



HEALS ACT ANALYSIS SNAPSHOT (7/29/20)

No Dedicated Fund for Aging Services Providers

- The package includes **\$25 billion for the provider relief fund to be split among all eligible providers**. It is only a fraction of the \$100 billion dollars needed by aging services providers alone.
- We were glad to see that the Medicare Accelerated and Advanced payment program repayment timeline was extended though given the financial strain aging services providers are under—but **more relief, such as loan forgiveness, is warranted**.
- **Many settings in which older adults live are not receiving the resources** they need.

Insufficient Testing Funds and No National Testing Strategy

- The package contains **\$16 billion dollars for testing (and calls it \$25 billion** by adding in \$9 billion of previously allocated, unspent funding to the total).
- This is insufficient; **\$10 billion is needed for aging services providers alone**.
- At a minimum, the \$75 billion dollars Heroes Act allocation by the House would be more aligned with our needs.
- Furthermore, the **testing money is for states**; there is no mention of a critical national testing strategy.

No Immediate Solutions for PPE

- **Aging services providers need PPE now, not a hope that companies will act on a tax credit**.
- This package **does not require immediate action to manufacture** and distribute sufficient quantities of PPE to meet the needs of this crisis.
- The **Defense Production Act needs to be invoked with funding from Congress** to ensure that more expansive PPE production begins as quickly as possible.
- Instead, the package incentivizes PPE production in America via tax credits and directs and provides funds to refill the National Strategic Stockpile.
- There is also a refundable payroll tax credit equal to 50% of qualified expenses, such as testing, PPE, and cleaning.

Needs of Older Adults in Affordable Housing Not Yet Addressed

- The Senate package does **nothing to address the needs of more 750,000 older adults in HUD federally-subsidized and privately-owned housing** programs.
- Affordable senior housing providers, the majority of whom are nonprofit, have been hemorrhaging funds to prevent the virus from harming residents and staff.
- Yet, the **Senate bill does nothing to help ensure apartment communities**, (home to residents with incomes below \$14,000 a year), **can be kept clean and disinfected** while allowing residents to access the services they need to remain in independent housing.
- We **expect much more from Congress and urge inclusion of \$300 million for Service Coordinators**, \$50 million for wireless internet for telehealth and to combat social isolation, and for \$845 million to pay for the cleaning, PPE, services, staffing, security, and more that affordable senior housing communities continue to provide as the virus rages on.
- The Senate bill **does not extend the evictions moratorium** for nonpayment of rent that expired on July 25. 22% of older adult households are renters, most of them with vastly lower incomes than homeowners, and are now at immediate risk of housing instability.

Limited Nursing Home Provisions

- The package contains several provisions addressing the impact of the virus on nursing homes, including **authorizing CMS to establish federal strike teams** to supplement state strike teams. **CDC/CMS have already established and deployed such teams.**
 - There is \$150 million dollars appropriated for CMS to use for strike teams for resident and employee safety, including activities to support clinical care, infection control and staffing. CMS would report to the Committees on Appropriations in both chambers 30 days after enactment, outlining a plan for strike team efforts, including how safety and infection control measures will be assessed, how facilities will be chosen, and the frequency of visits.
 - It is not clear that a potential injection of resources (funding, staffing, PPE and expertise) to support nursing homes is funded.
- CMS is further instructed to provide training on infection control, enhance diagnostic testing, and promote the implementation of televisitation. These helpful provisions require **serious funding, and do not address the key issues of PPE, a national testing strategy and funding for loss of revenue and increased expenses.**

Minimal Staffing Provisions, No Heroes Pay

- Several provisions relate to staffing issues, but **much needed pandemic or heroes pay for frontline workers is not included.**
- There are \$500M in Department of Labor grants to states for dislocated worker employment and training for in-demand sectors or occupations, including health care and direct care.
- HEALS provides support to child care providers so they can continue to serve working parents and provide safe environments.
- The proposal **does not include exclusion/exemption for health care employees for either FMLA and paid leave.**

Medicaid Not Mentioned

- **In contrast to the HEROES Act**, which increases FMAP, includes Maintenance of Effort provisions, delays MFAR, and increases HCBS payments, **HEALS is silent on Medicaid**.
- HEALS does address some funding and reauthorization of Older Americans Act provisions.

Telehealth Flexibility Extensions Still Do Not Include Home Health

- The package includes an **extension to the current telehealth flexibilities** through Dec 2021 (or the end of the public health emergency if it extends beyond that date).
- It also orders a MedPAC report on the impact of telehealth flexibilities on access, quality, and cost by July 1, 2021.
- It requires that HHS post data on the use of telehealth throughout the pandemic and provide legislative recommendations to Congress. This ensures that patients are not left without access to care while giving Congress time to weigh data and recommendations on the future of telehealth in the Medicare program.
- The **addition of home health providers to those that can be fully reimbursed for telehealth services was *not* included** in the bill. It is **critical that home health providers be added** to the provider types that can be reimbursed for utilizing telehealth especially as the Congress is considering the future of telehealth beyond the emergency.

Loan Provisions Fall Short for Frontline Aging Services Providers

- Changes to the PPP **don't do enough to help aging services on the front line**.
- The proposed expansion of allowable PPP costs may have limited utility to aging services providers that have spent down all or most of their loan, as well as those who still have PPP funds but are subject to the 60% payroll rule.
- While the **opportunity for some borrowers to receive a second PPP loan is promising**, only a **limited subset of aging services providers would qualify**, since they tend to experience increased costs—not just reduced revenues. And, providers operating multiple sites still have **no relief under the PPP if they have more than 500 employees**.

Liability Provisions Included

- The liability provisions limit the types of cases that can be brought to gross negligence or willful misconduct and that the gross negligence or willful misconduct of the defendant caused the injury.
- The bill preempts and supersedes less stringent state laws and sets a statute of limitation at a year to bring a case. The definition of “health care provider” is broad and likely includes the whole continuum except housing, which would be covered under the general business protections. Acts, omissions, or decisions resulting from a resource or staffing shortages shall not be considered gross negligence or willful misconduct. This would preempt and supersede state laws unless the state law is stricter or limits liability protections.