

CORONAVIRUS INFORMATION & UPDATES

May 7, 2020

COVID-19 ISSUES AND CONSIDERATIONS FOR AMCs

This document is intended to serve as a checklist for AMC legal offices, as they triage the unprecedented demands that they and their organizations more broadly face as a result of the COVID-19 crisis.

Attorneys
[Michael B. Lampert](#)
[Adrienne Ortega](#)
[Christina A. Ravelo](#)

The table that follows summarizes key issues and considerations for AMCs arising from statutory, regulatory, and industry responses to COVID-19. To serve as a useful checklist, the table is high-level. However, where applicable, for those seeking a deeper dive, we provide links in the footnotes to more detailed assessments.

The table addresses the following topics:

- Medical Education (Section A)
- Liquidity and Municipal Bond Defaults (Section B)
- Sources of Relief Funding (Section C)
- Reimbursement (Section D)
- Care Delivery Models and Clinical Care (Section E)
- Staffing Shortages (Section F)
- Labor and Employment (Section G)
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Regulatory developments are coming quickly, and this checklist unavoidably will soon become out of date. This last was updated on **May 5, 2020**.

A. Medical Education		
Issue	Summary	Considerations
1. Medical Student Volunteer Opportunities	Liaison Committee on Medical Education (LCME) issued guidelines making volunteer opportunities available to medical students during the COVID-19 pandemic. ¹	Liability and immunity, professional liability insurance coverage, licensure considerations, adequacy of training
2. Undergraduate Medical Education: Curriculum & Clinical Clerkships	LCME stated that, unless there is a critical need for health care workers, medical students should not be involved in any direct patient care activities if the medical school is located where there is active current or anticipated community spread, limited availability of PPE, and/or limited availability of COVID-19 guidance. LCME also issued guidance allowing medical education programs to	Availability of PPE and COVID-19 testing

¹ [COVID-19 Issues for AMCs](#), ROPES & GRAY (Apr. 7, 2020).

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	adopt flexibilities in light of online instruction and cancelled clinical clerkships. Regional accreditation organizations have also relaxed policies. ²	
3. Graduate Medical Education: Residency and Fellowship Programs	Accreditation Council for Graduate Medical Education (ACGME) issued staged guidance regarding timing of accreditation activities, the challenges for residency and fellowship programs to achieve minimum visit and case numbers, and compliance with the work hour, supervision, and education/training requirements. ³	GME agreements, reimbursement (e.g., telehealth, moonlighting), in-person supervision requirements, professional liability insurance coverage
B. Liquidity and Municipal Bond Defaults⁴		
Issue	Summary	Considerations
1. Sources of Liquidity	Access to the tax-exempt bond market at this time is limited, and many AMCs face liquidity challenges due to precipitous drops in patient care revenue. AMCs may need to access other sources of liquidity, such as bank lines, loans, and endowments.	MAE covenants, financial covenants, public disclosure
2. Covenant Defaults	Liquidity concerns may give rise to potential covenant defaults under debt instruments, including bonds and private placement debt.	Obtaining waivers, engaging consultants, fiduciary duties, public disclosure
3. Voluntary Market Disclosures & EMMA Disclosures	Securities standards for COVID-19 reporting may require disclosure under certain circumstances. AMCs may also receive inquiries from investors or rating agencies.	Securities rules re: forward-looking projections, rule 15c2-12 amendments
C. Sources of Relief Funding		
Issue	Summary	Considerations
1. Public Health and Social Services Emergency Fund	On March 27, 2020, Congress appropriated \$100B under the Coronavirus Aid, Relief, and Economic Security (CARES) Act for healthcare-related expenses or lost revenue attributable to COVID-19. ⁵ On April 24, 2020, Congress extended an additional \$75B for provider relief funding and an additional \$25B for testing-related expenses under the Paycheck Protection Program and	Satisfaction of terms and conditions of payment, statutory restrictions on use of funds, recordkeeping and documentation

² *Id.*

³ *Id.*

⁴ Teleconference, *COVID-19: Liquidity and Municipal Bond Considerations for Hospitals*, ROPES & GRAY (March 31, 2020) (teleconference slides and recording available upon request).

⁵ [HHS Provides Guidance on Additional Distributions from the Public Health and Social Services Emergency Fund](#), ROPES & GRAY (Apr. 23, 2020); [Public Health & Social Services Emergency Fund Implementation Guidelines as of April 15, 2020](#), ROPES & GRAY (Apr. 16, 2020); [HHS Initiates Initial \\$30 Billion Distribution of the \\$100 Billion Public Health and Social Services Emergency Fund](#), ROPES & GRAY (Apr. 10, 2020); [COVID-19 Issues for AMCs](#), ROPES & GRAY (Apr. 7, 2020); [CARES Act – Financial Relief Sections Applicable to Health Care Providers](#), ROPES & GRAY (Apr. 1, 2020).

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	Health Care Enhancement Act. ⁶ The Department of Health and Human Services (HHS) has initiated the following programs for allocating the funds: (i) \$50B “general distribution fund” to Medicare providers/suppliers; (ii) \$10B to hard-hit hospitals; (iii) uncapped reimbursement for testing and treatment of uninsured COVID-19 patients; (iv) \$10B for rural providers; and (v) \$400M for the Indian Health Service. Funds are subject to limitations on eligibility and use and ongoing reporting obligations. ⁷	
2. Economic Injury Disaster Loans under the Small Business Act	Increased the \$2M borrowing cap for Economic Injury Disaster Loans to \$10M for small businesses with fewer than 500 employees. ⁸	Explore potential opportunities for JVs or other non-controlled entities related to the AMC, limitation on uses of proceeds, employee headcount and affiliated entities, loan forgiveness eligibility, documentation requirements, collateral requirements, personal guarantees
3. Federal Reserve Lending Programs and Facilities	Provides \$454B for senior loans, guarantees, and other investments in programs or credit facilities established in support of the Federal Reserve’s lending system to eligible businesses, states, and municipalities. ⁹	Eligibility requirements
4. Expansion of the Medicare Accelerated Payment Program	Permits physician groups to request up to three months (and hospitals to request up to six months) of Medicare payments, repayable via recoupment. ¹⁰	Subject to repayment and recoupment
5. Geriatric Training Grants	Provides funding to support training in geriatric medicine through the establishment or operation of Geriatrics Workforce Enhancement Programs. ¹¹	

⁶ [Key Health Care Provisions of the Paycheck Protection Program and Health Care Enhancement Act](#), ROPES & GRAY (Apr. 23, 2020).

⁷ [In Law360, Health Care Attorneys Analyze How to Determine Eligibility for U.S. Health and Human Services COVID-19 Emergency Funds](#), ROPES & GRAY (Apr. 27, 2020).

⁸ [COVID-19 Issues for AMCs](#), ROPES & GRAY (Apr. 7, 2020); [CARES Act – Financial Relief Sections Applicable to Health Care Providers](#), ROPES & GRAY (Apr. 1, 2020).

⁹ [CARES Act – Financial Relief Sections Applicable to Health Care Providers](#), ROPES & GRAY (Apr. 1, 2020).

¹⁰ [CARES Act Oversight: False Claims Act Risk under the CARES Act for Health Care Providers](#), ROPES & GRAY (Apr. 8, 2020); [COVID-19 Issues for AMCs](#), ROPES & GRAY (Apr. 7, 2020); [CARES Act – Financial Relief Sections Applicable to Health Care Providers](#), ROPES & GRAY (Apr. 1, 2020); [Medicare Accelerated and Advance Payment Program Expansion During COVID-19](#), ROPES & GRAY (March 31, 2020); [Bipartisan Proposal for Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\) – Summary of Key Provisions](#), ROPES & GRAY (March 26, 2020).

¹¹ [COVID-19 Issues for AMCs](#), ROPES & GRAY (Apr. 7, 2020).

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6. Federal Communications Commission (FCC) COVID-19 Telehealth Program	Provides \$200M in funding for health care providers to purchase products and services needed to provide telehealth services to patients.	Limitations for use of funds, understanding HHS-waived regulations regarding telehealth, prerequisites for receiving payments, funding cap of \$1M per applicant
D. Reimbursement		
Issue	Summary	Considerations
1. Waived Copays for COVID-19 Testing	Insurers will cover COVID-19 testing and certain other related services, including serological tests, at no cost. ¹²	Website disclosure of testing price
2. Centers for Medicare & Medicaid Services (CMS) Flexibilities for Medical Resident and Fellow Services	Relaxed standards for billing services of medical residents and fellows, including requirements for in-person supervision, reimbursement for services provided outside hospital premises, and reimbursement of resident moonlighting services. ¹³	Coordination with ACGME standards, as revised
3. CMS Waivers of Payment and Coverage Requirements	Waived many payment and coverage requirements for hospitals to facilitate flexibility in patient care, including bed limits, stay limits, and admittance/discharge requirements. ¹⁴	Enforcement discretion, cost-sharing waivers
4. CMS Section 1135 Waivers	Implemented Section 1135 waivers providing expanded telehealth coverage, relaxing physician supervision requirements, and waiving EMTALA sanctions for redirecting individuals to an alternative location for screening or transferring non-stabilized patients. ¹⁵	State licensure restrictions, temporal nature of waivers
5. Expansion of Medicare Reimbursement for Telehealth Services	Waiver and modification of certain telehealth requirements to permit providers to receive Medicare reimbursement for a wider range of telehealth services. ¹⁶ Of note, CMS recently announced that hospitals may bill as the originating site for Medicare patients registered as outpatients, including when the patient is located at home.	CMS requirements, billing practices, documentation and recordkeeping requirements, enforcement discretion ¹⁷

¹² [Bipartisan Proposal for Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\) – Summary of Key Provisions](#), ROPES & GRAY (March 26, 2020); [COVID-19 Related Reimbursement Developments](#), ROPES & GRAY (March 18, 2020).

¹³ [COVID-19 Issues for AMCs](#), ROPES & GRAY (Apr. 7, 2020).

¹⁴ [COVID-19 Related Reimbursement Developments](#), ROPES & GRAY (March 18, 2020).

¹⁵ [Dealing with Health Care Staffing Shortages in the Face of COVID-19](#), ROPES & GRAY (Apr. 7, 2020); [COVID-19 Related Reimbursement Developments](#), ROPES & GRAY (March 18, 2020).

¹⁶ [CARES Act Oversight: False Claims Act Risk under the CARES Act for Health Care Providers](#), ROPES & GRAY (Apr. 8, 2020); [Bipartisan Proposal for Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\) – Summary of Key Provisions](#), ROPES & GRAY (March 26, 2020); [COVID-19 Related Reimbursement Developments](#), ROPES & GRAY (March 18, 2020).

¹⁷ See also E.1. – Care Delivery Models & Clinical Care, Telehealth.

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6. 2% Medicare Sequestration Reductions	Temporary suspension of Medicare sequestration cuts between May 1, 2020, and December 31, 2020. ¹⁸	Potential flow-through to Medicare Advantage through payor-provider contracts, commercial payments
7. Medicare Payment Relief	CMS issued rule changes to incentivized expanded access to services for Medicare beneficiaries. Reimbursement relief includes allowing payment for partial hospitalization services (e.g., psychotherapy) delivered in expansion sites and patients' homes. Also, a 20% increase in the weighting factor for each DRG under the Medicare inpatient prospective payment system for discharges during the emergency period with a primary or secondary diagnosis of COVID-19 and an increase in reimbursement for high-throughput COVID-19 lab tests. ¹⁹	
8. CARES Act Funding for Teaching Health Centers	The CARES Act continues funding for teaching health centers (federally supported, community-based primary care centers, such as FQHCs; not large AMCs) that operate GME programs through November 30, 2020. ²⁰	
E. Care Delivery Models and Clinical Care²¹		
Issue	Summary	Considerations
1. Telehealth	Expanded reimbursement opportunities for telehealth by waiving "originating site" limitations, expanding the waiver to all covered telehealth services, allowing providers to incur the same resource costs for services, and waiving certain licensure requirements. Also waived requirements for a prior existing patient relationship and restrictions on modality. ²²	State licensure restrictions, ²³ liability, technology infrastructure, patient privacy and confidentiality, enforcement discretion, controlled substances prescriptions, cost-sharing ²⁴
2. Hospitals Without Walls	Acute care hospitals may deliver hospital care at offsite locations (e.g., ASCs, ambulatory clinics, hotels, gymnasiums, third-party providers). ²⁵ CMS provided	Contracting questions, state licensure, accreditation, liability issues, reimbursement

¹⁸ [Bipartisan Proposal for Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\) – Summary of Key Provisions](#), ROPES & GRAY (March 26, 2020).

¹⁹ *Id.*

²⁰ *Id.*

²¹ See generally [Federal Government Releases Resource Package for Hospitals Facing COVID-19 Surge](#), ROPES & GRAY (Apr. 22, 2020).

²² [HHS Announces Expanded Medicare Telehealth Coverage](#), ROPES & GRAY (March 19, 2020); see, e.g., [Illinois's Expansion of Access to Health Care via Telehealth Executive Order 2020-09 & Medicaid Emergency Rulemaking](#), ROPES & GRAY (Apr. 6, 2020).

²³ COVID-19 Telehealth 50-State Licensure Waiver Tracking Survey, ROPES & GRAY (please contact your Ropes & Gray attorney for more information).

²⁴ See also D.5. – Reimbursement, Expansion of Medicare Reimbursement for Telehealth Services.

²⁵ [COVID-19 Issues for AMCs](#), ROPES & GRAY (Apr. 7, 2020); see, e.g., [California Authorities Issue a Wide Range of Rules and Guidance on COVID-19](#), ROPES & GRAY (Apr. 28, 2020).

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	reimbursement flexibilities to support this initiative, such as allowing partially and wholly relocated provider-based outpatient departments to be paid under the Outpatient Prospective Payment System rather than the lower rates under the Physician Fee Schedule.	
4. Triage Care Planning and Delivery	Scarce supplies and resources, including staff or faculty, and infectious disease controls may require a move from a conventional standard of care to a crisis standard of care. ²⁶	Triage team and plan development, documentation requirements, legal liability protection, patient and surrogate communications
5. CMS Guidance re: Reopening Facilities and Resuming Elective Services	CMS released guidance for the reopening of health care facilities to provide non-emergent, non-COVID-19 health care. The guidance would apply to providers, subject to state and local decision-making, based on gating criteria guidelines specified in the “Guidelines for Opening Up America Again.” ²⁷	State and local laws, ²⁸ capacity at facility, availability of resources (e.g., PPE, workforce)
F. Staffing Shortages		
Issue	Summary	Considerations
1. Modification of Licensure Requirements	States taking action to allow out-of-state or otherwise unlicensed (e.g., inactive, retired) professionals to practice in that state on an expedited basis by temporarily waiving or modifying certain statutory and regulatory background check requirements. ²⁹	Variability among state laws and/or emergency declarations, expedited licensure processes under state laws and/or emergency declarations, professional liability insurance
2. Non-Traditional Practice Arrangements	States implementing executive and emergency orders that deploy either non-traditional medical providers or traditional medical providers in non-traditional capacities. ³⁰	Variability among state laws and/or emergency declarations
3. Medicare and Medicaid Enrollment Processes &	CMS authorized expedited Medicare enrollment applications for new providers, temporarily waived certain background check requirements, and established a hotline	

²⁶ Ropes & Gray has summarized key considerations for triage policies in [Arkansas](#), [California](#), [Connecticut](#), [Florida](#), [Georgia](#), [Illinois](#), [Louisiana](#), [Maryland](#), [Massachusetts](#), [Michigan](#), [Pennsylvania](#), [Texas](#), [Washington](#); see generally [Federal Government Releases Resource Package for Hospitals Facing COVID-19 Surge](#), ROPES & GRAY (Apr. 22, 2020).

²⁷ [CMS Recommendations on Reopening Facilities to Provide Non-Emergent, In-Person Health Care](#), ROPES & GRAY (Apr. 22, 2020).

²⁸ See, e.g., [Illinois Extends and Modifies Its Stay-at-Home Order Through May 30, 2020 and Permits Elective Surgeries and Procedures as of May 11, 2020](#), ROPES & GRAY (May 4, 2020); [California Authorities Issue a Wide Range of Rules and Guidance on COVID-19](#), ROPES & GRAY (Apr. 28, 2020).

²⁹ [Dealing with Health Care Staffing Shortages in the Face of COVID-19](#), ROPES & GRAY (Apr. 7, 2020); see, e.g., [Massachusetts COVID-19 FAQs](#), ROPES & GRAY (Apr. 15, 2020); [Reinstatement of Illinois Medical and Other Health Care Licenses and The Introduction of Temporary Practice Permits for Out-of-State Practitioners](#), ROPES & GRAY (Apr. 3, 2020).

³⁰ [Dealing with Health Care Staffing Shortages in the Face of COVID-19](#), ROPES & GRAY (Apr. 7, 2020).

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Accelerated Billing Privileges	for certain suppliers and providers to enroll and receive temporary Medicare billing privileges. Many state Medicaid programs have requested and received use of similar waivers. ³¹	
4. Credentialing & Privileging	CMS waiving some of its requirements related to physician credentialing. States also suspending the traditional credentialing and privileging process for physicians. ³²	Professional liability insurance
G. Labor and Employment		
Issue	Summary	Considerations
1. Deferral of Social Security Tax	Delay of payment of employer social security payroll taxes from March 27, 2020, to January 1, 2021. Fifty percent (50%) of the deferred amount paid on December 31, 2021. The remaining 50% paid on December 31, 2022. ³³	Eligibility, documentation and recordkeeping
2. Safe Workplaces for Health Care Workers	The Department of Labor and HHS developed joint guidance documents regarding how to prepare workplaces for COVID-19. The guidance documents specifically address health care workers who are classified as being at the highest level of risk. ³⁴	Policies and procedures, essential workers, engineering controls, administrative controls, safe work practices, availability of PPE ³⁵
3. Families First Coronavirus Response Act (FFCRA) Paid Sick Leave	The FFCRA provides that employers with fewer than 500 employees must provide paid family and sick leave for certain qualifying reasons related to COVID-19. ³⁶ Employers may elect to exclude from FFCRA paid sick leave “health care providers,” which is defined broadly to include most people who work at a health care facility, and “emergency responders,” which the Department of Labor intends to interpret broadly.	Eligibility, documentation and recordkeeping
H. Clinical Research		
Issue	Summary	Considerations
1. Administrative Flexibilities for Federal Research Grants, Contracts, and Other Transactions	The Office of Management and Budget and federal grant agencies have published guidance on flexibilities for	Evolving individual agency guidance and FAQs, institutional policy, disruptions to research, documentation and recordkeeping requirements

³¹ *Id.*

³² *Id.*

³³ [Bipartisan Proposal for Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\) – Summary of Key Provisions](#), ROPES & GRAY (March 26, 2020).

³⁴ See also [Understanding the Challenges of Workplace and Business Re-Opening](#), ROPES & GRAY (Apr. 20, 2020).

³⁵ See generally [Federal Government Releases Resource Package for Hospitals Facing COVID-19 Surge](#), ROPES & GRAY (Apr. 22, 2020).

³⁶ [COVID-19 FAQs: Updated April 15, 2020](#), ROPES & GRAY (Apr. 15, 2020).

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	applications, reporting, and compliance with award conditions, including the charging of salaries. ³⁷	
2. Disruptions to Domestic & International Clinical Trials	The Food & Drug Administration (FDA), National Institutes of Health (NIH), and Office for Human Research Protections (OHRP) released guidance documents regarding how sponsors, investigators, and institutional review boards (IRBs) should conduct clinical trials during the COVID-19 pandemic. ³⁸ Foreign regulatory authorities have also issued related guidance. ³⁹	Safety of trial participants, data integrity, informed consent changes, changes in location of research activities from central site to local sites and attendant contracting considerations, scarcity in supplies and resources at sites (including staff or faculty), requirements to delay elective treatments, IRB approval, institutional policies, FDA regulatory review and requirements, reimbursement, waivers on certain telehealth requirements
3. Additional Funds for COVID-19-related Research and Other Activities Pursuant to Federal Stimulus Legislation	Provide supplemental funding for research and other activities to support various COVID-19 efforts. The funds included an estimated \$7B to HHS/Biomedical Advanced Research and Development Authority (BARDA) and the Health Resources and Services Administration (HRSA), \$1.7B to NIH, and \$75M to the National Science Foundation.	Documentation and certification requirements, requirements under funding opportunity announcements and requests for proposals, data rights, and data sharing
I. FDA Regulatory		
Issue	Summary	Considerations
1. Emergency Use Authorizations (EUA)	FDA authorizing certain unapproved or unapproved uses of devices, in vitro diagnostic products, laboratory developed tests, personal protective equipment, decontamination systems, ventilators, and therapeutics.	Quality systems at manufacturing sites, labeling, distribution systems, enforcement, advertising and promotion, contracting (e.g., warranties and disclaimers)
2. Laboratory-Developed Tests	FDA allowing laboratories certified to perform high-complexity testing under the Clinical Laboratory Improvement Amendments (CLIA) and commercial test kit makers to use tests they develop and validate to	CLIA/state licenses and certificates, state executive orders waiving licensing requirements, state-based

³⁷ [Federal Funding, Research Continuity and Coronavirus: Funding and Chargeable Costs Flexibilities](#), ROPES & GRAY (March 27, 2020).

³⁸ [FDA and NIH Release Guidance on Ongoing Clinical Trials Affected by COVID-19](#), ROPES & GRAY (March 27, 2020).

³⁹ [COVID-19 Disruptions of International Clinical Trials: Comparing Guidances Issued by Key European National Regulatory Authorities, the Australian Department of Health, Brazil's ANVISA, Health Canada and Singapore's HAS](#), ROPES & GRAY (Apr. 8, 2020).

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	diagnose COVID-19 even before FDA issues an EUA for their test. States may also authorize laboratories within the state to develop and perform a test for COVID-19, even if the laboratories do not apply to FDA for an EUA. ⁴⁰	policies, pending legislation in the Senate
3. Importation of Medical Products	FDA published new importation instructions for critical personal protective equipment and devices.	U.S. Customs and Border Protection import issues, covered materials
J. Liability		
Issue	Summary	Considerations
1. False Claims Act and Civil Monetary Penalties Act Liability	The CARES Act programs offering additional or incremental funding that are subject to conditions of eligibility pose potential False Claims Act and Civil Monetary Penalties Act liability, in the absence of effective controls. ⁴¹	Billing fraud theories for expanded coverage, compliance certification for federal research funds, documentation and recordkeeping requirements, opportunities for increased whistleblower activities
2. CMS Waivers of Stark Law Liability	CMS issued qualified blanket waivers of the Stark Law for certain financial relationships and referrals related to the national public health emergency. ⁴²	Coordination of waiver’s sunset with agreement termination, limitations on modifications of fair market value requirement
3. CARES Act & State-Based Immunity from Liability	Insulates licensed health care professional “volunteers” from liability in providing health care services during the national emergency, except for gross negligence or other misconduct. State laws and/or executive orders may provide broader immunity protections. ⁴³	Licensure requirements, scope of immunity
4. Public Readiness and Emergency Preparedness (PREP)	HHS issued a declaration under the PREP Act providing tort liability immunity to certain individuals and entities against any claim of loss resulting from the manufacture,	Scope of immunity under PREP Act and declaration,

⁴⁰ [Will the Coronavirus Spur Passage of LDT Reform Legislation?](#), ROPES & GRAY (March 25, 2020).

⁴¹ [CARES Act Oversight: False Claims Act Risk under the CARES Act for Health Care Providers](#), ROPES & GRAY (Apr. 8, 2020); [Heightened Oversight May Lead to Rise in False Claims Act Actions Related to Assistance Programs Under the CARES Act](#), ROPES & GRAY (Apr. 4, 2020).

⁴² [COVID-19 Stark Law Waiver](#), ROPES & GRAY (Apr. 2, 2020).

⁴³ [COVID-19 Issues for AMCs](#), ROPES & GRAY (Apr. 7, 2020); [Bipartisan Proposal for Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\) – Summary of Key Provisions](#), ROPES & GRAY (March 26, 2020); see, e.g., [Illinois Extends and Modifies Its Stay-at-Home Order Through May 30, 2020 and Permits Elective Surgeries and Procedures as of May 11, 2020](#), ROPES & GRAY (May 4, 2020) (explaining that Governor Pritzker amended a previous grant of immunity from civil liability to health care professionals, facilities, and volunteers assisting in the fight against COVID-19 in Illinois); [Dealing with Health Care Staffing Shortages in the Face of COVID-19](#), ROPES & GRAY (Apr. 7, 2020) (noting that, in New York, Governor Cuomo granted immunity to select health care providers in New York for claims arising out of providing medical services in support of New York’s response to the COVID-19 outbreak, other than in the case of gross negligence).

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Act Immunity from Liability	distribution, administration, or use of medical countermeasures, except for claims involving willful misconduct. ⁴⁴	whether an AMC is a “Covered Person”
5. Interruptions to Open Litigation and Investigation Matters	The Department of Justice (DOJ) is using certain tactics to extend litigation and investigation matters. DOJ asked Congress for broadened powers in this regard.	Enforcement priorities
K. Tax		
Issue	Summary	Considerations
1. IRS Extension of Filing Deadlines & Due Dates for Tax-Exempt Organizations	Certain federal tax returns, tax payment obligations, and time-sensitive actions relevant to tax-exempt obligations have extended filing deadlines until July 15, 2020. ⁴⁵	
L. Patient Privacy and Confidentiality		
Issue	Summary	Considerations
1. HHS Office for Civil Rights (OCR) Enforcement Discretion re: Telehealth Remote Communications and Disclosures for Public Health and Health Oversight Activities	OCR announced HIPAA enforcement discretion against covered health care providers or their business associates for good-faith uses and disclosures of protected health information (PHI) for public health activities or health oversight activities, even if not expressly permitted in the applicable business associate agreement. Discretion also employed against covered health care providers providing telehealth services. ⁴⁶	Parameters of enforcement discretion, other federal or state laws re: patient privacy, notification requirements for business associates, HIPAA minimum necessary standard, disclosure of substance use disorder information (42 C.F.R. Part 2)
2. HHS OCR Guidance re: PHI of Patients Exposed to COVID-19	OCR outlined circumstances for the permissible uses and disclosures of PHI of an individual infected with or exposed to COVID-19 without an individual’s HIPAA authorization.	Parameters of enforcement discretion, other federal or state laws re: patient privacy, HIPAA minimum necessary standard
M. Collaborations		
Issue	Summary	Considerations
1. State Partnerships & Public-Private Partnerships	States and private companies are partnering with universities and nonprofit entities in response to the COVID-19 national emergency (<i>e.g.</i> , opening testing sites).	Immunity from liability, state-specific laws, contracting questions, patient privacy and confidentiality

⁴⁴ [Dealing with Health Care Staffing Shortages in the Face of COVID-19](#), ROPES & GRAY (Apr. 7, 2020).

⁴⁵ [IRS Extends Filing Deadlines and Other Due Dates for Tax-Exempt Organizations](#), ROPES & GRAY (Apr. 10, 2020); [Administration Defers April 15 Tax Payments until July 15](#), ROPES & GRAY (March 18, 2020).

⁴⁶ [OCR Releases FAQs Clarifying Telehealth Enforcement Discretion During COVID-19](#), ROPES & GRAY (March 24, 2020).