Resources and Assistance for Hospitals and Healthcare Providers

April 7, 2020

Overview

For additional guidance, please refer to Steptoe’s COVID-19 Resource Center.

Overview

On March 27, President Trump signed the “Coronavirus Aid, Relief, and Economic Security Act” (the CARES Act). The CARES Act’s estimated $2+ trillion price tag includes: extraordinary public health spending to confront the COVID-19 pandemic; immediate cash relief for individual citizens; a broad lending program for small business (generally up to 500 employees) as well as “mid-sized” employers (from 500-10,000 employees); and targeted relief for hard-hit industries.

The CARES Act was the third in a series of emergency legislative packages passed by Congress and signed by the president relating to COVID-19. President Trump also declared an emergency under the National Emergencies Act and has issued either emergency or major disaster declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act for all 50 states. Additionally, Secretary of Health and Human Services Alex Azar has declared a Public Health Emergency and agencies like the Centers for Medicare and Medicaid Services (CMS) have both issued waivers and increased the availability of reimbursement for a variety of practices and procedures.

All of these programs provide a tremendous opportunity for hospitals and healthcare providers—including private nonprofit entities, for-profit facilities and practices, university hospitals and healthcare systems, nursing homes, and others—to recoup costs associated with the COVID-19 pandemic, both through existing funding mechanisms and grant programs, as well as new programs.

In order to maximize their opportunities for financial relief, hospitals and healthcare providers should take some basic steps as soon as possible to understand the different types of eligible costs and activities under each program, as well as to prepare now for a potential future audit of federal assistance.

Steptoe’s Government Affairs and Public Policy practice group can assist hospitals and healthcare providers in navigating the process of understanding these myriad programs, maximizing opportunities for reimbursement while avoiding issues like non-duplication restrictions, and preparing now for any audit that may occur down the road.

Developing a Response Strategy

Hospitals and healthcare providers have several up-front opportunities for recovering costs associated with the COVID-19 pandemic. These include:
Enhanced reimbursement opportunities for Medicare and Medicaid procedures based on new CMS guidance

Grants from the Department of Health and Human Services (HHS) through existing programs such as the Hospital Preparedness Program and the Center for Disease Control and Prevention’s (CDC) state and local preparedness grants

HHS’s new hospital and healthcare provider reimbursement program from the Public Health and Social Services Emergency Fund, for which Congress appropriated $100 billion

Hospitals and healthcare providers also may qualify for low-interest (and in some instances, forgivable) loans from the Small Business Administration and the Federal Reserve, as well as for funding under a variety of other programs, including:

- Telehealth grants from HHS, the US Department of Agriculture and the Federal Communications Commission
- Grants for specific functions such as substance abuse and mental health programs, laboratory testing support, and facility police and public safety activities
- General funding provided by the Department of the Treasury to states and local governments based on a formula for distribution
- Disaster reimbursement funding for emergency protective measures under FEMA’s Public Assistance program.

Each source of assistance and cost category will need to be synchronized internally and with insurance reimbursements, if applicable, in order to avoid prohibitions on duplication of assistance.

The first step is to understand the various categories of activities—delineated by facilities/departments or cutting across different facilities, locations, or departments—to determine the applicable assistance programs.

Second, each hospital or healthcare provider should look at the variety of sources for reimbursement or cost coverage, and map out which costs will be recovered from which sources. For example, hospitals and healthcare providers will want to maximize their CMS reimbursements, identify activities like telehealth where non-HHS grants may be available, and seek recovery of the bulk of their remaining costs from the HHS hospitals and healthcare providers reimbursement fund.

Entities may want to develop strategies for seeking specific cost reimbursements or funding from general Treasury Department funds, and will want to understand their eligibility to recover remaining emergency expenses such as surge staffing costs and emergency procurement of personal protective equipment and durable medical goods under FEMA’s Public Assistance program.

Compliance Requirements and Audit Preparations

Today, all efforts are focused on addressing immediate needs caused by the COVID-19 pandemic. However, there will come a time when this crisis will pass. At that point, any federal assistance received likely will be the subject of multiple, and perhaps overlapping, audits by a host of federal inspectors general, Congressional oversight committees, private commissions, and regulatory agencies.

Healthcare providers should prepare today for that audit. They should:

- Task accounting departments with finding ways to easily track costs and activities.
- Keep close track of what costs are being directly paid, what costs are being reimbursed, and what costs remain uncovered.
- Document every decision and make sure to back up emergency approvals from federal agencies with written confirmation, whether that is agency opinions or simply emails from a responsible official.
- Make sure to comply with any special rules or requirements included in the CARES Act or special agency guidance for COVID-19 (some of which has not even been issued).

Steptoe can help providers address the myriad funding opportunities in a straightforward and efficient manner, and help prepare for scrutiny in the future. We are happy to work with internal teams as well as outside accountants and others to best guide our clients through this process.

Practices

Government Affairs & Public Policy