The Healthcare Law Section Presents

17th Annual Healthcare Law Compliance Symposium: Part III

Thursday, October 22, 2020
3:30 - 5:45 P.M.
Via Zoom
2.0 hours Gen. CLE Credit

Provider #36
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Covid-Induced Stress: Bankruptcy and Other Solutions for Healthcare Providers

Keith C. Owens, Fox Rothschild LLP
Gary F. Torrell, Hooper, Lundy & Bookman, P.C.
COVID – Induced Stress Bankruptcy and Other Solutions for HC Providers

October 22, 2020

Presented by:
Gary F. Torrell, Esq., gtorrell@health-law.com - Hooper, Lundy & Bookman, P.C.
Keith C. Owens, Esq., kowens@foxrothschild.com - Fox Rothschild, LLP

a. What is a “Healthcare Business?”


A. Public or private entity (whether “for profit” or “non-profit”) that is primarily engaged in offering to the general public facilities and services for—

(i) the diagnosis or treatment of injury, deformity, or disease; and

(ii) surgical, drug treatment, psychiatric, or obstetric care.

B. Includes-- any—

(i) general or specialized hospital;

(ii) ancillary ambulatory, emergency, or surgical treatment facility;

(iii) hospice;

(iv) home health agency;

(v) other health care institution that is similar to any of the foregoing entities; and

(vi) any long-term care facility, including any—

(a) skilled nursing facility;
(b) intermediate care facility;
(c) assisted living facility;
(d) home for the aged;
(e) domiciliary care facility; and
(f) health care institution that is related to a facility referred to above, if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.
2. When Bankruptcy Should be Considered.


   b. Reimbursement Challenges: Reductions in Medicare and Medicaid payments.

   c. Exit Strategy: Ideal vehicle to acquire distressed assets without assuming liabilities and minimizing litigation risk.

   d. Mismanagement or Fraud: Opportunity to replace management and instill trust in reorganization or sales process.

   e. Competition with other local hospitals or specialty practices. (E.g., Century City Doctor’s Hospital).

a. The Automatic Stay.
   (1) Stops, with certain exceptions, all pending lawsuits and proceedings.
   (2) Prevents creditors holding pre-petition claims from attempting on to collect outside of bankruptcy.
   (3) NOTE: With limited exceptions, the automatic stay does not stay litigation against non-debtor parties.

b. Debtor-in-Possession (DIP).
   (1) Chapter 11 DIP generally remains in possession and control of the assets and business operations.
   (2) Officers and Directors continue to make decisions within the confines of the Bankruptcy Code unless a Trustee is appointed for cause.
   (3) DIP is treated as a new entity as of the petition date, and owes fiduciary duties to all creditors.
   (4) DIP may engage in ordinary course of business transactions.
   (5) DIP may file lawsuits to recover money paid or property transferred to creditors and other parties pre-petition, because the transfers were preferential or fraudulent.
4. **Potential Downside of Bankruptcy.**

   a. Appointment of Chapter 11 Trustee or Examiner for cause including mismanagement or fraud.
   
   b. Case may convert to Chapter 7 if debtor is administratively insolvent or unable to confirm a plan.
      
      (1) Chapter 7 Trustee is appointed to take control and possession of the estate’s assets. The Chapter 7 Trustee may seek authority to operate the debtor’s business, but this is done rarely.
      
      (2) Trustee can pursue claims against insiders as well as other creditors.
   
   c. Case may be dismissed for “cause” including bad faith.
   
   d. Chapter 11 is expensive.
5. Key Events During Bankruptcy Case.

a. Financing a Chapter 11.
   
   (1) Use of Cash Collateral.
       A. Consensual.
       B. Contested.
   
   (2) DIP Financing.
       A. Consensual.
       B. Contested.
       C. Priming Liens and Roll-ups.

(1) Allowed under Section 363 of the Bankruptcy Code; often used.

(2) Sales can be piecemeal or include substantially all assets.

A. Court-Approved Auction Process: The Bankruptcy Court establishes bidding procedures and bid protections in advance of the auction. Bid protections often include:

   (i) approval of a stalking horse bid;

   (ii) minimum bid and bidding increments;

   (iii) break-up fee or expense reimbursement for the stalking horse bidder;

   (iv) earnest money deposits;

   (v) bid qualification procedures; and

   (vi) scheduling an auction and sale hearing.

(3) Credit Bid Rights: Secured creditor may credit-bid its secured debt at an auction.

(4) Role of State Attorney General in approving sale of hospital assets.

(5) Role of federal agencies and licensing authorities – Medicare/Medicaid.

(6) Role of state agencies and licensing authorities.
c. Chapter 11 Plans.
   (1) Plan of Reorganization.
   (2) Plan of Liquidation.
   (3) DIP has exclusive right to file a plan during the exclusivity period. This period is the first 120 days after the petition date, but may be extended by court order. If DIP files a plan during the 120 days after the petition date, then DIP has the exclusive right to seek approval of that plan for the 180 days following the petition date. No other entity may file a plan or seek approval of a plan during the exclusivity period.

d. Executory Contracts and Leases.
   (1) DIP may assume, assume and assign, or reject most executory contracts.
   (2) Contracts are executory where material obligations remain unperformed by each party.
   (3) DIP must “cure” all monetary defaults as a condition to assumption.
   (4) Assumption results in payment in full.
   (5) Counterparty to executory contract and unexpired leases may demand adequate assurance of future performance by buyer.
   (6) Rejection of executory contracts and unexpired leases enables the DIP to rid itself of unprofitable contracts and exit leased properties for minimal cost.
   (7) Exceptions to Assignability – 11 U.S.C. § 365(c)
      A. Personal service contracts.
      B. Intellectual property licenses.
      C. Some government contracts.
e. Medicare and Medicaid Provider Agreements.

(1) Medicare is governed by 42 C.F.R. § 489.18(c), which provide that when “there is a change of ownership ... the existing provider agreement will automatically be assigned to the new owner.”

A. New owner assumes obligation to repay the Department of Health & Human Services for any of the (debtor) assignor’s accrued Medicare or Medicaid overpayments at the time the overpayments were made or discovered.

B. Bankruptcy limitations.

(i) A Medicare or Medicaid Provider Agreement as executory contract. If a Medicare and Medicaid provider agreement is determined to be an executory contract under 11 U.S.C. § 365, DIP may assume or reject the agreement, but DIP may not assume the agreement unless all defaults are cured or DIP provides adequate assurance of prompt cure. 11 U.S.C. § 365(b).

(ii) Provider Agreement as non-executory. If the Medicare or Medicaid provider agreement is determined to be non-executory, the buyer would presumably acquire all assets free and clear of such obligations under Section 363.
(2) Split Authority:

A. Third Circuit. *In re University Medical Center*, 973 F.3d 1065 (3d Cir. 1992) (holding without analysis that “a Medicare provider agreement is an executory contract. *But see* Germantown Hosp. & Med. Ctr. v. Heckler, 590 F. Supp. 24, 30-31 (E.D. Pa. 1983) (“There is no contractual obligation requiring [the DHHS] to provide Medicare reimbursement. Rather, upon joining the Medicare program, providers gain a statutory entitlement to reimbursement. Thus the amount of reimbursement is governed not by contract but by statute; specifically the Medicare Act's "reasonable cost" provisions.”), aff'd *sub nom.* Germantown Hosp. & Med. Ctr. v. Schweiker, 738 F.2d 631 (3d Cir. 1984); *In re Ctr. City Healthcare LLC*, Case No. 19-11466 (KG) (Bankr. D. Del. Sept. 10, 2019) (unpublished) (holding that Debtor’s Medicare provider agreement did not meet the definition of an “executory contract,” but was a statutory entitlement capable of being sold free and clear of all interests and successor liability under 11 U.S.C. § 363).

B. Second Circuit. *In Hollander v. Brezenoff*, 787 F.2d 834 (2d Cir. 1986) (holding that nursing home operator’s claims under Medicaid did not fall within the six-year limitations period for contract claims under New York law because claims under the Medicaid program are statutory claims rather than contract claims)


D. Ninth Circuit. *Guzman v. Shewry*, 552 F.3d 941 (9th Cir. 2009) (holding in a non-bankruptcy matter that a Medi-Cal Provider Agreement was not a contract); *In re Verity Health Systems of California, Inc.*, 606 B.R. 843, 848-51, and 852-54 (Bankr. C.D. Cal. 2019) (holding that because Medi-Cal provider agreements are not contracts, they were not governed by Section 365 of the Bankruptcy Code and could be transferred free and clear of liens under Section 363(f)(5) of the Bankruptcy Code), *vacated*, 2019 WL 7288754, *1 (Bankr. C.D. Cal. Dec. 9, 2019) (Order Approving Stipulation re: Assumption and Assignment of Medi-Cal Provider Agreements to Strategic Global Management, Inc.).
(3) Rights of Recoupment and Setoff.

A. Ability of Medicare to recoup pre-petition overpayments from post-petition obligations, essentially cutting off a DIP's lifeline of Medicare reimbursement.

B. Split of Authority.

(i) No recoupment permitted.


(ii) Recoupment permitted.

(a) *In re Gardens Regional Hosp. & Med. Ctr., Inc.*, ___ F.3d ___, 2020 WL 5541387 (9th Cir. Sept. 16, 2020)(California may recoup overdue tax called HQAF assessments, by reducing supplemental Medi-Cal payments owed to debtor funded by the tax, but state may not recoup Medi-Cal fee-for-service payments based on hospital's unpaid HQAF assessments); *In re TLC Hospitals Inc.*, 224 F. 3d 1008 (9th Cir. 2000) (government can recoup pre-petition overpayments from post-petition Medicare reimbursements); *U.S. v. Consumer Health Services of America Inc.*, 108 F.3d 390 (D.C. Cir. 1997); *In re Hefferman Memorial Hosp. Dist.*, 192 B.R. 228 (Bankr. S.D. Cal. 1996); In re *St. Johns Home Health Agency, Inc.*, 173 B.R. 238 (Bankr. S.D., Fla. 1994) (Medicare adjustment to ongoing payments to recover prior overpayments is properly characterized as recoupment and is not subject to the automatic stay); *In re Visiting Nurse Ass'n.*, 121 B.R. 114 (Bankr. M.D. Fla. 1990); *In re Homecall of S.W. Va.,* 1990 WL 278658 (Bankr. W.D. Va. 1990); and *In re Yonkers Hamilton Sanitarium Inc.*, 34 B.R. 385, 387-88 (S.D.N.Y. 1983); *Mount Sinai Hospital, Inc. v. Weinberger*, 517 F.2d 329 (5th Cir.), modified, 522 F.2d 179 (5th Cir. 1975), cert. denied, 425 U.S. 935 (1976); *Lowry Hospital Ass'n v. Blue Cross*, 415 F. Supp. 589 (E.D. Tenn. 1976) (Medicare has common law right to recoup earlier overpayments from ongoing payments outside of bankruptcy).
f. Patient Care Ombudsman.

(1) Bankruptcy Code requires the appointment of a patient care ombudsman within 30 days after commencement of a bankruptcy case by a health care business unless the court finds that, under the specific facts of the case, appointment of an ombudsman is not necessary for the protection of patients. 11 U.S.C. § 333(a)(1).

(2) An ombudsman may be appointed in every Chapter 7, 9 or 11 filed by a health care business.

(3) The ombudsman monitors the quality of patient care and represents the interests of patients of the health care business. 11 U.S.C. § 333(a)(1). The ombudsman is required to prepare and file a report with the bankruptcy court every 60 days regarding the quality of patient care. 11 U.S.C. § 333(b)(2). If any serious matters arise and the quality of patient care declines significantly or otherwise is materially compromised, the ombudsman may notify the Court. 11 U.S.C. § 333(b)(3).

(4) The ombudsman must be disinterested and is paid by the bankruptcy estate. 11 U.S.C. § 333(a)(2)(A).

(5) An ombudsman may help facilitate a sale or reorganization by helping to maintain patients at the facilities and give patients and their family comfort knowing that the quality of care will continue.

g. Consumer Privacy Ombudsman.

(1) If DIP has a privacy notice that prohibits transfers of personally identifiable information, the Bankruptcy Court must order the United States Trustee to appoint a Consumer Privacy Ombudsman prior to a sale involving such personally identifiable information. 11 U.S.C. § 332.

(2) Consumer Privacy Ombudsman may appear and be heard at the sale hearing.

6. Questions.
Contact Page

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Thank You.
Gary Torrell is a partner in Hooper, Lundy & Bookman’s Business Department and Co-Chair of the Health Care Financial Restructuring Practice Group. He has over 30 years of legal and business experience with a focus on business and finance, real estate, and creditors’ rights. Mr. Torrell has a tradition of providing clients sophisticated business and legal advice coupled with a reasonable fee structure to provide exceptional value. He is both a transactional lawyer and a litigator, which makes his clients feel protected and prepared for virtually any circumstance.

Mr. Torrell spent the first half of his legal career working at national law firms, where he handled creditors’ rights and bankruptcy cases as well as real estate and lending transactions. He has appeared in bankruptcy courts across the country, and handled other matters including loan workouts, new loans and all types of real estate transactions. Mr. Torrell has also worked as in-house counsel for three companies: as Senior Counsel at City National Bank; Chief Legal Officer at Downey Savings (a $16 billion, publicly-held, 2,500 employee, 200-branch bank); and General Counsel to a privately-held $1 billion national real estate company. Prior to joining Hooper, Lundy & Bookman, he was head of the Business and Finance, Real Estate and Creditors’ Rights practice areas at his prior law firm.

Mr. Torrell has five published decisions; four representing creditors and one representing a famous entertainer in bankruptcy.

Representative Matters

- Represented the buyer of two operating hospitals in Los Angeles in a Section 363 bankruptcy sale as part of the Promise Healthcare chapter 11 case in Wilmington, Delaware.
Successfully defended payroll service company against preference recovery complaint filed in chapter 11 case Delaware. Creditors’ committee sought over $300,000; negotiated a settlement to pay less than 6% of the amount demanded.

Successfully defended preference and fraudulent conveyance claims made by creditors’ committee and asserted secured claims of former hospital management company in chapter 11 case of a hospital, filed in California. The matters were settled on favorable terms including full payment of client’s reduced secured claim and no liability for preference or fraudulent conveyance claims.

**Honors & Awards**

- A-V Rated (highest rating by Martindale-Hubbell)

**Presentations & Speaking Engagements**

- Webinar: COVID-19 Financial Relief for Providers—Supplemental Payments, Loans, and Beyond
  April 16, 2020

- *Covid-Induced Stress: Bankruptcy and Other Solutions for Healthcare Providers*, Los Angeles County Bar Association’s 17th Annual Healthcare Law Compliance Symposium, Part III, (co-presenter), October 22, 2020

**News**

- Can you Force a Delinquent Health Care Tenant Into Bankruptcy In the Midst of a Pandemic? Should You?
  October 8, 2020

- COVID-19 Accelerates Health Care Financial Restructuring
  August 20, 2020

- New Guidance from SBA on PPP Loans
  May 14, 2020

- Financial Relief for Providers During the COVID-19 Pandemic: Guide
  Updated April 27, 2020

- EIDL: Another Loan Available to Health Care Providers Under The CARES Act
  April 7, 2020

- MOB Leases With Unusual Terms Withstand Appraiser Whistleblower Claims
  August 19, 2019

- Innocent Third Parties Can Be Held Liable For Fraudulent Transfers In Bankruptcy Cases
  January 18, 2018
Tenant Rights in Bankruptcy Published in Los Angeles Lawyer
January 5, 2018
Los Angeles Lawyer

A Bankruptcy Trustee’s Right To Sell A Property Versus A Tenant’s Right To Stay
September 1, 2017

Unsecured Creditors Prevail in Chapter 11 Battle
December 13, 2016

Health Law Perspectives

Health Law Perspectives, August 2019
August 27, 2019
Keith C. Owens  
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Keith has nearly 25 years of experience representing clients in bankruptcy proceedings, creditors' rights matters and commercial litigation. Experienced in all facets of bankruptcy, insolvency, distressed acquisitions and dispositions, Keith has represented businesses and individuals in a wide range of industries, including healthcare, entertainment, technology, sports, commercial real estate and hospitality.

Keith has assisted clients before bankruptcy courts and federal district courts throughout the United States, and has led creditors’ rights litigation in California state courts. His knowledge of bankruptcy law encompasses critical aspects of bankruptcy and insolvency, including:

- Chapter 11 plan restructuring and related litigation
- Section 363 sales
- Valuation disputes
- Single-asset real estate cases
- Debtor-in-possession (DIP) financing
- Adversary proceedings
- Bankruptcy appeals
- Assignment for the benefit of creditors
- Corporate dissolutions
- Out of court workouts

Keith also works extensively with lenders and commercial mortgage-backed securities (CMBS) servicers regarding real property secured loan litigation and real estate owned (REO) disposition matters, including judicial and non-judicial foreclosures, guarantor litigation, lender liability litigation, enforcement of pre- and post-judgment remedies, including receivership appointments, injunctions, workouts, loan restructurings, forbearances, discounted payoffs and Note sales.

Before Fox Rothschild

Prior to joining Fox Rothschild, Keith was a Partner in the Bankruptcy and Creditors’ Rights Practice at two AmLaw 100 law firms.

Keith began his legal career as a trial law clerk for the Honorable Christopher M. Klein of the United States Bankruptcy Court for the Eastern District of California, and as an appellate law clerk to the Honorable John E. Ryan, who served on
the United States Bankruptcy Appellate Panel for the Ninth Circuit. Prior to attending law school, Keith worked as a writer for Tig Productions and various Los Angeles–based magazines.

**Representative Matters**

- Argued Ninth Circuit appeal in *U.S. Bank Nat'l Ass'n v. Village at Lakeridge, LLC*, 814 F.3d 993, 1001 (9th Cir. 2016) on the issues of whether an assignee of an insider claim was a non-statutory insider disqualified on voting to confirm a plan of reorganization under 11 U.S.C. § 1129(a)(10) and whether the acquisition and solicitation of the insider claim was made in bad faith for purposes of 11 U.S.C. § 1129(a)(6)
- Represented Vista Hospital System (comprising French Hospital, Arroyo Grande Hospital and Corona Regional Medical Center) in its Chapter 11 bankruptcy cases filed in the United States Bankruptcy Court for the Central District of California
- Represented Care1st Health Plan in its acquisition of WattsHealth d/b/a UHP Healthcare HMO for $30 million in the WattsHealth Chapter 11 bankruptcy case filed in the United States Bankruptcy Court for the Central District of California
- Represented the County of Contra Costa in connection with its funding of West Contra Costa Healthcare District, d/b/a Doctors Medical Center, in its Chapter 9 bankruptcy case filed in the United States Bankruptcy Court for the Northern District of California
- Represented purchasers and/or stalking horse bidders in various nursing home bankruptcies
- Represent the back-up bidder in a Section 363 Sale of certain assets in the Chapter 11 bankruptcy cases filed by Community Provider Enrichment Services, Inc., and certain affiliated entities, pending in the United States Bankruptcy Court for the Central District of California
- Represented a rehabilitation center in an out-of-court workout
- Represent a payment processing company in various bankruptcies including Verity Health Services, Inc. and its affiliated debtor entities pending in the United States Bankruptcy Court for the Central District of California, and IntegraMed, Inc., one of the nation’s largest infertility treatment management companies, pending in the United States Bankruptcy Court for the District of Delaware
- Represented prints and advertising lenders Endgame Releasing Company, LLC and Endgame Releasing Funding, LLC in the Chapter 11 bankruptcy cases filed by Los Angeles-based film production and distribution company Open Road Films, LLC, and certain debtor affiliates, in the United States Bankruptcy Court for the District of Delaware
- Represented a mezzanine lender in the Cupertino Square Chapter 11 bankruptcy case in the United States Bankruptcy Court for the Northern District of California
- Represent producers and licensors in the Jaguar Distribution Chapter 11 bankruptcy pending in the United States Bankruptcy Court for the Central District of California.
- Represent a producer in the Global Eagle Entertainment Chapter 11 bankruptcy pending in the United States Bankruptcy for the District of Delaware
- Represented numerous actors, producers, directors and writers as counter-parties to contracts in The Weinstein Company Chapter 11 bankruptcy cases in the United States Bankruptcy Court for the District of Delaware
Represented talent clients in the Relativity Media Chapter 11 bankruptcy cases filed in the United States Bankruptcy Court for the Southern District of New York

Represents intellectual property licensors and licensees in bankruptcy cases and Assignment for the Benefit of Creditors proceedings throughout the United States

Represents asset purchasers, lenders and assignees in Assignment for the Benefit of Creditors proceedings

Represented various automotive suppliers in General Motors and Chrysler bankruptcies cases filed in the United States Bankruptcy Court for the Southern District of New York

Represented various brokers in the Lehman Brothers Chapter 11 bankruptcy and SIPA proceedings

Represented auto parts manufacturer Fluid Routing Solutions and its affiliated debtor entities in their Chapter 11 bankruptcy cases filed in United States Bankruptcy Court for the District of Delaware

Represented auto parts manufacturer Diamond Glass, Inc. and its affiliated debtor entities in their Chapter 11 bankruptcy cases

Represented trade creditors in various retail bankruptcies and out-of-court workouts

Represented landlords in various retail bankruptcies

Represented the Official Committee of Bondholders in the Farmland Industries Chapter 11 case filed in the United States Bankruptcy Court for the Eastern District of Missouri

Represented the Official Committee of Unsecured Creditors of RCR Plumbing in the United States Bankruptcy Court for the Central District of California

Represented the Organization of Parishes (consisting of over 98 parishes) of the San Diego Catholic Diocese in the Chapter 11 case of the San Diego Catholic Diocese

Represented the shareholders of Metabolife International, Inc. in Metabolife’s Chapter 11 case filed in the United States Bankruptcy Court for the Southern District of California

Represented a former officer in the Rhythm & Hues Studios Inc. Chapter 11 bankruptcy case in the United States Bankruptcy Court for the Central District of California

Represented a former officer in the Nutracea Chapter 11 bankruptcy case in the United States Bankruptcy Court for the District of Arizona

Represented some of the nation's largest special servicers of CMBS assets on all aspects of commercial real estate loan workouts, bankruptcies, foreclosure and receivership litigation

Honors & Awards

- Recognized in Chambers USA, Bankruptcy/Restructuring, California (2015-2016, 2018)
- Among Southern California Super Lawyers, Bankruptcy and Creditors’ Rights (2009-2020)

Practice Areas

- Financial Restructuring & Bankruptcy

Bar Admissions

- California
Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, Northern District of California
- U.S. District Court, Southern District of California
- U.S. Bankruptcy Court, Central District of California
- U.S. Bankruptcy Court, Eastern District of California
- U.S. Bankruptcy Court, Northern District of California
- U.S. Bankruptcy Court, Southern District of California

Education

- Southwestern Law School (J.D., *cum laude*, 1996)
- University of California, Los Angeles (B.A., 1991)

Memberships

- American Bankruptcy Institute
- Financial Lawyers Conference
- Beverly Hills Bar Association (2011)
  - Executive Committee of the Bankruptcy Section, Chair
- Los Angeles County Bar Association
  - Executive Committee of the Commercial Law and Bankruptcy Section
- Los Angeles Bankruptcy Forum
- Orange County Bankruptcy Forum
- Turnaround Management Association

Board of Directors

17th Annual Healthcare Law Compliance Symposium
Part III

CARES ACT Provider Relief Fund: Considerations for Providers

Paul L. Garcia, Hooper, Lundy & Bookman, P.C.

Vanessa- Lauren Massie, FTI Consulting
CARES ACT Provider Relief Fund: Considerations for Providers

Understanding Obligations, Avoiding Liability, and Compliance Best Practices

Presented by: Paul Garcia & Vanessa Massie
Agenda

CARES ACT Provider Relief Fund: Considerations for Providers

I. Provider Relief Funds Overview
   — General Fund Distributions
   — Attestation, Certification and Terms and Conditions

II. Provider Relief Funds Compliance Risks
   — Overpayment, fraud and false claims exposure

III. Practical Applications
   — Tracking & Documentation
   — Accounting Considerations

IV. Reporting & Auditing
Provider Relief Funds Overview

Paul L. Garcia
HOOPER, LUNDY, AND BOOKMAN P.C.
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Provider Relief Fund Appropriations

Through the CARES Act and the PPPCHE, the federal government has allocated $175 billion in payments to be distributed through the Provider Relief Fund (PRF).

<table>
<thead>
<tr>
<th>Authority</th>
<th>Appropriation</th>
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<tbody>
<tr>
<td>Coronavirus Aid, Relief, and Economic Security (CARES) Act</td>
<td>$100 billion</td>
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<tr>
<td>Paycheck Protection Program and Health Care Enhancement Act (PPPCHE)</td>
<td>$75 billion</td>
</tr>
<tr>
<td>Families First Coronavirus Response Act (FFCRA)</td>
<td>$1 Billion (Uninsured Program)</td>
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- Qualified providers of health care, services, and support may receive PRF payments for healthcare-related expenses or lost revenue attributable to COVID-19.
- Separately, the COVID-19 Uninsured Program reimburses providers for testing and treating uninsured individuals with COVID-19.
Provider Relief Fund Appropriations

PRF Funds are being allocated by HHS into the following buckets:

— **General Distribution Fund**
  - Phase 1 (≤$50 Billion)
  - Phase 2 (≤$18 Billion)
  - Phase 3 (≤$20 Billion)

— **Targeted Distributions**
  - COVID-19 High Impact Distribution (≤$22 Billion)
  - Rural Distribution (~$11.3 Billion)
  - SNF Distribution (~$7.4 Billion)
  - Tribal Hospitals, Clinics and Urban Health Centers (~$500 Million)
  - Safety Net Hospitals (~$14.7 Billion)

This Presentation

This guidance focuses on the **General Distribution Fund** portion of the Provider Relief Fund.

Eligibility:

- Any provider of health care, services, and support in a medical setting, at home, or in the community is eligible to apply for General Distribution Funds.
- Generally, provider must have billed Medicare or Medicaid and provide or provided after January 31, 2020 diagnoses, testing or care for individuals with possible or actual cases of COVID-19.
- Note - “HHS broadly views every patient as a possible case of COVID-19”, therefore, if you billed in 2019 and provide or provided diagnoses, testing or care after January 31, 2020, should be eligible.
Phase 3 General Distribution

The PRF is currently allocating Phase 3 General Distribution funding:

**Application Deadline:** Friday, **November 6, 2020** is the deadline to submit an application

— Providers are encouraged to submit their applications as soon as possible
— Must apply through the Provider Relief Fund Application and Attestation Portal: [https://cares.linkhealth.com/#/](https://cares.linkhealth.com/#/)
— Must meet eligibility requirements
— Must submit documentation (even if previously submitted revenue details for prior PRF distributions)
  - Most recent federal income tax return for 2017, 2018 or 2019 (if in operation before 1/1/2020)
  - Quarterly tax returns for FY 2020 (if operations began after 1/1/2020)
  - Revenue worksheet (discussed, later)
  - Operating revenues and expenses from patient care for Q1-Q2 in 2019-2020

**Detailed Application Instructions, available at:** [https://www.hhs.gov/sites/default/files/provider-distribution-instructions.pdf](https://www.hhs.gov/sites/default/files/provider-distribution-instructions.pdf)
Phase 3 General Distribution (Cont.)

Phase 3 General Distribution funding Support providers who have experienced expenses or lost revenues attributable to COVID-19 that have not been reimbursed by other sources:

— **Payment Based on:**
  - 2% of annual patient care revenue (if not previously received)
  - Assessed revenue losses and expenses attributable to COVID-19
  - Prior PRF distributions

— **Eligibility**
  - All providers eligible for a previous PRF distribution plus new 2020 providers and behavioral health providers may apply.
  - All Providers are eligible to apply regardless of whether they were eligible for, applied for, received, accepted or rejected payment from prior PRF distributions.

— **Additional Requirements** (applicable to all General Distribution funding)
  - Validate Tax ID Number
  - Attest to Terms and Conditions
  - Have 90 days to attest or reject funds (not attesting will be viewed as acceptance)
  - Recipients of over $10,000 are subject to additional reporting requirements
Attestation & Certification

Attestation – Within 90 days of receipt – Providers that receive distributions from the General Fund must accept or reject funds through the Provider Relief Fund Application and Attestation Portal (https://cares.linkhealth.com/#/). Failure to reject the funds within 90 days of receipt will be viewed as an acceptance of the Terms & Conditions.

Certification

I acknowledge receipt of $XXXX from the Public Health and Social Services Emergency Fund ("Relief Fund"), and accept the Terms & Conditions. If you received a payment from funds appropriated in the Relief Fund under Division B of Public Law 116-127 and retain that payment for at least 30 days without contacting HHS regarding remittance of those funds, you are deemed to have accepted the following Terms & Conditions. This is not an exhaustive list and you must comply with any other relevant statutes and regulations, as applicable. Your commitment to full compliance with all Terms and Conditions is material to the Secretary’s decision to disburse these funds to you. Non-compliance with any Term or Condition is grounds for the Secretary to recoup some or all of the payment made from the Relief Fund. These Terms and Conditions apply directly to the recipient of payment from the Relief Fund. In general, the requirements that apply to the recipient, also apply to sub-recipients and contractors under grants, unless an exception is specified.

Commitment is material, to be compliant, you have to figure out what that means for your org.

You are acknowledging that this list of Terms & Conditions isn’t an exhaustive one, and may be subject to more regulation in the future.

Have we documented sufficiently? What is sufficient?

What’s allowable?

What documentation is needed for reporting?
Key Terms and Conditions – Definition & Interpretation

Requirements from the PRF terms and conditions include (not exhaustive):

1. “Provides or provided after January 31, 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.”
   a) In Guidance, HHS clarifies: “care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19.”
   b) If TIN that received payment is no longer providing health care as of 1/31/2020, must reject payment. (Includes restructuring and sales - cannot transfer to buyer because seller cannot meet T&C)

2. “Payment will only be used to prevent, prepare for, and respond to coronavirus, and that the Payment shall reimburse the Recipient only for health care related expenses or lost revenues that are attributable to coronavirus.”
   a) FAQs say that recipients “will be required to submit documents to substantiate that these funds were used for increased healthcare related expenses or lost revenue attributable to coronavirus”
      o Lost Revenues: “You may use a reasonable method of estimating the revenue during March and April 2020 compared to the same period had COVID-19 not appeared”, for example:
         ➢ If you have a budget prepared without taking into account the impact of COVID-19, the estimated lost revenue could be the difference between budgeted and actual revenue.
         ➢ It is also reasonable to compare the revenues to the same period last year.
         ➢ Examples of Drivers – lost outpatient visits, cancelled procedures, uncompensated care

   b) AND “those expenses or losses were not reimbursed from other sources and other sources were not obligated to reimburse them.”
      o You need to pursue third-party payments – insurers (business interruption, etc.), in-network out of pocket expenses from presumptive COVID-19 patients (burden of proof, currently undefined)
      o Also beware of use of PPP funds

   c) What are qualified health care related expenses attributable to coronavirus? Maintaining delivery capacity is key.
      o Building or construction of temporary structures;
      o Leasing of properties
      o Medical supplies and equipment (including PPE and testing supplies)
      o Increased workforce and trainings
      o Emergency operation centers
      o Retrofitting facilities
      o Surge capacity
      o Salaries? Cannot use funds to pay salaries through grant or other mechanism at a rate in excess of Executive Level II salary - $197,300 exclusive of fringe benefits. May pay above the cap with nonfederal funds.
Key Terms and Conditions – Definition & Interpretation

3. **Reimbursement from other sources:** “For all care for a presumptive or actual case of COVID-19... providers have an obligation to pursue third-party payment AND it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network Recipient.”
   a) Presumptive case: “a case where a patient’s medical record documentation supports a diagnosis of COVID-19, even if the patient does not have a positive in vitro diagnostic test result in his or her medical record.” —-document why
   b) Providers should bill insurance. *(burden of proof, currently undefined)*
      o HOWEVER, If insurer does not pay prevailing in network rate, provider is subject to an in network cap: may seek to collect from the patient out of pocket expenses in an amount no greater than what patient would be required to pay at in-network provider.
      o No double dipping or writing off without pursuit

4. **Requirement to maintain appropriate records and cost documentation,** should include but not limited to:
   a) Clinical documentation
   b) Invoices
   c) Purchase orders

5. **Other statutory obligations apply including prohibitions against using funds for:**
   — Excessive executive pay
   — Confidentiality/non-disclosure agreements
   — Unpaid federal tax liability

6. **Quarterly reporting for providers receiving more than $150K & cooperate with applicable audits**
   a) **Updated by HHS on 9/19/20.** Details discussed, below.
   b) For tracking purposes, you should segregate funds (cash) and income/expense on the P&L (separate business unit/department, etc.)
   c) Revenue recognition standards:
      o Nonprofits: evaluate the assistance received to determine if it represents a payment that should be accounted for as an exchange transaction under ASC 606 or as a contribution under ASC 958-605. For assistance considered a contribution within the scope of ASC 958-605, revenue recognition will be dependent on whether it is deemed conditional (whether the agreement includes both a barrier and a right of return or release).
      o Other entities: the provisions of ASC 958-605 apply to all entities, including business entities who receive contributions within the scope of this topic. However, transfers of assets from governments to business entities are excluded. In situations where there is no GAAP that specifically addresses the accounting for a transaction, businesses should look to similar guidance for assistance in the application. In this case, guidance in ASC 958-605 or in IAS 20 (an IRFS standard on accounting for government grants and assistance) could be considered for the accounting.
Compliance Risks
Overview of Compliance Risks

Risks areas include:

■ Overpayment risk
  — Required to return funds if not in compliance with Terms and Conditions
  — Reporting Requirements
  — Government Audits

■ False Claims Act risk
  — Severe penalties, including treble damages and per-claim penalties
  — Is there a claim?
    ○ Submission of erroneous data in connection with fund distribution
    ○ Submission of erroneous post-distribution reports
  — Improper expenditure of funds
    ○ 60-day Rule should not apply
    ○ Is there still liability for the retention of an “overpayment”?
  — Scienter” requirement: for FCA liability, must act knowing you did something wrong, or with reckless disregard or deliberate ignorance or whether you acted lawfully.
    ○ If no bad scienter then there should not be a larger problem than a refund, if the funds are determined to have been used improperly
Additional Risk Areas

- **Use of funds**
  - **Healthcare related expenses**
    - Per FAQs, “Healthcare related expenses attributable to coronavirus” is a broad term that may cover a range of items and services purchased to prevent, prepare for, and respond to coronavirus,” including: supplies and equipment to provide healthcare services for possible or actual COVID-19 Patients; workforce training; developing and staffing emergency operation centers; and reporting COVID-19 test results.”
    - May be incurred on any day, but “highly unusual” if incurred before 1/1/2020.
  - **Lost Revenue**
    - Can cover any cost that the lost revenue would have covered, so long as that cost prevents, prepares for, or responds to coronavirus
    - Costs do not need to be specific to providing care for possible or actual coronavirus patients

- **Other Responsible Party** – Provider “will not use the Payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.”
  - Ambiguous! No clarification from HHS.

- **Balance Billing** – “For all care for a presumptive or actual case of COVID-19, Recipient certifies that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network Recipient.

- **Data Submission** – “The Recipient certifies that all information it provides as part of its application for the Payment, as well as all information and reports relating to the Payment that it provides in the future at the request of the Secretary or Inspector General, are true, accurate and complete, to the best of its knowledge.”
  - Supplies and
  - Required to return funds if not in compliance with Terms and Conditions
  - Reporting Requirements
  - Government Audits
Risk Mitigation

- Dealing with the Government always entails risk
- What now seems to be generous in a time of emergency may later be looked at in a less forgiving manner
- Document what you do and why you do it
  - Document guidance relied upon in real time
- Report accurately
- Make concurrent disclosures where there is a lack of clarity
- Think about defending your actions two years from now
Practical Applications
Mitigating Risk – Practical Applications

Tracking

1. Create a dedicated business unit, department code, or other organizational entity dedicated solely to COVID-19 revenue and expenses.
   — Why not a General Ledger Account? Because there will be many types of revenues and expenses incurred associated with the pandemic.
   — You should be able to run a P&L dedicated to this entity to see all line items associated with COVID-19. Below are a few examples of what may fall into the difference revenue and expense line items.
   — Time and invoices should be coded to this new entity when in support of caring for a presumptive or diagnosed COVID-19 patient.

2. Capital Expenditures – To track capital expenditures, maintain all purchase orders, agreements, and document the spend for assets needed for support of the pandemic. This may be tracked within your fixed asset register in your GL by assigning an asset subtype under whichever asset category the project falls into. This may include projects like retrofitting a floor, building a temporary structure, equipment purchases, or other applicable spend.

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### Dept 05 - COVID-19
**From Jul 2019 to May 2020**

<table>
<thead>
<tr>
<th>Financial Row</th>
<th>Mar 2020 Actual</th>
<th>Apr 2020 Actual</th>
<th>May 2020 Actual</th>
<th>Total Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Revenue</td>
<td>0.00</td>
<td>1,001,539.13</td>
<td>1,749,310.93</td>
<td>2,750,850.06</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td>0.00</td>
<td>1,001,539.13</td>
<td>1,749,310.93</td>
<td>2,750,850.06</td>
</tr>
<tr>
<td><strong>Operating Expense</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personnel</td>
<td>117,051.97</td>
<td>744,746.03</td>
<td>839,088.33</td>
<td>1,700,886.33</td>
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<tr>
<td>Professional Fees &amp; Contract Services</td>
<td>2,701.54</td>
<td>55,354.19</td>
<td>138,119.37</td>
<td>196,175.10</td>
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<tr>
<td>Food, Drugs, &amp; Supplies</td>
<td>81,482.30</td>
<td>244,410.23</td>
<td>337,167.25</td>
<td>663,059.78</td>
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<tr>
<td>Facilities &amp; Equipment</td>
<td>13,158.14</td>
<td>27,721.08</td>
<td>23,169.42</td>
<td>64,048.64</td>
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<tr>
<td>Other</td>
<td>11.90</td>
<td>2,587.15</td>
<td>5,693.96</td>
<td>8,293.01</td>
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<tr>
<td><strong>Total Operating Expense</strong></td>
<td>214,405.85</td>
<td>1,074,818.68</td>
<td>1,343,238.33</td>
<td>2,632,462.86</td>
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<tr>
<td>Pension</td>
<td>148.34</td>
<td>1,515.44</td>
<td>10.23</td>
<td>1,674.01</td>
</tr>
<tr>
<td><strong>EBITDA</strong></td>
<td>(214,554.19)</td>
<td>(74,794.99)</td>
<td>406,062.37</td>
<td>116,713.19</td>
</tr>
<tr>
<td><strong>Operating Income</strong></td>
<td>(214,554.19)</td>
<td>(74,794.99)</td>
<td>406,062.37</td>
<td>116,713.19</td>
</tr>
<tr>
<td>Other Income &amp; Expense</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Contributions</td>
<td>(52,563.00)</td>
<td>(48,652.00)</td>
<td>(20,513.00)</td>
<td>(121,728.00)</td>
</tr>
<tr>
<td><strong>Total Other Income &amp; Expense</strong></td>
<td>(52,563.00)</td>
<td>(48,652.00)</td>
<td>(20,513.00)</td>
<td>(121,728.00)</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td>(267,117.19)</td>
<td>(123,446.99)</td>
<td>385,549.37</td>
<td>(5,014.81)</td>
</tr>
</tbody>
</table>

---

You can also track Net Patient Service revenue generated from treating confirmed COVID-19 patients.

Hazard pay, dedicated workforce, screening time for COVID-19 patients or presumptive patients.

Donations to support COVID-19 Efforts.

Mitigating Risk – Practical Applications

Documentation

Lost Revenues

“You may use a reasonable method of estimating the revenue during March and April 2020 compared to the same period had COVID-19 not appeared”, for example:

- If you have a budget prepared without taking into account the impact of COVID-19, the estimated lost revenue could be the difference between budgeted and actual revenue.
- It is also reasonable to compare the revenues to the same period last year.
- Examples of Drivers – lost outpatient visits, cancelled procedures, uncompensated care – Generate reports tracking metric trends, cancellation trends, or uncompensated visit trends to compare to the budget or prior year same period.

Expenses

- Personnel Costs: You should work with payroll administrator to:
  - Create new timecodes for COVID-19 care time and hazard pay.
  - Generate reports by pay period and by employee for these new codes, correlating to all personnel expense that will be recorded to the COVID-19 entity for that period.
- Other Expenses: For expenditures, either operating or capital, examples of documentation include, but are not limited to: invoices, purchase orders, receipts, other approval documents such as emails.

Third Party Payments/Reimbursements

- Commercial Insurance – Providers have an obligation to bill commercial insurance where applicable. Maintain proper revenue cycle documentation per normal protocols. No writing off of COVID-19 expenses prior to commercial insurance billing submission.
- Business Interruption Insurance – You must keep records of application & acceptance/denial of claim for payment under any business interruption insurance coverage. These funds should be first applied to applicable COVID-19 expenses prior to applying any stimulus monies.
- PPP Funds – You must keep records of application & acceptance/denial for PPP funds. These funds must also be applied first as indicated above, no double dipping.
Mitigating Risk – Practical Applications

Accounting Considerations

Revenue recognition standards, application of ASC 958-605:

- The provisions of ASC 958-605 apply to all entities, including business entities who receive contributions within the scope of this topic. However, transfers of assets from governments to business entities are excluded. In situations where there is no GAAP that specifically addresses the accounting for a transaction, businesses should look to similar guidance for assistance in the application.

- Evaluate the assistance received to determine if it represents a payment that should be accounted for as an exchange transaction under ASC 606 or as a contribution under ASC 958-605.

- For assistance considered a contribution within the scope of ASC 958-605, revenue recognition will be dependent on whether it is deemed conditional (whether the agreement includes both a barrier and a right of return or release).
  - A stimulus grant typically would be considered revenue on the income statement (other/misc. revenue) versus a loan which is would be a liability on the balance sheet.

Tax Deferral Treatment - Payable:

- If you exercised the option to defer the employer portion of payroll taxes until the due dates of December 2020 and 2021, each period, you should recognize the expense in the applicable period on the income statement, but also record a liability payable on the balance sheet each period.

Sequestration Waiver Treatment – Accounts Receivable:

- With the waiver of the 2% sequestration on government reimbursements until December 2020, you should see an increase in your cash inflows. Accordingly, when billing CMS, you should be sure to record the 2% sequestration as now a collectible amount in the Accounts Receivable, removing it from the contractual allowance category on the income statement.
Reporting & Auditing
Reporting Overview & Timeline

On September 19, 2020, HHS published guidance outlining potential reporting timelines and requirements. This guidance can be found HERE.

Who has to report?
- Reporting obligations are applicable to any provider that received payments exceeding $10,000 from the following Cares Act/PRF distributions:
  - General Distributions:
    - Initial and/or Additional Medicare Distribution
    - Medicaid, Dental, & CHIP Distribution
  - Targeted Distributions:
    - High Impact Area Distribution
    - Rural Distribution
    - Skilled Nursing Facilities Distribution
    - Indian Health Service Distribution
    - Safety Net Hospital Distribution

Key Dates
- The reporting system will become available for Recipients on October 1, 2020—Updated: January 15, 2021
- All Recipients must report within 45 days of the calendar year end 2020, February 15, 2021, on their expenditures through the period ending December 31, 2020.
Reporting Requirements

**Demographic Information**

- **Reporting Entity**: Entity (at the Tax Identification Number (TIN) level) that received one or more PRF payments. If the entity has subsidiary TINs that received General Distribution payments, regardless of whether the subsidiary or Reporting Entity formally attested to accepting the payment within the provider portal, the Reporting Entity may report on and direct the use of General Distribution payments.

- **Tax Identification Number (TIN)**: Reporting Entity’s primary TIN associated with the provider who received the funds and accepted the PRF payment during attestation (the recipient).

- **National Provider Identifier (NPI) [optional]**: The unique 10-digit numeric identifier for covered healthcare providers.

- **Fiscal Year-End Date**: Month in which the recipient reports its fiscal year-end financial results.

- **Federal Tax Classification**: Designated business type associated with the Reporting Entity’s primary TIN used for filing taxes.

**Reporting Guidance on Use of Funds**

1. **Expenses Attributable to Coronavirus Not Reimbursed by Other Sources (2020 only)** - Healthcare related expenses attributable to coronavirus that another source has not reimbursed and is not obligated to reimburse, which may include General and Administrative (G&A) or healthcare related operating expenses.

   a. Expenses attributable to coronavirus may be incurred both in treating confirmed or suspected cases of coronavirus, preparing for possible or actual coronavirus cases, maintaining healthcare delivery capacity, etc.

   b. Recipients who received $500,000 or more in PRF payments are required to report healthcare related expenses attributable to coronavirus, net of other reimbursed sources, and they must do so by reporting more detailed information within the two categories of G&A expenses and other healthcare related expenses, according to the following sub-categories of expenses:

   - **G&A**
     i. **Mortgage/Rent**: Monthly payments related to mortgage or rent for a facility.
     ii. **Insurance**: Premiums paid for property, malpractice, business insurance, or other insurance relevant to operations.
     iii. **Personnel**: Workforce-related actual expenses paid to prevent, prepare for, or respond to the coronavirus during the reporting period, such as workforce training, staffing, temporary employee or contractor payroll, overhead employees, or security personnel.
     iv. **Fringe Benefits**: Extra benefits supplementing an employee’s salary, which may include hazard pay, travel reimbursement, employee health insurance, etc.
     v. **Lease Payments**: New equipment or software lease.
     vi. **Utilities/Operations**: Lighting, cooling/ventilation, cleaning, or additional third party vendor services not included in “Personnel”.
     vii. **Other General and Administrative Expenses**: Costs not captured above that are generally considered part of overhead structure.
Reporting Requirements

**Reporting Guidance on Use of Funds**

**Healthcare Related Expenses Attributable to Coronavirus** - The actual healthcare related expenses incurred over and above what has been reimbursed by other sources.

i. **Supplies**: Expenses paid for purchase of supplies used to prevent, prepare for, or respond to the coronavirus during the reporting period. Such items could include: personal protective equipment (PPE), hand sanitizer, or supplies for patient screening.

ii. **Equipment**: Expenses paid for purchase of equipment used to prevent, prepare for, or respond to the coronavirus during the reporting period, such as ventilators, updates to HVAC systems, etc.

iii. **Information Technology (IT)**: Expenses paid for IT or interoperability systems to expand or preserve care delivery during the reporting period, such as electronic health record licensing fees, telehealth infrastructure, increased bandwidth, and teleworking to support remote workforce.

iv. **Facilities**: Expenses paid for facility-related costs used to prevent, prepare for, or respond to the coronavirus during the reporting period, such as lease or purchase of permanent or temporary structures, or to modify facilities to accommodate patient treatment practices revised due to coronavirus.

v. **Other Healthcare Related Expenses**: Any other actual expenses, not previously captured above, that were paid to prevent, prepare for, or respond to the coronavirus.

2. **Lost Revenues Attributable to Coronavirus** - Reporting Entities provide information used to calculate lost revenues attributable to coronavirus, represented as a negative change in year-over-year net operating income from patient care related sources.

   a. **Total Revenue/Net Charges from Patient Care Related Sources (2019 and 2020)**: Revenue/net charges from patient care (prior to netting with expenses) for the calendar years 2019 and 2020. Calendar year actual revenues will be entered by quarter (e.g., January–March 2019, April–June 2019, etc.).

   i. **Revenue from Patient Care Payer Mix (2019 and 2020)** – Includes actual revenues/net charges received from Medicare Part A+B+C, Medicaid, Commercial Insurance, Self Pay (No Insurance), Other.

   ii. **Other Assistance Received** – Includes other income from sources such as Treasury, Small Business Administration (SBA), and Cares Act/Paycheck Protection Program (PPP), FEMA CARES Act, CARES Act Testing, Local/State/Tribal Government Assistance, Business Insurance, Other Assistance.

   b. **Total Calendar Year Expenses for 2019 and 2020**: in the following categories, with quarterly break down (e.g., January–March 2019, April–June 2019, etc.)

   i. **G&A** - Items such as monthly payments related to mortgage or rent for facility where reporting entity provides patient care services, other monthly finance charges for real property and/or property taxes, insurance premiums for property, employee health insurance, or malpractice insurance, overhead salaries, healthcare and contractor salaries, fringe benefits, lease payments, lighting, cooling/ventilation, cleaning, vendor services purchased from third party vendors, consulting support, legal fees, audit and accounting services, food preparation and supplies, logistics and transport or other costs not captured above, such as debt financing, for the relevant calendar year.

   ii. **Healthcare Related Expenses** - Items such as supplies, equipment, IT, facilities, employees, and other healthcare related costs/expenses for relevant calendar year.
Reporting Requirements

**Reporting Guidance on Use of Funds**

3. Non-Financial Data (per quarter)
   a. Facility, Staffing and Patient Care:
      i. **Personnel Metrics**: Total personnel by labor category (full-time, part-time, contract, other: recipient must define), total re-hires, total new hires, total personnel separations by labor category.
      ii. **Patient Metrics**: Total number of patient visits (in-person or telehealth), total number of patients admitted, total number of resident patients.
      iii. **Facility Metrics**: Total available staffed beds for medical/surgical, critical care, and other beds.
   b. Change in Ownership - Reporting Entities that acquired or divested of related subsidiaries indicate the change in ownership, whether the related TIN was acquired or divested, providing the following data points for each relevant TIN:
      i. Date of acquisition/divestiture
      ii. TIN(s) included in the acquisition/divestiture
      iii. Percent of ownership for acquisition/divestiture
      iv. Did/do you hold a controlling interest in this entity? (Y/N)
Auditing

1. The recipients of Provider Relief Fund payments may be subject to auditing to ensure the accuracy of the data submitted to HHS for payment. Any recipients identified as having provided inaccurate information to HHS will be subject to payment recoupment and other legal action.

2. All recipients of Provider Relief Fund payments shall maintain appropriate records and cost documentation including, as applicable, documentation described in 45 CFR § 75.302 – Financial management and 45 CFR § 75.361 through 75.365 – Record Retention and Access, and other information required by future program instructions to substantiate that recipients used all Provider Relief Fund payments appropriately.

3. Upon the request of the Secretary, the recipient shall promptly submit copies of such records and cost documentation and the recipient must fully cooperate in all audits the Secretary, Inspector General, or Pandemic Response Accountability Committee conducts to ensure compliance with applicable Terms and Conditions.

Single Audit Status
Reporting Entities that expended $750,000 or more in aggregated federal financial assistance in 2020 (including PRF payments and other federal financial assistance) are subject to Single Audit requirements, as set forth in the regulations at 45 CFR 75.501. Recipients must indicate if they are subject to Single Audit requirements in 2020, and if yes, whether the auditors selected PRF payments to be within the scope of the Single Audit (if known at the time the Reporting Entity submits report).
Paul L. Garcia is an associate in the Regulatory Department of Hooper, Lundy & Bookman.

Mr. Garcia is a former attorney with the California Department of Health Care Services, where he served as a member of the Health Care Financing and Rates Team. In this capacity he provided legal counsel to develop and support Medi-Cal managed care financing policy, including the department's compliance with the 2016 Medicaid managed care rule as it relates to capitated rates, and key funding programs such as the Prop 56 Tobacco Tax and other directed-provider payments.

Mr. Garcia previously served as an Executive Fellow, through the Capital Fellows Programs, for Covered California, where he worked with the executive staff to implement state and federal health care reforms.

Mr. Garcia received his B.A. in Political Science, *magna cum laude*, from the University of San Diego. He earned his J.D. from the University of Southern California Gould School of Law, where he served as the Executive Notes Editor for the *Southern California Law Review*. While in law school, Mr. Garcia served as a judicial extern for the Honorable Kim McLane Wardlaw, United States Court of Appeals for the Ninth Circuit. He was also a student scholar for the Saks Institute for Mental Health Law, Policy, and Ethics.

**Professional Affiliations**

- American Health Lawyers Association
- California Society for Healthcare Attorneys
Presentations & Speaking Engagements

COVID-19 Financial Relief for Providers: CARES Act Provider Relief Fund, Uninsured Program, and Coverage Issues
Webinar, June 9, 2020

HLB 2019 Managed Care Update Seminar
October 22, 2019 – The LA Grand Hotel Downtown, Los Angeles, CA; October 23, 2019 - Hotel Shattuck Plaza, Berkeley, CA

News

Flexibilities for the California Medi-Cal Program and Medi-Cal Providers Provided by Executive Order N-55-20
May 7, 2020

California Announces Proposal for Important Changes to the Medi-Cal Delivery System
January 31, 2020

Hooper, Lundy & Bookman Ranked in the 2020 Edition of US News/Best Lawyers in America Best Law Firms
November 2, 2019

Hooper, Lundy & Bookman Named To American Bar Association's Health Law Top 10 List
October 1, 2019

Top Patent Litigator Drew Woodmansee Joins Hooper, Lundy & Bookman as Head of IP Practice
August 5, 2019

What the Supreme Court’s Azar v. Allina Ruling Means for Health Care Providers
June 4, 2019

Hooper, Lundy & Bookman Launches Webinar Series with Focused Discussions on Post-Acute Care Partnerships
May 8, 2019

PRNewswire

Hooper Lundy & Bookman Recognized Among the Top Health Law Firms in the United States by Chambers USA
April 25, 2019

CMS Proposes Changes to Telehealth Reimbursement, Stark, Substance Use Disorder Treatment Reimbursement, and Evaluation & Management Reimbursement in the CY 2019 Physician Fee Schedule Proposed Rule
July 14, 2018
Health Law Perspectives

Health Law Perspectives, August 2019
August 27, 2019

Health Law Perspectives, June 2019
June 20, 2019

Publications


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Vanessa-Lauren Massie has specialized industry expertise in many areas of healthcare, and many ownership models such as Private Equity and non-profit. She has 20 years of experience in corporate finance, general accounting, investigative/forensic accounting, and healthcare operations management, with an emphasis on revenue cycle enhancement, labor and cost optimization, operational efficiency, process improvement, and business transformation. Her specialties include crisis & transition leadership, management under Private Equity ownership, and physician practice, post-acute, and senior care spaces.

Over the last 10 years, Ms. Massie has focused on various financial and operational leadership positions in healthcare and pharmacy services, including FP&A, accounting, treasury, strategic planning and reorganization, pricing and profitability, and performance analysis and improvement.

During her time at FTI, Ms. Massie’s primary roles have been as a high-growth CFO/CAO under Private Equity ownership in Radiology, Post Acute, and other Outpatient forms of care. Most recently, as an interim CFO focused on crisis management and stabilization for Finance, Accounting, Treasury and Revenue Cycle for a Skilled Nursing and Senior Care campus during the COVID-19 pandemic. She has performed performance improvement management and implementation, COVID-19 program compliance, cash flow management, and accounting and financial reporting improvement.

Her most recent industry-side experience was as VP of operational finance for $1.3B, 200-agency region of a large Home Health, Hospice, and Palliative Care services company, she led a cross functional, high performance team that drove high financial returns, despite market compression, through various operational initiatives including: revenue cycle improvement, labor productivity and utilization, supply cost optimization, and shared service centralization.

Ms. Massie obtained a Six Sigma Green Belt process improvement certification through the BGMI Institute while working with McKesson Inc.

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**Education**

B.S., Accounting, University of North Carolina at Greensboro
M.B.A., Finance/International Business, University of South Florida
Executive Certificate, Healthcare Leadership, Emory University

**Certifications**

Six Sigma Green Belt – BGMI Institute

**Leadership Positions**

Board of Trustees – Georgia Eye Bank