

Congress appropriated record levels of relief funding for health care providers due to the COVID-19 pandemic. At the same time, the president's March 13, 2020, COVID-19 nationwide emergency declaration and subsequent major disaster declarations authorized the Federal Emergency Management Agency (FEMA) to provide funding to certain governmental and private non-profit organizations for emergency protective measures. Increased government audits, investigations and enforcement actions on eligibility for and compliance with the terms and conditions of the various funding programs are likely to follow.

HOW WE CAN HELP

We monitor closely—and analyze in real time—the fast-paced evolution of these COVID-19 relief programs, and advise our clients on the latest regulatory developments and implications for relief program eligibility and compliance.

Our work includes:

- Insights on benchmarking in the industry
- Advice on complex funding eligibility determinations (e.g., changes of ownership, affiliate relationships, and sale and leaseback structures)
- Guidance on permissible uses of funding
- Advice on evolving regulatory guidance
- Advocacy to agency regulators regarding developing compliance questions
- Establishing a compliance record
- Assistance with reports for submission to the U.S. Department of Health and Human Services (HHS)

OUR EXPERIENCE

We have a long history of representing health care clients on a wide range of issues relating to reimbursement from government health care programs, private insurers and other third-party payors. We assist providers and other health care clients in obtaining appropriate payment for items and services, including assistance with value-based care arrangements; complying with coverage, payment, billing and grant funding rules; ensuring the availability of payments; defending the propriety of payments challenged through investigations and enforcement actions; and developing new and enhanced payment streams. We also represent hospitals, health systems and other health care clients in cutting-edge administrative and federal court litigation contesting adverse government agency action in reimbursement and other areas. Most recently, we have been guiding our clients on issues related to the COVID-19 pandemic, including ongoing developments in federal funding and reimbursement.

Our advice on COVID-19 relief funding programs includes:

Provider Relief Fund

- Assisting hospitals, health systems and other providers in determining eligibility for various funding streams of the Provider Relief Fund as well as permitted uses of funding consistent with HHS's terms and conditions, including:
 - Assisting Medicare providers in evaluating eligibility for General Distribution funding deposited into their accounts.
 - Advising Medicaid providers, including dentists, on applications for Medicaid/CHIP Distribution funding.
 - Advising skilled nursing facilities on eligibility for the targeted skilled nursing distribution.

- Communicating with agency regulators on special circumstances that have led to the issuance of new guidance, such as change-of-ownership concerns and funding concerns in integrated health systems.
- Creating compliance tracking tools and documents to track varying terms and conditions, permissible uses of funds, and reporting requirements to document compliance and provide a contemporaneous record to mitigate future enforcement risk.

PPP and SBA/Treasury EIDL Loans

- Advising a broad spectrum of health care clients regarding eligibility for the PPP, including the various size standards, eligibility requirements and “affiliation” rules.
- Advising clients regarding the forgiveness provisions of the rule and repayment of loans, where applicable, in light of rapidly changing guidance ambiguities in the PPP rules.
- Advising clients regarding eligibility for SBA Emergency Injury Disaster Loans (EIDL), which were expanded under the CARES Act to include any business with not more than 500 employees, and the interplay between the EIDL program and the PPP.

FEMA Public Assistance Program

- Counseling hospitals, academic medical centers and other health care providers regarding eligibility for, and appropriate uses of, FEMA Public Assistance Program funds and conditions of such funding.
- Assisting hospitals and academic medical centers in preparing applications for FEMA Public Assistance funding, including reviews of and guidance on eligible costs; advocating with FEMA representatives regarding cost eligibility, operation periods and other FEMA reimbursement parameters; and advising clients on duplication of benefits.
- Advising hospitals in connection with reimbursement issues associated with U.S. Department of Defense medical support during the COVID-19 pandemic.
- Developing data validation and tracking tools for clients to ensure compliance with FEMA funding conditions to position clients for success in final reconciliations and audits.

CONTACTS

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