



The CARES Act

Key Physician Provisions - Part 1

March 27, 2020

The largest fiscal rescue package in U.S. history passed the Senate —The CARES Act—and the House passed it today, Friday, March 27, 2020. The Act establishes a \$100 Billion fund (Fund) for hospitals and clinicians who are enrolled in Medicare and/or Medicaid. This is NOT a hospital only available fund.

The CARES Act is nearly 800 pages and is the third piece of major federal legislation in the past 3 weeks, so this “Part 1” update will focus on two aspects of that Act:

1. The \$100 billion Fund; and
2. The Small Business Administration’s (SBA) Section 7(a) loan program.

Background of Major Legislation:

First, in its initial response to the global coronavirus pandemic, Congress passed and POTUS signed the Coronavirus Preparedness and Response Supplemental Appropriations Act (COVID-19 1.0) on March 6, 2020. Next, the Families First Coronavirus Response Act (COVID-19 2.0) was signed March 18, 2020. Finally, the Coronavirus Aid, Relief and Economic Security Act (the CARES Act or COVID-19 3.0) (S. 3548) passed the Senate late on March 25, 2020 with a vote of 96-0—the House passed The CARES bill on Friday, March 27, 2020 and POTUS has said he will sign it (we refer to the bill as an Act given the expected House passage and POTUS signature).

The Public Health & Social Services Fund

The CARES Act will create a fund of \$100 billion for health care services related to COVID-19. The purpose of the fund to reimburse hospitals and clinicians enrolled in Medicare and/or Medicaid through grants and other mechanisms for necessary expenses to prevent, prepare and respond to coronavirus, domestically or internationally. The healthcare related expenses must be related to or “attributable to” coronavirus, and the expenses were not otherwise reimbursed via other means. The entities and organizations may be for profit or non-profit, as the Secretary (see below) may specify.

While much discretion is granted to the Secretary of the Dept. of Health and Human Services (DHHS), Secretary Azar is charged with reviewing applications and making payments—these may be pre-payments, prospective or retrospective. Recipients of the funding will be required to file reports to DHHS and maintain documentation in accordance with rules to be determined by the Secretary.

Examples of expenses, lost revenue and costs may include but are not limited to the following:

- Volume and revenue shortfalls—examples include the cancellation of non-emergent procedures and surgeries, patients cancelling scheduled care for fear of contracting COVID-19 and ED volume losses that are ranging between 10-40% based on similar fears;
- Incurred costs on quarantined and sick physicians—compensation and benefit costs absorbed by practices for these physicians and APPs;



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- Additional staffing expenses for surge capacity, including potential costs associated with additional medical director administrative time.
- Temporary structures and presumably staffing for these structures, (e.g., COVID-19 screening in an external tent or building outside the hospital);
- Leasing property;
- Medical supplies and equipment including the purchase of personal protective equipment (PPE);
- COVID-19 testing costs and supplies;
- Increased workforce and training, (e.g., training APPs or other staff to perform COVID-19 screening and EMTALA mandated screenings in a tent or external building);
- Emergency operations centers and retrofitting existing structures for COVID-19 testing and treatment.

Additional Reimbursement Related Provisions of the CARES bill:

- Under the combined COVID-19 2.0 and 3.0 new laws, COVID-19 testing and treatment must be reimbursed by Medicare and Medicaid (including their managed care programs) and by commercial insurance at the full allowed amounts for testing and patient care—the patient cost sharing will be waived.
- Many major health plans—UHC, Anthem and CIGNA to name a few—are waiving patient cost sharing not only for COVID-19 testing and treatment in a doctor’s office, urgent care center, or ED but also via a telehealth service (video and audio; audio alone would not be sufficient), during the public health emergency (PHE).
- The CARES Act has clarified that under the COVID-19 2.0 law that care for the uninsured will be reimbursed for testing AND treatment; these patients will be temporarily enrolled in Medicaid and the states will receive funding for administering claims for these patients—this is an important clarification of the Families First Act described above.
- It is our present understanding that if no COVID-19 testing is available for the patient, then the claim for services would be adjudicated via the patient’s standard policy, including deductible and co-insurance—so patient cost sharing would not be waived for these patients.
- Liability protection has been granted to **volunteer** healthcare professionals during the public health emergency; manufacturers of PPE will also have liability protection during the PHE.
- Hospitals will receive a +20% add-on reimbursement from Medicare for inpatient services related to COVID-19 patients.
- The -2% “sequester cuts” to Medicare that have been in place for many years will be temporarily lifted from May 1, 2020 through December 31, 2020.



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- The “geographic practice cost index” (GPCI) 1.0 floor has been extended through December 1, 2020. This will especially help rural areas where the GPCI would according to the RBRVS formula usually float below 1.0.

Section 7(a) Small Business Association (SBA) loans and loan forgiveness provisions:

- Medical and outpatient clinics are eligible for the SBA program, provided they employ less than 500 employees.
- The maximum available loan is \$10 million.
- The loan may be used for payroll support, paid sick or medical leave, employee salaries, mortgage, and other debt obligations.
- There are loan forgiveness programs for certain payroll costs, mortgages, rent, and utilities.
- Loan forgiveness procedures are as follows:
 - The loan is an amount equal to the payroll costs and costs related to payment of debts for the period of 3/1/20 through 6/30/20.
 - The amount of loan forgiveness will be reduced by the number of employees laid off during the period of 3/1/20 through 6/30/20.
 - The amount of loan forgiveness will be reduced by the amount of any reduction in total salary or wages of employees during the covered period that is in excess of 25%. There is relief from the forgiveness reduction if the employee’s wage reduction is caught up by June 30, 2020.
 - For determining forgiveness, payroll costs must exclude those employees who earn => \$100K annual compensation; however, the loan forgiveness should apply to the first \$100K of that compensation, but not to any payroll costs in excess of \$100K per employee.
 - Forgiveness amounts will not be included in taxable income.

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