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COVID-19 Financial Relief for Providers— Supplemental Payments, Loans, and Beyond

Moderator:
Nina Marsden

Presented by:

- Gary Torrell
- Andrew Struve
- Katrina Pagonis

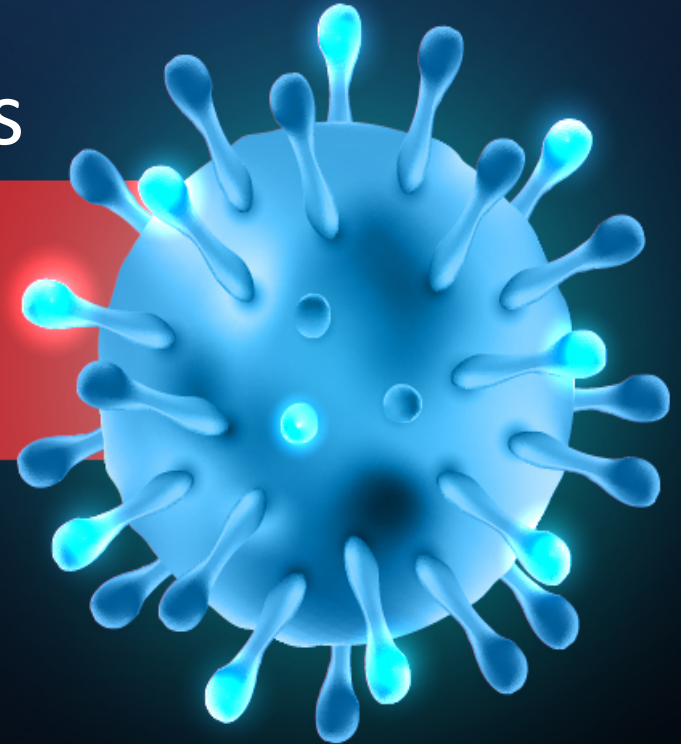
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Hooper, Lundy & Bookman's

Coronavirus COVID-19

Updates and Resources

For links to guidance from various
state and federal agencies regarding
COVID-19 go to www.hlbcovid19.com



Agenda

COVID-19 Financial Relief for Providers—Supplemental Payments, Loans, and Beyond

- 1) Providers as Debtors and Creditors
- 2) Business Interruption Insurance
- 3) Supplemental Payments, Accelerated Payments, and Reimbursement

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Re-Negotiating Obligations: Providers as Debtors and Creditors

Healthcare Providers as Debtors

- This environment is different
- Increase existing credit lines, draw down cash
- Obtain new loans, including PPP and EIDL from SBA (if eligible)
- Request payment relief and sign forbearance contracts with lenders, landlords, suppliers
- Stop paying?
- Communicate with your creditors
- Lender may sell your loan
- Bankruptcy?
- Status of courts
- Leverage

Healthcare Providers as Creditors

- Your tenants will request rent relief, or not pay. Treat all tenants similarly, or case-by-case?
- Request or demand tenants apply for SBA loans and use proceeds to pay you?
- New small business bankruptcy cases expected to increase; \$7.5 million debt eligibility until March 27, 2021.

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Business Interruption Insurance

Business Interruption Insurance

Variations in Coverage

- Coverage is often included as endorsement to standard property insurance
- Coverage for business income losses due to communicable disease?
 - Some policies explicitly cover
 - Some policies are limited to particular covered losses (e.g., fire)
 - Some policies explicitly exclude coverage for losses arising from disease
- Potential coverage for cessation or diminishment of business operations due to a civil or military order (e.g., shelter-in-place order)

Business Interruption Coverage

Nuts and Bolts

- Potential pathway, including the concept “direct” versus “indirect” cause.
- For an example, most policies explicitly provide coverage for cessation or diminishment of business operations due to a civil or military order.
- These are huge potential losses, due to either total discontinuation of services, diminishment of services, and increased cost of operations.
- Commentators are picking sides early. Many law firms and consultants with insurer-oriented practices take an easy-to-guess position. Policyholder rights firms take a diametrically opposed view.

Business Interruption Coverage

Nuts and Bolts

- Lawsuits are already being filed. All are relying upon the States' closure orders.
- Land speed records on denials, at least so far. The carriers really have no economic choice/incentive not to fight this issue to the hilt.
- Mass claims predicted.
- Court decisions may well help whole groups of insureds.
- There also may be either a mass action (MDL) or several of such consolidated proceedings that could benefit you. These often result in a negotiated settlement, as we've seen with tobacco, opioid and the like.

Business Interruption Coverage

Nuts and Bolts

- Governmental action already at work: NAIC (state insurance commissioners) is issuing guidance almost daily. 4/12: NAIC and 18 states issue guidance on BI coverage, including with respect to how COVID-19 impacts a typical BI policy; the impact of a statewide stay-at-home order affects coverage; and the stay-at-home loss costs.
- So far, state legislatures in LA, MA, NJ, NY, OH, PA and SC have introduced legislation to specifically create retroactive BI coverage explicitly for COVID-19.
- NAIC wrote Congress on 3/25 expressly recommending against retroactivity legislation, citing solvency risks and “effect on overall economy.”

So what to do?

1. Review your policy or policies, but the wording is not as transparent as one might hope, and some jurisdictions have interpreted or stricken certain provisions.
2. We'd be happy to help with policy review if desired.
3. Don't rely on your agent to interpret the policy, or the insurance companies communications on the internet and elsewhere.
4. **A claim that never gets made surely never will be paid.**

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Supplemental & Advance Payments and Reimbursement

\$100B for COVID-19 Expenses/Losses

- \$100 Billion appropriated to the Public Health and Social Services Emergency Fund (PHSSEF) for providers'
 - COVID-19 health expenses
 - Lost revenue attributable to COVID-19
- Administered by HHS
 - May be pre-payment, prospective payment, or retrospective payment
 - Consider most efficient payment systems practicable
 - Application includes statement justifying need and TIN
 - Can't reimburse expenses or losses that other sources are obligated to reimburse



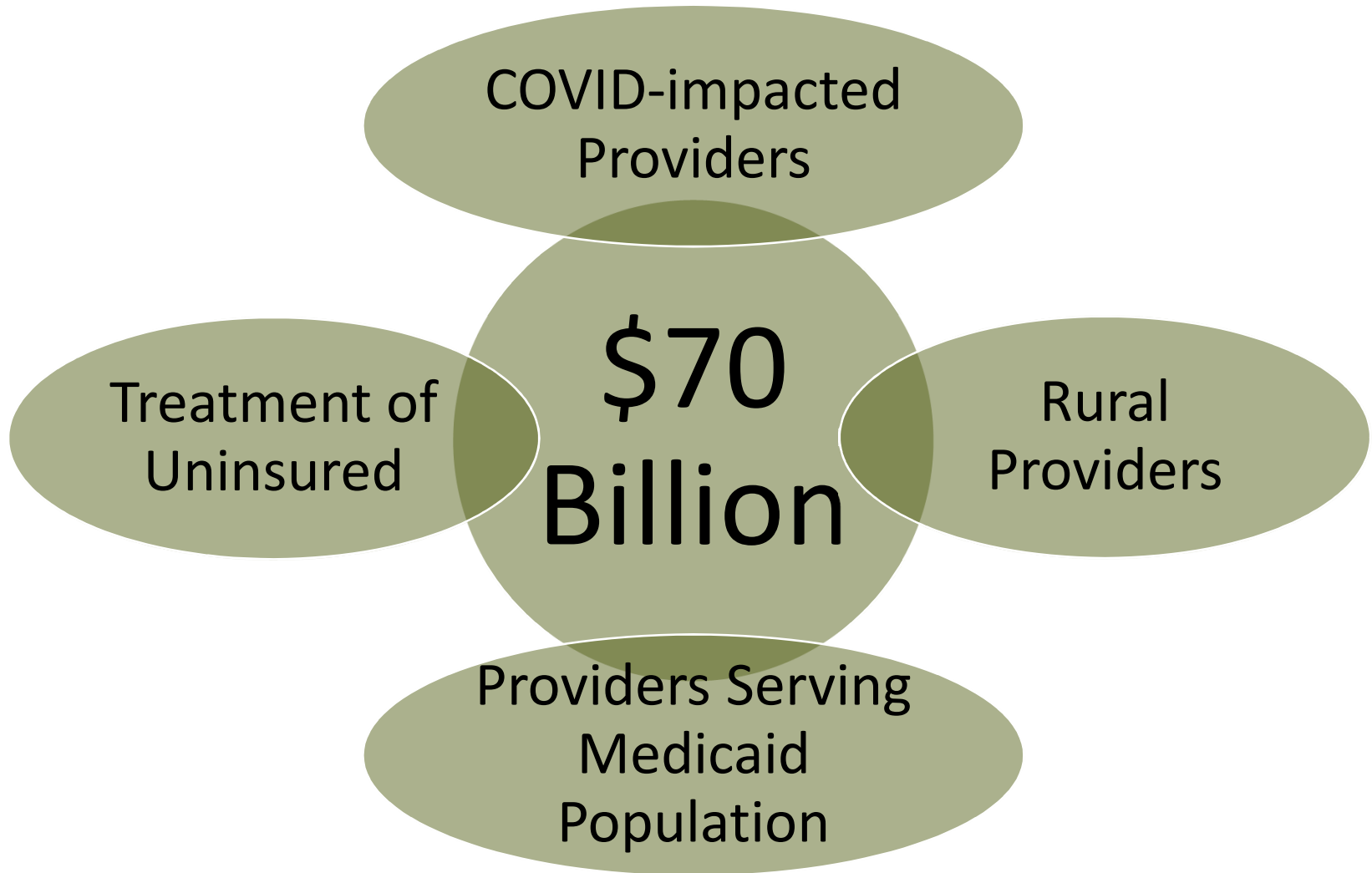
First \$30 Billion

- **Timing:** Began distribution on April 10
- **Amount of payment:** Relative share of FFY 2019 Medicare Payments
- **Terms and Conditions:** Sign within 30 days
- **Uses of Funds:**
 - prevent, prepare for, and respond to coronavirus
 - health care related expenses or lost revenues that are attributable to coronavirus
 - Cannot be used for expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse
- **Record-keeping & Reporting Requirements**
- **Surprise Billing**

Eligible Providers:

- *Billed Medicare in 2019*
- *Provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19*
- *Not currently terminated or excluded from participation in a Federal health care program*
- *does not currently have Medicare billing privileges revoked*

Remaining \$70 Billion



Uninsured and COVID-19

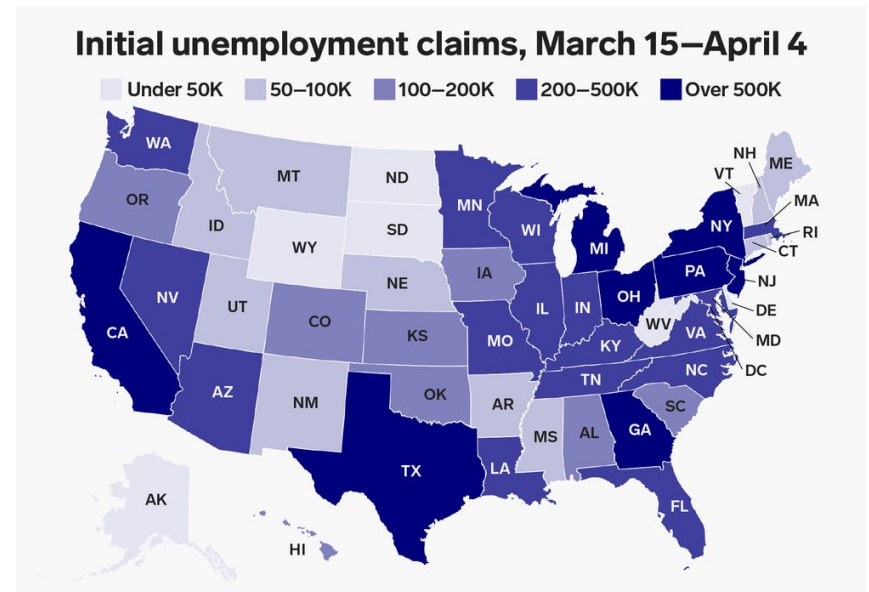
Coverage options:

- Medicaid: Hospital Presumptive Eligibility
- State-Based Exchanges: Special open enrollment periods (CA, CO, CT, MD, MA, MN, NV, NY, RI, VT, and WA)
- HealthCare.gov: Special enrollment periods
- COBRA Continuation Coverage

Other Sources of Relief?

- Priority for part of \$70 Billion PHSSEF
- Families First Coronavirus Relief Act (FFCRA)—enrollment of uninsured in Medicaid for testing coverage only.
- Uncompensated Care DSH
- Fourth Stimulus Package?

17 million claims for unemployment in three weeks



Source: Business Insider

<https://www.businessinsider.com/initial-unemployment-claims-by-state-coronavirus-2020-4>

Accelerated & Advance Payments Program

Eligibility:

- Billed Medicare for claims within 180 days immediately prior to request
- Not in bankruptcy
- Not under active medical review or program integrity investigation
- No outstanding, delinquent Medicare overpayments

Application Process

- Use existing MAC applications, links available at our COVID-19 Resource page
- CMS Fact Sheet gives specific instructions:
<https://www.cms.gov/files/document/Accelerated-and-Advanced-Payments-Fact-Sheet.pdf>

AMOUNT ADVANCED:

- Hospitals: 6-months of Medicare payments
- Others: 3-months of Medicare Payments

TIMING:

- Processing: 7 days
- Repayment begins after 120 days
- Balance due after 1 year (hospitals) or 210 days (others)

Temporary Sequester Relief

Medicare Sequester:

- 2% reduction to FFS Medicare Payments
- In place since April 1, 2013

CARES Act:

- Exempts Medicare from sequestration from May 1, 2020 to December 31, 2020
- Extends sequester from 2029 to 2030

→ Consider impact on Medicare Advantage payments

Medicare IPPS Add-On Payment

- Recognition that COVID-19 inpatients are more costly than others:
 - More intensive services
 - Longer length of stay
- DRG weight increased by 20% for individuals diagnosed with COVID-19
- 20% add-on applies for discharges during the Public Health Emergency (beginning January 27, 2020)
- New COVID-19 Diagnosis Code: U07.1
- Note: Outlier Threshold for FFY 2020 is \$26,473

FEMA Public Assistance (PA)

Eligible Recipients:

- State, Territorial, Tribal, local government entities (including public hospitals)
- Certain private non-profit (PNP) organizations
- For-profit entities are not eligible for direct PA, but, under certain circumstances, may contract with an eligible entity to carry out eligible emergency protective measures

No duplication of funding from other sources

Emergency protective measures may include:

- Management, control, and reduction of immediate threats to public health/safety
- Emergency medical care
- Medical sheltering



FEMA

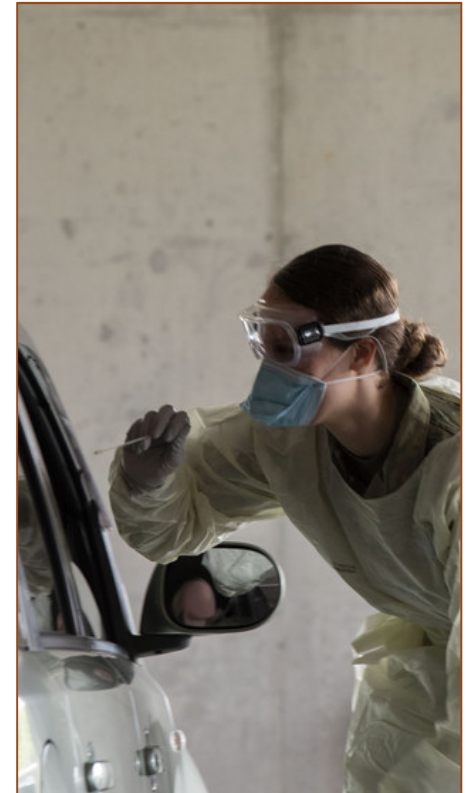
COVID-19 Testing & Payment

- **Medicare/Medicaid FFS & MA:**

- Coverage without cost-sharing for COVID-19 testing-related service
- Includes the E/M visit

- **Commercial Plans:**

- Coverage without cost-sharing, prior authorization, etc. for COVID-19 testing
- Includes items and service furnished during office, urgent care, and emergency room visits but only to the extent such items and services relate to the furnishing or administration of the test or evaluation for purposes of determining the need for such test
- Reimbursement:
 - Negotiated rate in effect in January (if any)
 - If no negotiated rate, cash price or lower negotiated rate
- Price Transparency:
 - Provider must publicize “cash price” for COVID-19 test on its public internet website
 - Compliance enforced through corrective action plans and then CMP of up to \$300/day



Questions



310.551.8153
nmarsden@health-law.com

Nina A. Marsden



619.744.7314
astruve@health-law.com

Andrew H. Struve



310.551.8103
gtorrell@health-law.com

Gary F. Torrell



415.875.8515
kpagonis@health-law.com

Katrina A. Pagonis

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