Federal Response to the Coronavirus Pandemic

Introduction

The following is a resource for members of the Home Care Association of America (HCAOA) detailing the key federal initiatives and policies that you should be aware of when making decisions during this coronavirus pandemic for your clients, employees and your company.

On March 6, 2020, President Trump signed the Coronavirus Preparedness and Response Supplemental Appropriations Act (H.R.6074), (Public Law No: 116-123) into law. This Act provided $8.3 billion in emergency funding for federal agencies to respond initially to the coronavirus outbreak. The full text and a summary of the provision within H.R.6074 can be found here.

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (H.R.6201), (Public Law No: 116-127) into law. This Act responds to the coronavirus disease outbreak by providing paid sick leave, tax credits, and free testing; expanding food assistance and unemployment benefits; and increasing Medicaid funding. The full text and a summary of the provision within H.R.6201 can be found here.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (H.R.748) into law. The Act provides $2 trillion in funding to address the needs of individuals and employers, states, and health care providers dealing with the fallout from the pandemic. The full text and a summary of the provision within H.R.748 can be found here.

What This Means for Home Care Providers:

- The Department of Labor has included home care under its list of workers exempted from the expansive paid sick leave and family and medical leave provisions in the FFCRA.
  - With that said, exempt businesses can still take advantage of the available tax credits if they opt to honor the leave policies afforded to workers in the FFCRA.
- The Small Business Administration is now able to offer loans through its existing 7(a) program in amounts equal to two and a half months of payroll. These loans are forgivable if used for payroll, rent, and utilities.
- HR6201 included expanded unemployment benefits to add an additional 13 weeks. The federal government is also funding 100% of states' work-sharing costs for 26 weeks.
• Employer payroll tax on all wages under $137,700 can be deferred

Key Provisions for Home Care Providers:

While many parts of these new coronavirus related laws will be of interest to home care providers, HCAOA has identified key elements that each home care provider should be familiar with. Details on these elements are provided below. The Departments of Treasury, Labor, and Health and Human Services will be issuing guidance on various parts of these laws and HCAOA will keep you updated on these announcements and their impact on home care providers.

**SBA Given Funds to Cover 2 ½ Months of Payments in Forgivable Loans**

The CARES Act provides nearly $350 billion to small businesses as forgivable loans to bridge the economic shutdown caused by the coronavirus. **A small business DOES NOT have to be experiencing financial hardship to qualify for this important funding, but the funding is meant to assist in maintaining employees and operation of a small business during this challenging time.**

Full SBA Guidance on loans under this program can be found [here](https://www.sba.gov/). You are encouraged to contact your commercial lender to inquire about applying for this program. Please note that if you have applied or plan to apply for the SBA’s existing Economic Injury Disaster Loan Program you may not be eligible to apply for the SBA’s Paycheck Protection Program.

Under the Cares Act, the Small Business Administration would provide the forgivable loans through its existing 7(a) program **in amounts equal to two and a half months of payroll**, with a maximum of $10 million. **As long as the borrower uses the loan to cover payroll, interest on debt, rent or utilities, the loans would be forgiven.**

The bill would waive most of the SBA’s usual paperwork requirements and other prerequisites to speed the money into entrepreneurs’ hands. Some paperwork would come on the back end when companies would need to prove they actually utilized the loans for the intended purpose under the Act.

Interest on the loans would be capped at 4 percent and only the principal of the loans would be forgivable. If a business terminates workers or reduces their pay, the amount forgivable would be reduced proportionately.

Forgiven debt is usually treated as income for tax purposes, but that would not apply to loans under this program, thereby keeping participating companies from being saddled with a larger tax bill next year.

Eligibility for this SBA loan program capped at not more than 500 employees. The definition of “employee” is defined as individuals employed on a full-time, part-time, or other basis.

[https://www.sba.gov/](https://www.sba.gov/)
New Paid Sick Leave and Family and Medical Leave Benefits – Home Care Exempted

A significant part of H.R.6201 establishes paid sick leave and expanded family and medical leave benefits for workers. The U.S. Department of Labor’s Wage and Hour Administration administers the programs and issues guidance to employers and employees. Please check this link regularly for guidance updates. https://www.dol.gov/coronavirus

The Act provides that employees of covered employers are eligible for:

- Two weeks (up to 80 hours) of **paid sick leave** at the employee’s regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee’s regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
- Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee’s regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

The required pay for this leave is capped at $511 per day ($5,110 in the aggregate) where leave is taken for state-mandated or doctor-recommended quarantines; and $200 per day ($2,000 in the aggregate) where the employee is taking leave to care for a family member or is staying home due to school closures.

Compensation for these programs is creditable in full under the payroll tax credit provisions of the FFCRA; see page 5 for a description of those provisions.

The paid sick leave and expanded family and medical leave provisions apply to certain public employers, and private employers with fewer than 500 employees. Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

The Secretary of Labor has the authority to exclude certain health care providers and emergency responders from the definition of employee under these new benefits by allowing the employer of such health care providers and emergency responders to opt out. The DOL has issued the following guidance on health care workers:
For the purposes of employees who may be exempted from paid sick leave or expanded family and medical leave by their employer under the FFCRA, a health care provider is anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

HCAOA was pleased that the DOL guidance specifically mentioned home health care providers and "any similar institution, employer, or entity." This means that home care providers are also exempt from having to comply with the mandate. Those HCAOA members wishing to comply with the leave mandates would be eligible for tax credits to offset these costs.

Rather than being permanent, the program is set to expire Dec. 31, 2020.

**Unemployment Benefits Extended an Additional 13 Weeks**

Under current law, unemployment insurance is available to individuals who have lost their jobs, and UI benefits replace part of their wages while they look for work. States run the basic unemployment insurance program, and most replace about half of an individual's wages for up to 26 weeks. A second program, the permanent extended benefits program, provides an additional 13 to 20 weeks of compensation once regular benefits have been exhausted, but only in states where the unemployment situation has gotten dramatically worse. Usually, states and the federal government split the cost of extended benefits.

H.R.6201 temporarily expands UI benefits for the millions who are losing their jobs because of the coronavirus pandemic, with the federal government picking up the cost through a Federal Pandemic Unemployment Compensation program. Including providing for immediate benefits, providing an additional $600 per week through July, and providing for an additional 13 weeks of regular benefits beyond the normal 26 weeks. It also generally expands eligibility for UI benefits to individuals who currently cannot receive traditional UI, including the self-employed, independent contractors, "gig" workers and others with limited work histories.

Under the measure, the expanded UI benefits would be available to workers who are unemployed due to a wide variety of effects of the coronavirus, including: their own illness, illness in a family member, the necessity to quarantine, job loss because of the virus, and staying home to take care of a child whose school or child care is closed because of the virus. It explicitly excludes those who can telework for pay, or who are already receiving paid sick leave or other paid leave benefits.

The bill's UI expansions would expire at the end of calendar year 2020, and state participation in the expanded program would be voluntary.
**Filing for Unemployment**

*Federal Government to Cover 26 Weeks of State Short-Time Compensation Payments*

Short-Time Compensation (STC) programs, also known as work sharing or shared work programs, are a variation of unemployment insurance meant to prevent layoffs. Under such programs, instead of laying off workers during an economic downturn, employers can cut back the number of hours worked and spread those hours among the entire workforce — with workers whose hours are cut receiving a prorated UI benefit to make their compensation whole.

Not all states have STC programs. Under H.R.6201, the federal government would pay 100% of a state's STC benefits, for up to 26 weeks of benefits for states that already have, or that establish, permanent programs in 2020. For states that establish temporary STC benefit programs, the federal government would pay up 50% of the state's benefit costs. Federal funding for both permanent and temporary programs would end Dec. 31, 2020, and individuals employed on a seasonal, temporary or intermittent basis would not be eligible for federal funding under state STC programs.

*Refundable Tax Credit to Assist Employers with Paid Sick Leave and FLMA Benefits*

To defray the costs of these new employee benefits during this pandemic, employers would receive a 100 percent refundable tax credit applied to the employer portion of the Social Security payroll tax for both paid sick leave and family leave wages.

Eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

The CARES Act also included a provision that allows employers to receive an advance tax credit for Required Paid Sick Leave (under the Families First Coronavirus Response Act) from Treasury instead of having to be reimbursed on the back end. It also creates regulatory authority for the Secretary of Treasury to implement the tax credit advances.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced by the Treasury Department.

See Treasury Department Guidance

**2020 Payroll Tax Payments Deferred Until 2021 and 2022**

As an additional incentive to keep workers on staff, the Act would allow companies to defer the 6.2 percent Social Security tax on all wages up to $137,700 for the rest of the year, though an
employer would have to pay it back in equal installments in 2021 and 2022. What they owe, though, could be reduced by the tax credits earned by keeping employees on their payroll.

**Employee Retention Tax Credit Available for Suspended Businesses**

The bill establishes an employee retention credit for those subject to closure due to COVID-19. It provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis.

To use this credit you have to meet two tests:

1. Have business operations fully or partially suspended operations due to orders from a governmental entity limiting commerce; business, travel or group meetings or
2. Experience a year over year (comparing calendar quarters) reduction in gross receipts of at least 50%—until gross receipts exceed 80% year-over-year.

Also, selecting this option precludes you from receiving loans under the SBA 7(a) program.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shutdown order. The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

**Direct Payments to Individuals and Households**

The centerpiece of the tax provisions is the inclusion of direct payments to households: $1,200 for individuals and $2,400 for joint filers, with an extra $500 per child. Those amounts phase out by 5 percent of adjusted gross income above $75,000 for single filers and $150,000 for married couples. A family of four earning $200,000 would see their credit reduced to $900 from the maximum $3,400.

**Penalties Waived on Retirement Savings Withdrawals and Loans**

As with other disasters, Congress will allow no-penalty hardship withdrawals from 401(k)s and other retirement plans as Americans struggle to find cash to make it through the coronavirus pandemic. The legislation contains relaxed rules for taking out loans against retirement savings, for deducting charitable contributions and for taking required minimum distributions from retirement plans.

The bill not only waives the 10 percent early withdrawal penalty from a retirement plan but gives those who make withdrawals three years to return the money to their plan. In addition, the income taxes owed on these distributions are also spread out over that same three year period.

***HCAOA will continue to update this document as federal agencies provide guidance on implementation efforts ***