

## Responding to the COVID-19 Crisis: How to Ensure Your Share of Relief Funding

April 6, 2020

### 1. Can homelessness funds go to community health centers to fund research and services into street medicine programs?

There does not seem to be anything specific in the CARES Act regarding the funding of research by community health centers related to street medicine programs. There is \$4 billion available through [H.R. 748 – 328] Homeless Assistance Grants for Homeless Assistance Grants until September 30, 2022, to prevent, prepare for, and respond to coronavirus.

### 2. Will they allow a base comparison of revenue, or do we have to measure it by cancellation of elective procedures based on CPT, DRG, etc.?

We recommend that you document the cancellations to substantiate the impact. You can value the lost procedures using expected reimbursement.

That said, it is recommended that organizations take a broad view of their revenue losses as per the \$100 billion Public Health and Social Service Emergency Fund, for lost revenues that are attributable to coronavirus. The loss of revenue should not be limited to cases directly linked to only COVID-19 patients, but rather the impact of the COVID-19 crisis is having on your organization's overall revenue streams when compared to a baseline period.

### 3. Does the payroll tax credit also subject to the 500 employee limit?

We recommend that you consult your accountant or tax advisor.

Payroll tax credit (Title II, Subtitle C)

- Provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the crisis. The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. Credit is based on qualified wages paid to the employees.
- Employers and self-employed individuals can defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.

### 4. Is the sequestration and 20% add-on for all provider types or just hospitals?

The legislation is clear that the 20% is for Medicare IPPS reimbursement (hospital MS-DRGs) for the Medicare Fee-For-Service program. We recommend that hospitals review their payor contract language. If those contracts emulate the Medicare payment system, then the payor may need to pay the added 20%. The link embedded [here](#), takes you to the America's Health Insurance Providers webpage that lists how many of the individual health plans are responding to the coronavirus.

[H.R. 748-142, Section 3710, (iv)(I)] For discharges occurring during the emergency period described in section 1135(g)(1)(B), in the case of a discharge of an individual diagnosed with COVID-19, the Secretary shall increase the weighting factor that would otherwise apply to the diagnosis-related group

to which the discharge is assigned by 20 percent. The Secretary shall identify a discharge of such an individual through the use of diagnosis codes, condition codes, or other such means as may be necessary.

The temporary suspension of the Medicare sequestration (2%) affects all provider types. The two percent sequestration reduction is applied to Medicare fee-for-services payments and to Medicare Advantage plans, Medicare Part D and other program payments. Please use the following CMS link for more information: <https://www.cms.gov/Medicare/Medicare-Advantage/Plan-Payment/Downloads/PaymentReductions.pdf>

The Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended, specifies that CMS “may not require any MA organization to...require a particular price structure for payment under such a contract...” Thus, whether and how sequestration might affect a Medicare Advantage Organization’s (MAO) payments to its contracted providers **are governed by the terms of the contract between the MAO and the provider.**

#### **Related Language from the CARES Act:**

[H.R. 748-141] SEC. 3709. ADJUSTMENT OF SEQUESTRATION.

(a) TEMPORARY SUSPENSION OF MEDICARE SEQUESTRATION.— During the period beginning on May 1, 2020 and ending on December 31, 2020, the Medicare programs under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) shall be exempt from reduction under any sequestration order issued before, on, or after the date of enactment of this Act.

#### **5. Is \$47 dollars already allocated and when would that be dispersed?**

The \$47 dollars per bed distribution is specific to funds being distributed by the California Hospital Association (CHA). It is our understanding CHA will distribute funds to the hospitals as soon as they are received from CMS. Please contact CHA for more information.

#### **6. Can you please advise if nursing bonuses for picking up extra shifts and relief pay will be considered for FEMA reimbursement?**

We believe the additional costs should be allowable, although the specifics will be clearer in coming weeks. We recommend that you track the costs in order to have them on hand should they be eligible when the process for applying for funding becomes available.

#### **7. Scheduled elective cases that were canceled (inpatient and outpatient) -- what is the best way to determine their value?**

Regarding the cases that were cancelled, you can value them at the payment you would expect from the payor plus any patient portion responsibility.

As per the response to number 2 above, it is recommended that organizations take a broad view of their revenue losses as per the \$100 billion Public Health and Social Service Emergency Fund, for lost revenues that are attributable to coronavirus. The loss of revenue should not be limited to cases directly linked to only COVID-19 patients, but rather the impact of the COVID-19 crisis is having on your organization’s overall revenue streams when compared to a baseline period.

**8. Can you give few tips on how an individual practice can combat the crisis and revenue loss?**

There is no simple answer. It depends on the specialty, your location, and the demand for your services. Some physicians operate urgent care centers, some provide inpatient services working as emergency physicians, hospitalists, intensivists (ICU), SNF services, and others provide office care. Some physicians work as medical directors, and others may contract to provide care in community clinics. Generally, individual practitioners should evaluate whether it is prudent to maintain their practice during the crisis or to provide services in a larger setting, such as a hospital, clinic, federal medical station (FMS), testing facilities or other locations. Whether individual practitioners maintain their practice or temporarily provide services in another location (independently or in concert with others), it is essential that documentation of cases, services, etc. be maintained.

Due to recent blanket regulatory waivers, including Stark law arrangements, including those above market value, in order to ensure access to treat COVID-19 patients, it is possible that your local hospital or health system will have options to support your practice. Examples of this may include providing physicians with telehealth/telemedicine equipment and software platforms, paying physicians to engage in COVID patient treatment activities, support to maintain practice viability and similar support related to ensuring COVID-19 patient treatment.

**9. How do we go about getting a loan and trying to make it forgivable?**

We assume that you are speaking in the CARES Act in [H.R. 748-17] Section 1106 related to the Small Business Act (Small Business Administration [SBA]). We recommend you speak to your SBA banker or call the Small Business Administration to get more information. We are hearing from our clients who are applying for SBA loans that there is still confusion related to the CARES Act and these loans. Some banks may not process loans for applicants who are not clients of the bank. More information should be forthcoming from SBA.

As of today, most banks seemed to be able to take an application, although the situation varies from bank to bank.

**10. When can we expect to see the process to request Medicare funding in advance from CMS?**

The details on how to apply are at the link below:

<https://www.cms.gov/files/document/Accelerated-and-Advanced-Payments-Fact-Sheet.pdf>

**11. We are a multispecialty outpatient group. Please give us the options of fund allocation available.**

Some other programs (not a comprehensive list) that you may be eligible for:

- a. Payroll tax credit (Title II, Subtitle C)
  - i. Provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the crisis. The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. Credit is based on qualified wages paid to the employees.
  - ii. Employers and self-employed individuals can defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.
- b. The Small Business Administration (SBA) Payroll Protection Program loans

- i. Includes \$350 billion in loan forgiveness grants to small businesses and non-profits to maintain existing workforce and pay for expenses like rent, mortgage, and utilities.
  - ii. Size of the loans would equal 250% of an employer's average monthly payroll. The maximum loan amount would be \$10 million.
  - iii. Loans would be available immediately through more than 800 existing SBA-certified lenders, including banks, credit unions, and other financial institutions.
  - iv. Defines eligibility for loans as a small business, 501(c)(3) organization, a 501(c)(19) veteran's organization, and tribal business concern described in section 31(b)(2)(C) of the Small Business Act with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher.
  - v. Sole-proprietors, independent contractors, and other self-employed individuals are eligible for loans.
  - vi. Includes \$17 billion to cover six months of payments for small businesses with existing Small Business Administrative (SBA) loans.
  - vii. Requires SBA to pay all principal, interest, and fees on all existing SBA loan products for six months.
  - viii. Includes \$265 million for grants to SBA resource partners, including Small Business Development Centers and Women's Business Centers, to offer counseling, training, and related assistance to small businesses.
  - ix. Expands eligibility for entities suffering economic harm due to COVID-19 to access SBA's Economic Injury Disaster Loans.
- c. Emergency Supplemental Appropriations
- i. \$100 billion for a new program to provide grants to hospitals, public entities, not-for-profit entities, and Medicare and Medicaid enrolled suppliers and institutional providers to cover unreimbursed health care related expenses or lost revenues attributable to the public health emergency resulting from the coronavirus.

## **12. Regarding the Medicare advance payments, do you have any information on the interest amount? We are hearing 10.25% after a certain time period.**

The interest begins to accrue after 12 months. The current rate is 10.25% as of December 31, 2019. But since the interest rate charged is the higher of the private consumer rate or the current value of funds rate prevailing on the date of final determination, and you have a year to pay the amount back, it would depend on your date of final determination and the rate in effect at that time.

- <https://www.hhs.gov/about/agencies/asfr/finance/financial-policy-library/interest-rates/index.html>
- Interest accrues from the date of the initial request for refund and is assessed for each 30-day period, or portion thereof, that payment is delayed after the initial refund request.

## **13. How soon can we expect audits?**

Related to the \$100 billion for the Public Health and Social Services Emergency Fund

- a. There is no specific date in HR 748 that indicates the time through which the funds will remain available. We expect that because they are emergency funds, payments are likely to be completed in 2020. Therefore, the audits should be completed by summer of 2023, because the final report will need to be transmitted from the Office of Inspector General of HHS to Congress by the end of CY 2023. (See below)
- b. If your organization books a receivable for funds you expect to collect from the PHSSE Fund then you can likely expect your auditing firm to examine and audit the amount.

- c. [H.R. 748-283] [For the PHSSE Fund], No later than 3 years after final payments are made, the Office of Inspector General of the Department of Health and Human Services shall transmit a final report on audit findings with respect to this program to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That nothing in this section that limits the authority of the Inspector General or the Comptroller General to conduct audits of interim payments at an earlier date.

#### **14. When will emergency funds be available?**

Funds from the \$100 billion for the Public Health and Social Services Emergency (PHSSE) Fund should be available soon; however, implementation is managed by CMS. Information and instructions will be available soon. The American Hospital Association's request to HHS/CMS that \$23 billion be paid to hospitals (\$25,000 per bed and \$30,000 per bed in hot spots) as an initial payment is intended to help hospitals weather the immediate cash flow problems that are created by revenue disruptions due to the COVID-19 pandemic.

SBA Payroll Protection loan applications are being offered by many banks now. It is important you talk immediately with the bank you currently do your business banking with as most banks are unwilling to take new customers to process these loans.

Other programs have different timelines, please let us know if you have questions about any specific program.

#### **15. Will other regulations or pending rules be affected during the emergency?**

Yes, there have been significant regulatory changes to encourage collaboration and support across health care providers, many that will be supportive of and could expedite any clinical integration related efforts that were in place prior to the COVID-19 pandemic. This opens the door to many new opportunities for health systems and hospitals to deepen collaboration and support physicians, in addition in some cases with above market arrangements.

Please let us know if you would like a call with our experts to learn more.

#### **16. How do we avoid fraudulent "sellers" of masks, face shields, gowns, etc.?**

A worldwide shortage of these items exists. If a broker, distributor or importer presents with a deal that sounds too good to be true, it likely is. Verification may be difficult. If proof of the products' existence and compliance with US standards is not verified, buyers should be beware. You can also ask them for a certificate from SGS which is a global inspection, verification, testing and certification company. ([www.sgs.com](http://www.sgs.com))

#### **17. In a few words, what are your recommendations to health care providers?**

Proceed cautiously but with due speed. Collaborate with others to maximize efficiencies, use of limited resources and safety. Do not underestimate the contagious characteristics or seriousness of COVID-19. Document everything you are doing, identify revenue losses, quantify costs and describe extra activities, with the expectation that audits by the government will occur within a few months.

#### **18. From a FEMA point of view, I gather that only overtime and temporary labor is reimbursable. But in a medical center, we have many people who are redeployed. Can this be recovered?**

See the "Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures" from FEMA in the link below. FEMA may provide assistance for emergency protective measures including, but not limited to, the following, if not funded by the HHS/CDC or other federal agency. Some activities listed may be eligible for funding through HHS/CDC.

The Public Health and Social Services Emergency Fund funded \$100 billion to remain available until expended, to prevent, prepare for, and respond to coronavirus, domestically or internationally for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus.

Because of the complexity and variability of **organizations** and their sources for funding, there is no simple answer. For each organization, it will depend on which positions are being redeployed and details around the redeployment. It also depends on whether relief funds were being received from the Public Health and Social Services Emergency Fund or FEMA relief funds. Redeployment of existing staff may help an organization save money because they are retaining their own staff. If personnel are being deployed, it could indicate that the area from which they are being shifted has lower volume, and therefore is experiencing a loss of revenue.

Please consider:

- Does the redeployment of staff increase labor expenses, or are costs being mitigated?
- How are revenues being affected in the various service areas?
- What is the best agency form which to access the funds - HHS, FEMA, SBA, etc.?

**From the FEMA website:**

<https://www.fema.gov/news-release/2020/03/19/coronavirus-covid-19-pandemic-eligible-emergency-protective-measures>