Predictions by Republicans that this bill is dead on arrival (DOA) and cite the need for hitting the pause button on more government stimulus until impacts of earlier relief can be assessed, may be overblown given the growing need for state and local government relief as well as their own demands for liability protection for businesses as the economy starts to reopen, the “red line” position of Majority Leader McConnell. Moving the HEROES Act in the Senate may be more an issue of “when” and not “if”. The House plans a speedy floor vote this week while Republicans will move much more slowly as they consider their counteroffer.

The HEROES Act provides funding for a wide range of businesses, government and people: new stimulus payments up to \$6,000 per household, \$1 trillion dollars of funding for state and local governments, hazard pay for essential workers, funding for coronavirus testing, rent and mortgage assistance, an extension of the \$600 weekly unemployment expansion, additional funding for small businesses, emergency relief for the U.S. Postal Service, and provisions for election safety and facilitating voting by mail.

In anticipation of this relief measure [**ASHA sent a letter to Congressional leaders on May 8, 2020**](#) along with our partner, Argentum outlining our key priorities that should be included in any future stimulus package:

1. Priority access to PPE and Testing for senior living staff and residents
2. An expansion of the HHS Public Health and Social Services Emergency Fund to include funding dedicated to Senior Living with an allocation of \$20 billion. This program is critical to the future financial health of the senior living industry. To date, our industry has not received any allocation of funds.
3. An expansion of the Small Business Administration (SBA) Paycheck Protection Program (PPP) to permit greater participation by senior living companies.
4. Coverage for the senior living workforce in any federal “Hero Pay” measures

LIMITED LIABILITY PROTECTION FOR SENIOR LIVING

ASHA is also working with an industry coalition seeking reasonable limited liability protections for senior living operators and employees for COVID-19 care and response efforts. Limited liability protection is critical for the industry that is caring for our nations seniors in these unprecedented times. It is especially concerning when we know several facts that if not considered when determining reasonable liability protections will certainly lead to unlimited frivolous litigation and further burden the care options for our seniors for years to come.

1. The virus is highly contagious and the most at risk population for contracting COVID-19 is seniors.
2. The average age of a resident in senior living is 85.
3. The virus is invisible allowing asymptomatic residents and staff to spread it unknowingly.

4. The tools to mitigate spread, ie PPE and testing capabilities have been in scarce supply and continue to be largely unavailable for foreseeable future.
5. There is no vaccine or treatment.

Our position recognizes that gross negligence should not be tolerated but a reasonable and limited approach to protect those who are caring for seniors under the worst of circumstances is a worthy effort. And so we recently sent a [letter to Leader McConnell](#) seeking such protection in the next stimulus Package. As indicated above, Sen McConnell has insisted that before considering another COVID-19 emergency aid bill, liability protections must be included for small businesses, state and local governments, and health care providers. While no surprise, the House Democratic proposal does not include such a provision but talks are certain to heat up in both Chambers on this issue as efforts to strike the balance between worker safety and reasonable protections from liability are negotiated. We will continue to engage in this effort along with our industry partners.

The House proposal touches on all these issues (with the exception of Liability Protection) but will require further reforms for the senior living industry to fully benefit from their intended financial relief for businesses impacted by COVID-19. We will continue to work to advance those improvements in the coming weeks.

KEY PROVISIONS IN THE HEROES ACT

The Provider Relief Fund: The legislation provides for another \$100 billion to the Public Health and Social Services Emergency Fund to prevent, prepare for, and respond to coronavirus. This additional funding will be tied to quarterly disbursement and application process that limits reimbursement to the sum of : 1) 100 % of eligible expenses*, and 2) 60% of lost revenues**, less any funds that have been received from any of the previous 4 relief programs and not required to repay.

NOTE: ASHA continues to advance a request for \$20 billion to be allocated from the existing dollars to the senior living industry to help with COVID-19 expenses/lost revenue. It is estimated that the current balance is approximately \$95 billion (This includes the additional \$75 billion appropriated in the Protection Program and Health Care Enhancement Act).

SBA Paycheck Protection Program (PPP): The legislation includes several reforms to the program including:

Extending the covered period from June 30 to December 31; extending eligibility to all nonprofits of all sizes; carves out 25% of the existing funds to be used specifically for small businesses with 10 or fewer employees; carves out another 25% for the use of all nonprofits, no matter their size or type but requiring that at least half this amount go to small nonprofits under the 500-employee threshold; amends the forgiveness terms; and clarifies the coordination between the Employee Retention Tax Credit and the PPP loans to ensure borrowers can take advantage of both types of assistance. The program also recognizes eligible business concerns to include certain local news media when the physical location of the business does not exceed the stated size standard, effectively treating them as non-affiliated entity. The rationale is to support continued provision of local news, information, content, or emergency information.

NOTE: The current program is generally limited to employers with less than 500 employees (including affiliated business employees) with an exception for lodging and restaurants. ASHA is seeking a similar treatment for senior living to allow communities to utilize an employee count per location and increase eligibility for needed financial relief.

“Heroes” Fund: Establishes a \$200 billion fund to provide premium pay to essential workers. Essential work employers are eligible for grants of \$10,000 per essential worker (\$5,000 for highly compensated essential workers) to cover the entire cost of premium pay, including employer payroll taxes for premium pay. Employer payroll taxes include the employer portion of Medicare Hospital Insurance tax (and the corresponding part of the Railroad Retirement Board (RRB) tier 1 tax), federal unemployment tax, and state and local employment taxes. Unused funds must be returned to the Treasury.

Employee Leave and Paid Sick Time: Amends the employee leave provisions of the Families First Coronavirus Response Act (FFCRA). It extends the paid sick leave and expanded family and medical leave provisions to private-sector employers, regardless of size. The FFCRA currently applies to private employers with fewer than 500 employees.

Exemption authority of DOL Secretary: Removes the Secretary of Labor’s authority to issue regulations, authorized under Families First Coronavirus Response Act, to exempt employees of businesses with fewer than 50 employees, or to issue regulations to exempt health care providers and emergency responders from the right to paid leave. Any regulations that have been issued under that previous authority shall have no effect.

NOTE: ASHA and Argentum sought and received an exemption for senior living employees serving on the front lines of COVID-19.

TAX PROVISIONS

Employee Tax Retention: Increases the per-employee limit for the Employee Retention Credit (ERC) from 50 percent of \$10,000 (or \$5,000 for the year) to 80 percent of \$45,000 (or \$36,000 for the year) per employee.

State and local tax deductions: Eliminates the limitation on the deduction for state and local taxes (SALT) for taxable years beginning on or after January 1, 2020 and on or before December 31, 2021.

Credits not allowed for certain large employers: Provides that, notwithstanding other changes in this Act requiring that employers with 500 or more employees provide required paid sick leave and paid family and medical leave, these employers are not eligible for payroll tax credits for these wages. This restriction does not apply to federal, state, and local governments. This provision applies to wages paid after the date of enactment.

Limitation on excess businesses losses of non-corporate taxpayers restored and made permanent: Amends the provisions of CARES that provides for a 5 year carry back of net operating loss (NOL) by limiting carrybacks to taxable years beginning on or after January 1, 2018. In addition, this provision prohibits taxpayers with excessive executive compensation or excessive stock buybacks and dividends from carrying back losses.

Passthrough Limitations: Reinstates and makes permanent a limit on the ability of pass-through business owners to deduct business net operation losses over \$250,000 (\$500,000 for joint filers).

OTHER KEY PROVISIONS

Worker Safety: Requires OSHA to issue strong enforceable standard within seven days to require all workplaces to develop and implement infection control.

Unemployment Benefits: Extends the \$600-per-week boost in unemployment insurance established under the CARES Act until January 2021 to help millions who have lost jobs during the pandemic.

Nursing Home Programs: Creates new nursing home programs such as incentives to establish COVID-19 specific facilities, the creation of strike teams to help manage outbreaks, provides for infection control support, supports “tele visitation” programs for residents and loved ones to communicate, and requires HHS to publicly report demographic data on COVID-19 cases on Nursing Home Compare.

Home and Community Based Services: Increases the federal payments to state Medicaid programs by an additional 10 percentage points starting July 1, 2020 through June 30, 2021 to support activities that strengthen their home- and community-based services (HCBS) benefit.

Medical Supplies Response Coordinator: Requires the President to appoint a Medical Supplies Response Coordinator. A Medical Supplies Response Coordinator would serve as the point of contact for the health care system, supply chain officials, and states on medical supplies, including personal protective equipment (PPE), medical devices, drugs, and vaccines. The appointee is required to have health care training and an understanding of medical supply chain logistics.

Family Care for Essential Workers: Directly appropriates \$850 million to Social Service Block Grant (SSBG) to provide care for members of the households of essential workers that are incapable of self-care, including children and adult family members who require daytime care. The section gives states several options for providing care, including reimbursing workers directly for care they obtain themselves, paying childcare and adult care providers, and setting up emergency childcare. It specifies that there is no income test for receiving this emergency.

To review a summary of the HEREOS Act, please [click here](#).



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