

PUBLICATION

CARES Act: Next Steps

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September 2020

Remaining Congressional Session

There is very little time left in this Congressional session, and both the House and Senate are expected to depart in October to go home to campaign. The exact timing is unclear and the plans for a lame duck session are uncertain. The pressure will be on to avoid a government shutdown and agree to a Continuing Resolution. Efforts will also be made to find a vehicle for many of the other expiring programs as well.

CARES Act Update

The COVID-19 pandemic – the size, scale, and relative absence of knowledge as to how best to treat, prevent, and monitor – has resulted in a host of different initiatives.

The Phase 1 bill, Coronavirus Preparedness and Response Supplemental Appropriations Act, provided initial support and vaccine development. Phase 2, the Families First Coronavirus Response Act (FFCRA), provided paid leave, unemployment, and food assistance. Phase 3, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, resulted in an economic stimulus, including loans to major industries and small businesses, as well as direct payments to individuals. Phases 3b and 3c, the Paycheck Protection Program and Health Care Enhancement Act, provided additional funding for small businesses and hospitals and extended the Paycheck Protection Program.

The chart below summarizes the funds made available for health care services:

Relief Fund Allocation	Date Issued/Announced	Total Payment Amount	Recipients
General Distribution (First Round)	April 10, 2020	\$30 billion	Entities that billed Medicare in 2019
General Distribution (Second Round)	April 24, 2020	\$20 billion	Entities that billed Medicare in 2019
Rural Provider Distribution (First Round)	May 6, 2020	\$10 billion	Rural acute general hospitals, CAHs, RHCs, and rural community health centers (CHCs)
High Impact Distribution	May 7, 2020	\$12 billion	Hospitals with at least 100 inpatient COVID-19 admissions as of April 10, 2020

(First Round)			
Skilled Nursing Facilities Distribution	May 22, 2020	\$4.9 billion	Medicare and Medicaid certified SNFs with at least six beds
Indian Health Service (IHS) Facilities	May 29, 2020	\$500 million	Tribal hospitals, clinics, and urban health centers
Safety Net Hospital Distribution (First Round)	June 9, 2020	\$10 billion	Hospitals with Medicare DPP of 20.2 percent or greater, average uncompensated care per bed of \$25,000 or more, and profitability of 3 percent or less
Medicaid and CHIP Distribution	June 9, 2020	\$15 billion (approximately)	Providers that did not receive a General Distribution payment and billed Medicaid for health care-related services between January 1, 2018, and December 31, 2019
Rural Provider Distribution (Second Round)	July 10, 2020	\$1 billion	Specialty rural hospitals, urban hospitals with certain rural Medicare designations, and hospitals in small metropolitan areas
Safety Net Hospital Distribution (Second Round)	July 10, 2020	\$3 billion	Hospitals with Medicare DPP of 20.2 percent or greater, average uncompensated care per bed of \$25,000 or more, and profitability of 3 percent or less <i>averaged consecutively over two or more of the last five cost reporting periods</i>
High Impact Distribution (Second Round)	July 17, 2020	\$10 billion	Hospitals with over 160 COVID-19 admissions between January 1 and June 10, 2020; or one admission per day; or that experienced a disproportionate intensity of COVID admissions (exceeding the average ratio of COVID admissions/bed)
Children's Hospital Distribution (part of Safety Net Hospital)	August 14, 2020	\$1.4 billion	80 free-standing children's hospitals either exempt hospital under the Medicare IPPS or a HRSA Children's Hospital Graduate Medical Education facility

Distribution)			
Nursing Home and Infection Control Distribution	August 27, 2020	\$5 billion	<p>\$2.5 billion: all certified nursing homes with at least six certified beds</p> <p>\$2.0 billion: certified nursing homes with at least six certified beds that meet performance-based metrics</p>

In May, the House considered further funding for unemployment, health care, funds for local, state, territorial and tribal governments, funds to assist renters and homeowners, increased the funding for the nutrition programs and funding for the U.S. Postal Service. The total cost of the "HEROES" bill (Health and Economic Recovery Omnibus Emergency Solutions Act) was estimated at \$3 trillion.

The GOP leadership in the Senate countered in July with the HEALS Act (Health, Economic Assistance, Liability Protection and Schools Act). The bill provided unemployment benefits (\$200/week), money for National Institutes of Health (NIH) and Centers for Disease Control and Prevention (CDC), liability protections for businesses, schools and hospitals; additional funds for the payroll protection program; loans to seasonal businesses and those in low-income census tracts and a deduction on business meals; and funding for education, but no direct funding for states and localities though they are given new flexibility. The total cost is estimated at \$1 trillion.

A chart comparing the HEROES Act and the HEALS Act proposals is included below:

PHASE 4 COMPARISON: DEM AND GOP PROPOSALS

	HEROES ACT House Dems proposal \$3 trillion	HEALS ACT Senate GOP proposal \$1 trillion
Stimulus Checks	\$1,200 per individual with an additional \$1,200 for each child up to three children	\$1,200 per individual with the same formula as the CARES act
Unemployment Benefits	\$600/week through January 2021	\$200-per-week until October; after October, individuals would be paid 70% of prior earnings
Paycheck Protection Program	Extends PPP coverage until December 2020 and modifies PPP funds to ensure they reach underserved communities	Provides \$190 billion to support second loans for PPP recipients; mandates that only firms with 300 or fewer employees and demonstrated revenue decrease can qualify
Health Provisions	\$75 billion for coronavirus testing, contact tracing, and isolation measures	\$16 billion for coronavirus testing; \$16 billion for the NIH; \$3 billion for the CDC
State and Local Funds	\$1 trillion to state, local, territorial and tribal governments for workers providing essential services and COVID-related expenses, such as forgone revenues	Does not contain direct funding for states and localities, however, the legislation alters the provisions to allow the previously allocated state and local aid in a more flexible manner
Liability Shield	N/A	Shields businesses, universities, schools, and hospitals from being sued for coronavirus-related damages for five years
Education Funding	\$90 billion for states to use on early childhood, elementary, secondary, and post-secondary education, with a third for higher ed; suspends student loan repayments until September 30, 2021	\$105 billion for education: \$70 billion targeted to K-12, with 2/3 of the funding to help schools reopen for in-person instruction; \$29 billion for higher ed; \$5 billion for states to distribute to higher ed or K-12
Hazard Pay for Essential Workers	Establishes a \$200 billion fund to provide essential workers with hazard pay	N/A

Sources: Senate Majority Leader, Senate HELP Committee, Washington Post, Forbes, House Appropriations Committee, CNN, Congress.gov | August 3, 2020

More recently (September 2020), Senate Majority Leader McConnell released a smaller draft proposal with a cost of \$500 billion. The bill provided unemployment benefits (\$300/week), modifies (or eases) requirements for small business paycheck protection, and provides money for testing and contact tracing and medical countermeasures and vaccines. Money is also allocated to schools.

No additional funds were allocated for state and local aid.

An effort to bring the bill before the Senate for consideration was defeated September 10, 2020. At the time of publication of this alert, it is not clear if the agreement can be reached on next steps and further funding. Key provisions of the rejected bill include funding for schools to safely reopen, an expansion of the Paycheck Protection Program, additional assistance to the unemployed, and liability protections for schools and businesses.

Since that time, the Problem Solvers Caucus outlined a proposal made up of elements of both measures and had a cost of approximately \$1.5 billion, but no effort was made to bring the proposal forward in either house. A recent statement by Speaker Pelosi and comments made by President Trump indicate a continuing desire to come to some agreement on a package, but the scale of such an effort remains undecided.

There has been a great deal of guidance provided by HHS as to the use and rules governing the Provider Relief funds. Frequently Asked Questions (FAQs) have been updated on an ongoing basis. One of the areas of greatest interest are the questions related to the reporting requirements for those receiving funds. Guidance

was expected in August but was delayed. On September 19, 2020, HHS issued detailed [guidance](#) outlining the reporting requirements for Provider Relief Fund (PRF) recipients.