The COVID-19 Pandemic

Financial Relief for Practices Affected by the COVID-19 Health Crisis

Holland & Knight

COOPERATIVE OF AMERICAN PHYSICIANS

Overview

- Alleviating Financial Strain: What hospitals and providers need to consider to pursue emergency funds and loan opportunities
- Reimbursement Relief: Overview of provisions that suspend reduced reimbursement
- Unprecedented Flexibility: How to take advantage of the new waivers and regulatory flexibilities to response to COVID-19
- COVID-19 Phase Four: Insights into what's next

COVID-19 is a Public Health and Economic Crisis

- Child Care
- Nutrition Programs
- Unemployment
- Family/Medical Leave
- Behavioral Health
- National Security Ramifications
- Few if any Economic Sectors not Impacted
- Health Care
  - Capacity, supplies
  - Developing/deploying tests, vaccines, treatments, countermeasures
  - Cost of Care – copays/deductibles

Federal-State-Local-Private Sector

Unprecedented Event Informed by Past Events

- 9/11
- Anthrax
- West Nile
- SARS
- Great Recession
- Ebola
- Zika
- H1N1

Congressional/Executive Response

- Coronavirus Preparedness and Response Supplemental Appropriations Act (H.R. 6074), signed into law on March 6
- Federal Emergency Declaration, declared on March 13
- Families First Coronavirus Response Act (H.R. 6201), signed into law on March 18, 2020
- Defense Production Act, declared on March 18
- Coronavirus Aid, Relief, and Economic Security Act (CARES/H.R. 748), signed into law on March 27, 2020

COVID-19 Response Administration Hierarchy

- White House
- Vice President
- DoD
- HHS
  - CDC
  - NIH
  - CMS
  - ASPR
  - FDA
  - SAMHSA
- Homeland
  - FEMA
- SBA
- Treasury
- Jared

Medicare

Medicaid

BARDA

HPP

SNS

Personnel Assistance

- **Unemployment Insurance (UI):**
  - Up to 39 Weeks
  - Regular state benefit plus $600/week for four months
    - Some states more generous than others
  - Feds are covering contractors and "gig" workers
  - **Relatively generous for lower income employees**
  - Apply through state agency – systems currently overwhelmed

- **Refundable Tax Credits:**
  - $1,200 to individual filers, $2,400 to joint filers, plus $500 per dependent.
  - Shooting for a quick turnaround time – three weeks
  - Electronic Deposit for electronic filers; paper checks for others

Federal Emergency Management Association (FEMA)

- Public Assistance Program
  - Covers Response and Recovery Costs not business losses
  - Assists States, localities and eligible private non-profit organizations
    - Health Care providers are eligible private non-profit organizations
    - Apply through State Emergency Management Agency -- Many State EMAs issuing notices
  - Payer of last resort (insurance, reimbursement)
    - Final reimbursement determinations coordinated by HHS and FEMA
  - 75 percent federal cost share.
  - Usually a retroactive reimbursement, but expedited option exists
- Distribution of supplies, devices, tests, drugs, etc.
  - FEMA has taken over Strategic National Stockpile
    - Largely depleted, procuring more/flying in
  - Requests flow up from local to county to state to FEMA

Employee Retention Credit

- Employer experiences a drop in gross revenues of 50% from the comparable prior year calendar quarter attributable to governmental order –
  - Total closure (e.g. non-essential business shut down order)
  - Partial closure (e.g. discontinue non-essential services at essential business)
- Employee cannot perform ordinary services due to governmental order
- Employer receives refundable payroll credit of 50% of qualifying wages up to $10,000 during applicable calendar quarter
- Ends in quarter when gross revenue returns to 80% of comparable prior year quarter
- No workforce maintenance requirement
- Cannot take this credit and participate in SBA program (below)

Medicare Advance Payment Program (APP)

- **Overview:** The APP is an expanded version of the Periodic Interim Payment (PIP) program that has existed for hospitals; this expansion was authorized under the CARES Act. The APP provides a quick mechanism for practices to obtain an accelerated cash flow, which is subject to repayment.

- **Application/Request Form:** Entities must make a request for an accelerated payment under the APP by submitting a form to their Medicare Administrative Contractor (MAC). Each MAC has their own application.

Medicare APP (continued)

- **Loan Amounts:** Healthcare entities can request an advanced payment of up to 100% (125 % for critical access hospitals) of the Medicare payment amount based on a three-month lookback period (for physicians) six-months for hospitals. **Providers have already accessed $34 billion in advanced payme*nts***, which are paid out in 7 business days after application.

- **Repayment:** Funds under the APP are subject to repayment, which for most healthcare entities begins 120 days after the payment is received. After the 120 days, the recoupment process will automatically start, and every claim submitted will be offset to repay the advanced payment. **Physician practices must repay within 210 days or be subject to interest of 10.25% beginning 31 days after the demand letter.**

$100 Billion for Health Care Providers and Hospitals

- Entirely new program
  - $100 billion, to remain available until expended
  - Grants and "other forms of assistance to be determined"
  - HHS is instructed to review applications and make payments on a rolling basis, in order to get money into the health system as quickly as possible.
- Eligible --public entities, not-for-profit entities, Medicare and Medicaid enrolled suppliers and providers, such for-profit and nonprofit entities
- Caveats –
  - "as the Secretary may specify"
  - *that provide diagnosis, testing, or care* to individuals that have or suspected to have COVID-19 disease
  - Cannot be used for expenses/losses reimbursed (or obligated to be) elsewhere

$100B -- Covered Costs…Process

- General Rule: “Healthcare-related expenses or lost revenues attributable to the coronavirus Public Health emergency”
- Can includes construction of temporary structures, leasing of properties, medical supplies/equipment, training, emergency operation centers, retrofitting, and surge capacity.
- Secretary may use pre-payment, prospective payment, and/or retrospective payment.
- Applications on a rolling basis with justification statement.
- HHS directed to use most efficient payment systems practicable.

What We Know and Do Not Know

- Later this week or early next, HHS will allocate the "first tranche" of the $100B fund, it will be $30B.
- It will be allocated by formula (not application), based upon Medicare Part A and B claims submitted in 2019. It will not include Medicare Advance or Medicare Part D claims, Medicaid, or private insurance claims. So, this means is that a provider will automatically receive whatever percent of the overall Medicare claims they comprised out of the national total in 2019.
- Which stakeholders will be assisted and which will not?
  - Hospitals
  - Physicians and other practitioners
  - SNFs, labs, outpatient facilities, home health, etc.
- What form assistance will take and timing?
  - Anticipate a tiered response -- quick dispersal for liquidity, followed by additional programs
- Response Costs v. Economic Loss Costs?
  - Interaction with FEMA, ESF, SBA
  - Audit/recoupment process

SBA Paycheck Protection Program (PPP)

- $349 Billion Appropriation
- Accepting Applications until June 30, 2020
- Small Business or Certain Non-Profits
  - SBs are identified by NAICS code w/size standard (annual revenue or # employees)
  - 501(c)(3)s, (19)s or tribal with 500 or fewer Employees
  - Contractors/Self-employed included

- Loan/Loan Forgiveness
  - Limited to 250% of average monthly payroll max $10 million
  - 1% interest, two year term, six month deferral, can pre-pay
  - Can obtain Loan Forgiveness for expenditures in first 8 weeks after approval – turns loan into a transfer payment
  - Forgiveness limited to payroll, mortgage, rent and utilities

Paycheck Protection Program (PPP)

- Caveats:
  - If you take the employer retention credit (below) you cannot participate
  - No wages above $100K; no more than 25% for non-wage costs
  - Forgiveness reduced if you reduce payroll – must be at prior level by June 30, 2020

- "Affiliation" Rules:
  - General Rule: a "small business concern" is not controlled (positively or negatively) by another entity through ownership share, contract or otherwise
  - May created a barrier for faculty practice plans, physician groups under health system umbrella, etc.
  - Legislated exceptions for hotel franchises and a few others
  - Possible Congress will legislate more exemptions – e.g., private-equity backed partnerships (ASC, radiology, etc.)

- Using existing SBA process and lenders -- more lenders to be qualified

Went live on Friday April 3rd – very rocky rollout

Relief for Certain Existing SBA Loans

- The CARES Act permits the SBA to pay the principal, interest and fees on these loans for six months beginning with the next payment due date
- Loans already on deferment will receive six months of payment after the deferral period.
- SBA will also encourage lenders to provide deferments
- SBA will allow lenders, for up to one year, to extend the maturity of SBA loans in deferment beyond current limits.

Economic Stabilization Fund

- New and unprecedented program – many details unknown
- $500 billion Exchange Stabilization Fund (ESF) to distribute emergency funding to companies of all sizes.
- Expected to focus more on non-small businesses, portion set aside for critical industries.
- Could be used to acquire equity stakes (remember TARP)
- $454 billion transferred to the Federal Reserve Banks for loans and loan guarantees -- Expected to be on generous terms

Treasury/Fed Exchange Stabilization Fund (ESF)

- Broad eligibility criteria –
  - "Eligible business." = any business adversely impacted by COVID-19

- Caveats --
  - Funds may not be used for costs covered by other sources
  - There is no forgiveness component – to be repaid
  - Employers accessing funds must keep employment at 90% of current levels.

- Implementation to be determined

State/Municipal Relief

- $150 billion
- No State receives less than $1.25 billion
- Funds for:
  - Expenditures incurred due to the COVID-19 public health emergency
  - State and local expenditures not accounted for in the most recent approved budget.
  - Available March 1 and December 30, 2020.
- Treasury will automatically award each state its share within 30 days.
- Qualifying localities must apply – over 500,000

FCC COVID-19 Telehealth Program Funding

- The COVID-19 Telehealth Program will make $200 million available to help health care providers purchase telecommunications services, broadband connectivity, and devices necessary for providing telehealth services in response to COVID.

- The FCC noted that it does not anticipate awarding more than $1 million to any single applicant.

- The program is not open to for-profit institutions. It is open to nonprofit and public eligible health care providers.

Documenting Financial Impacts

Response

- Overtime/new hires
- Use of existing supplies
- Acquisition of PPE, drugs, etc.
  - Purchase/Lease
- Equipment Operating Costs
- Food, housing, etc. for workforce
- Overhead
- Increased amounts of uncompensated care
- Support costs for first responders

Economic Loss

- Patients electing to stay away
- Deferred procedures/services due to workforce issues, conserving PPE, Govt. Orders or Recommendations, Professional Recommendations
- Reduced procedure revenues net of drop in uncompensated care
- Treatment of future upticks?
- Idled capacity costs net of credits
- Increased borrowing, insurance, liability costs
- Improved reimbursement
- Business loss Insurance

Liability Issues

- Public Readiness and Emergency Preparedness Act (PREP Act)

- Limited Immunity for Volunteer Providers
  - Services provided in good faith response to COVID/Suspected COVID
  - Within scope of practice
  - Only Covers Simple Negligence
    - Not willful/wanton
    - Not under influence of drugs/alcohol
  - Time limited to period of emergency

- New York State Executive Orders

Key Short-Term Relief Provisions Affecting Medical Practices

- **Medicare:**
  - Accelerated Payment Program (as discussed above)
  - 20 percent Add-on payment for inpatient hospital COVID-19 patients
  - Two Percent Sequestration Suspended from May 1 through December 31
  - Extensive Waivers – Blanket versus Application
  - Delay of numerous reporting requirements
  - Telehealth Changes
  - Vaccine/testing cost sharing
  - Extends the physician work geographic index floor GPCI through Dec. 1, 2020.
- **Medicaid:**
  - 6.2% FMAP Bump
  - State Waivers

Permanent Change: The CARES Act allows for additional care coordination by modernizing regulations (42 CFR Part 2) to make it easier to share the medical records of people with substance use disorders.

Unprecedented Flexibility

Waivers

On March 30, CMS released a series of temporary waivers and an Interim Final Rule (IFR) with Comment.

A few items of note include:

- CMS added 80 codes to its telehealth list.
- CMS eased supervision rules, reducing face-to-face requirements for a range of services, and suspending audits and other administrative requirements.
- CMS recently announced relief from many Medicare quality reporting requirements and broadened three Alternative Payment Model (APM) program parameters (MSSP, CJR and, MDPP) uncontrollable circumstances policies, and extended deadlines for three models.
- CMS implemented waivers that exempt providers from sanctions for noncompliance of certain Stark Law rules, permitting certain referrals and the submission of related claims that would otherwise violate the Stark Law.

Telehealth Flexibility

- Qualifying Originating Sites: Originating site restrictions are waived, permitting clinicians to furnish services to patients that are in their homes or other locations. Geographic Limitations:
- Geographic limitations: are waived, permitting clinicians to furnish services to patients located in any geographic area of the country, regardless of whether it is rural, urban, etc. Covered Codes:
- CMS expanded the list of ordinarily covered codes to now include more than 80 additional codes during the public health emergency. The full list of codes eligible for telehealth are listed here.
- The HHS Office for Civil Rights (OCR) will waive penalties under HIPAA violations against healthcare providers that serve patients in good faith through everyday communications technologies, such as FaceTime or Skype.
- Audio Only E/M: CMS will reimburse for audio-only telephone E/M visits using CPT codes 99441-99443 and 98966-98968. These codes were not previously reimbursed by Medicare but are covered for the duration of the public health emergency.

Merit-Based Incentive Payment (MIPS) Program Reporting Flexibility

- CMS modified its extreme and uncontrollable circumstances policy. First, it extended the deadline from December 31, 2019, to April 30, 2020 (or a later date as specified by CMS) for COVID-19-related hardships only.

- Second, MIPS participants would normally need to submit 2019 data by the end of March, but now have until the end of April—and if they do not submit data by that time, they will eventually receive a "neutral" payment adjustment rather than the positive or negative adjustment they would otherwise incur based on the 2019 performance year.

- CMS also added one new improvement activity for the CY 2020 performance period related to the COVID-19 public health emergency. This improvement activity promotes clinician participation in a COVID-19 clinical trial utilizing a drug or biological product to treat a patient with a COVID-19 infection.

Medicare Shared Savings Program (MSSP)

- CMS modified the extreme and uncontrollable circumstances policy to cover all ACOs that may be unable to completely and accurately report 2019 quality data due to the COVID-19 pandemic (not just during performance year itself).

- For financial reconciliation for the 2020 performance year, CMS will reduce the amount of an ACO's shared losses by the percentage of total months of the performance year affected by an extreme and uncontrollable circumstance (March through the end of the COVID-19 public health emergency).

- CMS notes that it will update ACO benchmarks using national and regional trends that include any changes arising from the COVID-19 pandemic.

Provider Enrollment

The following provider enrollment flexibilities are implemented:

- Temporarily suspends certain Medicare enrollment screening requirements for non-certified Part B suppliers, physicians, and non-physician practitioners. This includes waiver of the application fee, criminal background check, and site visits.
- Postpones all revalidation actions.
- Expedites any pending or new applications.
- Each Medicare Administrative Contractor (MAC) is operating a provider enrollment hotline, and physicians/non-physician practitioners can be screened and temporarily enrolled on the spot by providing certain information. The effective date can be as early as March 1.
- Allows practitioners to render telehealth services from their home without updating their Medicare enrollment information with their home address.

COVID-19 Phase 4: What's Next

- Work is already underway on a fourth relief bill.
- Upon Congress returning sometime after April 20, House Democrats intend to release and move legislation to further facilitate economic stimulus/recovery.
- House Democrats are pushing for many of the provisions they put forth in the Take Responsibility for Workers and Families Act to be included in the next package.
- Additions based on specific needs – e.g., $10 billion for community health centers, investments in broadband, drinking water systems, and medical needs equipment. Medicaid also a likely focus.
- Possible infrastructure bill as the 5th relief bill.

Questions?

Thank you.