

Featured Professionals

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Funding for Health Care Companies Under the CARES Act

Legal Update

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Updated as of April 10, 2020

On Friday, March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law. There is a lot to digest and numerous sources of relief for businesses of all sizes, across a wide range of industries. In this article, we highlight a few key sources of relief for our health care clients. This article contains the latest information on the Paycheck Protection Program and \$100 billion fund for hospitals and providers authorized by the CARES Act as of as of April 10, 2020.

Paycheck Protection Program (i.e., Forgivable SBA Loans)

Key Takeaway: *If you have 500 or fewer employees, you may be eligible for a forgivable small business loan to help cover payroll and other expenses. We anticipate most independent physician practices, clinics and other health care providers that meet the size limitations will be eligible for these loans.*

The CARES Act includes approximately \$349 billion for federally-guaranteed loans for small businesses. The program, called the Paycheck Protection Program, has been the subject of agency rulemaking and several guidance documents released by the U.S. Department of the Treasury and the Small Business Administration (SBA) since the CARES Act was passed. Below are the highlights, up to date as of April 10, 2020. Please see the link below for additional detailed information if you are considering applying for the program.

Who is eligible? With a few exceptions for larger entities, these loans will be available for eligible borrowers that employ up to 500 individuals. Eligible borrowers must certify, in good faith, that they have been impacted by COVID-19 and that the funds will be used to retain workers and maintain payroll and other debt obligations. There are affiliation rules that may impact eligibility for certain private equity-backed providers or those affiliated with a larger health system.

What are covered expenses? The loans may be used to cover payroll costs, health benefits, mortgage interest payments, rent, utilities and interest on other debt obligations accrued prior to February 15, for expenses incurred between February 15 and June 30, 2020. Covered payroll costs, however, are capped and exclude cash compensation to individual employees in excess of an annualized amount of \$100,000. The Interim Final Rule clarified that 75% of the loan proceeds must be used on payroll costs. An unpublished version of the Interim Final Rule can be found here (scheduled to be published on April 15, 2020).

What amount will be forgiven? While we still anticipate additional guidance from SBA on loan forgiveness terms, here's what we know as of April 10, 2020: Employers will be eligible for loan forgiveness, up to the principal amount of the loan, based on the amount of the loan used by the employer for covered payroll costs, mortgage interest, rent and utilities during the designated loan forgiveness period – *an 8-week period that will commence on the date the lender makes the first disbursement of the PPP loan to the borrower.** In other words, the forgivable amount is that spent on eligible costs starting on the date the borrower receives the money and continuing through the next 8 weeks.

Additional eligibility criteria added by the Interim Final Rule dictate that *75% of the loan forgiveness amount must be attributable to payroll costs.*

The original eligibility criteria of retaining employees and payroll levels still stand. Forgiveness amounts will be reduced if there's a reduction in FTE (i.e., the amount forgiven will be proportionally reduced by the number of FTE during the eight-week forgiveness period as compared to a baseline period) and/or if there is a reduction in wages over 25% for the loan forgiveness period versus the prior quarter (for employees who have an annualized salary of more than \$100,000).

There is also a re-hire provision, which means employers that laid off employees or reduced wages from February 15, 2020, through April 26, 2020—will not have those numbers counted against them for purposes of loan forgiveness, so long as such reductions in FTE/salaries are eliminated by June 30, 2020.

**Note, an earlier version of this article stated that that the period for loan forgiveness would look at uses of the loan during the period of February 15 – June 30, 2020. This version clarifies that forgiveness is based on covered amounts spent during the specific eight-week loan forgiveness window immediately following the receipt of the funds to the borrower.*

For information specific to the Paycheck Protection Program, please see Fredrikson & Byron's article "Payroll Protection Loans Under the CARES Act: Updated FAQs for Companies Seeking Assistance."

Economic Injury Disaster Loans

Key Takeaway: *In addition to the Paycheck Protection Program loans, the CARES Act expands the existing SBA disaster loans, which offer another source of funding and have an opportunity to be forgiven, in part, if refinanced with the Paycheck Protection Program loans.*

Emergency economic injury disaster loans (EIDLs) were already available to small businesses in states where the governor has declared a state of emergency. The CARES Act allocates \$10 billion for these loans and expands eligibility for the period between January 31, 2020, and December 31, 2020. The maximum amount available is \$2 million, and the loan may be used by small businesses to pay off debt, payroll and other bills that cannot be paid because of the disaster.

The CARES Act stipulates that, in issuing these loans, the SBA may waive any personal guarantee on loans less than \$200,000 and offer loans solely based on credit score. Loan recipients may request an advance on a loan of less than \$10,000, which the SBA must make available within three days. Additionally, while companies may be eligible for loans under both programs, a borrower cannot seek recovery under an EIDL for the same costs that are covered by a Paycheck Protection Program loan.

For information specific to SBA EIDLs, please see Fredrikson & Byron's article "SBA Economic Injury Disaster Loans Due to COVID-19 FAQs."

\$100 Billion Public Health Fund for Hospitals/Providers

Key Takeaway: *More funding may be available in the form of grants from the US Department of Health and Human Services (HHS). While providers are anxious to have access to these funds, we are waiting on more guidance and criteria from HHS.*

The CARES Act establishes a \$100 billion fund for hospitals and other providers under the Public Health and Social Services Emergency Fund, to prevent, prepare for and respond to coronavirus (domestically or internationally), for necessary expenses to reimburse eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus.

Starting April 10, 2020, \$30 billion of these funds are being delivered to health care providers, largely via direct deposit. The payment is based on a provider's share of total Medicare FFS reimbursements in 2019 (not Medicare Advantage payments). HHS notes that this set of funds "will provide relief to both providers in areas heavily impacted by the COVID-19 pandemic and those providers who are struggling to keep their doors open due to healthy patients delaying care and cancelled elective services."

What about the remaining \$70 billion? HHS has indicated those will be targeted distributions that will focus on providers in areas particularly impacted by the COVID-19 outbreak, rural providers, providers of services with lower shares of

Medicare reimbursement or who predominantly serve the Medicaid population, and providers requesting reimbursement for the treatment of uninsured Americans.

The full description of the CARES Act Provider Relief Fund from HHS can be found here, along with a link to the terms and conditions.

Minnesota COVID-19 Response Grants

The legislature has approved \$200 million for health care grants to support costs related to planning for, preparing for or responding to an outbreak of COVID-19. A \$150 million COVID-19 Health Care Response Grant will be granted through a Request for Proposal (RFP) process for costs related to planning for, preparing for or responding to the COVID-19 outbreak. The \$150 million Response Fund may also be used for administering the grants and for testing or facilities to provide treatment, isolation or quarantine. Originally anticipated in the first week of April, as of April 8, grant applications for these funds are anticipated “within the next week.”

FAQs, including eligible recipients and permitted purposes of the funding are available here.

COVID-19 Employment Question of the Day