



COVID-19 RELIEF FOR HEALTH CARE PROVIDERS

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With the United States now leading the world in confirmed Coronavirus (COVID-19) cases, the recently passed Coronavirus Aid, Relief, and Economic Security (CARES) Act attempts to specifically help support the health care industry and the ability of health care providers to respond to the crisis over the coming months.

The focus of this article is on the various resources specifically available for health care providers to help them navigate the current crisis, which are in addition to the many provisions designed to address potential shortages of medical supplies, in particular, personal protective equipment (PPE), prescription drugs and medical devices, as well as measures to alleviate health professional workforce shortages during the public health emergency.

Health care providers find themselves in the unique position of potentially being placed on the front lines of the defense against the Coronavirus pandemic while, at the same time, facing their own individual challenges to their business due to the impact of social distancing guidelines, the loss of revenue from elective procedures and the costs of preparation for the pandemic.

This article will attempt to summarize the material provisions of the CARES Act for an individual health care provider, in particular, providers such as physician practices or for-profit companies that are independent of any major not-for-profit health care system. Please note that this summary is not exhaustive and there may be additional provisions in the CARES Act that are of interest to your business. And, it should be noted that there may be additional COVID-19 relief for the health care industry, as there is already talk of a fourth phase of legislation once Congress reconvenes at the end of April.

Small Business Loan Program

For smaller health care providers, an assessment should be made with the provider's respective professional advisors about the health care provider's ability to access a forgivable loan available through the \$349 billion "Paycheck Protection Program" (PPP). In the health care sector, the PPP may be particularly helpful for smaller health care providers such as physician practices and dental practices but note that smaller hospitals or health care providers affiliated with larger health systems or health networks may not qualify as a small business eligible for these loans. For a full discussion of the small business loan program under the CARES Act, please click [here](#).

Business Tax Considerations

In addition to the provision of stimulus funds for certain businesses, the CARES Act included a number of major tax provisions, many of which will benefit businesses large and small, including, without limitation:

- Net Operating Loss Rule Relaxation (CARES Act Section 2303)
 - Losses arising in 2018, 2019 and 2020 can be carried back to the five preceding years.
- Employer Payroll Tax Delay (CARES Act Section 2302)
 - Employers can defer the 6.2% payroll tax due (with half of this deferred amount being due on Dec. 31, 2020 and the other half due by Dec. 31, 2022).
 - Similar provisions apply to self-employed individuals, however, 50% of the self-employment tax still needs to be remitted on the existing deadlines.
- Employee Retention Payroll Tax Credit (CARES Act Section 2301)
 - Eligible employers (see below) affected by COVID may receive a payroll tax credit of as much as \$5,000 per employee for wages (and health benefits) paid after March 12 and before Jan. 1, 2021.
 - An employer is eligible for this credit if the operation of its business is fully or partially suspended during a calendar quarter due to orders of a governmental authority that limited commerce, travel or group meetings. An employer is also eligible for this credit in the first quarter in which the employer has a reduction of gross receipts of more than 50% in a calendar quarter as compared to the same calendar quarter in the prior year.
 - If the credit exceeds the employer's liability, the excess will be refundable.
- Increase of Interest Expense Deduction Limitation (CARES Act Section 2306)
 - In 2019 and 2020, corporations can deduct more of their borrowing costs (up to 50% of their earnings, instead of only 30%).
- Modification of Refundable Tax Credit (CARES Act Section 2305)

- Corporations with eligible minimum tax credits may accelerate their refunds.

Every health care provider should consult with its professional advisors about the impact of these tax provisions on their respective business.

\$100B Public Health and Social Services Emergency Fund

Among the most significant of the CARES Act provisions for health care providers is the new \$100 Billion Public Health and Social Services Emergency Fund from which the Department of Health and Human Services (HHS) will reimburse "eligible health care providers" for "health care related expenses or lost revenues that are attributable to coronavirus." Providers eligible for this fund include: public entities; Medicare or Medicaid enrolled suppliers and providers; and for-profit entities and nonprofit entities that provided diagnoses, testing or care for individuals with possible or actual cases of COVID-19.

Health care providers wishing to apply for such emergency funds must submit an application to HHS that includes a statement supporting the need for such funds. Applications will be reviewed and funds awarded on a rolling basis with HHS having significant authority to determine how the Emergency Funds may be allocated. The Emergency Funds will remain available until expended, so submission of an application sooner rather than later may be critical to obtaining access to such monies. The CARES Act does not provide details on the application procedures, but it is expected that HHS will issue guidance on the process shortly. It should be noted that the term "payment" in the bill is defined as a "pre-payment, prospective payment or retrospective payment as determined appropriate" so this will not be just retrospective payments, but can be prospective as well.

Medicare/Medicaid Payment Adjustment Provisions

The CARES Act includes a number of provisions adjusting reimbursement policies to assist health care providers caring for patients during the COVID-19 emergency period which are designed to be quick boosts to revenue streams, including without limitation:

- Temporarily suspending the Medicare sequester (which reduced payments to providers by 2%) until December 31 (CARES Act Section 3709)
- Increasing Medicare reimbursement to hospitals by creating a new 20% add-on to the DRG rate for COVID-19 patients treated at inpatient prospective payment system hospitals (IPPS) (CARES Act Section 3710)
- Expanding the ability of qualified hospitals to request and receive accelerated Medicare payments up to a six-month advanced lump sum or periodic payments for which repayment could be delayed for four months and would be interest-free for at least 12) months (CARES Act Section 3719)
- Waiving the 50% Rule and Site-Neutral payment policies for post-acute care providers so they can increase the capacity of the health care system without penalty (CARES Act Section (CARES Act Section 3711)

- Eliminating the \$4 billion reduction in Medicaid disproportionate share hospital (DSH) payments for FY 2020 and reducing the FY 2021 DSH cuts from \$8 billion to \$4 billion; and the implementation of the FY 2021 DSH cuts will be delayed until December 1 (CARES Act Section 3813)
- Increasing payment for durable medical equipment (DME) furnished in rural areas for the remainder of 2020 (CARES Act Section 3718)

Health Care Funding Opportunities

The CARES Act includes a number of other opportunities to receive grants or other assistance in the pursuit of certain policy objectives. These include but are not limited to:

- *Research, Treatment and Prevention Funding* – The bill provides \$27 billion to the Public Health and Social Services Emergency Fund to support the development of vaccines, therapies and diagnostics to treat and prevent COVID-19 (in addition to the \$3.5 billion to the Biomedical Advanced Research and Development Authority for the manufacturing, production and purchase of vaccines, therapeutics and diagnostics).
- *Centers for Disease Control and Prevention Funding* – The bill directs the CDC to provide \$4.3 billion to federal, state and local public agencies to prevent, prepare for and respond to COVID-19.
- *Administration for Community Living (ACL) Funding* – The bill includes \$955 million for aging and disability support programs, including nutrition programs, home and community-based services, family caregiver services and independent living.
- *National Institutes of Health Funding* – The bill includes \$945 million to support research into vaccines for COVID-19 and an improved understanding of the coronavirus.
- *Substance Abuse and Mental Health Services Administration (SAMHSA)* – The bill provides \$425 million for SAMHSA to prevent, prepare for and respond to COVID-19. The funding includes support for the Certified Community Behavioral Health Clinic Expansion Grant program, suicide prevention programs and tribal health organizations or behavioral health providers to tribes.
- *Funding for Rural Providers* – The bill includes \$275 million for the Health Resources and Services Administration (HRSA) to prevent, prepare for and respond to COVID-19

Health care providers should consult with their respective professional advisors about areas of opportunity that may be available to their particular business.

Telehealth Opportunities

Because telehealth offers flexibility for patients to access COVID-19 screening or care while avoiding exposure to others, the CARES Act includes a number of policy changes relating to telehealth services in order to increase access to care during the COVID-19 crisis. For instance, the CARES Act provides for the immediate expansion of telehealth under Medicare, eliminating a provision from the “Phase 1” package

that required providers to have a pre-existing relationship with a patient in order to provide telehealth services during the emergency period. In addition, during the emergency period, FQHC's and Rural Health Clinics will be able to serve as distant sites to provide telehealth services to patients in their homes and other eligible locations while being reimbursed at a rate that is similar to payment for comparable telehealth services under the physician fee schedule. In addition to the immediate telehealth opportunities, the Federal Communications Commission recently announced that it is launching a new telehealth program aimed at using the \$200 million in new federal funding from the CARES Act to improve broadband connectivity for connected health services.

The CARES Act also allows high deductible health plan (HDHP) participants with health savings accounts (HSAs) to receive telemedicine free of cost-sharing for plan years on or before Dec. 31, 2021. A new safe harbor permits HDHPs to cover telehealth and other remote care services before participants have met their deductible. The legislation also makes clear that other coverage for telehealth and other remote care services while participating in a HDHP will not make an individual ineligible for HSA contributions. For employers offering or considering telemedicine as part of their COVID-19 strategy, these changes to the HSA rules ensure that employers with HDHPs can cover telehealth without any cost sharing.

Obligations for COVID-19 Testing

The CARES Act provides that all testing for COVID-19 is to be covered by private insurance and Medicare Part B, without cost-sharing. Health insurance plans are required to pay the cash price for such tests as listed on the health care provider's public website unless another price is negotiated. Each provider of a COVID-19 diagnostic test must publicize the cash price for such a test on their website and failure to do so will subject the provider to civil money penalties of up to \$300 per day that the violation occurs. The CARES Act also requires health insurers to cover "any qualifying coronavirus preventive service," such as immunization, shortly after a recommendation by the U.S. Preventive Services Task Force or the Centers for Disease Control and Prevention (CDC).

Liability Limitations

On a personal note for any care providers, it should be noted the CARES Act limits liability for volunteer work by health care professionals during the COVID-19 emergency response. The CARES Act provides that a health care professional shall not be liable for care provided within the scope of the volunteer's license and made in good faith, with certain exceptions for harm that was caused due to gross negligence or reckless misconduct. In addition, the CARES Act extends the liability immunity to manufacturers and sellers of certain essential medical devices during a public health crises to entities who manufacture, test, distribute, prescribe or administer "respiratory protective devices."

Evolving Regulatory Environment

In addition to the recent CARES Act, the regulatory landscape for health care providers continues to evolve as the country responds to the COVID-19 pandemic. On March 30, the Centers for Medicare & Medicaid Services (CMS) issued blanket waivers to the Stark Law that permit certain arrangements between physicians and health care providers implemented in response to COVID-19 that would



otherwise violate the Stark Law. Importantly, the waivers only apply to remuneration and referrals related to COVID-19.

If you have questions or would like to discuss further, please contact [Jarod Moss](#).

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