STATE OF WISCONSIN

DWD

Department of Workforce Development

Unemployment Insurance Advisory Council

Council Members: Please bring your calendars to schedule future meetings.
https://dwd.wisconsin.gov/uibola/uiac/

MEETING

Date: March 19, 2020

Time: 10:00 a.m. – 2:00 p.m.

Place: Department of Workforce Development
*Teleconference (Please see below for further information)

Join by Phone:
415-655-0003 or 855-282-6330 (toll free)

Connect via WebEx:
March 19, 2020 UIAC Meeting WebEx
Meeting Number (Access Code): 923 219 645
Meeting Password: DWD1

AGENDA ITEMS AND TENTATIVE SCHEDULE:

1. Call to Order and Introductions
2. Approval of Minutes of the January 16, 2020 Council Meeting
3. Department Update
4. Annual Fraud Report
5. Update on Legislation
    - UIAC Agreed Bills (SB 671 & SB 672)
6. UI Program and the Coronavirus Pandemic
    - H.R. 6201, Families First Coronavirus Response Act
    - Scope Statement 008-20, Chs. DWD 127 & 128

7. Research Requests
8. Future Meeting Dates
9. Adjourn

Notice:

**Due to the declaration of a public health emergency, the meeting will be conducted via teleconference. Staff and the public have the option to participate via teleconference or WebEx using the information provided under the meeting details above.*

- The Council may not address all agenda items or follow the agenda order.
- The Council may take up action items at a time other than that listed.
- The Council may discuss other items, including those on any attached lists.
- The Council members may attend the meeting by telephone.
- The employee or employer members of the Council may convene in closed session at any time during the meeting to deliberate any matter for potential action or items posted in this agenda, under sec. 19.85(1)(ee), Stats. The employee or employer members of the Council may thereafter reconvene again in open session after completion of the closed session.
- This location is accessible to persons with disabilities. If you have a disability and need assistance (such as an interpreter or information in an alternate format), please contact Robin Gallagher, Unemployment Insurance Division, at 608-267-1405 or dial 7-1-1 for Wisconsin Relay Service.
- Today's meeting materials will be available online at the time the meeting is scheduled to begin at: https://dwd.wisconsin.gov/uibola/uiac/meetings.htm

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

Meeting Minutes

Offices of the State of Wisconsin Department of Workforce Development
201 E. Washington Avenue, GEF 1, Room F305
Madison, WI

January 16, 2020

The meeting was preceded by public notice as required under Wis. Stat. § 19.84.

Members Present: Janell Knutson (Chair), Scott Manley, Susan Quam, Mike Gotzler, John Mielke, Sally Feistel, Shane Griesbach, Terry Hayden, and Dennis Delie.

Department Staff Present: Mark Reihl, Amy Banicki, Andrew Rubsam, Jennifer Wakerhauser (Deputy Legal Counsel), Samantha Ahrendt (Deputy Legal Counsel), Mike Myszewski, Patrick Lonergan, Tom McHugh, Mary Jan Rosenak, Pam James, Janet Sausen, Robert Usarek, Jason Schunk, and Robin Gallagher.

Members of the Public Present: Mike Duchek (Legislative Reference Bureau), BJ Dernbach (office of Representative Warren Petryk), Tyler Longsine (office of Representative James Edming), Anita Krasno (General Counsel, Labor & Industry Review Commission),Victor Forberger (Attorney Wisconsin UI Clinic), Brian Dake (Wisconsin Independent Businesses, Inc.) Phoebe Hefko, Katie Block and Lisa Sobczyk (students with Journey of Collaboration).

1. Call to Order and Introduction

Ms. Knutson called the Unemployment Insurance Advisory Council meeting to order at 10:05 a.m. under Wisconsin's Open Meetings law. Council members introduced themselves and Ms. Knutson recognized DWD Deputy Legal Counsel, Jennifer Wakerhauser and introduced the new DWD Deputy Legal Counsel, Samantha Ahrendt. Ms. Knutson also recognized BJ Dernbach of Rep. Warren Petryk's Office, Tyler Longsine of Rep. James Edming's Office, Mike Duchek of the Legislative Reference Bureau (LRB), Anita Krasno, General Counsel, Labor & Industry Review Commission (LIRC), and Journey of Collaboration students.

2. Approval of Minutes of the December 6, 2019 Meeting

Motion by Mr. Hayden, second by Mr. Gotzler, to approve the minutes of the December 6, 2019 meeting without correction. The motion carried unanimously.

3. Department Update

Mr. Reihl announced that the department will not be renewing the leases for the UI hearing offices located in Eau Claire and Appleton, and those offices are scheduled to close the first week of March 2020. Mr. Reihl noted there will be no layoffs of any staff working in those

offices. The department has identified other locations across the region, including in Eau Claire and the Fox Valley, where the department already has space leased to hold in-person hearings. Mr. Reihl added that the closure of these offices will save the department over $350,000 annually.

Ms. Knutson notified the Council that DWD launched a redesigned version of the department's website on January 2, 2020. The website offers the same features and services as before, but with a modernized look and feel to improve the functionality for customers.

4. Correspondence

Ms. Knutson reviewed a letter sent to Secretary-designee Frostman on December 10, 2019 from northern Wisconsin legislators expressing concerns about the closure of the Eau Claire and Appleton hearing offices. Ms. Knutson also reviewed the December 11, 2019 response from Secretary-designee Frostman that addressed the concerns raised in the letter from the northern Wisconsin legislators and provided clarifying information.

Mr. Manley asked how far a claimant or employer in those regions would have to travel if they wanted to have an in-person hearing. Ms. Knutson responded there is still a location to hold in-person hearings in Eau Claire, and the closest alternative location to Appleton is in Green Bay.

5. Update on Legislation

Ms. Knutson reported the two UIAC agreed bills (SB 671 and SB 672) have been introduced by the Senate Committee on Labor and Regulatory Reform. The committee has scheduled a public hearing on both bills for Tuesday, January 28, 2020 at 10:00 a.m. Ms. Knutson stated the department will attend the hearing to testify in favor of the bills and hopes that members of the Council will do the same if schedules permit. Mr. Manley mentioned that he will be in Washington, D.C. that week so he will be unable to attend the public hearing, but Mr. Chris Reader from WMC will be attending the hearing to testify in support of the bills and Mr. Manley will submit written testimony in support of the bills. Mr. Gotzler, Ms. Quam, and Mr. Hayden indicated they plan on attending the public hearing and testifying in favor of the bills as well.

6. Report on the Unemployment Insurance Reserve Fund

Mr. McHugh provided the following 2019 UI Reserve Fund Highlights:

- Benefit payments declined by $3.6 million (1.0%) from $375.9 in 2018 to $372.3 million in 2019. Mr. McHugh reviewed the year-end change in benefit payments going back to 2015. Year-to-year comparisons have shown a continued decline in benefit payments from the previous year; however, there has been a slight increase in benefit payments over the past six months which could indicate the continued decline in benefit payments may be leveling out.

- The department is required to provide Form 1099-G information to the Internal Revenue Service and to all claimants paid benefits during the previous year (including benefits paid from the UI Trust Fund, federal government, and reimbursable employers). For the

2019 tax year, the UI Division issued a total of $394 million in benefit payments to 129,888 claimants. Mr. McHugh examined previous 1099 files and noted the last time payments were below this amount was in 1990 when they were $371 million. In contrast, payments were $3.1 billion in 2009 during the recession.

- Mr. McHugh provided an overview of cash activity related to taxable employers from 2018 – 2019 and included a breakdown of the cash receipts and benefits paid from the UI Trust Fund over that time period. Total tax receipts declined $39.2 million (6.6%) from $592.8 million in 2018 to $553.6 million in 2019.

- The UI Trust Fund balance at the end of 2019 was $1.96 billion, an increase of $229.7 million (13.3%) from 2018. Interest earned on the UI Trust Fund is received quarterly and the U.S. Treasury annualized interest rate for this quarter is 2.4%. At a 2.4% interest rate the UI Trust Fund is earning about $129,000 in daily interest. Interest for 2019 totaled $44.9 million, an increase of $8 million (21.7%) from 2018.

Mr. McHugh also reported on the 2019 UI Employer Tax Rate Highlights. The department determines employer tax rates once a year and employers received their 2020 tax rate notices in October 2019. The statutes provide four separate tax rate schedules, and the Trust Fund balance on June 30th determines the tax schedule in effect for the next year. The balance of the UI Trust Fund on June 30, 2019 was $1.8 billion, which means that Wisconsin employers are in Schedule D, the lowest schedule, for a third consecutive year.

Of the approximately 142,000 employers for 2020, 24% (33,855 employers) experienced no change in their tax rate for 2020. Twenty-four percent (8,105) of the employers with no change to their tax rate for 2020 were already rated at the lowest possible tax rate so their rate could not be reduced any further and another 5% remained at the maximum tax rate.

Mr. Mielke asked if the increases are due to changes in employer experience ratings. Mr. McHugh responded that is correct that when there is not a schedule change from year-to-year that any changes are experience related. In the past, any changes could have been a combination of a schedule change in addition to experience ratings but since the state has been in Schedule D for the past three years that is not currently the case.

To measure the effect of the tax rate changes, each employer's 2019 and 2020 tax rates were multiplied by their 2019 Fiscal Year Taxable payroll. Between 2019 and 2020, the 52,025 employers with lower tax rates will pay $89.4 million less in unemployment taxes if their payroll remained the same as their 2019 Fiscal Year Taxable payroll. Similarly, the 33,415 employers with a higher tax rate will pay $60.9 million more, holding payroll constant. This is not a forecast or projection. Since 2020 rates are based on the same schedule as 2019, the net reduction in taxes of $28.3 million is due solely to the individual employer's experience.

Mr. Gotzler asked Mr. McHugh for clarification on what is included in taxable payroll. Mr. McHugh explained that taxable payroll is only payroll up to the taxable wage base of $14,000 for each employee and does not include the total payroll for all of Wisconsin. Mr. Gotzler followed up by asking what percent of Wisconsin's payroll is considered taxable payroll. Mr. McHugh

responded that total wages for second quarter of 2019 were $27 billion and taxable wages were $7 billion in that same quarter. Gross wages were up over 3.3% for the first three quarters of 2019 and taxable payroll was up 1% during that time.

Mr. McHugh provided additional details of the savings by each business sector based on the hypothetical scenario from earlier (holding payroll constant across years and using the 2019 and 2020 rates). Mr. McHugh highlighted that the manufacturing industry would realize savings of $6.9 million (a 5.9% decrease in taxes paid), the health care and social assistance industry would realize savings of $4.2 million (a 10.6% decrease in taxes paid), and the construction industry would realize savings of $2.4 million (a decrease of 2.6% of taxes paid).

Mr. McHugh provided information on the taxes paid and benefits charged by industry sector as opposed to tax brackets, and the distribution of tax rates by industry sector.

Mr. Manley noted that three-quarters of construction employers have a tax rate that is under 3.9% and asked if it is possible to analyze that industry sector further to determine which subsectors of the construction industry have the positive and negative reserve fund balances. Mr. McHugh responded that this analysis was done using the first two digits of the North American Industry Classification System (NAICS) codes and the NAICS codes could be expanded further to see what subsectors of construction industry employers have the lower or higher tax rates. Mr. Mielke asked if the department could review what percent of benefits are paid to claimants expected to return to work and have a work search waiver. Ms. Knutson responded that the department will review his request and determine if the information is available.

7. Worker Misclassification 2019 Year End Report

Mr. Myszewski reported on the activities of the Worker Classification Section. The Worker Classification Section conducted 679 investigations in calendar year 2019 (compared to approximately 550 investigations from the previous year).

Mr. Myszewski provided the following statistics on the worker misclassification efforts since the program was initiated in May 2013:

- The program has yielded a 31% return on investment from when it first began in 2013;
- 2,740 investigations have been conducted (61% of those investigations involve the construction industry);
- The investigations have resulted in 8,274 workers being reclassified as employees and the assessment of $2,743,032 in UI tax and interest;
- $66,000 in administrative penalties have been issued in 13 cases for intentional misclassification since the penalties went into effect in October 2016;
- 622 investigations (22.7%) have resulted in audits by the Field Audit Section;
- $85 million in gross wages and $54 million in taxable wages have been audited due to referrals from the Worker Classification Section;

Mr. Myszewski noted that the Worker Classification Section now consists of six full-time and two part-time employees. During the winter when construction slows down worker misclassification investigators investigate non-construction industries.

Ms. Quam requested that Mr. Myszewski confirm what non-construction industries investigators give special emphasis on during the winters. Mr. Myszewski explained that they identify other industries that issue large amounts of 1099s because they could have high potential for worker misclassification.
Mr. Gotzler asked how often his section receives anonymous complaints. Mr. Myszewski answered that most of the tips and complaints he receives are from individuals wanting to bring a potential issue to the department's attention but not looking to remain anonymous. Mr. Mielke asked where most of the complaints come from and Mr. Myszewski stated about 70% - 80% are self-generated.

The Council thanked Mr. Myszewski for his report and expressed that it is nice to see the program is yielding a positive return on investment.

8. Review Draft Scope Statement – Occupational Drug Testing Administrative Rule

Ms. Knutson reminded the Council that Scope Statement 091-15, relating to the administrative rules for occupational drug testing is set to expire on February 4, 2020. The department is looking to withdraw Scope Statement 091-15 and file a new one. The draft of the new Scope Statement for the occupational drug testing administrative rule was provided to the Council for their review and approval. If the Council votes to approve the draft Scope Statement at today's meeting, the department will submit it to the Governor's Office for approval and, once approved, will begin working on the permanent rule. Mr. Knutson noted the draft includes a few changes from the previous Scope Statement that are primarily due to the administrative rules relating to the pre-employment drug testing program being promulgated since the last Scope Statement was drafted.

Mr. Manley stated the drug testing statute Wis. Stat. § 108.133 appears to make a distinction between drug screening an individual who is in an industry that regularly drug tests and screening an individual where there is a reasonable suspicion for the unlawful use of controlled substance; but, the draft Scope Statement seems to link the two scenarios such that an individual would be required to be in an occupation that regularly drug tests and there be a reasonable suspicion they have engaged in the unlawful use of drugs.

Mr. Rubsam explained that the federal law only permits drug testing of individuals in an occupation that regularly drug tests and state law adds the screening requirement for reasonable suspicion before a drug test will be conducted.

Mr. Mielke inquired about the reason for creating a distinction between occupations that regularly drug test and those that do not. Mr. Rubsam responded that the department will not be conducting drug testing on individuals in occupations that do not regularly drug test because the federal law does not allow it.

Mr. Manley asked what method the department will use to screen for a reasonable suspicion if it determines an applicant's only suitable work is in an occupation that regularly drug tests. Ms. Knutson said the department will develop a screening process and include it in the draft rule that will be presented to the Council for their review.

Mr. Mielke asked is there an existing statutory definition for an "occupation" opposed to an industry or other classification. Mr. Rubsam answered that occupations are within an industry so the law cannot be applied to an entire industry because some occupations in that industry may require drug testing but other may not.

Mr. Gotzler asked if there was a list of occupations that regularly require drug testing identified in the federal law. Ms. Knutson confirmed that there are occupations identified and provided some examples.

9. Future Meeting Dates
Ms. Knutson reviewed the tentative UIAC meeting schedule for 2020.

Caucus

Motion by Ms. Feistal, second by Mr. Manley, to convene in closed caucus under Wis. Stat. § 19.85(1)(ee), to deliberate items on the agenda and report back after caucus. The motion carried unanimously, and the Council convened in closed caucus at 11:25 a.m.

The Council reconvened the public meeting at 12:50 p.m.

Motion by Mr. Manley, second by Mr. Hayden, to approve the draft Scope Statement for the administrative rule related to occupational drug testing. The motion carried unanimously

10. Adjourn

Motion by Ms. Feistal, second by Mr. Manley, to adjourn. The motion carried unanimously, and the Council adjourned at 12:51 p.m.

Department of Workforce Development
Secretary's Office
201 E. Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-3131
Fax: (608) 266-1784
Email: sec@dwd.wisconsin.gov

STATE OF WISCONSIN
Department of Workforce Development

Tony Evers, Governor
Caleb Frostman, Secretary

FOR IMMEDIATE RELEASE
Tuesday, March 17, 2020
CONTACT: DWD Communications, 608-266-2722
On the Web: http://dwd.wisconsin.gov/news/
On Facebook: http://www.facebook.com/WIWorkforce
On Twitter: @WIWorkforce

Governor Evers to Issue Emergency Order Waiving Work Search, Modifying Availability Requirements for UI Benefits - Asks Legislature to Repeal One Week Wait

MADISON – Gov. Tony Evers today announced he will issue an Emergency Order tomorrow that will waive work search requirements and modify the availability requirements for unemployment insurance benefits for workers impacted by COVID-19. Gov. Evers is working with the Wisconsin State Legislature to quickly act to waive the one-week waiting period for benefits so that much-needed unemployment insurance funds make it to affected workers quickly.

Gov. Evers announced that his order will waive the requirement that UI claimants conduct at least four weekly work search actions during the COVID-19 emergency. His order will also ensure that claimants who are otherwise eligible but out of work due to COVID-19 are considered available for work and therefore eligible for benefits.

"Tomorrow's emergency order will take advantage of the federal guidance related to administering unemployment insurance benefit claims during the pandemic period and allows the program to support our workers who have been affected by the COVID-19 outbreak," Gov. Evers said. "I am urging the Wisconsin State Legislature to quickly act and repeal the one week waiting period for UI benefits, so UI funds can quickly get to affected workers to support those households and our communities.

Gov. Evers' proposed 2019-2021 state budget had eliminated the one week waiting period for UI.

EMERGENCY ORDER #6

ORDER TO THE DEPARTMENT OF WORKFORCE DEVELOPMENT REGARDING UNEMPLOYMENT INSURANCE

Under the authority of Wis. Stat. § 323.12(4) and the public health emergency declared in Executive Order #72, I, Governor Tony Evers, order the following:

1. Under Wis. Admin. Code § DWD 128.01, the Department of Workforce Development (DWD) shall consider a claimant to be available for suitable work during a public health emergency if the claimant is perceived by an employer as exhibiting COVID-19 symptoms preventing a return to work or the claimant is quarantined by a medical professional or under local, state or federal government direction or guidance, and one of the following applies:
    a. The employer has instructed the claimant to return to work after the employee no longer exhibits symptoms, after a set amount of time to see if the disease is present, or after the quarantine is over.
    b. The employer has not provided clear instruction for the claimant to return to work.
    c. The claimant would be available for other work with another employer but for the perceived COVID-19 symptoms preventing a return to work or the quarantine.

2. Section 2 shall be good cause for not reporting for an eligibility review under Wis. Admin. Code § DWD 128.03.

3. For the purposes of Wis. Stat. §§ 108.04 (1) (a) to (bm), during a week in which there is a public health emergency, all of the following apply:
    a. No work is actually available within such a week.
    b. An employee is not considered absent from work if the employee is perceived by an employer as exhibiting COVID-19 symptoms preventing a return to work or the employee is quarantined by a medical professional or under local, state or federal government direction or guidance.

4. Under Wis. Admin. § DWD 127.01, a public health emergency constitutes four work search actions for each claimant who files a claim for each week during which the public health emergency is declared. This section is retroactively effective to March 12, 2020.

5. This order shall go into effect immediately and remain in effect for the duration of the public health emergency declared in Executive Order #72, or until a superseding order is issued.

6. Violation or obstruction of this order is punishable by imprisonment, fines, or both. Wis. Stat. § 252.25.

The provisions contained in this order are subject to further guidance and recommendations from the Wisconsin Department of Workforce Development.

This order shall remain in effect for the duration of the public health emergency declared in Executive Order #72, or until subsequent superseding emergency orders are issued, or until it becomes supplanted by rule promulgation.

Tony Evers
Governor
State of Wisconsin

03/18/2020
Date

WISCONSIN UNEMPLOYMENT INSURANCE

Integrity ★ Customer Service ★ Accountability

DWD

2020 Fraud Report to the

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL

UCD-17392-P (R. 03/2020)

"When an individual loses work through no fault of their own, the unemployment insurance program helps to mitigate the effects of job loss on individuals, their families and communities, and our economy. Maintaining the integrity and strength of this important social safety net is, and will continue to be, a top priority."

- Secretary Caleb Frostman,
Wisconsin Department of Workforce Development

"The Wisconsin Unemployment Insurance Division is recognized as a leader in its efforts to combat fraud. The division uses data analytics and technology to detect and deter fraud, ensuring the integrity of the UI program."

-Mark Reihl, UI Administrator
Wisconsin Department of Workforce Development

Inside

1 A Message from the Secretary
2 Worker Classification
3 Overpayments
3 Work Search
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8-11 Addenda

STATE OF WISCONSIN
DWD
Department of Workforce Development

Unemployment Insurance

dwd.wisconsin.gov/ui

This report is presented to the Wisconsin Unemployment Insurance Advisory Council pursuant to Wis. Stat. §108.14(19). The report contains information relating to the detection and prosecution of unemployment insurance fraud in the preceding year.

DWD
Department of Workforce Development

March 15, 2020

Dear Members of the Unemployment Insurance Advisory Council:

On behalf of the Department of Workforce Development (DWD), Administrator Mark Reihl and I are pleased to present the 2020 Unemployment Insurance (UI) Fraud Report, outlining the UI Division's efforts to combat waste, fraud, and abuse in the UI program in calendar year 2019. Fraud committed against the program comes in many forms and is perpetrated by employers and claimants. The following report outlines DWD's efforts to ensure this important safety net remains solvent and available to workers in the event they lose work through no fault of their own and are forced to rely on the program while they actively search for new employment.

In 2019, Governor Tony Evers established the Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification, which recently released recommendations to help combat this important issue affecting not only Wisconsin's UI program, but state UI programs across the country. The following report outlines the issue of worker misclassification, DWD's efforts to protect workers and employers who follow the law, investigate those employers who do not, and educate all employers and workers about the issue. The Taskforce's full report is also linked in the report.

We are proud to report that the amount of identified fraud continued to decline in 2019, with fraud overpayments declining by 4 percent when compared to the previous year.

A key tenant of all UI programs is that someone who claims UI benefits must remain able and available for full-time work. When work search requirements are not waived, individuals must make an active search for work and adequately document and report at least four actions per week. Audits of claimants' work search actions resulted in approximately 7,000 decisions finding work search requirements were not met. We will continue our educational campaign to help individuals understand this program requirement.

The following report also contains descriptions of many of the department's fraud-fighting tools, as well as our efforts to educate the general public about the importance of ensuring the UI program remains financially stable and available to workers separated from employment through no fault of their own.

Thank you again for your time and commitment to the betterment of the UI program. Your industry expertise is invaluable, and we look forward to working with you in 2020 and beyond.

Sincerely,

Caleb Frostman, Secretary
Department of Workforce Development

Mark Reihl, Administrator
Unemployment Insurance Division

WORKER CLASSIFICATION

Misclassification Taskforce

On April 15, 2019, Governor Tony Evers created the Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification.

Governor Evers recognizes worker misclassification denies thousands of Wisconsin workers the protections afforded by Unemployment Insurance (UI), Worker's Compensation (WC), and certain labor protections, and creates a competitive disadvantage for employers who correctly classify their workers as employees. Worker misclassification and payroll fraud results in the loss of millions of dollars to state government and taxpayers due to underpayment of wages, payroll taxes, Unemployment Insurance contributions, and Worker's Compensation Insurance fraud.

The role of the task force includes:

- Facilitating the sharing of information among task force members relating to worker misclassification violations;
- Evaluating current law and considering potential policy solutions to help prevent worker misclassification and payroll fraud;
- Facilitating the coordination of investigative and enforcement resources from the Department of Workforce Development, Department of Revenue, Commissioner of Insurance, Department of Justice, and other state agencies; and
- Seeking ways to prevent worker misclassification through public education; increasing awareness of the illegal nature of worker misclassification and the harm it causes.

The task force issued its first report to Governor Evers in March of 2020. The report is posted at dwd.wisconsin.gov/misclassification.

Protecting Workers, Protecting Employers

Worker misclassification contributes to waste and fraud in the UI program through the loss of UI tax revenue from employers who misclassify workers, and the creation of an unfair business climate that places businesses that follow the law at a competitive disadvantage. It also denies workers, who are out of work through no fault of their own, access to the UI benefits they may have been eligible for if they were properly classified.

In 2019, Wisconsin UI auditors conducted 2,535 audits and identified 7,692 misclassified workers. Due to the Division of Unemployment Insurance's efforts to detect worker misclassification, $1.6 million was generated in UI taxes and interest. The division's efforts to combat worker misclassification include a robust program of worksite misclassification investigations combined with efforts to educate employers and workers.

Worker Classification Education

Wisconsin's worker classification website provides employers with a clear and understandable process to assist them in determining whether their workers are employees or independent contractors. The website also provides a mechanism to report suspected worker misclassification. The website is available at dwd.wisconsin.gov/worker-classification.

Worker Classification Investigations

Worksite investigations are conducted by experienced division investigators, many of whom have law enforcement backgrounds in white collar and economic crime investigations. The division conducted 679 worker classification field investigations in 2019. In addition, investigative team members continue to present at construction industry events and meetings with organizations representing employers and workers, labor union meetings, community organizations, and other public forums on worker classification.

FRAUD OVERPAYMENTS

The UI Division remains committed to ensuring the integrity of the UI program as evidenced by the continued decline of fraud against the Wisconsin UI program. UI fraud overpayments declined by 4 percent from 2018 to 2019.

UNEMPLOYMENT BENEFIT OVERPAYMENTS

		2018 Amount	2019 Amount	Dollar Change	Percent Change
	Total UI Payments	$416,023,272	$409,453,854	-$6,569,418	-2%
+	**Fraud Overpayment**[1]	$4,900,271	$4,727,300	-$172,971	-4%
	As Percent of Total Payments	1%	1%		
+	**Non-Fraud Overpayment**[1]	$8,202,583	$8,614,761	$412,178	5%
	As Percent of Total Payments	2%	2%		
=	**OVERPAYMENT TOTAL**	**$13,102,854**	**$13,342,061**	**$239,207**	**2%**

		2018 Number of Cases	2019 Number of Cases	Case Reduction	Percent Reduction
+	**Fraud Cases**	4,755	4,734	21	0%
+	**Non-Fraud Cases**	44,634	41,197	3,437	-8%
=	**CASE TOTAL**	**49,389**	**45,931**	**3,458**	**-7%**

[1]Overpayment figures reflect the amounts detected in the stated calendar year. A portion of those overpayments were disbursed in prior calendar years.

Non-Fraudulent Overpayments

In Wisconsin, the UI Division goes to great lengths to help ensure UI customers comply with the requirements of the law and are able to easily understand Wisconsin's UI system. UI provides an online application for applying for UI benefits, filing weekly claims, and locating information for UI related questions on easy-to-use Internet platforms that can be accessed by numerous types of electronic devices, such as computers, tablets, and smartphones. UI also operates a Help Center as a resource for those who need assistance using the online application or help locating answers to complex UI questions.

Even with these resources available, sometimes customers make unintentional errors. These instances are tracked separately from intentional fraud and are referred to as "non-fraudulent overpayments." As is the case with intentional fraud, the division's systems seek to prevent and detect these errors and collect these overpayments for deposit into the Trust Fund.

WORK SEARCH

Enhanced Online Weekly Work Search for Claimants

UI claimants are required to provide verification of their four work search actions each week when filing their weekly claim (unless the requirements are waived). A stand-alone online application allows claimants to enter their work search actions throughout the week, instead of having to wait until the week is over to submit their work search actions. These enhancements make the system more user-friendly, saving claimants' time while helping to reduce benefit claims filing errors.

Video for Claimants

In the spring of 2019, the division created and published a video for claimants titled "Work Search Requirements for Unemployment Benefits." The video includes topics such as work search requirements, how to report work search actions, examples of valid work search actions, and best practices for documentation.

Work Search Audits

The division has a well-established work search auditing program. UI claimants who are required to search for work must submit their work search record each week a claim is filed. These records are subject to random audits for program integrity purposes. These audits uncover mistakes made by claimants, instances of intentional fraud, and provide an opportunity for the division to educate claimants on what constitutes a valid work search action and what information is needed for the division to verify the action.

In 2019, the division conducted 31,263 work search audits. Those audits resulted in 7,118 decisions finding work search requirements were not met.

TOOLS USED IN THE FIGHT AGAINST FRAUD

Prevention Tools

Data Analytics

The Wisconsin UI program uses cutting-edge data analytics aimed at protecting the UI Trust Fund through detection of fraud. Identity theft is an ongoing concern in both the public and private sectors and poses a threat to the integrity of Wisconsin's UI program. A combined approach of analytic techniques, staff expertise, and system improvements are used to detect this ever-changing threat.

The division's current process proactively identifies suspected fraudulent claims, allowing time to stop those claims, investigate them, and prevent overpayments.

Online Filing

The online claim filing systems were enhanced to increase efficiency, clarity, and ease of understanding, which in turn helps claimants file accurate claims. Approximately 98 percent of initial and weekly claims are currently filed online. This modernized online system includes the ability to file weekly claims in Spanish. Advantages to online filing include:

- The ability to enter work search information online;
- A mobile-friendly application, allowing claimants to file their claim using any smartphone, tablet, or computer;
- A convenient employer search tool to add important employer information to a claim;
- The ability for claimants to save their claim and return later that same day to complete the claim; and
- Clarifying help text to support greater self-service and accurate claim filing.

The department implemented an identity verification quiz as part of the claimant portal authorization process effective September 2019. The user must answer a series of questions provided by LexisNexis to verify their identity.

Education

Education is a key component to any prevention and deterrence effort. The division has improved notices regarding the potential legal and financial consequences of committing fraud, such as:

- Before logging in to online benefit services, claimants must acknowledge they are aware that committing UI fraud is illegal and they are aware of the penalties for doing so;
- Claimants who previously committed UI fraud receive a special message upon logging in reminding them of their prior act and the potential for increased penalties; and
- In the online initial and weekly claim applications, claimants must acknowledge more than once that the information they are providing is true.

A claimant handbook with detailed instructions on the claim filing process is available and claimants are responsible for knowing all the information provided in the handbook. This handbook is posted at dwd.wisconsin.gov/uiben/handbook.

The division offers written educational information for employers, including how to protect themselves and the Trust Fund, in an employer handbook posted at dwd.wisconsin.gov/ui201.

UI Internet resources such as methods for reporting UI fraud and "Frequently Asked Questions about UI Benefit Fraud" are also available.

Additional Prevention Approaches

Other fraud prevention tools include:

- Benefit Payment Notices informing employers of UI benefit charges to their account;
- Non-citizen work authorization verification with United States Citizenship and Immigration Services (USCIS) when the claimant is not a U.S. citizen;
- Scanning employer tax and benefit charge information to identify potential fictitious employers; and
- New web resources on the UI Internet site detailing UI scams.

> "Regardless if it is an employer engaging in misclassification or an employee fraudulently trying to obtain benefits, no one wants fraud in the system."
>
> **-Scott Manley, UIAC Member**

Detection Tools

Dedicated UI Workers

Staff vigilance is one of the division's best tools for detection. The Integrity and Quality Section within the Benefit Operations Bureau provides training to staff on methods for detecting and reporting fraud. The section consists of experienced investigators who investigate the most complex and organized efforts to defraud the system.

Post Verification of Wages

The division sends wage verification notices to employers when claimants, who had been reporting wages weekly, report no wages in a week. This allows employers the opportunity to timely report any issues.

Cross-Matches

The division utilizes numerous cross-matches that assist in detecting UI fraud:

Quarterly Wage Cross-Match – This cross-match compares benefit payment records with wage records submitted by employers covered under Wisconsin's UI program. Employers are required by law to submit these records to the division quarterly. This helps to verify wages are properly reported on unemployment claims.

Inmate Cross-Match – Claimants may not be eligible for UI benefits if incarcerated. This tool consists of one cross-match that compares benefit payment records to incarceration records for all of Wisconsin's county jails and prisons. A second cross-match compares benefit payment records to incarceration records for facilities nationwide.

Interstate Wage Record Cross-Match – This cross-match compares benefit payment records with quarterly wage records submitted by employers from other states. This helps to verify wages are properly reported on unemployment claims.

Wisconsin and National New Hire Cross-Match – Employers are required to report basic information about employees who are newly hired, rehired, or return to work after a separation from employment. Division staff cross-match UI payment records with new hire information. Wisconsin cross-matches quarterly federal wage data from the National Directory of New Hires reports for claimants who are former federal government employees.

Vital Statistics (Death Records) Cross-Match – The Wisconsin Department of Health Services provides a record of deaths in Wisconsin that is cross-matched with UI data to determine whether UI claims continue to be filed after a claimant is deceased.

SSDI Crossmatch – This crossmatch, implemented in August 2018, compares individuals currently listed as applying/receiving SSDI with claimants filing initial and weekly unemployment claims.

Other Detection Approaches

Additional detection approaches utilized to preserve and protect the integrity of the UI Trust Fund include:

- Audits of employers - resulting in employer contribution assessments totaling approximately $1.5 million in 2019;
- Employer complaints and tips from the public concerning suspected fraudulent claims;
- Using 1099 information from the Internal Revenue Service (IRS) to investigate employers who may be misclassifying employees as independent contractors;
- Contacts from local, state, and federal law enforcement officers regarding suspicious activities;
- Sophisticated fraud monitoring tools employed by U.S. Bank, which allow the department to monitor, predict, and respond quickly to suspected fraudulent activity; and
- Meetings with several other state agencies on a quarterly basis to discuss fraud trends and cases of mutual interest. The agencies share fraud tips to ensure fraud occurring across agencies is thoroughly investigated and stopped.

"I appreciate the discussion on this issue and the Council's progressive action on worker misclassification. Seeing this issue firsthand in the construction industry, misclassification is a problem that needs to be fixed."

-Shane Griesbach, UIAC Member

Compliance Tools

Wisconsin is very successful at recovering overpayments when they do occur. According to an internal UI longitudinal state study, over a 10-year period, 83 percent of fraud and 80 percent of non-fraud overpayments are collected. From 2011-2019, UI collected over $600 million in taxes and overpayments and took in an additional $50 million in interest and penalties. In 2019, the division recovered $18 million in overpayments, including more than $5 million in debts older than five years. This was achieved by utilizing the various mechanisms outlined below.

Tax Refund Intercept – The division is able to intercept claimant state and federal tax refunds. The division participates in the Treasury Offset Program (TOP) to intercept federal tax refunds. By utilizing the tools available through TOP, in 2019, the division recovered almost $2.5 million in overpayments, penalties, and collection costs. The division is also able to intercept tax refunds for employer delinquencies. In 2019, receipts related to employer TOP totaled $465,000. In addition, rather than have their tax refund intercepted, employers paid $218,000 upon receipt of the Notice of Intent to Certify Debt to IRS for a collection total attributable to employer TOP of $683,000.

Benefit Offset – Benefits are withheld from a claimant as an offset for an overpayment. The claimant does not receive UI benefit payments until the overpayment has been repaid.

Out of State Offset – Wisconsin UI can have another state withhold unemployment benefits to a claimant in that state to repay a Wisconsin overpayment.

Bankruptcy – Fraud debts are not dischargeable in bankruptcy. Division attorneys file adversary petitions to dispute discharge of the debt. A claim is also filed against the assets of the debtor.

Warrants – A lien is placed on the debtor's personal property to secure repayment of a delinquent debt.

Levy Against Wages and Bank Accounts – A levy is issued against wages, bank accounts, or any property belonging to the debtor.

Financial Record Matching Program – A financial record matching program is used by UI debt collectors to identify the bank accounts of delinquent UI debtors.

Criminal Prosecution for UI Fraud

The division pursues criminal prosecution in cases of egregious fraudulent activity, and works cooperatively with district attorneys, the Wisconsin Department of Justice (DOJ), and federal prosecutors.

Professional division staff investigate complex fraud cases. Many of these professionals have law enforcement experience.

All criminal investigations completed by benefit fraud investigators are referred to our Bureau of Legal Affairs (BOLA) for review by legal and investigative staff to ensure the investigations meet division standards for
prosecution referral. After review, BOLA staff refer the cases to either a county district attorney or the DOJ.

DWD works collaboratively with DOJ and the county district attorneys to determine which cases should be referred for prosecution. Ultimately, it is DOJ and the DAs who make the decision to file criminal charges. DOJ evaluates several factors in determining whether a case will be prosecuted, including:

- Whether evidence exists to prove intent to defraud;
- An individual's criminal history/history of defrauding government programs; and
- In cases involving employers, the employer's enforcement and compliance history.

In addition, the division works with the U.S. Department of Labor, Office of Inspector General, on complex fraud cases.

UNEMPLOYMENT INSURANCE

Our Mission:

To facilitate financial stability and a prosperous Wisconsin economy by delivering high-quality, innovative, customer-driven unemployment services.

ADDENDA

Addendum A – Overpayment Data

HISTORICAL DATA ON BENEFIT PAYMENTS 2015-2019

	Combined State & Federal	2019	2018	2017	2016	2015
	Total Federal & State UI Paid	$409,453,854	$416,023,272	$453,715,534	$511,891,628	$605,481,027
+	**Fraud Overpayment**[1]	$4,727,300	$4,900,271	$5,016,369	$8,655,187	$13,384,998
	Number of Cases	4,734	4,755	5,132	8,438	9,793
	Avg. Overpayment	$999	$1,031	$977	$1,026	$1,367
+	**Non-Fraud Overpayment**[1]	$8,614,761	$8,202,583	$8,922,443	$8,902,765	$11,878,072
	Number of Cases	41,197	44,634	48,484	59,362	78,851
	Avg. Overpayment	$209	$184	$184	$150	$151
=	**OVERPAYMENT TOTAL**	$13,342,061	$13,102,854	$13,938,812	$17,557,952	$25,263,070
	CASE TOTAL	45,931	49,389	53,616	67,800	88,644
	Avg. Overpayment	$290	$265	$260	$259	$285

[1]Overpayment figures reflect the amounts detected in the stated calendar year. A portion of those overpayments were disbursed in prior calendar years.

FRAUD OVERPAYMENT DETECTION AMOUNTS AND DECISIONS BY SOURCE FOR 2018-2019

Detection Method	2019		2018	
	Amount	Decisions	Amount	Decisions
Wage Record Cross-Match	$1,434,984	1,035	$1,397,016	1,130
Agency Detection - Not Covered by Other Codes	$1,293,071	1,074	$1,252,327	1,059
State New Hire Cross-Match	$569,194	1,051	$528,398	935
Liable Employer Protests Benefit Charges	$408,614	513	$417,559	501
Post Verification of Wages	$201,623	149	$161,292	158
Tips and Leads from Other than Liable Employer	$192,635	185	$383,799	243
Audit of Work Search	$154,377	107	$181,230	124
Post Verification - No Wages Reported	$122,599	293	$149,921	328
Claimant Initiated	$70,856	64	$126,597	71
SSDI Cross-Match	$66,497	37	$155,638	35
National New Hire Cross-Match	$49,624	54	$53,297	52
Field Audit Discoveries	$46,333	9	$1,850	2
Appriss Inmate Cross-Match	$42,212	100	$55,053	85
Inmate Cross-Match	$28,297	37	$8,844	13
Quality Control	$26,993	19	$24,490	16
Fictitious Employer Cases	$9,075	1	$0	0
Interstate Cross-Match	$6,249	3	$2,960	3
Reversals	$2,261	1	$0	0
Deceased Citizen Cross-Match	$910	1	$0	0
Federal Wage Cross-match	$896	1	$0	0
Total	**$4,727,300**	**4,734**	**$4,900,271**	**4,755**

Addendum A continued - Overpayment Data

NON-FRAUD OVERPAYMENT DETECTION AMOUNTS AND DECISIONS BY SOURCE FOR 2018-2019

Detection Method	2019		2018	
	Amount	Decisions	Amount	Decisions
Audit of Work Search	$3,550,793	6,823	$3,074,081	6,060
Post Verification of Wages	$1,232,399	25,284	$1,389,187	29,274
Liable Employer Protests Benefit Charges	$1,214,695	2,637	$1,006,383	2,517
Agency Detection - Not Covered by Other Codes	$892,504	1,661	$728,450	1,466
Claimant Initiated	$578,900	2,189	$569,669	2,304
Reversals	$428,104	269	$578,859	313
Tips and Leads from Other than Liable Employer	$252,517	680	$272,431	689
State New Hire Cross-Match	$133,843	626	$155,451	642
Wage Record Cross-Match	$114,176	356	$205,390	528
Post Verification - No Wages Reported	$70,043	408	$107,837	614
Quality Control	$40,006	98	$41,250	85
Field Audit Discoveries	$39,008	38	$14,956	34
SSDI Cross-Match	$31,614	26	$26,713	16
Appriss Inmate Cross-Match	$20,907	64	$26,595	68
Inmate Cross-Match	$9,216	17	$886	4
National New Hire Cross-Match	$4,466	17	$3,371	17
Deceased Citizen Cross-Match	$910	1	$0	0
Interstate Cross-Match	$574	2	$12	1
SAVE (Alien Verification)	$86	1	$0	0
Federal Wage Cross-Match	$0	0	$1,062	2
Total	**$8,614,761**	**41,197**	**$8,202,583**	**44,634**

Addendum B – Collection Data

OVERPAYMENT RECOVERIES IN 2019 BY YEAR OF THE DECISION

Year Identified	Fraud	Non-fraud	Total
2019	$712,813	$5,426,863	$6,139,676
2018	$1,777,488	$1,408,440	$3,185,928
2017	$684,532	$400,940	$1,085,472
2016	$637,059	$160,390	$797,449
2015	$596,130	$121,795	$717,925
2014	$756,563	$184,815	$941,378
Older Than Five Years	$3,853,934	$1,526,823	$5,380,757
Total collected in 2019	**$9,018,519**	**$9,230,066**	**$18,248,585**

Addendum B continued – Collection Data

BENEFIT OVERPAYMENT RECOVERIES 2015 - 2019

Federal Tax Offset Program Recoveries	2019	2018	2017	2016	2015
Fraud	$1,976,525	$2,584,192	$4,046,395	$5,713,579	$7,495,899
Non-Fraud	$111,189	$166,405	$293,010	$591,933	$867,815
Other*	$403,614	$508,653	$677,632	$549,526	$692,655
Total	**$2,491,328**	**$3,259,250**	**$5,017,037**	**$6,855,038**	**$9,056,369**

State Tax Offset Program Recoveries	2019	2018	2017	2016	2015
Fraud	$508,679	$627,995	$939,187	$1,323,466	$1,516,003
Non-Fraud	$647,867	$855,692	$907,126	$1,276,997	$1,655,580
Other*	$205,650	$248,908	$376,553	$390,332	$358,514
Total	**$1,362,196**	**$1,732,595**	**$2,222,866**	**$2,990,795**	**$3,530,097**

Intercept of Unemployment Benefits	2019	2018	2017	2016	2015
Fraud	$380,006	$411,538	$477,693	$619,255	$782,127
Non-Fraud	$4,212,352	$4,064,752	$4,360,089	$4,551,321	$5,481,994
Other*	$10,563	$9,247	$9,080	$10,482	$16,066
Total	**$4,602,921**	**$4,485,537**	**$4,846,862**	**$5,181,058**	**$6,280,187**

Checks, EFT Payments, & Recoupments from Other States	2019	2018	2017	2016	2015
Fraud	$6,153,309	$7,097,494	$8,789,594	$10,401,445	$10,925,165
Non-Fraud	$4,258,658	$4,332,507	$4,666,413	$5,461,918	$6,782,314
Other*	$1,450,009	$1,513,384	$1,749,807	$2,000,422	$1,726,034
Total	**$11,861,976**	**$12,943,385**	**$15,205,814**	**$17,863,785**	**$19,433,513**

*Other includes items such as penalties and collection costs

Addendum B continued – Collection Data

FORFEITURE ASSESSMENT AND COLLECTION, BENEFIT AMOUNT REDUCTION AND PENALTY ASSESSMENT AND COLLECTION 2015-2019

Other Fraud-Related Activity	2019	2018	2017	2016	2015
Forfeitures Assessed	$21,788	$137,705	$114,996	$295,848	$716,823
Benefit Amount Reduction	$13,221,457	$13,183,450	$13,912,308	$22,480,473	$30,152,510
Penalties Assessed	$1,883,649	$1,899,471	$1,961,063	$3,368,650	$2,532,081
Recovered for All Years Assessed	**2019**	**2018**	**2017**	**2016**	**2015**
Forfeitures Collected	$45,950	$267,229	$531,459	$1,109,493	$1,748,211
BAR Satisfied	$4,205,393	$4,115,052	$4,405,349	$5,292,259	$5,050,371
Penalties Collected	$1,721,015	$1,874,976	$2,313,408	$2,362,788	$2,133,735
Overpayments Collected	**2019**	**2018**	**2017**	**2016**	**2015**
Fraud	$9,018,519	$10,721,219	$14,252,869	$18,057,745	$20,719,194
Non-Fraud	$9,230,066	$9,419,356	$10,226,638	$11,882,169	$14,787,703
Total	**$18,248,585**	**$20,140,575**	**$24,479,507**	**$29,939,914**	**$35,506,897**

STATE OF WISCONSIN
DWD
Department of Workforce Development
201 E. Washington Ave.
Madison, WI 53703
608-266-3131|dwd.wisconsin.gov

Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: http://legis.wisconsin.gov/lfb

March 17, 2020

TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: U.S. House of Representatives Legislation Passed in Response to Coronavirus Disease 2019 (COVID-19)

On March 14, 2020, the U.S. House of Representatives passed legislation in response to the outbreak of respiratory disease caused by the coronavirus designated as SARS-CoV-2. The disease caused by this coronavirus is named "coronavirus disease 2019" or "COVID-19." The bill passed by the House (H.R. 6201), known as the "Families First Coronavirus Response Act," contains provisions addressing a range of the health and economic impacts of COVID-19. This memorandum provides a summary of key provisions of H.R. 6201, as well as the budgetary impact of those provisions on Wisconsin, to the extent that these impacts are currently known. In some cases, the scope and impact of some provisions would be dependent upon guidance and regulations issued by the administering federal agencies. As of the date of this memorandum, H.R. 6201 has not been acted upon by the U.S. Senate.

Emergency Unemployment Insurance Stabilization and Access Act of 2020

H.R. 6201 would apportion $1,000,000,000 to states for administering unemployment insurance (UI) claims. Under the bill, $500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs. To be eligible to receive administrative grants, the state must: (a) require employers to provide notification of potential UI eligibility to laid-off workers; (b) provide workers with at least two ways to apply for benefits, with available options being in-person application, online, and by phone; and (c) notify applicants when an application is received and being processed, and, if the application cannot be processed, provide information to the applicant about how to ensure successful processing. These state requirements would likely not require legislative action.

The remaining $500 million apportioned to states would be reserved for those states in which the number of unemployment claims has increased by at least 10% over the same quarter of the previous calendar year. Additionally, a state must have demonstrated steps it has taken or will take

to ease eligibility requirements and access to unemployment compensation for claimants, including: (a) waiving work search requirements; (b) waiving the waiting week requirement; and (c) directly or indirectly relieving benefit charges for claimants and employers directly impacted by COVID–19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

Under s. 108.04(2)(bd)2. of the Wisconsin statutes, the Department of Workforce Development (DWD) may, by rule, establish work search waivers if doing so is necessary to comply with a requirement under federal law or is specifically allowed under federal law. DWD submitted a scope statement (SS 008-20) on March 13, 2020, to modify certain work search requirements, including: (a) a rule to modify provisions of DWD 127, related to work search actions and work search waivers for unemployment claimants who are currently laid off but who are job-attached, otherwise eligible for unemployment benefits, and who are isolated or quarantined due to COVID-19; and (b) a rule to modify provisions of DWD 128, related to the requirement of availability for work for individuals who are currently laid off but who are job-attached, otherwise eligible for unemployment benefits, and who are isolated or quarantined due to COVID-19. Legislative action would likely not be required to address the work search waiver requirements in H.R. 6201.

Under s. 108.04 (3) of the statutes, a claimant's waiting period for unemployment benefits is defined as the first week of a claimant's benefit year for which the claimant has timely applied and is otherwise eligible for regular benefits. DWD is not specifically authorized to waive the current law waiting week requirement. Legislative action would likely be required to waive the waiting week requirement to comply with the provisions of H.R. 6201.

The bill would require a state to directly or indirectly relieve benefit charges for claimants and employers directly impacted by COVID–19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers. In Wisconsin, an employer's account balance is the net of all UI tax payments less UI benefit charges for that employer. Legislative action would likely be required to waive benefit charges to such accounts for claimants and employers.

The bill would also provide full federal funding for extended unemployment compensation benefits for states, rather than 50% under current law, through December 31, 2020, for states that meet eligibility for administrative grants, as described previously. Additionally, the bill would waive, through December 31, 2020, current law prohibiting federal funding for payments during the first week of unemployment compensation eligibility, if the state provides for such payments. States providing for a first week of unemployment compensation benefits would, therefore, be eligible for federal funding through the 2020 calendar year under the bill, if state law allows such payments.

Emergency Family and Medical Leave Expansion Act

The bill would amend the federal Family and Medical Leave Act (FMLA) of 1993 to:

a. Modify eligibility from the effective date of the bill until December 31, 2020, to allow an employee who has been employed for at least 30 calendar days by an employer with fewer than 500 employees to take qualifying leave related to the coronavirus public health emergency.

b. Specify that a qualifying need for leave related to the coronavirus public health emergency would include: (a) to comply with a recommendation or order by a public official having jurisdiction or a health care provider on the basis that the physical presence of the employee on the job would jeopardize the health of others because of the exposure of the employee to coronavirus or exhibition of symptoms of coronavirus by the employee and the employee is unable to both perform the functions of the position and comply with such recommendation or order; (b) to care for a family member with respect to whom a public official having jurisdiction or a health care provider makes a determination that the presence of the family member in the community would jeopardize the health of other individuals in the community because of exposure of the family member to coronavirus or exhibition of symptoms of coronavirus by the family member; or (c) to care for the son or daughter (under 18 years of age) of the employee if the school or place of care has been closed, or the child care provider of the child is unavailable due to the public health emergency. The term public health emergency means an emergency with respect to the coronavirus (SARS-CoV-2 or another coronavirus with pandemic potential) that is declared by a federal, state, or local authority.

c. In general, provide 14 days of unpaid leave for qualifying purposes related to the coronavirus public health emergency. An employee may substitute accrued vacation leave, personal leave, or medical or sick leave for unpaid leave. An employer may not require that an employee substitute paid leave for unpaid leave. Under current law, eligible employees may generally take up to 12 weeks of FMLA leave for various qualifying purposes. While the bill would expand qualifying purposes as noted above, through December 31, 2020, it would not increase the total amount of FMLA leave an employee could take.

d. Specify that employers provide paid leave for qualifying periods of leave related to the coronavirus public health emergency that exceed 14 days in an amount that is not less than two-thirds of the employee's regular rate of pay and that is based on the number of hours the employee would otherwise be normally scheduled to work. Alternatively, if an employer is unable to determine with certainty the number of hours the employee would have worked, the employer must use the daily average number of hours the employee was scheduled to work over the previous six months or, if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours the employee would normally be scheduled to work.

e. Require employees to provide notice of leave to the employer as practicable, in any case where the necessity for leave is foreseeable.

f. Specify that an employee of an employer that employs fewer than 25 employees is not entitled to be restored by the employer to the position held by the employee when the leave commenced or an equivalent position with equivalent benefits, pay, and other terms and conditions if the following conditions are met: (1) the employee takes leave related to the coronavirus public health emergency; (2) the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer that affect employment and are caused by a public health emergency during the period of leave; (3) the employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held; and (4) if such reasonable efforts fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the one-year period

beginning on the earlier of the date on which the qualifying need for leave concludes or the date that is 12 weeks after the date on which the employee's leave commences.

g. Specify that an employer that is signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and agreement, fulfill its obligations to provide paid leave after 14 days by making contributions to a multiemployer fund, plan, or program based on the paid leave each of its employees is entitled to while working under the collective bargaining agreement, provided that it enables employees to secure pay from the fund, plan, or program based on hours they have worked under the collective bargaining agreement for paid leave taken related to the coronavirus public health emergency.

h. Specify, with respect to leave taken related to the coronavirus public health emergency, that: (a) parent means a biological, foster, or adoptive parent of the employee, a stepparent of the employee, a parent-in-law of the employee, a parent of a domestic partner of the employee, or a legal guardian or other person who stood in loco parentis to an employee when the employee was a child; and (b) family member means a parent, spouse, or son or daughter (under 18 years of age) of the employee, an individual who is a pregnant woman, senior citizen, individual with a disability, or has access or functional needs (individuals with access and functional needs may include, but are not limited to, children, older adults, persons with limited English proficiency, and persons with limited access to transportation) and who is also a son or daughter of the employee, a next of kin of the employee or a person for whom the employee is next of kin, or a grandparent or grandchild of the employee.

i. Authorize the Secretary of Labor to issue regulations for good cause to exclude certain health care providers and emergency responders from the definition of eligible employee, and to exempt small businesses with fewer than 50 employees from the requirements of the bill when the imposition of such requirements would jeopardize the viability of the business.

The provisions relating to emergency family and medical leave, above, would take effect no later than 15 days after the date of the enactment of the bill.

Emergency Paid Sick Leave Act

Under the bill, employees would be entitled to paid sick leave for any of the following uses: (a) to self-isolate, if the employee is diagnosed with coronavirus; (b) to obtain medical diagnosis or care for coronavirus symptoms; (c) to comply with a recommendation or order by a public official or health care provider if the employee's physical presence on the job would jeopardize the health of others because of coronavirus or coronavirus symptoms; (d) to care for or assist the employee's family member who is diagnosed with or experiencing symptoms of coronavirus or whose physical presence on the job would jeopardize the health of others because of coronavirus or coronavirus symptoms; or (e) to care for the employee's child, if the school or place of care has been closed or the child care provider is unavailable due to coronavirus. Duration of employment would not be a factor in paid sick time eligibility under the bill. The bill would take effect no later than 15 days after the date of enactment, and its provisions would expire on December 31, 2020.

Employees who meet the above criteria for paid sick leave would be entitled to 80 hours of paid sick leave for full-time employees, and a number of hours equal to the number of hours that the employee works, on average, over a two-week period for part-time employees. Paid sick leave time would end effective at the beginning of the employee's first work-shift following the termination of the qualified need for sick leave time.

Under the bill, if an employer's policy already provides paid sick leave (on the day before the date of enactment of the bill), paid sick time under the bill would be available to employees in addition to existing paid sick leave policies. Employers could not change their existing paid sick leave policies on or after the bill's enactment or require employees to search for or find a replacement employee while the employee is using paid sick time. In addition, an employer could not require an employee to use other paid sick leave provided to the employee before the employee uses the paid sick time under the bill.

Employers would be required to post notices to employees of the requirements described in the bill in conspicuous places on the premises of the employer, where notices are customarily posted. The Secretary of Labor would be required to make a model of a notice publicly available, no later than seven days after the date of enactment.

Employers could not discharge, discipline, or in any other manner discriminate against an employee who takes leave under the bill or files a complaint or proceeding or testifies under or related to the provisions of the bill. An employer who violates the unlawful termination provision or the unpaid sick leave provision would be considered to have violated the Fair Labor Standards Act (FLSA) of 1938 and would be subject to penalties. The bill would not require financial or other reimbursement to an employee from an employer upon the employee's separation from employment for paid sick time under the bill that has not been used by the employee.

Under the bill, if an employer is signatory to a multiemployer collective bargaining agreement, the employer could fulfill its obligations under the bill by making contributions to a multiemployer fund, plan, or program based on the hours of eligible paid sick time under the bill, consistent with bargaining obligations and the collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay based on hours they have worked under the agreement and for uses specified under the bill. The bill would not be construed to diminish the rights or benefits that employees are otherwise entitled to.

The bill would define the following terms:

"Child" - a biological, foster, or adopted child, a stepchild, a child of a domestic partner, a legal ward, or a child of a person standing in *loco parentis* under 18 years of age.

"Coronavirus" - SARS-CoV-2 or another coronavirus with pandemic potential.

"Employer" - a person who is a covered employer (defined below), an entity employing a state employee, an employing office, or an executive agency.

"Covered Employer" - any person engaged in commerce or any industry or activity affecting commerce that: (a) in the case of a private entity or individual, employs fewer than 500 employees; and (b) in the case of a public agency or any other entity that is not private, employs one or more employees, including persons acting directly or indirectly in the interest of an employer in relation to an employee and any successor in interest of an employer, any "public agency," and the Government Accountability Office and Library of Congress. This section also defines the terms "public agency," commerce," and "persons."

"Family Member" - a parent, spouse, or child of an employee, or an individual who is a pregnant woman, senior citizen, individual with a disability, or has access or functional needs and who is also a sibling of the employee, a next of kin of the employee, a person for whom the employee is next of kin, or a grandparent or grandchild of the employee.

"Paid Sick Time" - an increment of compensated leave that is provided by an employer for use during an absence from employment for a reason described in the bill and is calculated based on the employee's required compensation and the number of hours the employee would otherwise be normally scheduled to work. An employee's required compensation is not less than the greater of the following: (a) the employee's regular rate of pay; (b) the minimum wage rate in effect; or (c) the minimum wage rate in effect for the employee in the applicable state or locality. An employee's required compensation for special rule of care for family members would be two-thirds of the employee's required compensation. In the case of part-time employees with varying schedules (where an employer is unable to determine with certainty the number of hours an employee would have worked if such employee had not taken paid sick time), the employer would be required to use the following in place of such a number: (a) a number equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of any type; or (b) if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work. If an employee receives paid sick time under the bill, an employer may require the employee to follow reasonable notice procedures in order to continue receiving paid sick time.

The bill would additionally define the terms "domestic partner" (including the term "committed relationship"), "employee," "FLSA terms" (including "employ" and "state"), "FMLA terms" (including "health care provider" and "next of kin"), "parent," "public health emergency," and "spouse."

Refundable Federal Tax Credits for Qualified Emergency Leave

H.R. 6201 would create refundable tax credits that employers and self-employed individuals could claim for certain paid leave provided in calendar year 2020 against their federal payroll taxes and self-employment taxes. Under state law, Wisconsin provides its own tax credits and generally does not conform to federal tax credits. The following section provides information regarding the federal tax provisions of H.R. 6201.

Sick Leave Credit. H.R. 6201 would provide a refundable payroll tax credit to certain private

sector and nonprofit employers equal to 100% of the "qualified sick leave wages" paid by the employer in a calendar quarter. Qualified sick leave wages would be defined as wages which are required to be paid by an employer under the Emergency Paid Sick Leave Act (EPSLA, described previously). The amount of qualified sick leave wages could not exceed $200 for each day that an employee is paid such wages. However, the limit for qualified sick leave wages eligible for the credit would be $511 for any day in which any portion of the day is paid sick time used for: (a) self-isolation because the employee is diagnosed with coronavirus; (b) obtaining a medical diagnosis or care if such employee is experiencing symptoms of coronavirus; or (c) complying with a recommendation or order by a public health official with jurisdiction or a health care provider on the basis that the presence of the employee on the job would jeopardize the health of others because of exposure of the employee to coronavirus or because the employee is exhibiting coronavirus symptoms.

The aggregate number of days for which the payroll tax credit could be claimed could not exceed the excess of ten over the aggregate number of days that an individual is paid qualified sick leave wages for any preceding calendar quarter.

Family and Medical Leave Credit. H.R. 6201 would also provide a refundable payroll tax credit to certain private sector and nonprofit employers equal to 100% of the "qualified family leave wages" paid by the employer in a calendar quarter. Qualified family leave wages would be defined as wages required to be paid by an employer under the Emergency Family and Medical Leave Expansion Act (EFMLEA, also described previously) because of a qualifying need related to a public health emergency. The amount of qualified family leave wages for purposes of the payroll tax credit could not exceed $200 for any day that an individual receives such wages, and could not exceed $10,000 in the aggregate with respect to all calendar quarters.

Credits for Self-Employed Individuals. Both refundable credits described above would also be provided for self-employed individuals against their self-employment taxes owed. A credit would be provided equal to 100% of the "qualified sick leave equivalent amount" of the individual, or 67% of such amounts if the employee uses paid sick leave to care for their family member who is experiencing symptoms of coronavirus or is otherwise deemed to need self-isolation for the reasons described above, or to care for their child if the child's school or place of care has been closed, or the child care provider is unavailable, due to coronavirus. This qualified sick leave equivalent amount would be defined as the number of days during the taxable year that an individual is unable to perform services in a trade or business (for reasons which would otherwise qualify the individual for paid leave under the sick leave credit) multiplied by the lesser of $200 ($511 if the higher limit would have applied under the sick leave credit) or the average daily self-employment income of the individual. The total number of applicable days for which the credit could be claimed could not exceed the excess of ten days over the number of days that an individual is considered unable to work (as described above) in all preceding taxable years.

Another credit would be provided equal to 100% of the "qualified family leave equivalent amount" of the individual. Such amount would be determined by multiplying the number of days (not to exceed 50) during the taxable year that an individual is unable to perform services in the trade or business (for reasons which would otherwise qualify the individual for paid leave under the family and medical leave credit) by the lesser of $200 or the average daily self-employment income of the

individual.

The average daily self-employment income for both credits would mean an individual's net earnings from self-employment for the taxable year divided by 260.

Each possession of the United States that bases its income tax laws on those of the U.S. and that incurs a revenue loss from implementing the aforementioned provisions would be reimbursed in amounts determined by the Secretary of the Treasury. A U.S. possession that does not base its income tax laws on those of the U.S. would be eligible to be paid amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided under the above provisions had the possession adhered to U.S. income tax laws.

General Provisions. Neither credit described above would apply to any federal, state, or local governmental employer, and neither credit would be allowed against wages for which a federal employer credit for paid family and medical leave is claimed. For self-employed individuals, each credit would be proportionally reduced by the number of days an individual is unable to work but received wages required to be paid by an employer under the EPSLA or EFMLEA. Any such wages required would not be considered wages for purposes of the federal payroll tax.

The Secretary of the Treasury would be required to prescribe any necessary regulations and guidance to fulfill the provisions of each credit. H.R. 6201 would transfer moneys from the general fund to the Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund in the amount of money which would have been transferred to each trust fund under current law but would not be transferred as a result of the credits provided under H.R. 6201.

H.R. 6201 would provide $15 million to the Internal Revenue Service for taxpayer services for the purposes of carrying out the Families First Coronavirus Response Act.

Applicability. Each credit would apply only to wages paid from the date selected by the Secretary of the Treasury under H.R. 6201 through December 31, 2020.

Health Programs

Medical Assistance -- Temporary Increase to the Federal MA Matching Percentage. The bill contains the following provisions relating to a temporary increase to the federal medical assistance percentage (FMAP), as described below.

Increase to the Federal Medicaid FMAP and the Impact on MA Program Budget. H.R. 6201 would increase the FMAP by 6.2 percentage points during any calendar quarter for which a federal public health emergency is in effect, provided the state meets certain requirements (described below). The U.S. Department of Health and Human Services (DHHS) Secretary declared a public health emergency, retroactive to January 27, 2020. Consequently, the enhanced FMAP would apply, at a minimum, during the first quarter of 2020 (January to March of 2020), and would continue until the end of the calendar quarter during which the public health emergency declaration order is terminated.

Under the MA program, the FMAP determines the percentage of eligible benefit costs that are paid by the federal government. Currently, the state's FMAP is 59.36%, meaning the state pays 40.64% of eligible MA benefit costs. As a result of the H.R. 6201, the state's FMAP would increase to 65.56%, decreasing the state's share to 34.44%. At current MA spending levels, this increase to the state's FMAP would shift approximately $150 million of state GPR costs to federal funds for each quarter that the federal public health emergency is in effect, or approximately $600 million for a full year. Therefore, without any changes to total program costs, the state would realize GPR savings relative to the current GPR budget for the program.

However, the net impact on the state GPR budget for MA would ultimately depend upon the impact of the COVID-19 epidemic on the MA program. The epidemic will likely affect MA expenditures in two ways. First, MA costs will increase as a result of treatment rendered to individuals contracting the disease. Second, the epidemic will have economic impacts resulting in a loss of income and employment for some households. As a consequence, MA enrollment is likely to increase in the coming months as more individuals become eligible for the program. While the health system costs associated with treating COVID-19 illness will eventually subside, the economic impacts of the epidemic, along with its effect on MA program enrollment, may last longer than the public health emergency.

State Requirements for Receiving Enhanced FMAP. In order to qualify for the higher FMAP, states would need to meet certain requirements related to enrollment eligibility standards and processes, applicable during the federal public health emergency. These provisions apply to beneficiaries whose coverage is either provided through the state Medicaid plan (standard eligibility and benefits) or through federal waivers.

First, a qualifying state could not adopt more restrictive eligibility standards, methodologies, or procedures for their Medicaid programs than were in effect on January 1, 2020. Second, the state could not charge a higher premium for any eligibility groups than was in effect on January 1, 2020. Third, the state could not terminate or deny the enrollment of any individual for a reason other than a failure to satisfy financial, categorical, or state residency requirements, for the duration of the federal public health emergency. Fourth, the state must provide coverage of COVID-19 testing and treatment for Medicaid beneficiaries without cost sharing. Finally, the state could not conduct periodic income checks, including automated income checks (for the purpose of determining income eligibility), more frequently than once every 12 months.

These provisions would require Wisconsin to modify some MA enrollment and eligibility standards and processes on a temporary basis, although in some areas the nature of these modifications remains uncertain. Department of Health Services (DHS) indicates that the Department is reviewing the legislation and would likely need guidance from the federal Centers for Medicare and Medicaid Services (CMS) to further evaluate what steps would be needed. In general, this analysis would center primarily on two areas, the applicability of the law to recently implemented provisions of the state's federal waiver for childless adult coverage, and the program's process for reviewing income changes for the purposes of determining program eligibility.

With respect to childless adult coverage, the state implemented some provisions of a federal

demonstration waiver on February 1, 2020, that have a bearing on childless adult eligibility. Starting on that date, childless adults who newly enroll or renew MA coverage, and who have a household income above 50% of the federal poverty level are required to pay a monthly premium. The premium is $8 per household, or $4 if the childless adult is found to meet criteria for certain healthy behaviors. In addition, as a condition of eligibility, childless adults are required to complete a substance abuse treatment needs question upon enrollment or renewal. Since neither of these provisions was in effect on January 1, 2020, and since both could be characterized as more restrictive eligibility standards, methodologies, or procedures, the state could be found ineligible for enhanced FMAP under H.R. 6201 if their application is not suspended during the federal public health emergency.

With respect to income verification, H.R. 6201 specifies that, as a condition of eligibility for enhanced FMAP, states may not conduct income checks or eligibility redeterminations more frequently than once every 12 months. The state currently uses a 12-month schedule for a comprehensive review of program eligibility, but also uses automated income checks to track any increase in household earnings in the interim period prior to renewal that may make a person ineligible for MA benefits. It remains uncertain if the provisions of H.R. 6201 would prohibit these automated income checks or restrict how they are used in determining eligibility.

This office is consulting with legislative attorneys and DHS to determine what statutory changes, if any, would be needed to comply with these provisions.

MA -- Coverage of COVID-19 Testing Without Cost Sharing. H.R. 6201 would require state Medicaid programs to provide coverage, without cost sharing requirements, for in vitro diagnostic products for the detection of the virus that causes COVID-19.

The bill would allow state Medicaid programs, at the option of the state, to provide coverage for COVID-19 testing for uninsured individuals. The FMAP for this coverage would be 100% (no state share). The state would need to submit a state Medicaid plan amendment to CMS to offer this coverage.

Coverage of COVID-19 Testing Without Cost-Sharing. In addition to the provisions relating to testing MA enrollees for COVID-19, as described above, the bill would require other health care plans to provide coverage of COVID-19 testing without cost sharing, including Medicare, private health plans and insurance policies, federal employee health plans, Veterans Affairs health, Tricare, and Indian Health Service.

National Disaster Medical System. The National Disaster Medical System is a coordinated effort by the U.S. DHHS, the Department of Homeland Security, the Department of Defense, and the Department of Veterans Affairs to support state and local authorities during and following a public health emergency. The system may be activated to provide health services, health-related social services, and other appropriate human service, including paying claims as reimbursement for health services.

H.R. 6201 would provide $1.0 billion to fund the following services for uninsured individuals: (a) diagnostic products for the detection of SARS-CoV-2 or the diagnosis of the virus that causes

COVID-19; and (b) items and services furnished to an individual during health care provider office visits, urgent care center visits, and emergency room visits that result in an order for, or administration of, a diagnostic product, but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for the purposes of determining the need of such individual for such product.

For these purposes, the bill would define an uninsured individual as an individual who is not enrolled in federal health programs specified in the bill or a group health plan or health insurance coverage offered by a health issuer in the group or individual market.

Nutrition Programs

SNAP -- Flexibility for Low-Income Jobless Workers. Under Wisconsin law, able-bodied adults without dependents (ABAWDs) are generally required to fulfill the work requirement established under federal rule to ensure ongoing eligibility for FoodShare or supplemental nutrition assistance program (SNAP) benefits. ABAWDs who do not meet the federal work requirement are only eligible to receive FoodShare benefits for three months in a 36-month period.

Under H.R. 6201, during a public health emergency, work requirements for SNAP could not be used to limit eligibility for SNAP, unless an individual does not comply with the requirements of a state work program or workfare program. This prohibition would last through the end of the month subsequent to the month the public health emergency declaration by the DHHS Secretary is lifted.

Additionally, beginning the month subsequent to the month the public health emergency declaration is lifted, the state agency would be required to disregard any period during which an individual received SNAP benefits prior to such month.

SNAP -- Flexibilities in a Public Health Emergency. Under H.R. 6201, in the event of a public health emergency declaration as declared by the DHHS Secretary, the U.S. Department of Agriculture (USDA) Secretary would be: (a) required to provide a requesting state agency the authority to provide emergency SNAP benefits to existing SNAP households up to the maximum monthly allotment for the household size, if the state agency provides sufficient data to support such a request; (b) authorized to adjust issuance methods and application and reporting requirements under federal law to be consistent with what is practicable under actual conditions in affected areas, if requested by a state agency or by guidance in consultation with the state agencies; (c) required to make publicly available on the USDA website within 10 days of receipt, or issuance, the following information: (1) any request submitted by a state agency under these provisions, (2) the Secretary's approval or denial of each such request, and (3) any guidance issued under part (b); and (d) required to, within 18 months after the public health emergency declaration is lifted, submit a report to the House and Senate Agriculture Committees with a description of measures taken to address the food security needs of affected populations during the emergency, any information or data supporting state agency requests, any additional measures that states requested that were not approved, and recommendations for changes to the Secretary's authority under the Food and Nutrition Act of 2008 to assist the Secretary, states, and localities in preparation for any future health emergencies.

Free and Reduced-Price Lunch -- Additional SNAP Assistance and Waivers. H.R. 6201 specifies that during fiscal year 2020, if a school is closed for at least five consecutive days during a public health emergency when the school would otherwise be in session, a household containing at least one child who is eligible for a free or reduced-price meal would also be eligible for additional aid under SNAP.

The bill would allow the USDA Secretary to approve state agency plans for temporary emergency standards of eligibility and levels of benefits under the Food and Nutrition Act of 2008 for households with eligible children. Such plans would be required to provide for supplemental allotments to households already receiving benefits, as well as issuances to households that do not currently receive benefits. The amount of the assistance would be provided in an amount determined by the Secretary, not less than the value of meals at the free rate over the course of five school days for each eligible child in the household. Assistance could be provided through the EBT card system.

The bill would allow the USDA Secretary to authorize state educational agencies and school food authorities administering a school lunch program to release to appropriate officials administering SNAP such information as may be necessary. The Secretary could waive the limits on certification periods, reporting requirements, and other administrative requirements that would otherwise apply. The bill would also allow the Secretary to purchase commodities for emergency distribution in any area of the United States during a public health emergency designation during fiscal year 2020.

The bill would appropriate to the Secretary such amounts as are necessary to carry out this section, including $100 million to remain available through September 30, 2021, for grants to the Commonwealth of the Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance in response to a COVID-19 public health emergency, if such amounts are designated by Congress as being for an emergency requirement pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985.

The bill would allow the USDA Secretary to grant a waiver of federal requirements under the National School Lunch Act or Child Nutrition Act that would increase federal costs. This provision would apply to a waiver requested by a state or eligible service provider for the purposes of providing meals and meal supplements during a school closure due to COVID-19.

The bill would allow the USDA Secretary to establish a waiver allowing non-congregate feeding under a child and adult care food program, if such waiver is for the purpose of providing meals and meal supplements under the program with appropriate safety measures with respect to COVID-19. Additionally, the waiver program could relax requirements related to the nutritional content of meals served if the following apply: (a) the waiver is necessary to provide meals and meal supplements under a qualified program; and (b) there is a supply chain disruption with respect to foods served under the program due to COVID-19.

The waiver would apply automatically to any state that chooses to be subject to the waiver. Any state that receives the waiver would be required to submit a report to the Secretary with the following information, not more than one year after the waiver was received: (a) a summary of the

use of the waiver by the state and by eligible service providers; and (b) a description of whether the waiver resulted in improved services to children. The waiver authority expires on September 30, 2020.

This provision would allow programs serving school lunches or breakfasts or participating in a child and adult care food program or a summer food service program to provide meals under those programs that can be taken and consumed away from the service site. Such meals would not be eligible for federal reimbursement under current federal law. (No such provision applies under state law.) The provision would also provide flexibility in the event of a food supply chain disruption.

WIC Supplemental Food Program -- Waiver of Certain Conditions of Certification. Under federal law, with limited exceptions, women and children who wish to be certified to participate in the women, infants and children (WIC) supplemental food program must be physically present at each certification or recertification determination in order to be eligible for the program. In addition, all WIC participants must be determined to have a nutritional risk, which may require that applicants meet anthropometric (body measurement) and bloodwork requirements.

The bill would permit the DHHS Secretary of the state agency that administers the WIC program [in Wisconsin, DHS] to request a waiver of the physical presence, anthropometric, and bloodwork requirements that WIC applicants would otherwise be required to meet in order to be eligible for WIC. If the waiver request were approved by the USDA, the requirements would not apply during any portion of the emergency period. This waiver authority would expire on September 30, 2020.

If a state waiver is requested and approved, each local WIC agency that uses the waiver would be required to submit a report to DHS that includes a summary of the use of the waiver by the local agency and a description of whether the waiver resulted in improved services to women, infants and children. These reports would be due within one year after the date the local agency uses the waiver. Each state agency that receives a waiver would be required to submit a report to USDA that includes a summary of the information provided by the local WIC agencies.

WIC Supplemental Food Program -- Waiver of Certain Administrative Requirements. Federal law authorizes USDA to implement administrative requirements relating to the WIC supplemental food program. These requirements, codified under 7 CFR Part 246, relate to all aspects of the program, including general provisions, state and local agency eligibility, participant eligibility, participant benefits, state agency provisions, monitoring and review, and other miscellaneous provisions.

H.R. 6201 would permit the state administering agency to request a waiver of any "qualified administrative requirement" relating to the program, which is defined as any regulatory requirement that the USDA Secretary determines: (a) cannot be met by a state agency due to COVID-19; and (b) the modification or waiver of which is necessary to provide assistance under the WIC supplemental food program.

If a state waiver is requested and approved, the state agency must, within one year after the

date the agency received the waiver, submit a report to USDA that includes a summary of the use of the waiver by the state agency, and a description of whether the waiver resulted in improved services to women, infants and children. The USDA's authority to grant waivers would expire on September 30, 2020.

Aging and Disability Services Programs -- Nutrition Services. The federal Older Americans Act funds a broad range of social services and programs for individuals who are 60 years old and older. These services include supportive services, congregate nutrition services (meals served at group sites), home delivered nutrition services, family caregiver support, community services employment, the long-term care ombudsman program, and services to prevent the abuse, neglect and exploitation of older persons.

Title III of the act authorizes grants for state and community programs on aging. In federal fiscal year 2019-20, the total federal funding amount allocated for services funded under Title III was approximately $1.314 billion, of which Wisconsin's allocation was approximately $23.8 million (approximately 1.8% of the total).

The federal legislation would provide an additional $250 million to increase funding for home-delivered nutrition services ($160 million), congregate nutrition services ($80 million), and nutrition services for Native Americans ($10 million). Based on the current federal fiscal year allocation of these funds, it is estimated that Wisconsin would receive approximately $4.5 million in additional federal funds under Title III.

The Older Americans Act limits the amount of the federal grant award that can be used for eligible purposes, and specifies that the federal funding may pay for up to 85 percent of the total cost of supportive services, senior centers and nutrition services, with at least 15 percent of eligible service costs paid by state and local funds. Under the bill, this state match requirement, as it applies to the supplemental funding, would not apply.

Supplemental Federal Appropriations

Under the title "Second Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020," the bill appropriates moneys to federal agencies for the federal fiscal year ending September 30, 2020, as identified below. The appropriations are not specific to Wisconsin, but rather for each identified federal agency and program. The bill specifies that the appropriated amounts are designated as being for an emergency requirement under the Balanced Budget and Emergency Deficit Control Act of 1985, but requires that monies are available "only if the President subsequently so designates all such amounts and transmits such designations to the Congress."

Federal Department/Program/Purpose	Amount	Funding Available Through
Agriculture		
Special Supplemental Nutrition Program for Women, Infants, and Children	$500,000,000	September 30, 2021
Commodity Assistance Program (up to $100 million for distribution of commodities)	400,000,000	September 30, 2021
Nutrition Assistance, COVID-19 Grants to the Commonwealths of Northern Mariana Islands, Puerto Rico and American Samoa	100,000,000	September 30, 2021
Defense		
Defense Health Program, SARS-CoV-2 or COVID-19 Items and Services	82,000,000	September 30, 2022
Treasury		
Internal Revenue Service, Taxpayer Services, Operational Support for Provisions of the Bill	15,000,000	September 30, 2022
Health and Human Services		
Indian Health Services, SARS-CoV-2 or COVID-19 Items and Services	64,000,000	September 30, 2022
Community Living, Aging and Disability Services, Older Americans Act		
• Home-Delivered Nutrition Services	160,000,000	September 30, 2021
• Congregate Nutrition Services	80,000,000	September 30, 2021
• Nutrition Services for Native Americans	10,000,000	September 30, 2021
National Disaster Medical System, Public Health and Social Services Emergency Fund, Provider Reimbursement	1,000,000,000	Until Expended
Veterans Affairs		
Veterans Medical Services, SARS-CoV-2 or COVID-19 Items and Services	30,000,000	September 30, 2022
Veterans Medical Community Care, SARS-CoV-2 or COVID-19 Items and Services	30,000,000	September 30, 2022

The bill specifies that, no later than 30 days after the date of enactment, the head of each agency receiving funding is required to provide a report to the Committees on Appropriations of the House of Representatives and the Senate detailing the anticipated uses of all such funding. Each report is required to include estimated personnel and administrative costs, as well as the total amount of funding apportioned, allotted, obligated, and expended, to date. Further, each plan must be updated and submitted to the committees every 60 days until all funds are expended or expire.

Under the bill, a state and local government receiving funds or assistance must ensure that its state emergency operations center receives regular and real-time reporting on aggregated data on testing and results from state and local public health departments, as determined by the Director of the Centers for Disease Control and Prevention (CDC), and that the data is transmitted to the CDC.

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116TH CONGRESS
2D SESSION

H. R. 6201

AN ACT

Making emergency supplemental appropriations for the fiscal year ending September 30, 2020, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Families First Coronavirus Response Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

DIVISION A—SECOND CORONAVIRUS PREPAREDNESS AND RESPONSE SUPPLEMENTAL APPROPRIATIONS ACT, 2020

DIVISION B—NUTRITION WAIVERS

DIVISION C—EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

DIVISION D—EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS ACT OF 2020

DIVISION E—EMERGENCY PAID SICK LEAVE ACT

DIVISION F—HEALTH PROVISIONS

DIVISION G—TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE

DIVISION H—BUDGETARY EFFECTS

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to ''this Act'' contained in any division of this Act shall be treated as referring only to the provisions of that division.

DIVISION A—SECOND CORONAVIRUS PREPAREDNESS AND RESPONSE SUPPLEMENTAL APPROPRIATIONS ACT, 2020

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2020, and for other purposes, namely:

TITLE I

DEPARTMENT OF AGRICULTURE

FOOD AND NUTRITION SERVICE

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For an additional amount for the ''Special Supplemental Nutrition Program for Women, Infants, and Children'', $500,000,000, to remain available through September 30, 2021: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

COMMODITY ASSISTANCE PROGRAM

For an additional amount for the ''Commodity Assistance Program'' for the emergency food assistance program as authorized by section 27(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) and section 204(a)(1) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 7508(a)(1)), $400,000,000, to remain available through September 30, 2021: *Provided*, That of the funds made available, the Secretary may use up to $100,000,000 for costs associated with the distribution of commodities: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant

to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS—THIS TITLE

SEC. 1101. (a) PUBLIC HEALTH EMERGENCY.—During fiscal year 2020, in any case in which a school is closed for at least 5 consecutive days during a public health emergency designation during which the school would otherwise be in session, each household containing at least 1 member who is an eligible child attending the school shall be eligible to receive assistance pursuant to a state agency plan approved under subsection (b).

(b) ASSISTANCE.—To carry out this section, the Secretary of Agriculture may approve State agency plans for temporary emergency standards of eligibility and levels of benefits under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) for households with eligible children. Plans approved by the Secretary shall provide for supplemental allotments to households receiving benefits under such Act, and issuances to households not already receiving benefits. Such level of benefits shall be determined by the Secretary in an amount not less than the value of meals at the free rate over the course of 5 school days for each eligible child in the household.

(c) MINIMUM CLOSURE REQUIREMENT.—The Secretary of Agriculture shall not provide assistance under

this section in the case of a school that is closed for less than 5 consecutive days.

(d) USE OF EBT SYSTEM.—A State agency may provide assistance under this section through the EBT card system established under section 7 of the Food and Nutrition Act of 2008 (7 U.S.C. 2016).

(e) RELEASE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary of Agriculture may authorize State educational agencies and school food authorities administering a school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to release to appropriate officials administering the supplemental nutrition assistance program such information as may be necessary to carry out this section.

(f) WAIVERS.—To facilitate implementation of this section, the Secretary of Agriculture may approve waivers of the limits on certification periods otherwise applicable under section 3(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(f)), reporting requirements otherwise applicable under section 6(c) of such Act (7 U.S.C. 2015(c)), and other administrative requirements otherwise applicable to State agencies under such Act.

(g) AVAILABILITY OF COMMODITIES.—During fiscal year 2020, the Secretary of Agriculture may purchase

commodities for emergency distribution in any area of the United States during a public health emergency designation.

(h) DEFINITIONS.—In this section:

(1) The term ''eligible child'' means a child (as defined in section 12(d) or served under section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d), 1759(a)(1)) who, if not for the closure of the school attended by the child during a public health emergency designation and due to concerns about a COVID–19 outbreak, would receive free or reduced price school meals under the Richard B. Russell National School Lunch Act (42 U.S.C. 175l et seq.) at the school.

(2) The term ''public health emergency designation'' means the declaration of a public health emergency, based on an outbreak of SARS–CoV–2 or another coronavirus with pandemic potential, by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d).

(3) The term ''school'' has the meaning given the term in section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)).

(i) FUNDING.—There are hereby appropriated to the Secretary of Agriculture such amounts as are necessary to carry out this section: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 1102. In addition to amounts otherwise made available, $100,000,000, to remain available through September 30, 2021, shall be available for the Secretary of Agriculture to provide grants to the Commonwealth of the Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance in response to a COVID–19 public health emergency: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE II

DEPARTMENT OF DEFENSE

DEFENSE HEALTH PROGRAM

For an additional amount for ''Defense Health Program'', $82,000,000, to remain available until September 30, 2022, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in section 6006(a) of division F of the Families First

Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE III

DEPARTMENT OF THE TREASURY

Internal Revenue Service

TAXPAYER SERVICES

For an additional amount for ''Taxpayer Services'', $15,000,000, to remain available until September 30, 2022, for the purposes of carrying out the Families First Coronavirus Response Act: *Provided*, That amounts provided under this heading in this Act may be transferred to and merged with ''Operations Support'': *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE IV

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

INDIAN HEALTH SERVICES

For an additional amount for ''Indian Health Services'', $64,000,000, to remain available until September 30, 2022, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in section 6007 of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amounts shall be allocated at the discretion of the Director of the Indian Health Service: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE V

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

AGING AND DISABILITY SERVICES PROGRAMS

For an additional amount for ''Aging and Disability Services Programs'', $250,000,000, to remain available until September 30, 2021, for activities authorized under

subparts 1 and 2 of part C, of title III, and under title VI, of the Older Americans Act of 1965 (''OAA''), of which $160,000,000 shall be for Home-Delivered Nutrition Services, $80,000,000 shall be for Congregate Nutrition Services, and $10,000,000 shall be for Nutrition Services for Native Americans: *Provided*, That State matching requirements under sections 304(d)(1)(D) and 309(b)(2) of the OAA shall not apply to funds made available under this heading in this Act: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OFFICE OF THE SECRETARY

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

For an additional amount for ''Public Health and Social Services Emergency Fund'', $1,000,000,000, to remain available until expended, for activities authorized under section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11), in coordination with the Assistant Secretary for Preparedness and Response and the Administrator of the Centers for Medicare & Medicaid Services, to pay the claims of providers for reimbursement, as described in subsection (a)(3)(D) of such section 2812, for

health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in paragraph (1) of section 6001(a) of division F of the Families First Coronavirus Response Act (or the administration of such products) or visits described in paragraph (2) of such section for uninsured individuals: *Provided*, That the term ''uninsured individual'' in this paragraph means an individual who is not enrolled in—

(1) a Federal health care program (as defined under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f)), including an individual who is eligible for medical assistance only because of subsection (a)(10)(A)(ii)(XXIII) of Section 1902 of the Social Security Act; or

(2) a group health plan or health insurance coverage offered by a health insurance issuer in the group or individual market (as such terms are defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91)), or a health plan offered under chapter 89 of title 5, United States Code:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE VI

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL SERVICES

For an additional amount for ''Medical Services'', $30,000,000, to remain available until September 30, 2022, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

MEDICAL COMMUNITY CARE

For an additional amount for ''Medical Community Care'', $30,000,000, to remain available until September 30, 2022, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE VII

GENERAL PROVISIONS—THIS ACT

SEC. 1701. Not later than 30 days after the date of enactment of this Act, the head of each executive agency that receives funding in this Act shall provide a report detailing the anticipated uses of all such funding to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That each report shall include estimated personnel and administrative costs, as well as the total amount of funding apportioned, allotted, obligated, and expended, to date: *Provided further*, That each such plan shall be updated and submitted to such Committees every 60 days until all funds are expended or expire.

SEC. 1702. States and local governments receiving funds or assistance pursuant to this division shall ensure the respective State Emergency Operations Center receives regular and real-time reporting on aggregated data on testing and results from State and local public health departments, as determined by the Director of the Centers for Disease Control and Prevention, and that such data is transmitted to the Centers for Disease Control and Prevention.

SEC. 1703. Each amount appropriated or made available by this Act is in addition to amounts otherwise appropriated for the fiscal year involved.

SEC. 1704. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 1705. Unless otherwise provided for by this Act, the additional amounts appropriated by this Act to appropriations accounts shall be available under the authorities and conditions applicable to such appropriations accounts for fiscal year 2020.

SEC. 1706. Each amount designated in this Act by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

SEC. 1707. Any amount appropriated by this Act, designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 and subsequently so designated by the President, and transferred pursuant to transfer authorities provided by this Act shall retain such designation.

This division may be cited as the ''Second Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020''.

DIVISION B—NUTRITION WAIVERS

TITLE I—MAINTAINING ESSENTIAL ACCESS TO LUNCH FOR STUDENTS ACT

SEC. 2101. SHORT TITLE.

This title may be cited as the ''Maintaining Essential Access to Lunch for Students Act'' or the ''MEALS Act''.

SEC. 2102. WAIVER EXCEPTION FOR SCHOOL CLOSURES DUE TO COVID–19.

(a) IN GENERAL.—The requirements under section 12(l)(1)(A)(iii) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)(1)(A)(iii)) shall not apply to a qualified COVID–19 waiver.

(b) ALLOWABLE INCREASE IN FEDERAL COSTS.—Notwithstanding paragraph (4) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), the Secretary of Agriculture may grant a qualified COVID–19 waiver that increases Federal costs.

(c) TERMINATION AFTER PERIODIC REVIEW.—The requirements under section 12(l)(5) of the Richard B.

Russell National School Lunch Act (42 U.S.C. 1760(l)(5)) shall not apply to a qualified COVID–19 waiver.

(d) QUALIFIED COVID–19 WAIVER.—In this section, the term ''qualified COVID–19 waiver'' means a waiver—

(1) requested by a State (as defined in section 12(d)(8) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(8))) or eligible service provider under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)); and

(2) to waive any requirement under such Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either such Act, for purposes of providing meals and meal supplements under such Acts during a school closure due to COVID–19.

TITLE II—COVID—19 CHILD NUTRITION RESPONSE ACT

SEC. 2201. SHORT TITLE.

This title may be cited as the ''COVID–19 Child Nutrition Response Act''.

SEC. 2202. NATIONAL SCHOOL LUNCH PROGRAM REQUIREMENT WAIVERS ADDRESSING COVID–19.

(a) NATIONWIDE WAIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may establish a waiver for all States under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), for purposes of—

(A) providing meals and meal supplements under a qualified program; and

(B) carrying out subparagraph (A) with appropriate safety measures with respect to COVID–19, as determined by the Secretary.

(2) STATE ELECTION.—A waiver established under paragraph (1) shall—

(A) notwithstanding paragraph (2) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), apply automatically to any State that elects to be subject to the waiver without further application; and

(B) not be subject to the requirements under paragraph (3) of such section.

(b) CHILD AND ADULT CARE FOOD PROGRAM WAIVER.—Notwithstanding any other provision of law, the Secretary may grant a waiver under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) to allow non-congregate feeding under a child and

adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) if such waiver is for the purposes of—

(1) providing meals and meal supplements under such child and adult care food program; and

(2) carrying out paragraph (1) with appropriate safety measures with respect to COVID–19, as determined by the Secretary.

(c) MEAL PATTERN WAIVER.—Notwithstanding paragraph (4)(A) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) the Secretary may grant a waiver under such section that relates to the nutritional content of meals served if the Secretary determines that—

(1) such waiver is necessary to provide meals and meal supplements under a qualified program; and

(2) there is a supply chain disruption with respect to foods served under such a qualified program and such disruption is due to COVID–19.

(d) REPORTS.—Each State that receives a waiver under subsection (a), (b), or (c), shall, not later than 1 year after the date such State received such waiver, submit a report to the Secretary that includes the following:

(1) A summary of the use of such waiver by the State and eligible service providers.

(2) A description of whether such waiver resulted in improved services to children.

(e) SUNSET.—The authority of the Secretary to establish or grant a waiver under this section shall expire on September 30, 2020.

(f) DEFINITIONS.—In this section:

(1) QUALIFIED PROGRAM.—The term ''qualified program'' means the following:

(A) The school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) The school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(C) The child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

(D) The summer food service program for children under section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(3) STATE.—The term "State" has the meaning given such term in section 12(d)(8) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(8)).

SEC. 2203. PHYSICAL PRESENCE WAIVER UNDER WIC DURING CERTAIN PUBLIC HEALTH EMERGENCIES.

(a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may grant a request described in paragraph (2) to—

(A) waive the requirement under section 17(d)(3)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(C)(i)); and

(B) defer anthropometric and bloodwork requirements necessary to determine nutritional risk.

(2) REQUEST.—A request described in this paragraph is a request made to the Secretary by a State agency to waive, on behalf of the local agencies served by such State agency, the requirements described in paragraph (1) during any portion of the emergency period (as defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42

U.S.C. 1320b-5(g)) (beginning on or after the date of the enactment of this section).

(b) REPORTS.—

(1) LOCAL AGENCY REPORTS.—Each local agency that uses a waiver pursuant to subsection (a) shall, not later than 1 year after the date such local agency uses such waiver, submit a report to the State agency serving such local agency that includes the following:

(A) A summary of the use of such waiver by the local agency.

(B) A description of whether such waiver resulted in improved services to women, infants, and children.

(2) STATE AGENCY REPORTS.—Each State agency that receives a waiver under subsection (a) shall, not later than 18 months after the date such State agency received such waiver, submit a report to the Secretary that includes the following:

(A) A summary of the reports received by the State agency under paragraph (1).

(B) A description of whether such waiver resulted in improved services to women, infants, and children.

(c) SUNSET.—The authority under this section shall expire on September 30, 2020.

(d) DEFINITIONS.—In this section:

(1) LOCAL AGENCY.—The term ''local agency'' has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(2) NUTRITIONAL RISK.—The term ''nutritional risk'' has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(4) STATE AGENCY.— The term ''State agency'' has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

SEC. 2204. ADMINISTRATIVE REQUIREMENTS WAIVER UNDER WIC.

(a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Agriculture may, if requested by a State agency (as defined in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C.

1786(b)), modify or waive any qualified administrative requirement with respect to such State agency.

(2) QUALIFIED ADMINISTRATIVE REQUIREMENT.—In this section, the term ''qualified administrative requirement'' means a regulatory requirement issued under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) that the Secretary of Agriculture determines—

(A) cannot be met by a State agency due to COVID–19; and

(B) the modification or waiver of which is necessary to provide assistance under such section.

(b) STATE AGENCY REPORTS.—Each State agency that receives a waiver under subsection (a)(1) shall, not later than 1 year after the date such State agency received such waiver, submit a report to the Secretary of Agriculture that includes the following:

(1) A summary of the use of such waiver by the State agency.

(2) A description of whether such waiver resulted in improved services to women, infants, and children.

(c) SUNSET.—The authority under this section shall expire on September 30, 2020.

TITLE III—SNAP WAIVERS

SEC. 2301. SNAP FLEXIBILITY FOR LOW-INCOME JOBLESS WORKERS.

(a) Beginning with the first month that begins after the enactment of this Act and for each subsequent month through the end of the month subsequent to the month a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID–19) is lifted, eligibility for supplemental nutrition assistance program benefits shall not be limited under section 6(o)(2) of the Food and Nutrition Act of 2008 unless an individual does not comply with the requirements of a program offered by the State agency (as defined in section 3 of the Food and Nutrition Act of 2008) that meets the standards of subparagraphs (B) or (C) of such section 6(o)(2).

(b) Beginning on the month subsequent to the month the public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of COVID–19 is lifted for purposes of section 6(o) of the Food and Nutrition Act of 2008, such State agency shall disregard any period during which an individual received

benefits under the supplemental nutrition assistance program prior to such month.

SEC. 2302. ADDITIONAL SNAP FLEXIBILITIES IN A PUBLIC HEALTH EMERGENCY.

(a) In the event of a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID–19) and the issuance of an emergency or disaster declaration by a State based on an outbreak of COVID–19, the Secretary of Agriculture—

(1) shall provide, at the request of a State agency (as defined in section 3 of the Food and Nutrition Act of 2008) that provides sufficient data (as determined by the Secretary through guidance) supporting such request, for emergency allotments to households participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 to address temporary food needs not greater than the applicable maximum monthly allotment for the household size; and

(2) may adjust, at the request of State agencies or by guidance in consultation with one or more State agencies, issuance methods and application and reporting requirements under the Food and Nu-

trition Act of 2008 to be consistent with what is practicable under actual conditions in affected areas. (In making this adjustment, the Secretary shall consider the availability of offices and personnel in State agencies, any conditions that make reliance on electronic benefit transfer systems described in section 7(h) of the Food and Nutrition Act of 2008 impracticable, any disruptions of transportation and communication facilities, and any health considerations that warrant alternative approaches.)

(b) Not later than 10 days after the date of the receipt or issuance of each document listed in paragraphs (1), (2), or (3) of this subsection, the Secretary of Agriculture shall make publicly available on the website of the Department the following documents:

(1) Any request submitted by State agencies under subsection (a).

(2) The Secretary's approval or denial of each such request.

(3) Any guidance issued under subsection (a)(2).

(c) The Secretary of Agriculture shall, within 18 months after the public health emergency declaration described in subsection (a) is lifted, submit a report to the House and Senate Agriculture Committees with a descrip-

tion of the measures taken to address the food security needs of affected populations during the emergency, any information or data supporting State agency requests, any additional measures that States requested that were not approved, and recommendations for changes to the Secretary's authority under the Food and Nutrition Act of 2008 to assist the Secretary and States and localities in preparations for any future health emergencies.

DIVISION C—EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

SEC. 3101. SHORT TITLE.

This Act may be cited as ''Emergency Family and Medical Leave Expansion Act''.

SEC. 3102. AMENDMENTS TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.

(a) PUBLIC HEALTH EMERGENCY LEAVE.—

(1) IN GENERAL.—Section 102(a)(1) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) is amended by adding at the end the following:

''(F) During the period beginning on the date the Emergency Family and Medical Leave Expansion Act takes effect, and ending on December 31, 2020, because of a qualifying need

related to a public health emergency in accordance with section 110.''.

(2) PAID LEAVE REQUIREMENT.—Section 102(c) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(c)) is amended by striking ''under subsection (a)'' and inserting ''under subsection (a) (other than certain periods of leave under subsection (a)(1)(F))''.

(b) REQUIREMENTS.—Title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.) is amended by adding at the end the following:

''SEC. 110. PUBLIC HEALTH EMERGENCY LEAVE.

''(a) DEFINITIONS.—The following shall apply with respect to leave under section 102(a)(1)(F):

''(1) APPLICATION OF CERTAIN TERMS.—The definitions in section 101 shall apply, except as follows:

''(A) ELIGIBLE EMPLOYEE.—In lieu of the definition in sections 101(2)(A) and 101(2)(B)(ii), the term 'eligible employee' means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested under section 102(a)(1)(F).

"(B) EMPLOYER THRESHOLD.—Section 101(4)(A)(i) shall be applied by substituting 'fewer than 500 employees' for '50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year'.

"(2) ADDITIONAL DEFINITIONS.—In addition to the definitions described in paragraph (1), the following definitions shall apply with respect to leave under section 102(a)(1)(F):

"(A) QUALIFYING NEED RELATED TO A PUBLIC HEALTH EMERGENCY.—The term 'qualifying need related to a public health emergency', with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

"(B) PUBLIC HEALTH EMERGENCY.—The term 'public health emergency' means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

"(C) CHILD CARE PROVIDER.—The term 'child care provider' means a provider who receives compensation for providing child care services on a regular basis, including an 'eligible child care provider' (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n)).

"(D) SCHOOL.—The term 'school' means an 'elementary school' or 'secondary school' as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

"(3) REGULATORY AUTHORITIES.—The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

"(A) to exclude certain health care providers and emergency responders from the definition of eligible employee under section 110(a)(1)(A); and

"(B) to exempt small businesses with fewer than 50 employees from the requirements of section 102(a)(1)(F) when the imposition of such requirements would jeopardize the viability of the business as a going concern.

1 "(b) RELATIONSHIP TO PAID LEAVE.—

2 "(1) UNPAID LEAVE FOR INITIAL 10 DAYS.—

3 "(A) IN GENERAL.—The first 10 days for
4 which an employee takes leave under section
5 102(a)(1)(F) may consist of unpaid leave.

6 "(B) EMPLOYEE ELECTION.—An employee
7 may elect to substitute any accrued vacation
8 leave, personal leave, or medical or sick leave
9 for unpaid leave under section 102(a)(1)(F) in
10 accordance with section 102(d)(2)(B).

11 "(2) PAID LEAVE FOR SUBSEQUENT DAYS.—

12 "(A) IN GENERAL.—An employer shall
13 provide paid leave for each day of leave under
14 section 102(a)(1)(F) that an employee takes
15 after taking leave under such section for 10
16 days.

17 "(B) CALCULATION.—

18 "(i) IN GENERAL.—Subject to clause
19 (ii), paid leave under subparagraph (A) for
20 an employee shall be calculated based on—

21 "(I) an amount that is not less
22 than two-thirds of an employee's reg-
23 ular rate of pay (as determined under
24 section 7(e) of the Fair Labor Stand-

ards Act of 1938 (29 U.S.C. 207(e)); and

"(II) the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)).

"(ii) CLARIFICATION.—In no event shall such paid leave exceed $200 per day and $10,000 in the aggregate.

"(C) VARYING SCHEDULE HOURS CALCULATION.—In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave under section 102(a)(1)(F), the employer shall use the following in place of such number:

"(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, in-

cluding hours for which the employee took leave of any type.

"(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

"(c) NOTICE.—In any case where the necessity for leave under section 102(a)(1)(F) for the purpose described in subsection (a)(2)(A)(iii) is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.

"(d) RESTORATION TO POSITION.—

"(1) IN GENERAL.—Section 104(a)(1) shall not apply with respect to an employee of an employer who employs fewer than 25 employees if the conditions described in paragraph (2) are met.

"(2) CONDITIONS.—The conditions described in this paragraph are the following:

"(A) The employee takes leave under section 102(a)(1)(F).

"(B) The position held by the employee when the leave commenced does not exist due to

economic conditions or other changes in operating conditions of the employer—

"(i) that affect employment; and

"(ii) are caused by a public health emergency during the period of leave.

"(C) The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

"(D) If the reasonable efforts of the employer under subparagraph (C) fail, the employer makes reasonable efforts during the period described in paragraph (3) to contact the employee if an equivalent position described in subparagraph (C) becomes available.

"(3) CONTACT PERIOD.—The period described under this paragraph is the 1-year period beginning on the earlier of—

"(A) the date on which the qualifying need related to a public health emergency concludes; or

"(B) the date that is 12 weeks after the date on which the employee's leave under section 102(a)(1)(F) commences.".

SEC. 3103. EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS.

(a) EMPLOYERS.—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under section 110(b)(2) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act, by making contributions to a multiemployer fund, plan, or program based on the paid leave each of its employees is entitled to under such section while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

(b) EMPLOYEES.—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in sub-

section (a) may secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

SEC. 3104. SPECIAL RULE FOR CERTAIN EMPLOYERS.

An employer under 110(a)(B) shall not be subject to section 107(a) for a violation of section 102(a)(1)(F) if the employer does not meet the definition of employer set forth in Section 101(4)(A)(i).

SEC. 3105. SPECIAL RULE FOR HEALTH CARE PROVIDERS AND EMERGENCY RESPONDERS.

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions in the amendments made under of section 3102 of this Act.

SEC. 3106. EFFECTIVE DATE.

This Act shall take effect not later than 15 days after the date of enactment of this Act.

DIVISION D—EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS ACT OF 2020

SEC. 4101. SHORT TITLE.

This division may be cited as the ''Emergency Unemployment Insurance Stabilization and Access Act of 2020''.

SEC. 4102. EMERGENCY TRANSFERS FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION.

(a) IN GENERAL.—Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

''Emergency Transfers in Fiscal Year 2020 for Administration

''(h)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of emergency administration grants in fiscal year 2020 to the accounts of the States in the Unemployment Trust Fund, in accordance with succeeding provisions of this subsection.

''(B) The amount of an emergency administration grant with respect to a State shall, as determined by the Secretary of Labor, be equal to the amount obtained by multiplying $1,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of deter-

mining such State's share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2019, under the provisions of subsection (a).

"(C) Of the emergency administration grant determined under subparagraph (B) with respect to a State—

"(i) not later than 60 days after the date of enactment of this subsection, 50 percent shall be transferred to the account of such State upon a certification by the Secretary of Labor to the Secretary of the Treasury that the State meets the requirements of paragraph (2); and

"(ii) only with respect to a State in which the number of unemployment compensation claims has increased by at least 10 percent over the same quarter in the previous calendar year, the remainder shall be transferred to the account of such State upon a certification by the Secretary of Labor to the Secretary of the Treasury that the State meets the requirements of paragraph (3).

"(2) The requirements of this paragraph with respect to a State are the following:

"(A) The State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation

from employment. Such notification may be based on model notification language issued by the Secretary of Labor.

"(B) The State ensures that applications for unemployment compensation, and assistance with the application process, are accessible in at least two of the following: in-person, by phone, or online.

"(C) The State notifies applicants when an application is received and is being processed, and in any case in which an application is unable to be processed, provides information about steps the applicant can take to ensure the successful processing of the application.

"(3) The requirements of this paragraph with respect to a State are the following:

"(A) The State has expressed its commitment to maintain and strengthen access to the unemployment compensation system, including through initial and continued claims.

"(B) The State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID–19 due to an illness in

the workplace or direction from a public health official to isolate or quarantine workers.

"(4) Any amount transferred to the account of a State under this subsection may be used by such State only for the administration of its unemployment compensation law, including by taking such steps as may be necessary to ensure adequate resources in periods of high demand.

"(5) Not later than 1 year after the date of enactment of the Emergency Unemployment Insurance Stabilization and Access Act of 2020, each State receiving emergency administration grant funding under paragraph (1)(C)(i) shall submit to the Secretary of Labor, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, a report that includes—

"(A) an analysis of the recipiency rate for unemployment compensation in the State as such rate has changed over time;

"(B) a description of steps the State intends to take to increase such recipiency rate.

"(6)(A) Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration ac-

count (as established by section 901 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary for purposes of making the transfers described in paragraph (1)(C).

''(B) There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.''.

(b) EMERGENCY FLEXIBILITY.—Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID–19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law.

(c) REGULATIONS.—The Secretary of Labor may prescribe any regulations, operating instructions, or other guidance necessary to carry out the amendment made by subsection (a).

SEC. 4103. TEMPORARY ASSISTANCE FOR STATES WITH ADVANCES.

Section 1202(b)(10)(A) of the Social Security Act (42 U.S.C. 1322(b)(10)(A)) is amended by striking ''be-

ginning on the date of enactment of this paragraph and ending on December 31, 2010'' and inserting ''beginning on the date of enactment of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 and ending on December 31, 2020''.

SEC. 4104. TECHNICAL ASSISTANCE AND GUIDANCE FOR SHORT-TIME COMPENSATION PROGRAMS.

The Secretary of Labor shall assist States in establishing, implementing, and improving the employer awareness of short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986) to help avert layoffs, including by providing technical assistance and guidance.

SEC. 4105. FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION FOR A LIMITED PERIOD.

(a) IN GENERAL.—In the case of sharable extended compensation and sharable regular compensation paid for weeks of unemployment beginning after the date of the enactment of this section and before December 31, 2020 (and only with respect to States that receive emergency administration grant funding under clauses (i) and (ii) of section 903(h)(1)(C) of the Social Security Act (42 U.S.C. 1102(h)(1)(C))), section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 (26

U.S.C. 3304 note) shall be applied by substituting ''100 percent of'' for ''one-half of''.

(b) TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.—With respect to weeks of unemployment beginning after the date of the enactment of this Act and ending on or before December 31, 2020, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall not apply.

(c) DEFINITIONS.—For purposes of this section—

(1) the terms ''sharable extended compensation'' and ''sharable regular compensation'' have the respective meanings given such terms under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(2) the term ''week'' has the meaning given such term under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(d) REGULATIONS.—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section.

DIVISION E—EMERGENCY PAID SICK LEAVE ACT

SEC. 5101. SHORT TITLE.

This Act may be cited as the ''Emergency Paid Sick Leave Act''.

SEC. 5102. PAID SICK TIME REQUIREMENT.

(a) IN GENERAL.—An employer shall provide to each employee employed by the employer paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).

(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child

care provider of such son or daughter is unavailable, due to COVID-19 precautions.

(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Except that an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.

(b) DURATION OF PAID SICK TIME.—

(1) IN GENERAL.—An employee shall be entitled to paid sick time for an amount of hours determined under paragraph (2).

(2) AMOUNT OF HOURS.—The amount of hours of paid sick time to which an employee is entitled shall be as follows:

(A) For full-time employees, 80 hours.

(B) For part-time employees, a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.

(3) CARRYOVER.—Paid sick time under this section shall not carry over from 1 year to the next.

(c) EMPLOYER'S TERMINATION OF PAID SICK TIME.—Paid sick time provided to an employee under this Act shall cease beginning with the employee's next scheduled workshift immediately following the termination of the need for paid sick time under subsection (a).

(d) PROHIBITION.—An employer may not require, as a condition of providing paid sick time under this Act, that the employee involved search for or find a replacement employee to cover the hours during which the employee is using paid sick time.

(e) USE OF PAID SICK TIME.—

(1) IN GENERAL.—The paid sick time under subsection (a) shall be available for immediate use by the employee for the purposes described in such subsection, regardless of how long the employee has been employed by an employer.

(2) SEQUENCING.—

(A) IN GENERAL.—An employee may first use the paid sick time under subsection (a) for the purposes described in such subsection.

(B) PROHIBITION.—An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under subsection (a).

SEC. 5103. NOTICE.

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements described in this Act.

(b) MODEL NOTICE.—Not later than 7 days after the date of enactment of this Act, the Secretary of Labor shall make publicly available a model of a notice that meets the requirements of subsection (a).

SEC. 5104. PROHIBITED ACTS.

It shall be unlawful for any employer to discharge, discipline, or in any other manner discriminate against any employee who—

(1) takes leave in accordance with this Act; and

(2) has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding.

SEC. 5105. ENFORCEMENT.

(a) UNPAID SICK LEAVE.—An employer who violates section 5102 shall—

(1) be considered to have failed to pay minimum wages in violation of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206); and

(2) be subject to the penalties described in sections 16 and 17 of such Act (29 U.S.C. 216; 217) with respect to such violation.

(b) UNLAWFUL TERMINATION.—An employer who willfully violates section 5104 shall—

(1) be considered to be in violation of section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)); and

(2) be subject to the penalties described in sections 16 and 17 of such Act (29 U.S.C. 216; 217) with respect to such violation.

SEC. 5106. EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS.

(a) EMPLOYERS.—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under this Act by making contributions to a multiemployer fund, plan, or program based on the hours of paid sick time each of its employees is entitled to under this Act while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collec-

tive bargaining agreement and for the uses specified under section 5102(a).

(b) EMPLOYEES.—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for the uses specified in section 5102(a).

SEC. 5107. RULES OF CONSTRUCTION.

Nothing in this Act shall be construed—

(1) to in any way diminish the rights or benefits that an employee is entitled to under any—

(A) other Federal, State, or local law;

(B) collective bargaining agreement; or

(C) existing employer policy; or

(2) to require financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for paid sick time under this Act that has not been used by such employee.

SEC. 5108. EFFECTIVE DATE.

This Act, and the requirements under this Act, shall take effect not later than 15 days after the date of enactment of this Act.

SEC. 5109. SUNSET.

This Act, and the requirements under this Act, shall expire on December 31, 2020.

SEC. 5110. DEFINITIONS.

For purposes of the Act:

(1) EMPLOYEE.—The terms ''employee'' means an individual who is—

(A)(i) an employee, as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)), who is not covered under subparagraph (E) or (F), including such an employee of the Library of Congress, except that a reference in such section to an employer shall be considered to be a reference to an employer described in clauses (i)(I) and (ii) of paragraph (5)(A); or

(ii) an employee of the Government Accountability Office;

(B) a State employee described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(C) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), other than an applicant for employment;

(D) a covered employee, as defined in section 411(c) of title 3, United States Code;

(E) a Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code; or

(F) any other individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code).

(2) EMPLOYER.—

(A) IN GENERAL.—The term ''employer'' means a person who is—

(i)(I) a covered employer, as defined in subparagraph (B), who is not covered under subclause (V);

(II) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(III) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(IV) an employing office, as defined in section 411(c) of title 3, United States Code; or

(V) an Executive Agency as defined in section 105 of title 5, United States Code, and including the U.S. Postal Service and the Postal Regulatory Commission; and

(ii) engaged in commerce (including government), or an industry or activity affecting commerce (including government), as defined in subparagraph (B)(iii).

(B) COVERED EMPLOYER.—

(i) IN GENERAL.—In subparagraph (A)(i)(I), the term ''covered employer''—

(I) means any person engaged in commerce or in any industry or activity affecting commerce that—

(aa) in the case of a private entity or individual, employs fewer than 500 employees; and

(bb) in the case of a public agency or any other entity that is not a private entity or individual, employs 1 or more employees;

(II) includes—

(aa) includes any person acting directly or indirectly in the interest of an employer in relation to an employee (within the meaning of such phrase in section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)); and

(bb) any successor in interest of an employer;

(III) includes any ''public agency'', as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)); and

(IV) includes the Government Accountability Office and the Library of Congress.

(ii) PUBLIC AGENCY.—For purposes of clause (i)(IV), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(iii) DEFINITIONS.—For purposes of this subparagraph:

(I) COMMERCE.—The terms ''commerce'' and ''industry or activity affecting commerce'' means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include ''commerce'' and any ''industry affecting commerce'', as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act of 1947 (29 U.S.C. 142 (1) and (3)).

(II) EMPLOYEE.—The term ''employee'' has the same meaning given such term in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)).

(III) PERSON.—The term ''person'' has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(3) FLSA TERMS.—The terms ''employ'' and ''State'' have the meanings given such terms in sec-

tion 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(4) FMLA TERMS.—The terms ''health care provider'' and ''son or daughter'' have the meanings given such terms in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611).

(5) PAID SICK TIME.—

(A) IN GENERAL.—The term ''paid sick time'' means an increment of compensated leave that—

(i) is provided by an employer for use during an absence from employment for a reason described in any paragraph of section 2(a); and

(ii) is calculated based on the employee's required compensation under subparagraph (B) and the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)), except that in no event shall such paid sick time exceed—

(I) $511 per day and $5,110 in the aggregate for a use described in

paragraph (1), (2), or (3) of section 5102(a); and

(II) $200 per day and $2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).

(B) REQUIRED COMPENSATION.—

(i) IN GENERAL.—Subject to subparagraph (A)(ii), the employee's required compensation under this subparagraph shall be not less than the greater of the following:

(I) The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).

(II) The minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(III) The minimum wage rate in effect for such employee in the applicable State or locality, whichever is greater, in which the employee is employed.

(ii) SPECIAL RULE FOR CARE OF FAMILY MEMBERS.—Subject to subparagraph (A)(ii), with respect to any paid sick time provided for any use described in paragraph (4), (5), or (6) of section 5102(a), the employee's required compensation under this subparagraph shall be two-thirds of the amount described in clause (B)(i).

(C) VARYING SCHEDULE HOURS CALCULATION.—In the case of a part-time employee described in section 5102(b)(2)(B) whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken paid sick time under section 2(a), the employer shall use the following in place of such number:

(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of any type.

(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

(D) GUIDELINES.—Not later than 15 days after the date of the enactment of this Act, the Secretary of Labor shall issue guidelines to assist employers in calculating the amount of paid sick time under subparagraph (A).

(E) REASONABLE NOTICE.—After the first workday (or portion thereof) an employee receives paid sick time under this Act, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.

SEC. 5111. REGULATORY AUTHORITIES.

The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

(1) to exclude certain health care providers and emergency responders from the definition of employee under section 5110(1) including by allowing

the employer of such health care providers and emergency responders to opt out;

(2) to exempt small businesses with fewer than 50 employees from the requirements of section 5102(a)(5) when the imposition of such requirements would jeopardize the viability of the business as a going concern; and

(3) as necessary, to carry out the purposes of this Act, including to ensure consistency between this Act and Division C and Division G of the Families First Coronavirus Response Act.

DIVISION F—HEALTH PROVISIONS

SEC. 6001. COVERAGE OF TESTING FOR COVID–19.

(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage (including a grandfathered health plan (as defined in section 1251(e) of the Patient Protection and Affordable Care Act)) shall provide coverage, and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements, for the following items and services furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C.

1320b–5(g)) beginning on or after the date of the enactment of this Act:

(1) In vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products.

(2) Items and services furnished to an individual during health care provider office visits (which term in this paragraph includes in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product described in paragraph (1), but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such individual for such product.

(b) ENFORCEMENT.—The provisions of subsection (a) shall be applied by the Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury to group health plans and health insurance issuers of-

fering group or individual health insurance coverage as if included in the provisions of part A of title XXVII of the Public Health Service Act, part 7 of the Employee Retirement Income Security Act of 1974, and subchapter B of chapter 100 of the Internal Revenue Code of 1986, as applicable.

(c) IMPLEMENTATION.—The Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury may implement the provisions of this section through sub-regulatory guidance, program instruction or otherwise.

(d) TERMS.—The terms ''group health plan''; ''health insurance issuer''; ''group health insurance coverage'', and ''individual health insurance coverage'' have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), and section 9832 of the Internal Revenue Code of 1986, as applicable.

SEC. 6002. WAIVING COST SHARING UNDER THE MEDICARE PROGRAM FOR CERTAIN VISITS RELATING TO TESTING FOR COVID–19.

(a) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(1)—

(A) by striking ''and'' before ''(CC)''; and

(B) by inserting before the period at the end the following: '', and (DD) with respect to a specified COVID–19 testing-related service described in paragraph (1) of subsection (cc) for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection, the amounts paid shall be 100 percent of the payment amount otherwise recognized under such respective specified outpatient payment provision for such service,'';

(2) in subsection (b), in the first sentence—

(A) by striking ''and'' before ''(10)''; and

(B) by inserting before the period at the end the following: '', and (11) such deductible shall not apply with respect to any specified COVID–19 testing-related service described in paragraph (1) of subsection (cc) for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection''; and

(3) by adding at the end the following new subsection:

"(cc) SPECIFIED COVID–19 TESTING-RELATED SERVICES.—For purposes of subsection (a)(1)(DD):

"(1) DESCRIPTION.—

"(A) IN GENERAL.—A specified COVID–19 testing-related service described in this paragraph is a medical visit that—

"(i) is in any of the categories of HCPCS evaluation and management service codes described in subparagraph (B);

"(ii) is furnished during any portion of the emergency period (as defined in section 1135(g)(1)(B)) (beginning on or after the date of enactment of this subsection);

"(iii) results in an order for or administration of a clinical diagnostic laboratory test described in section 1852(a)(1)(B)(iv)(IV); and

"(iv) relates to the furnishing or administration of such test or to the evaluation of such individual for purposes of determining the need of such individual for such test.

"(B) CATEGORIES OF HCPCS CODES.—For purposes of subparagraph (A), the categories of

HCPCS evaluation and management services codes are the following:

"(i) Office and other outpatient services.

"(ii) Hospital observation services.

"(iii) Emergency department services.

"(iv) Nursing facility services.

"(v) Domiciliary, rest home, or custodial care services.

"(vi) Home services.

"(vii) Online digital evaluation and management services.

"(2) SPECIFIED OUTPATIENT PAYMENT PROVISION.—A specified outpatient payment provision described in this paragraph is any of the following:

"(A) The hospital outpatient prospective payment system under subsection (t).

"(B) The physician fee schedule under section 1848.

"(C) The prospective payment system developed under section 1834(o).

"(D) Section 1834(g), with respect to an outpatient critical access hospital service.

"(E) The payment basis determined in regulations pursuant to section 1833(a)(3) for rural health clinic services.".

(b) CLAIMS MODIFIER.—The Secretary of Health and Human Services shall provide for an appropriate modifier (or other identifier) to include on claims to identify, for purposes of subparagraph (DD) of section 1833(a)(1), as added by subsection (a), specified COVID–19 testing-related services described in paragraph (1) of section 1833(cc) of the Social Security Act, as added by subsection (a), for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection.

(c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of, including amendments made by, this section through program instruction or otherwise.

SECTION 6003. COVERAGE OF TESTING FOR COVID–19 AT NO COST SHARING UNDER THE MEDICARE ADVANTAGE PROGRAM.

(a) IN GENERAL.—Section 1852(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–22(a)(1)(B)) is amended—

(1) in clause (iv)—

(A) by redesignating subclause (IV) as subclause (VI); and

(B) by inserting after subclause (III) the following new subclauses:

"(IV) Clinical diagnostic laboratory test administered during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of the Families First Coronavirus Response Act for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 and the administration of such test.

"(V) Specified COVID–19 testing-related services (as described in section 1833(cc)(1)) for which payment would be payable under a specified outpatient payment provision described in section 1833(cc)(2).";

(2) in clause (v), by inserting ", other than subclauses (IV) and (V) of such clause," after "clause (iv)"; and

(3) by adding at the end the following new clause:

"(vi) PROHIBITION OF APPLICATION OF CERTAIN REQUIREMENTS FOR COVID–19 TESTING.—In the case of a product or service described in subclause (IV) or (V), respectively, of clause (iv) that is administered or furnished during any portion of the emergency period described in such subclause beginning on or after the date of the enactment of this clause, an MA plan may not impose any prior authorization or other utilization management requirements with respect to the coverage of such a product or service under such plan.".

(b) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the amendments made by this section by program instruction or otherwise.

SECTION 6004. COVERAGE AT NO COST SHARING OF COVID–19 TESTING UNDER MEDICAID AND CHIP.

(a) MEDICAID.—

(1) IN GENERAL.—Section 1905(a)(3) of the Social Security Act (42 U.S.C. 1396d(a)(3)) is amended—

(A) by striking ''other laboratory'' and inserting ''(A) other laboratory'';

(B) by inserting ''and'' after the semicolon; and

(C) by adding at the end the following new subparagraph:

''(B) in vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) administered during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subparagraph for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products;''.

(2) NO COST SHARING.—

(A) IN GENERAL.—Subsections (a)(2) and (b)(2) of section 1916 of the Social Security Act (42 U.S.C. 1396o) are each amended—

(i) in subparagraph (D), by striking "or" at the end;

(ii) in subparagraph (E), by striking "; and" and inserting a comma; and

(iii) by adding at the end the following new subparagraphs:

"(F) any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this subparagraph (and the administration of such product), or

"(G) COVID–19 testing-related services for which payment may be made under the State plan; and".

(B) APPLICATION TO ALTERNATIVE COST SHARING.—Section 1916A(b)(3)(B) of the Social Security Act (42 U.S.C. 1396o–1(b)(3)(B)) is amended by adding at the end the following new clause:

"(xi) Any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section

beginning on or after the date of the enactment of this clause (and the administration of such product) and any visit described in section 1916(a)(2)(G) that is furnished during any such portion.''.

(C) CLARIFICATION.—The amendments made this paragraph shall apply with respect to a State plan of a territory in the same manner as a State plan of one of the 50 States.

(3) STATE OPTION TO PROVIDE COVERAGE FOR UNINSURED INDIVIDUALS.—

(A) IN GENERAL.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

(i) in subparagraph (A)(ii)—

(I) in subclause (XXI), by striking ''or'' at the end;

(II) in subclause (XXII), by adding ''or'' at the end; and

(III) by adding at the end the following new subclause:

''(XXIII) during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the en-

1 actment of this subclause, who are un-
2 insured individuals (as defined in sub-
3 section (ss));''; and
4 (ii) in the matter following subpara-
5 graph (G)—
6 (I) by striking ''and (XVII)'' and
7 inserting '', (XVII)''; and
8 (II) by inserting after ''instead of
9 through subclause (VIII)'' the fol-
10 lowing: '', and (XVIII) the medical as-
11 sistance made available to an unin-
12 sured individual (as defined in sub-
13 section (ss)) who is eligible for med-
14 ical assistance only because of sub-
15 paragraph (A)(ii)(XXIII) shall be lim-
16 ited to medical assistance for any in
17 vitro diagnostic product described in
18 section 1905(a)(3)(B) that is adminis-
19 tered during any portion of the emer-
20 gency period described in such section
21 beginning on or after the date of the
22 enactment of this subclause (and the
23 administration of such product) and
24 any visit described in section

1916(a)(2)(G) that is furnished during any such portion''.

(B) RECEIPT AND INITIAL PROCESSING OF APPLICATIONS AT CERTAIN LOCATIONS.—Section 1902(a)(55) of the Social Security Act (42 U.S.C. 1396a(a)(55)) is amended, in the matter preceding subparagraph (A), by striking ''or (a)(10)(A)(ii)(IX)'' and inserting ''(a)(10)(A)(ii)(IX), or (a)(10)(A)(ii)(XXIII)''.

(C) UNINSURED INDIVIDUAL DEFINED.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

''(ss) UNINSURED INDIVIDUAL DEFINED.—For purposes of this section, the term 'uninsured individual' means, notwithstanding any other provision of this title, any individual who is—

''(1) not described in subsection (a)(10)(A)(i); and

''(2) not enrolled in a Federal health care program (as defined in section 1128B(f)), a group health plan, group or individual health insurance coverage offered by a health insurance issuer (as such terms are defined in section 2791 of the Public

1 Health Service Act), or a health plan offered under
2 chapter 89 of title 5, United States Code.''.
3 (D) FEDERAL MEDICAL ASSISTANCE PER-
4 CENTAGE.—Section 1905(b) of the Social Secu-
5 rity Act (42 U.S.C. 1396d(b)) is amended by
6 adding at the end the following new sentence:
7 ''Notwithstanding the first sentence of this sub-
8 section, the Federal medical assistance percent-
9 age shall be 100 per centum with respect to
10 (and, notwithstanding any other provision of
11 this title, available for) medical assistance pro-
12 vided to uninsured individuals (as defined in
13 section 1902(ss)) who are eligible for such as-
14 sistance only on the basis of section
15 1902(a)(10)(A)(ii)(XXIII) and with respect to
16 expenditures described in section 1903(a)(7)
17 that a State demonstrates to the satisfaction of
18 the Secretary are attributable to administrative
19 costs related to providing for such medical as-
20 sistance to such individuals under the State
21 plan.''.
22 (b) CHIP.—
23 (1) IN GENERAL.—Section 2103(c) of the So-
24 cial Security Act (42 U.S.C. 1397cc(c)) is amended
25 by adding at the end the following paragraph:

"(10) CERTAIN IN VITRO DIAGNOSTIC PRODUCTS FOR COVID–19 TESTING.—The child health assistance provided to a targeted low-income child shall include coverage of any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this subparagraph (and the administration of such product).".

(2) COVERAGE FOR TARGETED LOW-INCOME PREGNANT WOMEN.—Section 2112(b)(4) of the Social Security Act (42 U.S.C. 1397ll(b)(4)) is amended by inserting "under section 2103(c)" after "same requirements".

(3) PROHIBITION OF COST SHARING.—Section 2103(e)(2) of the Social Security Act (42 U.S.C. 1397cc(e)(2)) is amended—

(A) in the paragraph header, by inserting ", COVID–19 TESTING," before "OR PREGNANCY-RELATED ASSISTANCE"; and

(B) by striking "category of services described in subsection (c)(1)(D) or" and inserting "categories of services described in subsection (c)(1)(D), in vitro diagnostic products described in subsection (c)(10) (and administra-

tion of such products), visits described in section 1916(a)(2)(G), or''.

SEC. 6005. TREATMENT OF PERSONAL RESPIRATORY PROTECTIVE DEVICES AS COVERED COUNTERMEASURES.

Section 319F–3(i)(1) of the Public Health Service Act (42 U.S.C. 247d–6d(i)(1)) is amended—

(1) in subparagraph (B), by striking ''or'' at the end; and

(2) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following new subparagraph:

''(D) a personal respiratory protective device that is—

''(i) approved by the National Institute for Occupational Safety and Health under part 84 of title 42, Code of Federal Regulations (or successor regulations);

''(ii) subject to the emergency use authorization issued by the Secretary on March 2, 2020, or subsequent emergency use authorizations, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (authorizing emergency use of personal

respiratory protective devices during the COVID–19 outbreak); and

"(iii) used during the period beginning on January 27, 2020, and ending on October 1, 2024, in response to the public health emergency declared on January 31, 2020, pursuant to section 319 as a result of confirmed cases of 2019 Novel Coronavirus (2019-nCoV).".

SEC. 6006. APPLICATION WITH RESPECT TO TRICARE, COVERAGE FOR VETERANS, AND COVERAGE FOR FEDERAL CIVILIANS.

(a) TRICARE.—The Secretary of Defense may not require any copayment or other cost sharing under chapter 55 of title 10, United States Code, for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) beginning on or after the date of the enactment of this Act.

(b) VETERANS.—The Secretary of Veterans Affairs may not require any copayment or other cost sharing under chapter 17 of title 38, United States Code, for in

1 vitro diagnostic products described in paragraph (1) of
2 section 6001(a) (or the administration of such products)
3 or visits described in paragraph (2) of such section fur-
4 nished during any portion of the emergency period defined
5 in paragraph (1)(B) of section 1135(g) of the Social Secu-
6 rity Act (42 U.S.C. 1320b–5(g)) beginning on or after the
7 date of the enactment of this Act.

8 (c) FEDERAL CIVILIANS.—No copayment or other
9 cost sharing may be required for any individual occupying
10 a position in the civil service (as that term is defined in
11 section 2101(1) of title 5, United States Code) enrolled
12 in a health benefits plan, including any plan under chapter
13 89 of title 5, United States Code, or for any other indi-
14 vidual currently enrolled in any plan under chapter 89 of
15 title 5 for in vitro diagnostic products described in para-
16 graph (1) of section 6001(a) (or the administration of
17 such products) or visits described in paragraph (2) of such
18 section furnished during any portion of the emergency pe-
19 riod defined in paragraph (1)(B) of section 1135(g) of the
20 Social Security Act (42 U.S.C. 1320b–5(g)) beginning on
21 or after the date of the enactment of this Act.

SEC. 6007. COVERAGE OF TESTING FOR COVID–19 AT NO COST SHARING FOR INDIANS RECEIVING PURCHASED/REFERRED CARE.

The Secretary of Health and Human Services shall cover, without the imposition of any cost sharing requirements, the cost of providing any COVID–19 related items and services as described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 320b–5(g)) beginning on or after the date of the enactment of this Act to Indians (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) receiving health services through the Indian Health Service, including through an Urban Indian Organization, regardless of whether such items or services have been authorized under the purchased/referred care system funded by the Indian Health Service or is covered as a health service of the Indian Health Service.

SEC. 6008. TEMPORARY INCREASE OF MEDICAID FMAP.

(a) IN GENERAL.—Subject to subsection (b), for each calendar quarter occurring during the period beginning on the first day of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) and ending on the last day of the cal-

1 endar quarter in which the last day of such emergency
2 period occurs, the Federal medical assistance percentage
3 determined for each State, including the District of Co-
4 lumbia, American Samoa, Guam, the Commonwealth of
5 the Northern Mariana Islands, Puerto Rico, and the
6 United States Virgin Islands, under section 1905(b) of the
7 Social Security Act (42 U.S.C. 1396d(b)) shall be in-
8 creased by 6.2 percentage points.

9 (b) REQUIREMENT FOR ALL STATES.—A State de-
10 scribed in subsection (a) may not receive the increase de-
11 scribed in such subsection in the Federal medical assist-
12 ance percentage for such State, with respect to a quarter,
13 if—

14 (1) eligibility standards, methodologies, or pro-
15 cedures under the State plan of such State under
16 title XIX of the Social Security Act (42 U.S.C. 1396
17 et seq.) (including any waiver under such title or
18 section 1115 of such Act (42 U.S.C. 1315)) are
19 more restrictive during such quarter than the eligi-
20 bility standards, methodologies, or procedures, re-
21 spectively, under such plan (or waiver) as in effect
22 on January 1, 2020;

23 (2) the amount of any premium imposed by the
24 State pursuant to section 1916 or 1916A of such
25 Act (42 U.S.C. 1396o, 1396o–1) during such quar-

ter, with respect to an individual enrolled under such plan (or waiver), exceeds the amount of such premium as of January 1, 2020;

(3) the State fails to provide that an individual who is enrolled for benefits under such plan (or waiver) as of the date of enactment of this section or enrolls for benefits under such plan (or waiver) during the period beginning on such date of enactment and ending the last day of the month in which the emergency period described in subsection (a) ends shall be treated as eligible for such benefits through the end of the month in which such emergency period ends unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State; or

(4) the State does not provide coverage under such plan (or waiver), without the imposition of cost sharing, during such quarter for any testing services and treatments for COVID–19, including vaccines, specialized equipment, and therapies.

(c) REQUIREMENT FOR CERTAIN STATES.—Section 1905(cc) of the Social Security Act (42 U.S.C. 1396d(cc)) is amended by striking the period at the end of the subsection and inserting "and section 6008 of the Families First Coronavirus Response Act, except that in applying

such treatments to the increases in the Federal medical assistance percentage under section 6008 of the Families First Coronavirus Response Act, the reference to 'December 31, 2009' shall be deemed to be a reference to 'March 11, 2020'.''.

SEC. 6009. INCREASE IN MEDICAID ALLOTMENTS FOR TERRITORIES.

Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B)—

(i) in clause (i), by striking ''and'' at the end;

(ii) in clause (ii), by striking ''for each of fiscal years 2020 through 2021, $126,000,000;'' and inserting ''for fiscal year 2020, $128,712,500; and''; and

(iii) by adding at the end the following new clause:

''(iii) for fiscal year 2021, $127,937,500;'';

(B) in subparagraph (C)—

(i) in clause (i), by striking ''and'' at the end;

(ii) in clause (ii), by striking ''for each of fiscal years 2020 through 2021, $127,000,000;'' and inserting ''for fiscal year 2020, $130,875,000; and''; and

(iii) by adding at the end the following new clause:

''(iii) for fiscal year 2021, $129,712,500;'';

(C) in subparagraph (D)—

(i) in clause (i), by striking ''and'' at the end;

(ii) in clause (ii), by striking ''for each of fiscal years 2020 through 2021, $60,000,000; and'' and inserting ''for fiscal year 2020, $63,100,000; and''; and

(iii) by adding at the end the following new clause:

''(iii) for fiscal year 2021, $62,325,000; and''; and

(D) in subparagraph (E)—

(i) in clause (i), by striking ''and'' at the end;

(ii) in clause (ii), by striking ''for each of fiscal years 2020 through 2021,

$84,000,000.'' and inserting ''for fiscal year 2020, $86,325,000; and''; and

(iii) by adding at the end the following new clause:

''(iii) for fiscal year 2021, $85,550,000.''; and

(2) in paragraph (6)(A)—

(A) in clause (i), by striking ''$2,623,188,000'' and inserting ''$2,716,188,000''; and

(B) in clause (ii), by striking ''$2,719,072,000'' and inserting ''$2,809,063,000''.

SEC. 6010. CLARIFICATION RELATING TO SECRETARIAL AUTHORITY REGARDING MEDICARE TELEHEALTH SERVICES FURNISHED DURING COVID–19 EMERGENCY PERIOD.

Paragraph (3)(A) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) is amended to read as follows:

''(A) furnished to such individual, during the 3-year period ending on the date such telehealth service was furnished, an item or service that would be considered covered under title

XVIII if furnished to an individual entitled to benefits or enrolled under such title; or''.

DIVISION G—TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE

SEC. 7001. PAYROLL CREDIT FOR REQUIRED PAID SICK LEAVE.

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified sick leave wages taken into account under subsection (a) with respect to any individual shall not exceed $200 ($511 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) for any day (or portion thereof) for which the individual is paid qualified sick leave wages.

(2) OVERALL LIMITATION ON NUMBER OF DAYS TAKEN INTO ACCOUNT.—The aggregate number of

days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

(A) 10, over

(B) the aggregate number of days so taken into account for all preceding calendar quarters.

(3) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(4) REFUNDABILITY OF EXCESS CREDIT.—

(A) IN GENERAL.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (3) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under

this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(c) QUALIFIED SICK LEAVE WAGES.—For purposes of this section, the term ''qualified sick leave wages'' means wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) and compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act.

(d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.—

(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

(2) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this subsection, the term ''qualified health plan expenses'' means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the

gross income of employees by reason of section 106(a) of such Code.

(3) ALLOCATION RULES.—For purposes of this section, qualified health plan expenses shall be allocated to qualified sick leave wages in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) SPECIAL RULES.—

(1) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe) not to have this section apply.

(3) CERTAIN TERMS.—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid sick time required to be provided under the Emergency Paid Sick Leave Act.

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security

Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

SEC. 7002. CREDIT FOR SICK LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS.

(a) CREDIT AGAINST SELF-EMPLOYMENT TAX.—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for any taxable year an amount equal to the qualified sick leave equivalent amount with respect to the individual.

(b) ELIGIBLE SELF-EMPLOYED INDIVIDUAL.—For purposes of this section, the term ''eligible self-employed individual'' means an individual who—

(1) regularly carries on any trade or business within the meaning of section 1402 of such Code, and

(2) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Paid Sick Leave Act if the individual were an employee of an employer (other than himself or herself).

(c) QUALIFIED SICK LEAVE EQUIVALENT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term ''qualified sick leave equivalent amount'' means, with respect to any eligible self-employed individual, an amount equal to—

(A) the number of days during the taxable year (but not more than the applicable number of days) that the individual is unable to perform services in any trade or business referred to in section 1402 of such Code for a reason with respect to which such individual would be entitled to receive sick leave as described in subsection (b), multiplied by

(B) the lesser of—

(i) $200 ($511 in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act), or

(ii) 67 percent (100 percent in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) of the average daily self-employment income of the individual for the taxable year.

(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME.—For purposes of this subsection, the term ''average daily self-employment income'' means an amount equal to—

(A) the net earnings from self-employment of the individual for the taxable year, divided by

(B) 260.

(3) APPLICABLE NUMBER OF DAYS.—For purposes of this subsection, the term ''applicable number of days'' means, with respect to any taxable year, the excess (if any) of 10 days over the number of days taken into account under paragraph (1)(A) in all preceding taxable years.

(d) SPECIAL RULES.—

(1) CREDIT REFUNDABLE.—

(A) IN GENERAL.—The credit determined under this section shall be treated as a credit

allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(2) DOCUMENTATION.—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary of the Treasury (or the Secretary's delegate) may prescribe to establish such individual as an eligible self-employed individual.

(3) DENIAL OF DOUBLE BENEFIT.—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act, the qualified sick leave equivalent amount otherwise determined under subsection (c) shall be reduced (but not below zero) to the extent that the sum of the amount de-

scribed in such subsection and in section 7001(b)(1) exceeds $2,000 ($5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act).

(4) CERTAIN TERMS.—Any term used in this section which is also used in chapter 2 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.

(e) APPLICATION OF SECTION.—Only days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020, may be taken into account under subsection (c)(1)(A).

(f) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary of the Treasury (or the

Secretary's delegate) based on information provided by the government of the respective possession.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury (or the Secretary's delegate) as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury (or the Secretary's delegate), under which such possession will promptly distribute such payments to its residents.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term ''mirror code tax system'' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(g) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to effectuate the purposes of this Act, and

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

SEC. 7003. PAYROLL CREDIT FOR REQUIRED PAID FAMILY LEAVE.

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified family leave wages paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified family leave wages taken into

account under subsection (a) with respect to any individual shall not exceed—

(A) for any day (or portion thereof) for which the individual is paid qualified family leave wages, $200, and

(B) in the aggregate with respect to all calendar quarters, $10,000.

(2) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, and section 7001 of this Act, for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(3) REFUNDABILITY OF EXCESS CREDIT.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(c) QUALIFIED FAMILY LEAVE WAGES.—For purposes of this section, the term ''qualified family leave

1 wages'' means wages (as defined in section 3121(a) of
2 such Code) and compensation (as defined in section
3 3231(e) of the Internal Revenue Code) paid by an em-
4 ployer which are required to be paid by reason of the
5 Emergency Family and Medical Leave Expansion Act (in-
6 cluding the amendments made by such Act).

7 (d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH
8 PLAN EXPENSES.—

9 (1) IN GENERAL.—The amount of the credit al-
10 lowed under subsection (a) shall be increased by so
11 much of the employer's qualified health plan ex-
12 penses as are properly allocable to the qualified fam-
13 ily leave wages for which such credit is so allowed.

14 (2) QUALIFIED HEALTH PLAN EXPENSES.—For
15 purposes of this subsection, the term ''qualified
16 health plan expenses'' means amounts paid or in-
17 curred by the employer to provide and maintain a
18 group health plan (as defined in section 5000(b)(1)
19 of the Internal Revenue Code of 1986), but only to
20 the extent that such amounts are excluded from the
21 gross income of employees by reason of section
22 106(a) of such Code.

23 (3) ALLOCATION RULES.—For purposes of this
24 section, qualified health plan expenses shall be allo-
25 cated to qualified family leave wages in such manner

as the Secretary of the Treasury (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) SPECIAL RULES.—

(1) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code .

(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe) not to have this section apply.

(3) CERTAIN TERMS.—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this

section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid leave required to be provided under the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act).

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard

to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

SEC. 7004. CREDIT FOR FAMILY LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS.

(a) CREDIT AGAINST SELF-EMPLOYMENT TAX.—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for any taxable year an amount equal to 100 percent of the qualified family leave equivalent amount with respect to the individual.

(b) ELIGIBLE SELF-EMPLOYED INDIVIDUAL.—For purposes of this section, the term ''eligible self-employed individual'' means an individual who—

(1) regularly carries on any trade or business within the meaning of section 1402 of such Code, and

(2) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Family and Medical Leave Expansion Act if the individual were an employee of an employer (other than himself or herself).

(c) QUALIFIED FAMILY LEAVE EQUIVALENT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term ''qualified family leave equivalent amount'' means, with respect to any eligible self-employed individual, an amount equal to the product of—

(A) the number of days (not to exceed 50) during the taxable year that the individual is unable to perform services in any trade or business referred to in section 1402 of such Code for a reason with respect to which such individual would be entitled to receive paid leave as described in subsection (b), multiplied by

(B) the lesser of—

(i) 67 percent of the average daily self-employment income of the individual for the taxable year, or

(ii) $200.

(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME.—For purposes of this subsection, the term ''average daily self-employment income'' means an amount equal to—

(A) the net earnings from self-employment income of the individual for the taxable year, divided by

(B) 260.

(d) SPECIAL RULES.—

(1) CREDIT REFUNDABLE.—

(A) IN GENERAL.—The credit determined under this section shall be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(2) DOCUMENTATION.—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary of the Treasury (or the Secretary's delegate) may prescribe to establish such individual as an eligible self-employed individual.

(3) DENIAL OF DOUBLE BENEFIT.—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an

employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act, the qualified family leave equivalent amount otherwise described in subsection (c) shall be reduced (but not below zero) to the extent that the sum of the amount described in such subsection and in section 7003(b)(1) exceeds $10,000.

(4) CERTAIN TERMS.—Any term used in this section which is also used in chapter 2 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.

(5) REFERENCES TO EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT.—Any reference in this section to the Emergency Family and Medical Leave Expansion Act shall be treated as including a reference to the amendments made by such Act.

(e) APPLICATION OF SECTION.—Only days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020, may be taken into account under subsection (c)(1)(A).

(f) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary of the Treasury (or the Secretary's delegate) based on information provided by the government of the respective possession.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury (or the Secretary's delegate) as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury (or the Secretary's delegate), under which such possession will promptly distribute such payments to its residents.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term ''mirror code tax system'' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(e) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of this Act, and

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

SEC. 7005. SPECIAL RULE RELATED TO TAX ON EMPLOYERS.

(a) IN GENERAL.—Any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of section 3111(a) of the Internal Revenue Code of 1986 or compensation for purposes of section 3221(a) of such Code.

(b) ALLOWANCE OF CREDIT FOR HOSPITAL INSURANCE TAXES.—

(1) IN GENERAL.—The credit allowed by section 7001 and the credit allowed by section 7003 shall each be increased by the amount of the tax imposed by section 3111(b) of the Internal Revenue Code of 1986 on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 7001 or 7003 (respectively).

(2) DENIAL OF DOUBLE BENEFIT.—For denial of double benefit with respect to the credit increase under paragraph (1), see sections 7001(e)(1) and 7003(e)(1).

(c) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social

Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

DIVISION H—BUDGETARY EFFECTS

SEC. 8001. BUDGETARY EFFECTS.

(a) STATUTORY PAYGO SCORECARDS.—The budgetary effects of division B and each succeeding division shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARDS.—The budgetary effects of division B and each succeeding division shall not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 (115th Congress).

(c) CLASSIFICATION OF BUDGETARY EFFECTS.—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105–217 and section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, the budgetary effects of division B and each succeeding division shall not be estimated—

(1) for purposes of section 251 of such Act; and

(2) for purposes of paragraph (4)(C) of section 3 of the Statutory Pay-As-You-Go Act of 2010 as being included in an appropriation Act.

Passed the House of Representatives March 14 (legislative day March 13), 2020.

Attest:

Clerk.

116th CONGRESS
2d Session

H. R. 6201

AN ACT

Making emergency supplemental appropriations for the fiscal year ending September 30, 2020, and for other purposes.

STATEMENT OF SCOPE
Department of Workforce Development

Rule No: DWD 127 and 128

Relating to: Amending provisions related to available for work, work available, and work search for unemployment insurance benefit claimants.

Rule Type: Emergency

Finding/nature of emergency:

An emergency rule is necessary to implement federal guidance (see UIPL No., 10-20, dated March 12, 2020) related to administering unemployment insurance benefit claims during the pandemic period related to the SARS-CoV-2 virus, which causes the coronavirus disease 2019 (in this Scope Statement, the virus and disease will be referred to as "COVID-19"). Additionally, by Executive Order 72, the Governor declared a public health emergency in order to protect the health and well-being of the state's residents, and directed state agencies to assist as appropriate in the State's on-going response to the public health emergency. The emergency rule is in response to COVID-19 in order to assist individuals affected by the disease who are job attached be more likely to be determined eligible for unemployment benefits.

Description of the objective of the proposed rule:

Currently, unemployment insurance benefit claimants must search for work (unless that requirement is waived) and must be available for work.

The rule will modify provisions of DWD127, related to work search actions and work search waivers for unemployment claimants who are currently laid off but who are job attached, otherwise eligible for unemployment benefits, and who are isolated or quarantined due to COVID-19.

The rule will modify provisions of DWD 128, related to the requirement of availability for work for individuals who are currently laid off but who are job attached, otherwise eligible for unemployment benefits, and who are isolated or quarantined due to COVID-19. The rule will also modify sections of DWD 128 to provide that work is not available for claimants who are isolated or quarantined due to COVID-19.

Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Currently, DWD 127 specifies the requirements for unemployment insurance claimants conducting work searches and provides waivers of the work search requirement in certain circumstances. DWD chapter 128 currently specifies the requirements for unemployment insurance claimants' availability for work.

The Department of Workforce Development proposes to amend DWD 127 to provide for an additional waiver of the work search requirement for the limited class of claimants who are job attached, otherwise eligible, and who are isolated or quarantined due to COVID-19. This will result in these claimants not being required to search for work during the isolation or quarantine period. The rule will also address work search actions for claimants.

The Department proposes to amend DWD 128 to provide for eligibility provisions related to the availability for work and work available requirements for claimants who are job attached, otherwise eligible, and who are isolated or quarantined due to COVID-19. These changes will provide that such claimants are considered available for work even though they are isolated or quarantined.

The policy alternative is to do nothing. If the Department does not promulgate the proposed rule, unemployment claimants who are currently laid off but who are job attached, otherwise eligible for unemployment benefits, and who are isolated or quarantined due to COVID-19 may not be eligible for benefits under current law.

Statutory authority for the rule, including the statutory citation and language:

The Department has statutory authority for the proposed rule.

"The department may adopt and enforce all rules which it finds necessary or suitable to carry out this chapter." Wis. Stat. § 108.14(2).

"The department may, by rule, do any of the following if doing so is necessary to comply with a requirement under federal law or is specifically allowed under federal law: Establish additional waivers from the requirements under par. (a) 2. and 3." Wis. Stat. § 108.04(2)(bd)2.

Estimate of the amount of time that state employees will spend developing the rule and other resources necessary to develop the rule:

The estimated time is 80 hours.

Description of all entities that may be affected by the proposed rule:

Claimants who are job attached, otherwise eligible for benefits, and are under quarantine or isolation. Employers whose employees qualify for unemployment benefits under this rule who would not have qualified under current state law.

Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal law requires, with exceptions, unemployment benefit claimants to be available for work. 20 C.F.R. §§ 604.3; 604.5.

Federal law requires state law to conform to and comply with federal regulations. *See* 20 C.F.R. § 601.5.

Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The proposed rule is expected to have an economic impact on unemployment insurance benefit claimants, who may be found to be eligible for unemployment benefits under this rule but who are not eligible under current law. The proposed rule is expected to have an economic impact on employers, including small businesses, because additional unemployment benefits may be charged to contribution employers' unemployment reserve accounts and to employers subject to reimbursement financing.

Contact Person: Janell Knutson, Director, Bureau of Legal Affairs, Unemployment Insurance Division, at (608) 266-1639 or janell.knutson@dwd.wisconsin.gov.

Approval of the agency head or authorized individual:

Pamela R. McGillivray, Chief Legal Counsel	**Date Submitted**