



The CARES Act & Other Financial Relief Programs for Senior Living & Care Providers

LANE POWELL WEBINAR

Today's Speakers

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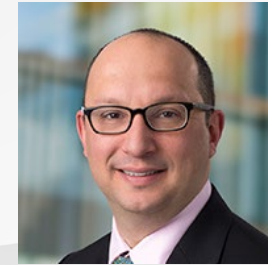
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Agenda

- Update on developments in Washington, D.C.
- CARES Act tax relief provisions
- Available favorable loans under the CARES Act

Federal Developments

Relief Provided to Offset Healthcare Impact

- LTC – Cost of care up short and long term. Census declining 1% weekly decline. Loss of admission from elective procedures.
- Hospitals in dire need of government relief. Most departments closed and revenue significantly curtailed. Many hospital financial failures looming if healthcare system remains closed beyond May.

Cash Flow Replacement Loans

- Accelerated Payments. Allows Medicare Administrative Contractors (MACs) to issue no-interest short term loan payments in certain circumstances including national emergencies. SNFs can request up to 100% of the Medicare Part A Payments they received from October-December 2019. CMS has already tabulated the amount available so SNFs do not need to submit support financial documentation.
- Deferral of 6.2-percent payroll tax. Defer the deadline for employers to pay the 6.2-percent tax on wages from the date of enactment through the end of 2020. Employer would ineligible to defer payment of such taxes if the taxpayer receives loan forgiveness under a new loan program established and administered by the Small Business Administration. (covered later in greater detail)

Census Loss Mitigation

- Section 1812(f) waiver of the 3-day qualifying hospital stay.
- CMS is waiving the requirement for a 3-day prior hospitalization for coverage of a SNF stay, which provides temporary emergency coverage of SNF services without a qualifying hospital stay, for those people who experience dislocations, or are otherwise affected by COVID-19.
- The qualifying hospital stay waiver applies to all SNF-level beneficiaries under Medicare Part A, regardless of whether the care the beneficiary requires has a direct relationship to COVID-19.
- Allows “skilling” of COVID-19 positive Medicaid residents.

Financial Support Bridges

- Medicare sequestration – Cares Act temporarily suspends the -2% sequestration payment adjustment on Medicare fee-for-service payment. This means that SNFs will see a 2% payment increase on Medicare claims effective May 1, 2020. The increase is effective for claims with dates of service from May 1, 2020, through December 31, 2020.
- FY '21 proposed Medicare payment rule – no PDPM changes & a 2.3% Medicare market basket increase effective October 1, 2020.
- Increased federal support for state Medicaid programs – CARES Act provides temporary 6.2% increase in Federal Medical Assistance Percentages (FMAP). This will allow for state Medicaid programs to have the funding needed to ensure that the most vulnerable patients and residents have continued quality care during the COVID-19 pandemic.

Financial Support Bridges

- CARES Act Provider Relief Fund
 - \$100 billion in relief funds to hospitals and other healthcare providers on the front lines of the coronavirus response. This funding will be used to support healthcare-related expenses or lost revenue attributable to COVID-19.
 - \$30 billion distributed immediately – with payments arriving via direct deposit beginning April 10, 2020 – to eligible providers throughout the American healthcare system. These are payments, not loans, to healthcare providers, and will not need to be repaid.
 - All facilities and providers that received Medicare fee-for-service (FFS) reimbursements in 2019 are eligible for this initial rapid distribution.
 - Remaining \$70 billion? The Party Line: The Administration is working rapidly on 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.

Future Financial Support Bridges

- Factors for allocating remaining \$70 billion:
 - Allocation to providers with significantly more consideration of Medicaid utilization as criteria for distribution of relief dollars.
 - Consideration of providers serving high volume of Medicare Advantage beneficiaries (only FFS considered in the initial \$30 billion distribution).
 - Additional financial relief for facilities serving confirmed COVID-19 patients/residents.

Additional Relief Imminent?

- Tuesday, April 21, 2020: Senate passed a \$484 billion relief package, after Democrats and Trump administration officials finalized an agreement. *Stimulus 3.5*
- HR 266 would provides an additional \$75 billion for the Public Health and Social Services Emergency Fund—the same vehicle that recently disbursed funding for healthcare providers. For the new funding round, providers will need to submit an application demonstrating a need for funding.
 - There is no prohibition on funding entities that have already been funded from this account. However, you cannot be reimbursed for expenses already reimbursed from this or other funds. You will need to demonstrate that there are expenses/lost revenue not covered from the initial payment.
 - The legislation states that these funds can be used for personal protective equipment.

Employee Retention Credit

Summary of the ERC

- Provides relief and liquidity for those who cannot get a PPP loan
- “Eligible employer” provided credit against “applicable employment taxes” for each quarter of 50% of “qualified wages” paid to each employee
- Qualified wages taken into account limited to \$10k per employee, capping the credit to \$5k per employee

Eligible Employer

- Any employer that was carrying on a trade/business during 2020 that had a period either:
 1. For which operations were fully or partially suspended by government order due to COVID-19; or
 2. Beginning with first calendar quarter starting after 12/31/19, in which gross receipts dropped by more than 50% compared to the same quarter in the prior year and ending with the calendar quarter in which gross receipts are greater than 80% of the same gross receipt for the same quarter in the prior year
- Tax-exempt organizations automatically treated as both carrying on a trade/business in 2020 and as having operations suspended by government order due to COVID-19
- Employers reaching \$10k/employee limit generally renders the end of an employer's status as an "eligible employer" largely academic

Applicable Employment Taxes

1. The taxes imposed under IRC Section 3111(a) (employer portion of social security taxes);
2. The portion of the taxes imposed under IRC Section 3211(a) are attributable to the rate in effect under IRC Section 3111(a) (RRTA); and
3. So much of the taxes imposed under IRC Section 3221(a) as are attributable to the rate in effect under IRC Section 3111(a) (RRTA taxes)

Qualified Wages

- Meaning depends on whether the average number of full-time employees of the qualified employer exceeds 100
 - **100 full time employees or less:** All wages paid to an employee during the periods the employer is an eligible employer
 - **More than 100 full time employees:** Wages paid to an employee during the periods the employer is an eligible employer with respect to which the employee is *not providing services*
- Full time employee defined by reference to IRC Section 4950H: “employee who is employed on average at least 30 hours of service per week”

Equivalent Duration Provision

- Wages paid for which the average number of full time employees is more than 100 cannot exceed the amount such employee would have been paid for working an equivalent duration during the 30-day period immediately preceding when the employer became an eligible employer
- This provision is unclear
- It appears that it prevents paying at a higher rate to get to \$10k cap faster

Qualified Health Plan Expenditures

- Qualified wages generally include health care costs of the employer associated with amounts treated as qualified wages
 - **100 full time employees or less:** includes all qualified health plan expenditures
 - **More than 100 full time employee:** the “not providing services” limitation applies
- Wages described in IRC Section 51(i) (related individuals) and IRC Section 280C (wages for which certain other credits are taken) are excluded from qualified wages

Keeping Track of Amounts Paid for Not Working

- Keeping track of wages paid to someone not providing services can be difficult, especially for an employee generally able to work from home
- Consider having employees record time during the workday the employee is not working
- Consider adopting a policy of reduced work schedule *with no reduction in salary*

Limitations on Qualified Wages

1. No credit is allowed for a business that receives a PPP loan
2. No wages paid to an employee are taken into account if the employer is allowed an IRC Section 51 credit (work opportunity credit) with respect to the employee for the period
3. An IRC Section 45S credit (paid family and medical leave credit) is not allowed for any wages used to calculate the employee retention credit
4. The credit is only allowed for wages paid after March 12, 2020, and before January 1, 2021

Deferral of Employer Portion of Social Security Taxes

Summary

- All employers can defer payment of the employer portion of social security taxes otherwise due between 3/27/2020 and 12/31/2020
- Half of the deferred taxes are due by 12/31/2021 and other half due by 12/31/2020
- This is effectively an interest-free loan of 6.2% of all wages paid in 2020 from around 3/27
- Good option for any business concerned about cash flow
- Document the decision and ensure timely payment of the deferred payroll taxes

Interaction With PPP Loan

- PPP loan forgiveness only prevents deferral of payment obligations subsequent to “the date the lender issues a decision to forgive the loan” (the “Forgiveness Date”)
- Deferral of the employer portion of social security taxes prior the Forgiveness Date remains deferred until December 31, 2021 (half) and December 31, 2022 (other half).)

Other CARES Act Business Tax Provisions

Other Business Tax Provisions in the CARES Act

- Relaxation of NOL carryover limits and allowance of a 5 year NOL carryback – get cash by amending returns
- Acceleration of use of corporate AMT credit
- Relaxation of interest deduction limitations
- Fixed the retailer glitch in the TCJA
- No excise tax on alcohol used for hand sanitizer
- Relaxation of IRC § 481 limitation – check if this applied to your 2018 return

Paycheck Protection Program

Program Background

- Goal is to keep businesses open and employees on staff
- Most small businesses (under 500 employees) are eligible
- Size determination according to the SBA attribution rules.
- No personal guarantee or collateral requirements
- Eligible for forgiveness on qualifying costs (payroll; mortgage; rent; utilities) during 8-week period after loan is made

Status

- Original \$349B in funding has been disbursed
- Additional \$310B in funding just approved by the House and the Senate
 - \$60B set aside specifically for smaller institutions like credit unions and community banks
 - Many applications are already pending. Funds will not last long.

Main Street Loan Program

Program Background

- Two Components to the Main Street Program:
 - Main Street New Loan Facility: Newly written term loans
 - Main Street Expanded Loan Facility: Expansions of existing credit facilities
- Provide relief for mid-sized and larger businesses
- Will run through commercial lenders who will sell 95% of loaned amount to the Fed
- Utility for borrowers is likely highly dependent on circumstances, including:
 - borrowers' existing leverage; and
 - ability to retain/rehire workforce

Eligibility

- Borrowers must be:
 - “created or organized” in U.S., or under U.S. laws, and have significant U.S. operations with majority of employees based in U.S.
 - Solvent - Not in bankruptcy
 - No more than 10k employees OR not more than \$2.5B in 2019 annual revenue if more than 10k employees
 - Not already participant of Fed’s Primary Market Corporate Credit Facility Program
 - For MSNLF borrowers, not be participant in MSELF program

Loan Terms

- Each MSNLF and MSELF loan will have:
 - Interest rate = Secured Overnight Financing Rate + 250-400 basis points
 - 4-year maturity with amortization of principal and interest deferred for 1 year
 - No prepayment penalties
 - Origination fee of 100 basis points of principal amount (upsized tranche amount for MSELF loans) payable by borrower to lender
 - Additional requirements apply for publicly traded companies including providing Treasury with warrant or other equity interest
 - MSNLF – Unsecured / MSELF Secured per existing credit facility
- MSNLF loan size: \$1M minimum up to the lesser of \$25M OR 4x borrower's 2019 EBITDA (including all committed but undrawn debt available)
- MSELF loan size: \$1M minimum up to the lesser of \$150M OR 30% of borrower's existing and undrawn bank debt OR 6x borrower's 2019 EBITDA (including all committed but undrawn debt available)

Required Attestations

- Each borrower will be required to certify:
 - Compliance with taxpayer protection requirements of CARES Act Section 4003(c), including:
 - No share repurchases for borrower or parent until 12 months after loan/loan guarantee is no longer outstanding (except pursuant to a pre-existing contractual obligation)
 - No dividend payments or other capital distributions on common stock until 12 months after loan/loan guarantee is no longer outstanding
 - Limitations on executive compensation
 - Compliance with employee retention requirements of CARES Act Section 4003(c)(3)(D), including:
 - Retention of at least 90% of borrower's workforce, at full compensation and benefits, until 9/30
 - Restoration of at least 90% of workforce that existed as of 2/1 to full compensation and benefits within 4 months of HHS terminating COVID-19 public health emergency
 - No outsourcing or offshoring jobs until 24 months after loan/loan guarantee is no longer outstanding
 - Remaining neutral in CBA negotiations
 - That no MSNLF/MSELF funds will be used to repay existing loans or lines of credit (other than mandatory payments) — this includes existing portions of MSELF loans and prohibits accelerated payment of any debt other than applicable MSNLF/MSELF loans
 - That borrower will not cancel or reduce existing lines of credit
 - That borrower requires financing due to exigent COVID-19 circumstances

Next Steps

- The Fed has released term sheets for the programs
- Fed solicited additional comments – period closed last week
- Feedback received has been:
 - Lower the minimum loan amount to make the program more attractive to smaller borrowers
 - Allow for more flexible repayment
- Expect to see additional guidance soon!



QUESTIONS?



Need Help Navigating COVID-19?

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Download our [PPP Spreadsheet](#)
to calculate estimated loan forgiveness

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