



# House aid bill aims to boost health benefits, COVID-19 leave, retention

By Geoff Manville and Katharine Marshall  
May 21, 2020

## In this article

[COBRA subsidies and notices](#) | [Flexibility for FSAs, cafeteria plans](#) | [Health plan mandates, cost relief](#) | [Emergency sick and family leave changes](#) | [Expanded employee retention credit](#) | [Tough Senate negotiations ahead](#) | [Related resources](#)

The coronavirus relief bill passed by the House May 15 would subsidize COBRA coverage, ease restrictions on cafeteria plans and flexible spending arrangements (FSAs), offer reinsurance for certain COVID-19 costs incurred by employer health plans, and impose new health plan mandates. The sweeping measure — the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act ([HR 6800](#)) — would also enhance the health, leave, payroll and employer financial aid programs enacted earlier. Drafted by House Democratic leaders, the bill has no chance of Senate passage but provides a blueprint for negotiations with Senate Republicans and the White House on a final package. While prospects for a compromise are uncertain, any deal could include some of the House bill's health, leave and other workplace proposals.

## COBRA subsidies and notices

The HEROES Act would fully subsidize COBRA premiums from March 2020 to February 2021 and require revised COBRA notices — both while the subsidies are available and afterward.

## Fully subsidized premiums

The legislation would provide a 100% subsidy for continuation coverage elected under COBRA or provided to furloughed employees. Individuals eligible for this assistance would pay no portion of the premium for health coverage. Employers and insurers that comply with certain reporting requirements would receive refundable tax credits equal to the premiums that individuals otherwise would have owed.

The subsidy would be available retroactively to March 1, 2020, and extend through Jan. 31, 2021. Individuals who lose their jobs, have reduced hours or are furloughed would be eligible for subsidized continuation coverage. Employers could allow subsidy-eligible individuals to switch to less-expensive coverage. Employers or group health plan administrators would have to inform assistance-eligible individuals about the availability of the subsidy and, in the case of COBRA-eligible individuals, an extended election period.

### **Revised COBRA notices**

The bill calls for improved COBRA election notices to ensure qualified beneficiaries understand all of their coverage options, including the availability of public exchange plans and possible financial assistance under the Affordable Care Act. The model COBRA election notice issued by the Department of Labor (DOL) already contains some of this information, although it is not required by statute. The bill also directs the DOL to update its model COBRA general and election notices and allow an opportunity for public comment to ensure they are clear and understandable to the average participant.

### **Flexibility for FSAs, cafeteria plans**

The bill contains a number of provisions — many recommended by plan sponsors — that would give more flexibility to cafeteria plans, health FSAs and dependent care FSAs during the pandemic. Here are some key provisions:

- Cafeteria plans and health FSAs could permit participants to carry over up to \$2,750 in unused benefits or contributions from a plan year ending in 2020 to the next plan year.
- Cafeteria plans and dependent care FSAs could let participants carry over up to \$5,000 (or \$2,500 if married and filing separately) of unused dependent care assistance benefits or contributions from a plan year ending in 2020 to the next plan year.
- Cafeteria plans and dependent care FSAs could increase the maximum permissible contribution to \$10,500 (up from \$5,000) for the 2020 tax year.
- Cafeteria plans could allow participants to carry over unused paid time off from a plan year ending in 2020 to the next plan year.
- Cafeteria plans and health FSAs could allow participants to make a one-time increase or decrease to their health FSA contribution elections (without regard to any change in status) or the amount of paid time-off elections before Dec. 31, 2020. Recent IRS guidance provides similar flexibility for medical plan, health and dependent care FSA election changes during 2020 (Notices [2020-29](#) and [2020-33](#)).

## House aid bill aims to boost health benefits, COVID-19 leave, retention

- Cafeteria plans and both health and dependent care FSAs could extend the grace period during which unused funds from the plan year ending in 2020 can be used from a maximum of 2-1/2 months to 12 months. Recent IRS guidance provides more limited flexibility. The bill would also allow an employee who ends participation in a health FSA in 2020 to continue receiving reimbursements from unused benefits or contributions through the end of the plan year.

### Health plan mandates, cost relief

**New mandates.** The HEROES Act includes a number of new requirements for group health plans:

- Plans would have to cover items and services related to COVID-19 treatment without any cost sharing during the emergency period. The bill also retroactively extends the existing requirement that plans cover COVID-19 testing without cost sharing to the beginning of the COVID-19 emergency.
- Plans would have to notify members that they can obtain advance prescription drug refills during an emergency period.

**Balance-billing ban for virus treatment.** The bill expands and extends the financial aid to healthcare providers established in the Coronavirus Aid, Relief and Economic Security (CARES) Act ([Pub. L. No. 116-136](#)). Providers receiving these funds could not balance-bill patients for COVID-19 testing and treatment costs exceeding the cost-sharing amount that would apply for a participating provider.

**Reinsurance program for employer costs.** A government-run risk corridor program would reimburse employer health plans — including self-insured plans — for certain COVID-19-related costs for plan years 2020 and 2021. Under the program, if the “target amount” — generally, all employer and employee costs reduced by administrative costs — exceeds 105%, plans would be reimbursed 75% of the additional cost.

### Emergency sick and family leave changes

The HEROES Act would extend through Dec. 31, 2021, the emergency sick and family leave programs (and related payroll tax credits) created by the Families First Coronavirus Response Act (FFCRA) ([Pub. L. No. 116-127](#)). The bill also would:

- Make all private-sector employers — not just those with fewer than 500 employees — subject to the FFCRA’s emergency paid sick and family leave programs, but larger employers would not receive any payroll tax credits to cover leave costs
- Expand qualifying reasons for leave under the Emergency Family and Medical Leave Expansion Act (EFMLA) to include the need to self-quarantine or care for a family member with COVID-19 or in quarantine — in addition to the FFCRA’s leave for employees unable to work when a son or daughter’s school or child care has closed due to the public health emergency

## House aid bill aims to boost health benefits, COVID-19 leave, retention

- Expand the definition of family member and require any emergency family leave taken not count against the maximum 12 weeks of leave otherwise available to an employee under the Family and Medical Leave Act (FMLA)
- Amend the Emergency Paid Sick Leave Act (EPSLA) of the FFCRA to provide paid sick leave for any reason allowed under the amended EFMLEA
- Repeal the lower daily wage-rate maximum for certain emergency leave under the EPSLA, increasing the payroll tax credit available from \$200 to \$511
- Increase from \$10,000 to \$12,000 the aggregate amount of payroll tax credits available for emergency family leave required by the EFMLEA
- Allow employees to take emergency paid sick and family leave intermittently or while working a reduced schedule
- Make the tax credits for paid emergency sick and family leave available to federal, state and local government employers of any size

The bill would temporarily modify through Dec. 31, 2022, the FMLA's employee eligibility requirements for nonemergency leave, reducing the required tenure to 90 days rather than 1,250 hours worked over 12 months.

### Expanded employee retention credit

The HEROES Act would expand the CARES Act's employee retention credit that covers 50% of eligible employee compensation, including health benefits, to a maximum of \$10,000 per employee between March 12, 2020, and Jan. 1, 2021. The bill would:

- Increase the credit to 80% of eligible compensation up to \$15,000 per employee in a calendar quarter and \$45,000 in aggregate
- Allow employers with 1,500 or fewer employees (rather than 100 or fewer) to receive the credit for any employee during a period of reduced operations or revenue loss
- Allow larger employers with more than \$41.5 million in gross receipts during 2019 to receive the credit while employees aren't providing services
- Make the credit available to state and local government employers

## **Tough Senate negotiations ahead**

The HEROES Act marks an opening bid by House Speaker Nancy Pelosi, D-CA, in advance of negotiations with the Republican-controlled Senate and the Trump administration. Senate Republicans call the bill a nonstarter, and many want to take more time to see how the nearly \$3 trillion in aid already enacted is working before approving a new round of relief.

While those negotiations will be a relatively long and difficult process, political pressure for additional government aid will likely intensify over the coming months. A compromise package could come sometime this summer.

## **Related resources**

### **Non-Mercer resources**

- [HR 6800](#), the HEROES Act (May 12, 2020)
- [Section-by-section summary of the HEROES Act](#) (May 12, 2020)
- [Description of the tax provisions of the CARES Act](#) (Joint Committee on Taxation, April 23, 2020)
- [Pub. L. No. 116-136](#), the CARES Act (Congress, March 27, 2020)
- [Section-by-section summary of the CARES Act](#) (Senate Health, Education, Labor & Pensions Committee, March 25, 2020)
- [Pub. L. No. 116-127](#), the FFCRA (Congress, March 18, 2020)

### **Mercer Law & Policy resources**

- [Pandemic relief provided to health and benefit plans, participants](#) (May 8, 2020)
- [Keeping track of COVID-19 laws affecting employee benefits, jobs](#) (May 4, 2020)
- [DOL and IRS issue COVID-19 guidance on emergency paid leave](#) (April 29, 2020)
- [Employer health plans have to meet new COVID-19 coverage mandate](#) (April 21, 2020)
- [CARES Act expands unemployment benefits, aims to stem job losses](#) (April 15, 2020)
- [CARES Act boosts telehealth, makes other health, paid leave changes](#) (March 27, 2020)

### Other Mercer resources

- [Stay informed on the coronavirus](#) (regularly updated)

*Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.*