**The Heroes Act**

**Summary of Relevant Provisions for EMS Agencies**

**I. Medicare Provisions**

*A. Medicare Accelerated and Advance Payment Programs*

***Part A.*** With respect to accelerated payments made on or after the enactment of the CARES Act and for the duration of the public health emergency:

* Treat such payment as if it were made from the General Fund of the Treasury;
* Upon request of the **hospital**: (1) provide for up to 1 year before claims are offset to recoup the accelerated payments, (2) limit the offset to not more than 25% of the payment on a future claim, and (3) allow not less than 2 years from the date of the accelerated payment before the advanced amount must be repaid in full.

***Part B*.** With respect to accelerated payments made on or after the enactment of the CARES Act and for the duration of the public health emergency:

* Treat such payment as if it were made from the General Fund of the Treasury;
* Upon request of the “**entity receiving such payment”**: (1) provide for up to 1 year before claims are offset to recoup the accelerated payments, (2) limit the offset to not more than 25% of the payment on a future claim, and (3) allow not less than 2 years from the date of the accelerated payment before the advanced amount must be repaid in full.

***Interest Rates***. Limits the interest rate to 1% on balances that are not repaid prior to the extended repayment schedule.

***Reports*.** Requires HHS Secretary to submit reports to House Ways and Means and Energy and Commerce Committees and Senate Finance Committee on the total amounts of payments during each 2 week period, the number of entities receiving payments during such period, and a “specification of each such entity.” After the termination of the public health emergency, similar reports every 6 months until all accelerated payments have been repaid.

*B. Medicare Beneficiary Cost Sharing (Sec. 30201)*

For the duration of the public health emergency, proposed legislation would hold a Medicare beneficiary harmless from any cost-sharing obligation (i.e., deductible, copayment, or coinsurance) associated with a “specified COVID-19 treatment service). These cost-sharing obligations will be paid by CMS, and the provider or supplier must not hold the beneficiary liable. Further provides for CMS to recoup the amounts that would have otherwise been paid by a Medi-Gap or other group health plan or health insurance issuer that provides secondary or supplemental coverage. Appropriates $100 million for these purposes.

For these purposes, a “specified COVID-19 treatment service” is defined to be any item or service furnished to an individual for which payment may be made under Medicare Part A or Part B to the extent such service is included on a claim that uses an ICD-10 code related to COVID-19 (using CDC coding guidelines).

*C. Medicare Advantage Enrollee Cost-Sharing (Sec. 30204)*

For the duration of the public health emergency, proposed legislation would prohibit Medicare Advantage plans from imposing any cost-sharing requirement (i.e., deductible, copayment, or coinsurance) on specified COVID-19 treatment services (as defined in Subpart B above). In the case of critical specified COVID-19 treatment services (including ventilator care and intensive care services) prohibit any requirement related to prior authorization or utilization management.

*D. Special Enrollment Period for Individuals in COVID-19 Emergency Areas (Sec 30207)*

Proposed legislation would create a special enrollment period (i.e., not later than July 1, 2020 through the last day of the month the PHE ends) for Medicare-eligible individuals that reside in “emergency areas” (as defined in Section 1135(g)(1)(b) that did not enroll during the normal enrollment period. Appropriates $30 million for these purposes.

**II. Medicaid Provisions**

*A. Increased Federal Medical Assistance Percentage (Sec 30101)*

Starting July 1, 2020 and through the duration of the public health emergency, revises the temporary increase in State’s FMAP to:

* 6.2% for the period starting on the first day of the public health emergency through June 30, 2020’
* 14% for the period starting on July 1, 2020 and ending on June 30, 2021; and
* 6.2% for the period starting on July 1, 2021 (if the public health emergency is still in effect on that date) through the last day of the calendar quarter in which the end of the public health emergency occurs.

*B. Medicaid Coverage of Non-Emergency Medical Transportation (Sec. 30111)*

Codifies the requirement that State Medicaid Programs cover non-emergency medical transportation (NEMT), including the requirement that a single state agency be responsible for ensuring the mandate is met. Requirement would apply to benchmark plans and benchmark equivalent plans.

Mandates a GAO study - - with 2 years of enactment - - on Medicaid coverage of non-emergency medical transportation. Further requires a stakeholder meeting (including providers) within 1 year of enactment.

*C. Extension of 1115 Demonstration Waivers (Sec. 30109)*

Applies to 1115 demonstration waivers that are set to end on or before February 28, 2021. To the extent a state requests an extension of the demonstration waiver, would obligate HHS to grant an extension for a period up to and including December 31, 2021. Extensions will be subject to the same terms and conditions applicable during the previous period. Further provides states the flexibility to propose modifications to a demonstration project to address the COVID-19 pandemic.

To the extent a state requests an extension of an 1115 demonstration waiver, requires HHS to grant an extension

*D*. *Elimination of Cost-Sharing for COVID-19 Vaccine and Treatment (Sec. 30104)*

Starting on the date of enactment and continuing through the end of the public health emergency, restricts the ability of states to impose cost-sharing obligations on Medicaid beneficiaries in connection with COVID-19 vaccines and/or COVID-19 treatment.

*E. Optional Coverage under Medicaid for COVID-19 Treatment and Vaccines of the Uninsured (Sec. 30105)*

To the extent a state has elected to cover COVID-related care for the uninsured through its Medicaid Program, ensures that there will be no cost-sharing obligations imposed on the uninsured for COVID-19 vaccines and/or COVID-19 treatment.

*F*. *Prevents HHS from Finalizing Medicaid Fiscal Accountability Regulation (Sec. 30102)*

Prevents the HHS Secretary from finalizing the Medicaid Fiscal Accountability Regulation during the duration of the public health emergency.

**III. Private Insurance Provisions**

*A. Special Enrollment Period Through ObamaCare Exchanges (Sec. 30301)*

Creates a special enrollment period for the uninsured to purchase health insurance through the federal and state exchanges. The enrollment period would start one week after the date of enactment and continue for an 8-week period. Appropriates funds for HHS to conduct outreach and educational activities. Restricts use of such funds to ACA-compliant health insurances, i.e., does not permit funds to be used to promote non-ACA compliant coverages.

*B. Elimination of Cost-Sharing Obligations for COVID-19 Related Treatment (Sec. 30303)*

Requires group health plans and individual health insurances from imposing cost-sharing amounts (i.e., deductibles, copayments, and coinsurance) during the public health emergency for: (1) medically necessary items and services (including telehealth) to treat or mitigate the effects of COVID-19 for individuals confirmed to be infected (either prior to care or diagnosed after the provision of services) and (2) medically necessary items and services (including telehealth) that are furnished to an individual that is “presumed to have COVID-19 but is never diagnosed as such to the extent the items or services are furnished to treat or mitigates the effects of COVID-19 on the individual or society, and the health care providers have taken the appropriate steps to make a diagnosis or confirm whether a diagnosis was made.

*C. Sooner Coverage of COVID-19 Testing (Sec. 30306)*

Makes free coverage of COVID-19 testing retroactive to the beginning of the public health emergency.

D. *Subsidized COBRA Premium Payment Coverage (Sec. 30311)*

Provides subsidized COBRA premiums for employees who are furloughed or have lost their employment due to the COVID-19.

**IV. Provisions Applicable to Other Federal Healthcare Programs**

*A. Elimination of Cost-Sharing Obligations for Other Federal Health Care Programs*

Effective on the date of enactment, the proposed legislation would eliminate the cost-sharing obligations owed by individuals for COVID-19 related medical care under TriCare (Sec. 30401), the Veterans Administration (Sec. 30402) and the Federal Employee Health Benefit Program (Sec. 30403).

*B. Emergency Treatment for Veterans during COVID-19 Emergency Period (Sec. 80005)*

During the public health emergency, the proposed legislation would require the V.A. to cover emergency treatment of eligible veterans at non-V.A. facilities, without requiring them to seek prior authorization. **For these purposes, “emergency treatment” is defined using the prudent layperson standard.**

Payment would be at Medicare rates, and will constitute payment in full, unless the provider rejects the payment and refunds the V.A. within 30 days of receipt of the V.A.’s payment. Also establishes that the V.A. will be the primary payer with respect to transportation of a veteran by ambulance.

To facilitate this program, it would require the V.A. to contract with one or more third-party administrators

**V. Public Health Assistance Provisions**

*A. Health Care Provider Relief Fund (Sec. 30611)*

Requires HHS within 7 days of enactment to establish a program to reimburse, through grants and other mechanisms, eligible health care providers for “eligible expenses” or lost revenues that occurred during calendar quarters on or after January 1, 2020 through the duration of the public health emergency. Under this program, providers would have a 7-day period after the close of each calendar quarter to submit applications for reimbursement (and 7 days after enactment for the 1Q 2020). Payments would be made within 14 days after the close of the quarter (or 14 days after enactment for the 1Q 2020). Appropriates **$100 billion** for these purposes, plus any unobligated balance of the existing Health Care Provider Relief Fund. It would also require that any further appropriations for reimbursing health care providers be used only to replenish this amount.

**Note:** the proposed legislation would seemingly limit to $10 billion the amounts that can be used to reimburse providers for the costs of caring for the uninsured (out of the unallocated $29.6 billion in CARES Act funding plus the $75 billion in Stimulus 3.5).

Reimbursement to an eligible provider would be equal to the sum of: (1) 100% of eligible expenses and (2) 60% of lost revenues, **minus** any funds received by the provider for that quarter - - and which are not required to be repaid - - under the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, the CARES Act, or the Paycheck Protection Program and Health Care Enhancement Act. To the extent a provider has a “negative balance” in any calendar quarter, the excess can be carried over into future quarters.

For these purposes, “eligible expenses” include:

* Building or construction of temporary structures;
* Leasing of properties;
* Medical supplies and equipment, including Personal Protective Equipment;
* In vitro diagnostic tests, serological tests, or testing supplies;
* Increased workforce and trainings;
* Emergency operation centers;
* Construction or retrofitting of facilities;
* Mobile testing units;
* Surge capacity;
* Retention of workforce; and
* Other items and services deemed appropriate by HHS

For these purposes, “lost revenues” is defined to be: (1) the “net patient revenue” of the provider for the corresponding quarter in 2019 minus (2) the net patient revenue of the provider for the calendar quarter, less (3) the savings of the provider during the calendar quarter attributable to foregone wages, payroll taxes, and benefits to personnel that are furloughed or laid off by the provider during that calendar quarter. **Note:** if the lost revenues during a calendar quarter do not exceed 10% of the net patient revenue for the corresponding quarter in 2019, then no allowance for lost revenues will be permitted for that calendar quarter.

For these purposes, “net patient revenue” is defined for each calendar quarter to be the sum of:

* 200% of the total amount of Medicaid reimbursement (including Medicaid waiver programs) received by the provider during the calendar quarter;
* 125% of the Medicare reimbursement (including Medicare Advantage) received by the provider during the calendar quarter; and
* 100% of the total amount received by the provider from other sources during the calendar quarter.

If the funds allocated for these purposes are inadequate to pay all amounts due to providers during a calendar quarter, HHS is required to prioritize the reimbursement of eligible expenses, and then make a pro-rata distribution for lost revenues. HHS is also required to make available an electronic database listing the recipients and amounts of any funding under this provision.

There are certain conditions on the use of these funds, including the requirement that it not be used for executive compensation. In addition, providers may not balance bill patients.

**VI. Small Business Provisions**

*A. Amendments to Paycheck Protection Program (Sec. 90001)*

The proposed legislation extends the expiration of the covered period of the program from June 30, 2020 to December 31, 2021. The legislation also repeals the requirement that 75% of PPP loans be spent on payroll.

The proposed legislation makes all non-profit critical access hospitals eligible for participation in PPP, regardless of the organization’s status as a debtor in a Chapter 11 Bankruptcy case, or the status of any debts such organization may otherwise owe to the federal government.

The proposed legislation also expands access to the PPP to non-profits of all sizes and sets aside 25% of PPP loan funds for non-profit borrowers (12.5% to be reserved for nonprofits with fewer than 500 employees).

**VII. Individual/Employer Tax Provisions**

*A. Deduction of State and Local Taxes (Sec. 20161)*

The proposed legislation provides for the reinstatement of the total deduction of state and local taxes (SALT) for individuals for calendar years 2020 and 2021. Under current law, the SALT deduction is limited to $10,000 for each tax year.

*Sec. 202. Above the line deduction allowed for certain expenses of first responders*

The proposed legislation provides a $500 above the line deduction for unreimbursed expenses of professional first responders related to the cost of uniforms or tuition and fees related to training. This deduction is indexed to inflation.

*Sec. 203. Temporary above the line deduction for supplies and equipment of first*

*responders and COVID19 frontline employees.*

The proposed legislation provides a $500 above the line deduction for 2020 for the uniforms, supplies, and equipment of first responders and COVID19 frontline employees. COVID19 frontline employees are those that perform at least 1,000 hours of essential work, as defined for pandemic premium pay reimbursable from the COVID19 Heroes Fund.

*Sec. 204. Payroll credit for certain pandemic related employee benefit expenses paid by*

*employers.*

The proposed legislation provides a 30% refundable payroll tax credit for expenses reimbursed or paid for the benefit of an employee for reasonable and necessary personal, family, living, or funeral expenses incurred as a result of the presidentially declared disaster related to COVID19. The credit percentage is 50% for expenses paid to employees if a substantial portion of the services performed by the employee is essential work, as defined for pandemic premium pay reimbursable from the COVID19 Heroes Fund. No credit is allowed if the expenses are provided in a manner which discriminates in favor of highly compensated employees. The Social Security Equivalent Benefit Account are held harmless under this provision, through a General Fund transfer of lost receipts as a result of this credit.

*B. Improvements to Employee Retention Credit (Sec. 20211)*

The proposed legislation would amend the employee retention credit set forth in Section 2301 of the CARES Act to:

* Increase the credit percentage for the retention credit from 50% to 80%;
* Increase the wage cap from $10,000 per calendar quarter to $15,000 per calendar quarter, up to $45,000 in the aggregate for all calendar quarters;
* Modify the threshold for an employer to be considered a “large employer.” The CARES act considers an employer to be large if it had an average of greater than 100 full-time employees. Under the new standard, an employer will be considered a “large employer” to the extent: (1) the average number of full-time employees during calendar year 2019 was greater than 1,500 and (2) the employer had gross receipts of more than $41,500,000; and
* Modify the decrease in gross receipts necessary to qualify for the credit.

As amended, the employee retention credit would offer an employer a credit against the employment taxes that otherwise would have been due for each calendar quarter. The size of the credit would be equal to 80% of the “qualified wages” (including certain health plan expenses) paid with respect to each eligible employee during such calendar quarter.

For these purposes, “qualifying wages” is defined to be wages and compensation (and health plan expenses properly allocable to the wages) paid by the employer:

* For “large employers,” paid with respect to any employee that **is not providing services** due to an economic hardship, i.e., a full or partial suspension due to a government mandate or a “significant decline in gross receipts”; or
* For employers that are not deemed to be “large employers,” all wages to paid to **any employee** during the period of economic hardship.

For these purposes, a “large employer” is defined to be any employer that had: (1) an average of more than 1,500 full-time employees during calendar year 2019 and (2) had gross receipts of more than $41,500,000 in calendar year 2019. Under the CARES Act, a “large employer” was defined to be any entity that averaged more than 100 full-time employees in calendar year 2019.

To meet the requirement of a significant decline in gross receipts, the employer’s gross receipts in any calendar quarter in 2020 must be less than 90% of its gross receipts (up from a 50% decline) for the same calendar quarter in 2019. Once this threshold is met, the employer will remain eligible for the credit through the end of the calendar quarter in which its gross receipts have recovered to more than 90% (up from 80%) of its gross receipts for the same calendar quarter in 2019. Otherwise, the credit will expire with the first calendar quarter of 2021. The proposed legislation also contains a phase-in of the credit

To the extent the employer is deemed eligible for the employee retention credit, the amount of the credit will be equal to 80% of the qualifying wages (up from 50% in the CARES Act) for each eligible employee, up to a maximum qualifying wage of $15,000 per eligible employee for each calendar quarter, and total qualifying wages of $45,000 for all calendar quarters. **Note:** the full tax credit is available only to the extent the employer has seen its gross receipts drop by more than 50% over the same calendar quarter in 2019. To the extent the employer’s gross receipts dropped by less than 50% (but more than the 10% threshold), the tax credit is reduced proportionately.

The tax credit may be used to offset employment taxes that are otherwise due for the quarter. Excess credits are treated as refundable tax credits. **State and local governmental employers would be able to claim the credit to the extent they are paying wages while their operations are fully or partially shut down.**

**Note: the employee retention credit is not available to any entity that qualifies for the forgiveness of all or any portion of an SBA loan made under the Paycheck Protection Program.**

*C. Payroll Credit for Certain Fixed Expenses of Employers Subject to Closure by Reason of COVID-19 (Sec 20212)*

The proposed legislation would permit eligible employers to take a credit against otherwise applicable employment taxes due for any calendar quarter an amount equal to 50% of the qualified fixed expenses paid or incurred by the employer during such calendar quarter. For these purposes, the amount of qualified fixed expenses that may be counted towards the credit is limited to the lower of: (1) the qualified fixed expenses paid by the eligible employer in the same calendar quarter of calendar year 2019, (2) $50,000, or (3) the greater of: (i) 25% of the wages (including certain health plan expenses) paid with respect to all employees during the calendar quarter or (ii) 6.25% of the gross receipts of the employer during calendar year 2019. This tax credit is refundable to the extent the credit exceeds the amount of employment taxes otherwise due during any calendar quarter. **Governmental employers are generally not eligible for the employee retention credit.**

For these purposes, “qualified fixed expenses” means the payment or accrual of any covered mortgage obligation, covered rent obligation, or covered utility payment. Such expenses do not include the prepayment of such obligations for a period in excess of a month, unless customarily due in advance.

To be eligible, an employer must:

* Have carried on a trade in 2020;
* Must either: (1) have not more than 1,500 full-time equivalent employees (FTEs) for calendar year 2019 or (2) not more than $41,500 in gross receipts in the last taxable year ending in 2019;
* With respect to any calendar quarter: (1) must have had its business fully or partially suspended due to a government mandate or (2) had a significant decline in gross receipts (defined as gross receipts that are 90% of its gross receipts for the same calendar quarter in 2019).

Once eligible, the employer remains eligible until its gross receipts for any calendar quarter recover to more than 90% of the gross receipts for the same calendar quarter in 2019.

**Note:** the full tax credit is available only to the extent the employer has seen its gross receipts drop by more than 50% over the same calendar quarter in 2019. To the extent the employer’s gross receipts dropped by less than 50% (but more than the 10% threshold), the tax credit is reduced proportionately.

*D. Payroll Tax Deferral for Recipients of Certain Loan Forgiveness (Sec. 20231)*

The proposed legislation would eliminate Section 2302(a) of the CARES Act, which limited the ability of employers to take advantage of the payroll tax deferral period to the extent they qualified for loan forgiveness under the Paycheck Protection Program or the U.S. Treasury Program Management Authority. This provision is retroactive to the enactment of the CARES Act.

*E. Certain Loan Forgiveness and other Business Financial Assistance under CARES Act not includible in Gross Income (Sec. 20233)*

The proposed legislation would provide that the following shall not be includible in the definition of “gross income” for a business or individual:

* Amounts forgiven under the U.S. Treasury Program Management Authority;
* Any advance under the Emergency EIDL Grant Program; and
* Principal, interest and fees on SBA Loans described in 1112(c) of the CARES Act.

*F. Treatment of Expenses Paid or Incurred with Proceeds from SBA Loans (Sec. 20235)*

The proposed legislation would clarify that amounts forgiven under the PPP program are not included in gross income.

**VIII. Employee Leave Provisions**

1. *Employee Eligibility and Employer Clarification (Sec. 120102)*

This section temporarily amends the Family and Medical Leave Act (1993) Employee Eligibility to reduce the current 12 month and 1,250-hour eligibility requirement for transitional unpaid FMLA to 90 days. This section also clarifies that public agencies are covered under the Family and Medical Leave Act of 1993, regardless of the number of employees.

1. *Emergency Leave Extension (Sec.120103)*

The proposed legislation would extend availability of Emergency Paid FMLA from December 31, 2020 to December 31, 2021.

1. *Emergency Leave Definition (Sec. 120104)*

The proposed legislation provides private sector and public sector employees who have been on the job for at least 30 calendar days with the right take up to 12 weeks of job protected paid leave under the Family and Medical Leave Act, regardless of the size of their employers.

1. *Regulatory Authorities (Sec. 120105)*

The proposed legislation removes the Secretary of Labor’s authority to issue regulations, authorized under Families First Coronavirus Response Act (FFCRA), 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. It nullifies any previously issued regulations that contradict these provisions.

1. *Paid Leave (Sec. 120106)*

The proposed legislation provides workers with a full 12 weeks of paid emergency FMLA leave and such leave does not count towards an employee’s 12 weeks of nonemergency unpaid FMLA leave. This also provides that only the employee can decide to take emergency FMLA leave concurrently with any other paid leave they have available.

1. *Intermittent Leave (Sec. 120109)*

The proposed legislation amends the FFCRA’s requirement that the employer and employee agree on the use of emergency paid leave in an intermittent manner. This legislation would permit employees to take leave intermittently or on a reduced work schedule, regardless of a previous agreement between an employer and employee.

1. Paid Sick Time Requirement (Sec. 120115)

The proposed legislation permits eligible employees to use paid sick leave for the uses allowed under the emergency FMLA. It also mandates that employers provide 80 hours of Paid Sick Leave for full-time employees and a prorated number of hours for part-time employees each 12-month period. Additionally, this amends the intermittent use provisions of the FFCRA Emergency Paid Sick Leave and permits employees to use Paid Sick Leave intermittently regardless of mutual agreement between employer and employee. The proposed legislation clarifies that all full time employees are eligible for paid sick leave immediately upon hire.

1. *Sunset. (Sec. 120116)*

The proposed legislation extends the availability of emergency paid sick leave from December 31, 2020 to December 31, 2021.

1. *Definitions (Sec. 120117)*

The proposed legislation eliminates the large employer exemption and clarifies that nonprofit organizations are covered employers. The proposed legislation ensures that fulltime and part time employees earn full wage replacement (up to $511 per day) for all emergency paid sick leave uses.

1. *Regulatory Authorities (Sec. 120120)*

The proposed legislation amends the FFRCA to eliminate the Secretary of Labor’s authority to issue regulations to exempt certain employers with fewer than 50 employees, health care providers, and emergency responders from the emergency paid sick leave provisions. The proposed legislation further amends the FFCRA and eliminates the Secretary’s authority to issue regulations to align Divisions C (Emergency Family and Medical Leave Act), E (Emergency Paid Sick Leave Act) and G (Tax Credits for Paid Sick and Paid Family and Medical Leave) of the Family First Coronavirus Response Act. Any such regulations issued by the Department shall have no force and effect.