



Kansas Hospital
ASSOCIATION

SIDE-BY-SIDE: HOSPITAL PROVISIONS HEALS ACT VS. HEROES ACT

Below is a 4-page comparison of certain key provisions that affect hospitals in the Senate-introduced HEALS Act (seen as the Republican bill) and the House-passed HEROES Act (seen as the Democratic bill).^{*} Negotiations are ongoing in Congress as they try and work out differences between these two bills before adjourning for the rest of the summer.

Liability Reform

Senate HEALS Act: Includes personal injury liability limitation, medical malpractice liability limitation, product liability limitation and labor/employment liability protection.

House HEROES Act: Includes personal injury liability limitation, medical malpractice liability limitation, product liability limitation and labor/employment liability protection.

Public Health and Social Services Emergency Fund

Senate HEALS Act: Provides \$25 billion in additional funding for hospitals bringing the total to \$200 billion.

House HEROES Act: Provides \$100 billion in additional funding for hospitals bringing the total to \$275 billion.

Telehealth

Senate HEALS Act: Allows CMS to extend Medicare telehealth flexibilities through December 31, 2021 or the end of the public health emergency whichever is later. Extends telehealth flexibilities for federally qualified health centers and rural health clinics for five years beyond the end of the PHE.

House HEROES Act: Authorizes the Department of Veterans Affairs to make telehealth capabilities available to homeless veterans. No Medicare telehealth policies.

Medicare Advance/Accelerated Payments

Senate HEALS Act: Provides up to 270 days before offsetting claims and 18 months for Part A providers and at least 14 months for Part B providers and suppliers to pay the full balance and before interest accrues. No change to the interest rate. Allows employers to offer telehealth as an excepted benefit to employees who are not full-time or do not qualify for their employer's coverage.

House HEROES Act: Reduces the interest rate for providers to one percent, limits recoupment to no more than 25 percent of Medicare reimbursement claims, and provides one full year before offsetting claims and two years for providers to pay the full balance.

Medicaid

Senate HEALS Act: N/A.

House HEROES Act: Provides a further temporary increase to the Federal Medical Assistance Percentage (FMAP) rate and delays implementation of the Medicaid Fiscal Accountability Regulation.

Nursing Homes

Senate HEALS Act: Authorizes the creation of federal nursing home strike teams to supplement state efforts. Requires the Secretary to: develop online training courses for nursing facilities, survey agencies, the long-term care ombudsman in each state and other individuals; enhance diagnostic testing; and develop training materials for personnel of nursing homes. Requires the Secretary to provide governors with a list of nursing facilities in which the reported cases of COVID-19 increased during the previous week. Authorizes the Secretary to create a website and seek input on developing training courses and best practices in infection control and prevention, including cohorting, strategies and use of telehealth to mitigate the transmission of COVID-19. Authorizes HHS to work with the Elder Justice Coordinating Council to promote testing and infection control in nursing facilities.

House HEROES Act: Directs HHS to allocate funds to states to create nursing home strike teams. Requires HHS to provide additional assistance through Medicare Quality Improvement Organizations to facilities struggling with infection control.

Federal Pandemic Unemployment Insurance

Senate HEALS Act: The CARES Act provided additional payments of \$600 per week to individuals receiving unemployment insurance (UI) through July 2020. Beginning in August, the HEALS Act proposes a reduced UI payment of \$200 per week through September 2020. Beginning in October, the program would be replaced with a payment (up to \$500) that when combined with the state UI payment would replace 70 percent of lost wages.

House HEROES Act: Extends the \$600 per week supplement to state and federal unemployment benefits through January 31, 2021.

Supplemental Emergency Unemployment Relief for Governmental Entities and Nonprofits

Senate HEALS Act: Provides payment to states to reimburse nonprofits, government agencies and Indian tribes for half of the costs they incur through December 31, 2020 to pay unemployment benefits. This provision increases the percentage from 50 to 75 percent.

House HEROES Act: Extends the financial relief provided to reimbursable employers in the CARES Act through January 31, 2021, and make technical corrections to ensure that states can simply waive 50 percent of the amount owed by such employers.

Paid Sick and Family Leave

Senate HEALS Act: N/A.

House HEROES Act: Extends the refundable payroll tax credits for paid sick and family leave through the end of 2021.

Paycheck Protection Program

Senate HEALS Act: Extends authorization for the PPP through December 31, 2020. Provides \$190 billion of committed and appropriated funds to support PPP and PPP Second Draw Loans. Eligibility for PPP Second Draw loans is defined as small businesses that meet the applicable SBA revenue size standard, have no more than 300 employees and demonstrate at least a 50 percent reduction in gross revenues. Includes a \$25 billion set-aside for entities with 10 or fewer employees and a \$10 billion set-aside for loans made by community lenders. The maximum loan size would equal 2.5 times average total monthly payroll costs, up to \$2 million. Businesses that received a PPP loan may not receive another PPP loan that aggregates to more than \$10 million. The 60/40 cost allocation for payroll and non-payroll costs to receive full PPP forgiveness continues to apply. Expands forgivable expenses to include covered supplier costs, covered worker protection expenditures, and covered operations expenditures. Allows borrowers to select a preferred 8-week period through 2020 to use the forgivable loan proceeds. Simplifies the forgiveness application process for loans under \$2 million. Expands PPP eligibility to include certain 501(c)(6) organizations, including Chambers of Commerce and Destination Marketing Organizations with 300 or fewer employees.

House HEROES Act: Extends authorization for the PPP through December 31, 2020. Appropriates an additional \$10 billion for Emergency EIDL Grants to remain available until expended. Sets aside funds specifically for small Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), SBA microlenders and SBA Certified Development Companies (CDCs), and mandates that 25 percent of the funds be used for small businesses with 10 or fewer employees and that another 25 percent of the funds be used solely for nonprofits. Removes regulatory actions that limited forgiveness of non-payroll operating expenses to 25 percent of total forgiveness. Adds flexibility in the covered period for borrowers by extending the eight-week period to 24 weeks and extends the covered period from June 30 to December 31. Expands eligibility for the PPP to all 501(C) nonprofits.

*Information contained here is summarized from *Covid-19 Policy Update: Summary of Key Policies—HEALS Act vs. HEROES Act*, by Akin, Gump, Strauss, Hauer, and Feld, LLC.