



## Legislative Fiscal Bureau

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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."

<u>Federal Department/Program/Purpose</u>	<u>Amount</u>	<u>Funding Available Through</u>
<b>Agriculture</b>		
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
<b>Defense</b>		
Defense Health Program, SARS-CoV-2 or COVID-19 Items and Services	82,000,000	September 30, 2022
<b>Treasury</b>		
Internal Revenue Service, Taxpayer Services, Operational Support for Provisions of the Bill	15,000,000	September 30, 2022
<b>Health and Human Services</b>		
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
<b>Veterans Affairs</b>		
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.

BL/lb