



COVID-19 Pandemic Legislative and Regulatory Changes: A Physician Practice's Guide

Presentation to NC Medical Group Managers

April 14, 2020

- **Legal disclaimer –**

- Portions of this communication may qualify as “Attorney Advertising” in some jurisdictions. Parker Poe intends for it to be used solely for educational and informational purposes only.
- This communication also is not intended and should not be construed as legal advice, nor does it establish an attorney client relationship. For questions, contact one of the presenters.
- The law is changing rapidly in this area. This presentation is our best attempt to summarize the current state of the law, but is subject to change.



Today's Presenters



Joy Hord

Health Care

joyhord@parkerpoe.com

704.335.9848



Tory Summey

Employment & Labor

torysummey@parkerpoe.com

704.335.9036



Matt Wolfe

Health Care

mattwolfe@parkerpoe.com

919.835.4647



Presentation Topics

- CARES Act (COVID Legislation Round 3)
 - Employee Retention Tax Credit
 - Unemployment Expansion
 - Paycheck Protection Program
 - Economic Impact Disaster Loans (Including Grant Advances)
 - Main Street Business Lending
 - Public Health and Social Services Emergency Fund
- Accelerated And Advance Payment Program (Expansion)
- The Families First Coronavirus Response Act (COVID Round 2)
 - FMLA Expansion Leave
 - Emergency Paid Sick Leave
 - The “health care provider” exception
- Business Interruption Insurance Policies
- Telemedicine Expansion
- North Carolina Medicaid Policy Changes
- Questions



COVID RESPONSE FEDERAL LEGISLATION (SO FAR)

- COVID Legislation at Federal Level
 - Round One: \$8.3 billion supplemental appropriation, signed into law on March 6, 2020
 - \$6.7B allocated to domestic governmental expenditures
 - \$6.2B of that to DHHS (Public Health and Social Services Emergency Fund, CDC, FDA)
 - Round Two: Families First Coronavirus Response Act, signed into law on March 18, 2020
 - Round Three: Coronavirus Aid, Relief, and Economic Security Act (CARES Act), signed into law on March 27, 2020
 - Round Four and Round Five (?): under discussion
- Additional Laws/Regulatory Changes/Actions in addition to laws specifically passed in response to COVID-19 at federal level

THE CARES ACT (AKA COVID ROUND 3)

Coronavirus Aid, Relief, and Economic Security Act



CARES Act

Employee Retention Tax Credit

- Refundable tax credit of 50% of qualified wages
 - Applies to qualified wages from 3/12/20 – 1/2/21
 - Cannot exceed \$100,00 per employee
- Eligible Employer:
 - Business suspended by government order, or
 - 50% decline in gross revenues
- Qualified Wages:
 - More than 100 employees = wages paid to employees who are not providing services due to suspension or downturn
 - 100 or fewer employees = all wages paid while employee qualified
- Not available for wages subject to FFCRA tax credit or if received Paycheck Protection Program loan

CARES Act

Unemployment Expansion

- \$600 weekly unemployment benefit in addition to maximum benefit under state law
 - Maximum of 39 weeks
 - No cap based on prior earnings
 - Paid from January 27, 2020. Expires December 31, 2020.
- Benefits available to persons not typically eligible for state benefits:
 - Independent contractors
 - Consultants
 - Self-employed
 - Seeking part-time employment
- Benefits available to individuals:
 - eligible for state unemployment benefits,
 - Who exhausted state benefits, or
 - Who meet listed COVID-19-related condition, such as:
 - Diagnosis
 - Caring for family member
 - Child unable to attend school
 - Unable to reach workplace
 - Forced to quit as a result of COVID-19
- Employees who remain employed through telework or collecting paid leave benefits are not eligible



CARES Act

Unemployment Expansion/State Implementation

NC

- ✓ Waived one-week waiting period (EO 118)
- ✓ Waived work search requirement (EO 118)
- ✓ Employers not charged for COVID19 claims
- ✓ Reduction in hours may qualify for benefits
 - Working less than 60% of regular schedule
 - Benefits reduced by earnings

SC

- ✓ Waived one-week waiting period (EO 2020-11)
- ✓ Waived online work search requirement (EO 2020-10)
 - “Actively seeking” requirement still applies but satisfied if reasonably seeking to return to same employer
- ✓ Employers will not be charged for COVID-19 claims
- ✓ Reduction in hours may qualify for benefits
 - working fewer than 30 hours & earning less than benefit

CARES Act

Paycheck Protection Program

- Forgivable loans to small businesses (must meet SBA definition)
- Forgivable if:
 - Used to cover payroll (75%), and up to 25% for mortgage interest, rent, and utility costs over 8-week period after loan
 - Employee and compensation levels maintained
- Terms:
 - 1% interest
 - 2 year maturity
 - Payments deferred 6 months
- Eligible Employers:
 - 500 employees or fewer
- Eligible Uses of Funds:
 - Payroll costs, including benefits
 - Interest on mortgage
 - Rent
 - Utilities
- Amount = 2.5 months of average monthly payroll
 - Payroll costs capped at \$100,000 per employee
- Forgiveness:
 - Reduced if reduce full-time headcount
 - Reduced if decrease wages by more than 25%
 - Re-hiring: Employers have until 6/30/20 to restore headcount or wages



CARES Act

Economic Injury Disaster Loan (EIDL)

- Loans to small businesses (must meet SBA definition)
- Will not be forgiven
- Maximum loan is \$2 million with exact amount based on economic injury suffered
- Up to \$10,000 advance (grant) which does not have to be repaid, but would reduce any PPP forgiveness
- Terms:
 - 3.75% interest rate
 - Terms go up to 30 years
- Guaranty and Collateral
 - Above \$25,000 requires collateral
 - Above \$200,000 requires individual guaranty
- Interaction with PPP:
 - Advance reduces forgiveness amount
 - An EIDL loan can be refinanced into a PPP loan.
 - Can have both a PPP loan and an EIDL loan (but not for same purpose)
- Eligible Uses of Funds:
 - Most uses, but cannot be used for (i) same purpose as PPP loan if both are applied for (as stated above), or (ii) physical repairs, expansion, employee bonuses or refinancing long-term debt

CARES Act

Main Street Business Lending

- Eligibility
 - Less than 10,000 employees or less than \$2.5B in annual revenue
- New or extended loans
- New loans of \$1M to \$25M
- Extended loans up to \$150M
- No collateral for new loans; no new collateral for extended loans
- Interest deferred for one year
- Interest at SOFR (1.04% as of April 13, 2020) plus 250-400 basis points



CARES Act

Public Health and Social Services Emergency Fund

- Eligibility
 - Must be healthcare entity that diagnoses, tests, and cares for possible and actual cases of COVID-19
- First \$30B distributed to Medicare enrolled entities
 - Payments received from first \$30B have reflected 6+% of 2019 Medicare billings
 - Paid first, attestation statement signed later.
 - CARES Act Grant Fund Terms and Conditions
- Remaining \$70B
 - Non-Medicare billers
 - Services to uninsured
- Qualifying Expenses
 - Can be used to cover lost revenues and pandemic related expenses, such as medical supplies, the construction of temporary structures, leasing of property, increased workforce, emergency operation centers, facility retrofitting, and surge capacity
 - Exception: costs subject to reimbursement from some other source

ACCELERATED AND ADVANCE PAYMENT PROGRAM

- Eligibility
 - Billed Medicare for claims within 180 days immediately prior to the date of signature on the practice's request form;
 - Must not be in bankruptcy;
 - Must not be under active medical review /integrity investigation; and
 - No outstanding delinquent Medicare overpayments.
- Amount of advance
 - For physician groups, up to 100% of Medicare for a three month period (Oct – Dec. 2019)
- Repayment
 - Starts 120 days after issuance of payment
 - Most providers have 210 days to repay
 - Repayments will be made by offset payments from future Medicare claims
- How to Apply
 - Accelerated/Advance Payment Request forms vary by contractor and can be found on each individual MAC's website. Complete an Accelerated/Advance Payment Request form and submit it to your servicing MAC via mail or email.



FAMILIES FIRST CORONAVIRUS RESPONSE ACT

(AKA COVID ROUND 2)



Families First Coronavirus Response Act (Expanded FMLA leave)

- Employers with fewer than 500 employees
 - Potential hardship exemption for employers with fewer than 50 employees
- Eligible employees
 - employed at least 30 days
 - (different from regular FMLA)
- Permits up to 12 weeks of leave for:
 - Care of son/daughter if schools or child care are closed
- Relation to Paid Leave:
 - First 10 days may be unpaid
 - Employee may elect to use paid leave instead
 - **Paid leave after 10 days at two-thirds of regular rate**
 - cap of \$200 per day, \$10,000 aggregate
 - Varying schedule = average hours over last 6 months
- Relation to Existing FMLA:
 - **Not** in addition to existing FMLA leave
- Effective date: **April 1, 2020**

Families First Coronavirus Response Act (Emergency Paid Sick Leave)

- Employers with fewer than 500 employees
 - Limited hardship exemption for employers with fewer than 50 employees (limited to reason (5) below)
- Up to 2 weeks paid leave for:
 - (1) quarantine
 - (2) self-isolation advised by health care provider
 - (3) symptoms
 - (4) caring for individual quarantined/self-isolated
 - (5) taking care of child if school/child care closed
 - (6) other substantially similar condition specified by HHS
- Duration:
 - Full-time = 80 hours
 - Part-time = equivalent of two weeks
- Compensation:
 - Full rate (capped at \$511 per day and \$5,110 total) if (1), (2), or (3)
 - 2/3 (capped at \$200 per day and \$2000 total) if (4), (5), or (6)
- Existing policies:
 - In addition to existing leave
 - Employer may not require use of other paid leave before emergency sick leave
- Effective date: April 1, 2020

Families First Coronavirus Response Act

Health Care Provider Exemption

- “An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of [FFCRA leave].”
- Election can be made on “case-by-case” basis
- DOL guidance being updated regularly
- “health care provider” includes “anyone employed at” the following:
 - Doctor’s office
 - Hospital
 - Health care center
 - Clinic
 - Post-secondary education institution offering health care instruction
 - Medical school
 - Local health department or agency
 - Nursing facility
 - Retirement home
 - Home health care provider
 - Lab or medical testing facility
 - Pharmacy
 - Any similar employer

BUSINESS INTERRUPTION INSURANCE

- Review current policies to determine if your practice has business interruption coverage and whether it is covered by the COVID-19 pandemic.
- Even if your practice's policies do not apply, a notice of claim should be submitted nevertheless
 - Some states are obligating insurers to cover losses caused by the COVID-19 pandemic under business interruption insurance – other states may follow.

TELEHEALTH EXPANSION

- Medicare Coverage
- Medicaid Coverage
- HIPAA



SELECT NC MEDICAID POLICY CHANGES

- Telehealth/Virtual Patient Communication Guidance
- Face-to-Face Provider Site Visits and Fingerprinting Requirements Temporarily Suspended
- Public Health Emergency Enrollment Applications for Health Care Professionals Not Currently Enrolled as an NC Medicaid Provider

Today's Presenters



Joy Hord

Health Care

joyhord@parkerpoe.com

704.335.9848



Tory Summey

Employment & Labor

torysummey@parkerpoe.com

704.335.9036



Matt Wolfe

Health Care

mattwolfe@parkerpoe.com

919.835.4647



Visit www.ParkerPoe.com for legal updates.



Parker Poe

Attorneys & Counselors at Law

www.parkerpoe.com