



Insight

Health Policy Provisions in the HEROES Act

CHRISTOPHER HOLT | MAY 14, 2020

Executive Summary

- On May 12, Speaker Pelosi released the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, House Democrats' \$3 trillion proposal for a fourth round of COVID-19 pandemic-response legislation, which includes myriad health policy provisions.
- HEROES would respond to the problem of the newly uninsured by having the federal government cover 100 percent of the premium for COBRA benefits; establishing special enrollment periods for Medicare and Medicare Advantage as well as the Affordable Care Act's health insurance exchanges; and by increasing the federal share of Medicaid expenditures by what the American Action Forum estimates to be \$45.2 billion over and above previous COVID-19 response legislation.
- HEROES also includes substantial new funding for many existing programs and agencies, expands mandates for coverage of COVID-19 testing and treatment without patient cost sharing across the health care system, and undertakes a number of reforms to the nation's medical supply chain, while also pressing for a more robust national testing regime.

Introduction

This week, Democrats in the House of Representatives released the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act. HEROES represents the House Democratic Caucuses' opening salvo in anticipated negotiations over a fourth round of pandemic-response legislation. The legislation, more than 1,800 pages long, includes myriad health policy initiatives and funding increases for existing programs. Notable provisions include additional increases in the federal share of Medicaid expenditures, federal subsidies for the entire cost of COBRA premiums for individuals and families that have lost their employer-sponsored insurance (ESI), the establishment of a special enrollment period (SEP) for Americans to sign up for insurance coverage through the Affordable Care Act's (ACA) health insurance exchanges, and numerous provisions related to COVID-19 testing and treatment.

One framework for parsing the hundreds of pages of health policy provisions is to divide them into two categories: those proposals that amount to simply adding more money to existing policies and programs, and those that create new, or notably alter existing, policies and programs.

New Money, Old Programs

It is unsurprising, given HEROES' \$3 trillion price tag, that reading through the legislative text can give the impression that the authors simply went line by line through the federal budget and increased spending for every single item they came across. Division A of the legislation is entirely supplemental appropriations under the auspicious of pandemic relief. Division C, focused on health provisions, also includes a number of increases in funding for existing programs and agencies. Some of these funding increases are listed below.

Medicaid: HEROES would increase the federal share of Medicaid expenditures (known as the Federal Medical Assistance Percentages, or FMAP). The Families First Coronavirus Response Act (FFCRA), enacted in March 2020, already increased the FMAP by 6.2 percentage points for all beneficiaries—except the ACA's expansion population—for the duration of the COVID-19 public health emergency declaration, retroactive to the beginning of the year. The American Action Forum (AAF) has previously [estimated](#) this policy will increase federal Medicaid spending by \$9.2 billion per quarter that the public health emergency declaration remains in effect. Since these projections were published, the Centers for Medicare and Medicaid Services (CMS) released the 2018 Actuarial Report on Medicaid's financial outlook. Applying those more recent projections to AAF's methodology would increase FFCRA's impact on federal Medicaid spending to \$11 billion quarterly. The HEROES Act would further increase the FMAP by an additional 7.8 percent for a total increase of 14 percent for the period of July 1, 2020, through June 30, 2021—subject to a limitation that no state's FMAP could exceed 95 percent of its Medicaid costs. After June 2021, the FMAP increase would revert to 6.2 percent for as long as the emergency declaration remains in effect. The result is that HEROES would increase federal Medicaid spending by \$45.2 billion on top of the FFCRA. ^{[1],[2]}

Additionally, HEROES provides increased funding for Home and Community Based Services through Medicaid, temporarily increases Medicaid allotments for disproportionate share hospitals by 2.5 percent, temporarily increases the FMAP for Indian health providers to 100 percent, and provides \$25 million to combat waste, fraud, and abuse in both the Medicaid and Medicare programs.

Public Health and Social Services Emergency Fund: HEROES provides \$100 billion in funding for hospitals and health care providers through the Public Health and Social Services Emergency Fund to compensate for expenses and lost revenue directly related to the pandemic. This is in addition to \$100 billion originally provided for this purpose in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and \$75 billion that was provided through the Paycheck Protection Program Increase Act of 2020, for a total of \$275 billion to date. Democrats had originally sought \$400 billion for the program in CARES. These new funds would remain available until expended.

National Institutes of Health: HEROES provides \$4.745 billion to the National Institutes of Health (NIH) for COVID-19 related research. The CARES Act previously provided \$945.5 billion to NIH. These funds would remain available through September 2024.

Ryan White HIV/AIDS Clinics: HEROES provides \$10 million for Ryan White HIV/AIDS clinics based on the patient population's increased risk factors for COVID-19 complications. These funds would remain available through September 2022.

Centers for Disease Control and Prevention: HEROES provides \$2.1 billion for the Centers for Disease Control and Prevention (CDC)—on top of the \$4.3 billion included in CARES—mostly in the form of state grants for pandemic related activities. These funds would remain available through September 2024. Additionally, HEROES provides \$1 billion for CDC to expand and improve its infrastructure and activities to address unmet emerging health needs. These funds would remain available until expended.

Biomedical Advanced Research and Development Authority: HEROES provides \$4.5 billion to the [Biomedical Advanced Research and Development Authority](#) (BARDA), mostly for COVID-19 vaccine and therapeutics developments, but also for research into antibiotics and work on next-generation manufacturing facilities. BARDA previously received \$3.5 billion from CARES for vaccine and therapeutics research and procurement. These new funds would remain available through September 2024.

Substance Abuse and Mental Health Services Administration: HEROES provides \$3 billion for the Substance Abuse and Mental Health Services Administration for existing treatment and outreach programs. These funds would remain available until September 2021.

Rural Health Care Program: HEROES provides \$2 billion for the Federal Communications Commission's Rural Health Care Program to provide subsidies to nonprofit public hospitals equal to 85 percent of their broadband service cost. This is an increase from 65 percent under existing law. These funds would remain available through September 2022, while the increased subsidy percentage will be applied for fiscal years 2019, 2020, and 2021.

Notable New Policies in HEROES

While much of HEROES amounts simply to dialing up existing federal spending, the legislation does make a game effort to establish entirely new federal spending programs and makes changes to a number of existing laws and programs. Some of the notable provisions that represent changes from existing law are listed below.

COBRA: HEROES would provide 100 percent federal financing of [COBRA premiums](#) between March 1, 2020, and January 31, 2021, for individuals and families who have lost their existing ESI insurance and have transitioned to COBRA. COBRA is a transitional insurance program dating back to 1985 that allows employees to continue with their existing ESI plan for between 18 and 36 months in most cases, provided they pay both the employee and employer shares of the premium. COBRA provides continuity, but it also can be prohibitively expensive. As a result, while keeping the newly uninsured in their ESI plans rather than transitioning them to ACA coverage or Medicaid may be desirable, it will also be extremely expensive for the federal government. The federal government [previously](#) provided temporary subsidies for COBRA as part of the American Recovery and Reinvestment Act of 2009. In that instance, however, the federal subsidy was limited to 65 percent of the cost of the premium.

Special Enrollment Periods: HEROES would establish SEPs for Medicare and the ACA's health insurance exchanges. Specifically, individuals who are eligible for Medicare but have not enrolled would be eligible for a SEP beginning no later than July 2020, and extending until the end of the public health emergency declaration; during this period they could elect Medicare coverage. HEROES would also establish an eight-week SEP, beginning a week after enactment of the legislation, for uninsured individuals who wish to obtain coverage through the ACA's health insurance exchange. Individuals who have recently lost their employment already qualify for a SEP under the ACA, so it is unlikely that this policy change would have a notable impact on ACA enrollment. Finally, HEROES would establish a SEP for individuals who receive COBRA subsidies under the legislation to enroll in ACA exchange coverage when the proposed COBRA subsidies expire at the end of January 2021. A simpler alternative might be to have the COBRA subsidies end December 31, 2020, and to direct individuals receiving them to participate in the ACA's standard open enrollment period at the end of 2020.

COVID-19 Testing and Treatment Coverage Mandates: HEROES mandates that private insurance waive all cost-sharing requirements for enrollees related to any COVID-19 connected medical treatments for the entirety

of the public health emergency declaration, and that testing be retroactively covered at no cost to beneficiaries to the beginning of the emergency declaration. HEROES further mandates that Medicare, Medicare Advantage, Medicare Prescription Drug Plans, Medicaid, TRICARE, the Veterans Health Administration, and the Federal Employees Health Benefit Program all provide COVID-19 treatment and testing at no out-of-pocket costs to beneficiaries.

Medical Supply Chain: HEROES contains a number of provisions related to the [medical supply chain](#), including a directive to the president to appoint a Medical Supplies Response Coordinator; clarifications about information manufacturers must include in required shortage notifications; requirements for pharmaceutical manufacturers to report quarterly on the locations of foreign manufacturing sites and the volume of drugs being manufactured; and authorization of the Food and Drug Administration to destroy counterfeit medical devices, among other provisions.

Testing and Contact Tracing: HEROES includes a wide swath of requirements and directives to the Department of Health and Human Services (HHS) regarding testing, some of which include: a mandate to establish a publicly searchable website with information about all COVID-19 related tests and diagnostics available in the United States, along with details on the sensitivity and specificity of the tests, and their availability; a requirement that states provide publicly searchable databases of testing sites in order to receive money through HEROES; and requirements that all laboratories performing COVID-19 testing submit daily reports to HHS, which would be made publicly available

HEROES would further require the CDC to work with states, local governments, and tribal and territorial health authorities to establish a nationwide system of testing, contact tracing, surveillance, containment and mitigation of COVID-19. HEROES provides \$75 billion through the Public Health and Social Services Emergency Fund for these activities.

Conclusion

The HEROES Act constitutes a gargantuan collection of member priorities—both related and unrelated to COVID-19—that were either not included in the previous rounds of pandemic response legislation or were not funded at levels desired by the legislation’s authors. While the House will likely pass HEROES as early as this week, the legislation is dead on arrival in the Senate. Further, because of the staggering breath of policy items included in HEROES, it does not even serve to clearly establish House Democrats’ priorities in any future legislative negotiation with the Senate and White House.

[1] <https://www.cms.gov/files/document/2018-report.pdf>

[2] <https://www.cbo.gov/about/products/budget-economic-data#3>