

COVID-19: Financial Considerations for Your Practice

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Overview

- PPP Loan Program
- Employee Retention Credit
- Social Security Tax Deferral
- Provider Relief Fund
- Advance Payment Program
- FFCRA
- What's next?

PPP Loan Program

- Program Overview
 - Passed as part of the CARES Act enacted on 3/27/2020
 - \$659 billion in forgivable loans through the Small Business Administration (SBA)
 - Loan amount based on lesser of 2.5x payroll or \$10 million
 - First regulations: April 1
 - Most recent regulations: April 30

PPP Loan Program

- Considerations
 - If your practice utilizes the PPP Loan Program, it cannot utilize the Employee Retention Credit.
 - If your practice obtains *loan forgiveness* under the PPP Loan Program, it will no longer be eligible to defer social security taxes following the date its lender approves forgiveness of the PPP loan.
 - FFCRA is considered separately.
 - If your practice obtains a PPP loan, it *may* affect how grant proceeds from the Provider Relief Fund are utilized.

PPP Loan Program

- Considerations (cont.)
 - Recent guidance:
 - Before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”
 - Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.
 - Safe Harbor: Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

PPP Loan Program

- What is included in payroll costs:
 - salary, wages, commission, or similar compensation
 - payment for vacation, parental, family, medical, or sick leave
 - allowance for dismissal or separation
 - payment required for group health care benefits, including insurance premiums
 - payment of any retirement benefit
 - payment of any state or local tax assessed on the compensation of employees

PPP Loan Program

- What is included in payroll costs (cont.):
 - Employee portion of FICA and other federal income tax withholdings
 - SBA: payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of FICA and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax.

PPP Loan Program

- What is NOT included in payroll costs:
 - the compensation of any individual employee in excess of an annual salary of \$100,000 as prorated for the covered period.
 - Employer portion of FICA and federal income tax withholdings.
 - qualified sick leave wages and qualified family leave wages under FFCRA.

PPP Loan Program

- Loan proceeds can be used for the following expenses during the covered period of February 15, 2020 through June 30, 2020:
 - payroll costs
 - costs related to the continuation of group health care benefits during period of paid sick, medical, or family leave as well as insurance premiums
 - employee salaries, commission, or similar compensation
 - payments of interest on any mortgage obligations (but not including prepayments or payment of principal)
 - rent
 - utilities
 - interest on any other debt obligations that were incurred before February 15, 2020.

PPP Loan Program

- SBA: 75% of loan proceeds must be used for payroll costs.
- If loan amounts are used for unauthorized purposes, the SBA will direct you to repay those amounts.
- If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud.
- If one of your shareholders, members, or partners uses loan funds for unauthorized purposes, the SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

PPP Loan Program

- PPP Loan Forgiveness
 - Awaiting additional regulations.
 - What we know for certain is from the language of the statute and the limited guidance on forgiveness released to date.
 - Watch for additional regulations coming out soon.

PPP Loan Program

- PPP Loan Forgiveness
 - The portion of the loan that is eligible for forgiveness is determined by looking at **the costs incurred and payments made** during the **eight-week period beginning on the origination date of the loan** (i.e., when the loan is funded) for the following expense items:
 - payroll costs
 - interest on real or personal property mortgage obligations in existence before February 15, 2020, and incurred in the ordinary course of business
 - rent under a lease agreement in force before February 15, 2020
 - utility payments, including electricity, gas, water, transportation, telephone or internet, for which service began before February 15, 2020

PPP Loan Program

- PPP Loan Forgiveness
 - In its initial regulations, the SBA added the new requirement that “not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs.”
 - Borrower must document the proceeds used for payroll costs in order to determine the amount of forgiveness.

PPP Loan Program

- PPP Loan Forgiveness
 - Potential reduction: the amount eligible for forgiveness may be reduced (but not increased) based on (1) a change in the number of FTE employees and/or (2) a change in wages.
 - Safe Harbor: the amount eligible for forgiveness is NOT subject to reduction to the extent that (i) the number of FTE employees or wages were decreased between February 15, 2020, and the date that is 30 days after the CARES Act was enacted (i.e., April 26, 2020) and (ii) such decreases are eliminated no later than June 30, 2020.
 - In addition, the SBA is permitted to grant further "de minimis exemptions" to the forgiveness requirements in its forthcoming regulations.

Employee Retention Credit

- Program Overview
 - Passed as part of the CARES Act.
 - Administered by IRS.
 - Payroll tax credit against employment taxes owed by eligible employers.
 - Employers eligible if they were in business in 2020 and (i) the business was fully or partially suspended due to orders from an appropriate governmental authority limiting commerce or travel during such calendar quarter because of COVID-19 OR (ii) the business experienced a significant decline of gross receipts (i.e., more than 50% compared to same calendar quarter in 2019).

Employee Retention Credit

- Program Overview
 - Refundable tax credit is lesser of 50% of an employee's qualified wages or \$5,000
 - If eligible based on decline of gross receipts, eligibility ends when gross receipts for a subsequent quarter return to greater than 80% of the same quarter in 2019.

Employee Retention Credit

- Considerations
 - If your practice utilizes the Employee Retention Credit, it cannot utilize the PPP Loan Program.
 - Employee Retention Credit can be taken together with the social security tax deferral.
 - Excludes wages taken into account under FFCRA.
 - Excludes wages counted for this credit can't be counted for the credit for paid family and medical leave under section 45S of the Internal Revenue Code.

Employee Retention Credit

- Considerations
 - Employers with an average number of full-time employees greater than 100 in 2019 may claim a credit only for payments to employees that are not providing services for the employer.
 - These employers can only count wages up to the amount that the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

Employee Retention Credit

- Considerations
 - Employers who averaged 100 or fewer full-time employees in 2019 may claim the credit for payments to any employee during the period operations were suspended or the period of the decline in gross receipts, regardless of whether or not its employees are providing services.

Social Security Tax Deferral

- Program Overview
 - Passed as part of the CARES Act
 - Allows employers to defer the 6.2% social security taxes due between March 27, 2020 and January 1, 2021.
 - 50% is deferred until December 31, 2021
 - 50% is deferred until December 31, 2022

Social Security Tax Deferral

- Considerations

- If your practice receives a PPP loan, its eligibility for the social security tax deferral ends as of the date the lender issues its decision on forgiveness.
- However, the amount of the deposit and payment of the employer's share of social security tax that was deferred through the date that the PPP loan is forgiven continues to be deferred and will be due on December 31, 2021 and December 31, 2022, as applicable.
- Deferral can be taken together with Employee Retention Tax Credit.

Provider Relief Fund

- Program Overview
 - Passed as part of the CARES Act
 - Originally thought: designated only for front line providers and obtained through application.
 - Beginning April 10, HHS started depositing \$30 billion in “grants” directly into providers’ accounts based on 2019 Medical revenue.

Provider Relief Fund

- Program Overview (cont.)
 - According to the initial press release, “There are no strings attached. So, the health care providers that are receiving these dollars can essentially spend that in any way they see fit.”***
 - *** BUT there are indeed “strings attached” in the Terms and Conditions (updated from the original version)

Provider Relief Fund

- Considerations
 - Additional guidance *may* be coming
 - Care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19 (emphasis added).
 - If you are a provider minimally impacted by coronavirus (i.e., you received more funds than needed to offset expenses or lost revenues attributable to the pandemic), you may need to consider returning the deposited funds.
 - The Terms and Conditions incorporate federal grant requirements that the monies received may not be used to "pay the salary of an individual at a rate in excess of Executive Level II." The current Executive Level II pay-scale rate is \$197,300.

Provider Relief Fund

- Considerations (cont.)
 - Your practice may not use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse (for example, Paycheck Protection Program loan funds).
 - It seems likely that "other sources" will include the forgiven portion of SBA loan monies under the Paycheck Protection Program.

Provider Relief Fund

- Considerations (cont.)
 - You must track, in detail how you use all monies received, whether under the CARES Act, the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, or any other Act primarily making appropriations for the coronavirus response and related activities, if you receive at least \$150,000 from all such sources.

Provider Relief Fund

- Considerations (cont.)
 - For all care for a possible or actual case of COVID-19, you will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network recipient (i.e., no “balance billing”).
 - HHS has clarified that not returning the full payment within 30 days of receipt will be viewed as acceptance of the Terms and Conditions.
 - “There will be significant anti-fraud and auditing work done by HHS, including the work of the Office of the Inspector General.”

Medicare Advance Payment Program

- Program Overview
 - \$34 billion program administered by CMS
 - Eligible Medicare providers and suppliers may request an advance payment in an amount up to 100% of their Medicare payment amount for a three-month period.
 - Program discontinued on April 26 following appropriation of additional funding to Provider Relief Fund.
 - CMS will not accept new applications and is reevaluating all pending applications.

FFCRA

- Program Overview
 - Effective 4/1/2020 and expires 12/31/2020
 - 2 Types of Paid Leave:
 - Emergency Paid Sick Leave (6 categories)
 - Emergency FMLA (only for child care or school)
 - Dollar-for-Dollar tax credit off same quarter payroll taxes
 - Cannot use PPP loan or Provider Relief Fund monies for FFCRA leave pay

Helpful Links

- <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
- <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>
- <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-7>
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm
- <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>
- <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>
- <https://www.dol.gov/agencies/whd/pandemic>

Questions?



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