Proskauer

Health Care Provider Relief Under the CARES Act: Supporting Those on the Front Lines of the Fight Against COVID-19

March 30, 2020

An update to this alert can be found here.

As hospitals, health systems and other health care providers across the country struggle to address the ongoing COVID-19 epidemic, Congress provided some much needed financial relief for the health care industry as part of the $2.0 trillion Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "CARES Act") that was signed by the President at the end of last week. Under the new legislation, certain stakeholders in the health care industry are eligible to receive funding and other benefits depending on both the size and type of health care entity. While many providers will benefit from the much needed financial support, many medical practices, behavioral health providers, management companies and other stakeholders do not qualify and are left to their own means. Below is a summary of what stakeholders can expect from the CARES Act.

Hospitals and Health Systems

For hospitals, health systems and other providers on the front lines of responding to the crisis, the CARES Act earmarks $100 billion to be administered through the U.S. Department of Health and Human Services ("HHS") to directly cover costs of such entities related to COVID-19. The CARES Act specifies that HHS will review applications on a rolling basis, and we anticipate direction from HHS in the near future on how to apply for reimbursement. In anticipation of the continued spread of COVID-19, the CARES Act also includes $250 million for HHS to deploy through its Public Health and Social Services Emergency Fund as needed to support hospitals in increasing surge capacity.

In addition to tranches of money set aside for the health care industry, hospitals can also benefit from adjustments to reimbursement amounts from federal health care programs, including a 20% add-on Medicare payment to hospitals treating patients infected by COVID-19, a 6.2% increase in matching funds from the federal government for Medicaid patients, Medicare sequester relief and delay of scheduled decreases in Medicaid disproportionate share payments. Hospitals may also request advances on Medicare payments based on prior years' payments to ensure that hospitals maintain adequate cash flow through the crisis. State Medicaid programs are also authorized under the CARES Act to compensate trained caregivers for providing services during hospital stays to lower the capacity burden on hospitals by decreasing the length of stay for disabled individuals.

Funding Generally Available to Health Care Providers and Other Small Businesses

Loan Programs Provided by the SBA

The CARES Act includes two separate avenues, the Paycheck Protection Program and Economic Injury Disaster Loans, through which the U.S. Small Business Administration (the "SBA") is authorized to provide low-interest rate loans to small businesses. Health care providers looking to maintain their pre-COVID-19 business by avoiding layoffs and other reductions in operating expenses as revenue drops during long periods of government-imposed social distancing may be eligible to receive these loans.

The Paycheck Protection Program

The Paycheck Protection Program, for which Congress has authorized approximately $350 billion, is available to providers with fewer than 500 employees. This Program may be utilized by hospitals (both tax-exempt and for-profit), medical groups and solo practitioners. Loans issued by the SBA under the Paycheck Protection Program will be available in amounts of up to $10.0 million, with interest rates of no more than 4%. The loan amounts are determined by the SBA based on the prospective borrower's proposed use of loan proceeds for payroll support, including employee salaries, paid leave, insurance premiums and mortgage, rent or utility payments. Unlike typical loans, those provided under this Program do not require the borrower to incur application fees, and do not require collateral or personal guarantees. Loans may be prepaid without penalty, and allow for deferral of loan repayments for at least six months.

Emergency Economic Disaster Loans

Providers who exceed the size criteria for the Paycheck Protection Program may be eligible for emergency Economic Injury Disaster Loans (EIDLs) provided by the SBA, for which the CARES Act has set aside $10 billion. EIDLs are low-interest working capital loans of up to $2.0 million that may be used to pay existing debt, payroll, accounts payable and other bills that cannot be paid by borrowers due to COVID-19. The CARES Act expands eligibility for EIDLs through December 31, 2020 to include sole proprietors, independent contractors and private non-profits. Corporate borrowers must fall below the size benchmarks set forth by the SBA to qualify for EIDLs, which includes average annual revenue of $41.5 million for General Medical and Surgical Hospitals or Specialty Hospitals, $30.0 million for Skilled Nursing Facilities, $16.5 million for Home Health Care Services, and $12.0 million for Assisted Living Facilities for the Elderly and Offices of Physicians; thresholds for other health care providers are provided on the SBA's website. These thresholds will leave a number of providers, which have more than 500 employees and revenues that exceed the revenue thresholds, unable to obtain loans under this program and require such mid-market providers to seek alternative methods to maintain operations in the face of the pandemic. Non-profits that qualify for EIDLs can receive loans with interest rates of 2.75%; other eligible providers can receive loans with interest rates of 3.75%.

Congress also sought to reduce layoffs through a loan forgiveness program that reduces the amount forgiven proportionally to any reduction in employees as compared to the prior year. Please see other Proskauer client alerts for additional details.

Telemedicine

The CARES Act includes a number of telehealth measures that expand the ability of providers and patients to interact remotely and encourage social distancing practices. In addition to reauthorizing the Health Resources and Services Administration (HRSA) grant program, which will promote the use of telehealth delivery of health care services, the CARES Act expands access for Medicare enrollees to telehealth from a broader range of providers (eliminating the requirement that the individual had been treated by the provider within the last 3 years), authorizes and encourages Federally Qualified Health Centers ("FQHCs") to provide care through telehealth by providing reimbursement pursuant to the Medicare Physician Fee Schedule, eliminates certain face-to-face requirements for the delivery of home dialysis and hospice care recertification, and encourages the use of telehealth by home health providers.

Physicians and Practice Groups

While physicians and practice groups can seek financial recompense through the SBA as set forth above, in order to encourage that all available health professionals participate in the national response to COVID-19, the CARES Act ensures that physicians providing medical services on a volunteer basis have protection from liability incurred pursuant to the delivery of such services and establishes a Ready Reserve Corps comprised of trained practitioners for response both to COVID-19 and other future public health emergencies.

FQHCs

In addition to encouraging FQHCs to provide care via telehealth, the CARES Act also includes $1.3 billion in emergency supplemental funding to be provided by HHS for community health centers, including federally-qualified health centers. These amounts are in addition to extending mandatory funding already available to FQHCs through November 2020.

Post-Acute Care Providers

Congress also sought to leverage post-acute care providers to address limitations on bed capacity at hospitals by providing more flexibility in the event a hospital's ability to find space for patients is exceeded. The CARES Act attempts to offset the burden of treating non-COVID-19 patients by allowing acute care facilities to move patients to post-acute care setting through waiver of the 3-hour rule for admission into Inpatient Rehabilitation Facilities and elimination of the requirement that Long Term Care Hospitals must have at least 50% of its admissions be intensive care patients. The CARES Act also includes measures to soften the transition from hospitals and post-acute care facilities to home treatment by eliminating a scheduled reduction in Medicare payments for DME for the duration of the national health emergency, making it more affordable for patients to convalesce while at home.

Conclusion

Ultimately, the CARES Act provides some relief for health care providers, but as cases of COVID-19 continue to grow exponentially and new hotspots are identified across the country, further action by the government will be necessary to help support the surge in capacity needed to provide care and protect economically both hospitals who are providing the immediate response to the epidemic and other providers who are unable to provide services and thus may go out of business as communities engage in social distancing.

* * *

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our **Coronavirus Resource Center** for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

Related Professionals

- **Edward S. Kornreich**
- **David Manko**
  Partner
- **Jason S. Madden**
  Partner