

Behavior Health Initiative: *Policy Challenges and Opportunities Stemming from Covid-19*

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Polsinelli COVID-19 Resources



Contact

For COVID-19 legal advice across a spectrum of issues impacting an array of industries and legal areas, our team is available and connected nationally and in the communities in which you operate.

Contact us with questions at:

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Road Map

- Overview – Behavioral Health COVID-19 Landscape
- Current Stimulus Opportunities and Limitations
- SBA Loans & Expansion of Affiliate Limitations
- EIDL Loan Program
- Main Street Loan Program
- Behavioral Health Specific Grants
- Telehealth Opportunities & Limitations
- Medicaid Waivers
- Prospects for Mandated Coverage for uninsured individuals for MH and SUD arising from COVID

Current COVID-19 Landscape - Weathering the Storm

- Public Health Emergency (PHE) Declared for Opioid Addiction (2017) Before COVID-19 Public Health Emergency
 - Potential Insight for SUD Providers: better developed PHE standards
- COVID Risks and Stay at Home Impact on SUD | Mental Health
- New Conditions/Exacerbation of Existing Conditions
- Impact on Behavioral Health Providers
 - Admissions, Professional Personnel, Financial Strain, Access to Stimulus and Relief, Workforce Support and Protection

Current COVID-19 Landscape –Emerging From the Storm and Looking to the Future

- Need Support for Retention and Recruitment of Quality Providers – Serve increased demand/avoid overflow
- Align with Focus on National Recovery/Strengthening Healthcare
- Need For Thoughtful Approach in Retaining and Building on Positive Changes in Healthcare Delivery
 - Quick adaptations helped show what is feasible and preferable
 - Parity and Equity for Behavioral Health in COVID responses

CARES Act Emergency Health Funding

- The CARES Act provides \$127 billion for the U.S. Department of Health and Human Services (HHS) Public Health and Social Services Emergency Fund, including:
 - \$100 billion for grants to healthcare providers -- \$30 billion distributed
 - \$27 billion for the Biomedical Advanced Research and Development Authority (BARDA), including:
 - \$16 billion to replenish the Strategic National Stockpile with medical supplies.
 - \$11 billion for research and development of vaccines, therapeutics, diagnostics, and other medical preparedness efforts, including a minimum of \$250 million for state hospital preparedness programs and \$275 million for HRSA to support rural health services and capacity.
 - The CARES Act also provided \$1.32 billion for HRSA to distribute to 1,400 health centers. This funding was awarded on April 8.

Public Health and Social Services Emergency Fund

The CARES Act provides \$100 billion for the Public Health and Social Services Emergency Fund to provide funding for healthcare providers to cover unreimbursed healthcare related expenses or lost revenues attributable to the public health emergency resulting from COVID-19.

- HHS announced on **Friday (April 10)** the distribution of \$30 billion to all Medicare-enrolled providers.
- The funds were administered by UnitedHealth Group using electronic ACH accounts (titled “HHSPAYMENT”) or paper checks sent in the mail.
- These funds are not a loan and are not required to be repaid so long as the terms and conditions are followed.
- A provider’s payment is based on the total amount of Medicare FFS payments that the provider received in 2019 per tax identification (TIN) number. This includes any Medicare-enrolled provider or supplier. An estimate of the amount can be made by dividing a provider or supplier’s 2019 FFS payments (by TIN) by the total Medicare FFS payments made in 2019--\$434 Billion. Medicare Advantage payments are not included in these calculations.

Emergency Fund Terms and Conditions

- Providers must sign an attestation confirming receipt of the funds within 30 days and agree to the [terms and conditions](#) of payment, including but not limited to:
 - Only using the funds to prevent, prepare for, and respond to COVID-19. Additionally, funds shall reimburse only for healthcare related expenses of lost revenue that are attributable to COVID-19.
 - Funds cannot be used to reimburse expenses or losses reimbursed from other sources or obligated for payment from other sources; and
 - Providers must agree not to “balance bill” COVID-19 patients.
- **If a provider receives payment and does not wish to comply with the terms and conditions the provider must notify HHS and remit the full payment.**

Behavioral Health Funding: SAMHSA

- Substance Abuse and Mental Health Services Administration (SAMHSA)-\$425 million to provide crisis intervention services, mental and substance use disorder treatment, and other related recovery supports for children and adults impacted by the COVID-19 pandemic including:
 - \$250 million to Certified Community Behavioral Health Clinics (CCBHCs)
 - \$50 million for suicide prevention programs
 - \$100 million to States for emergency-response spending that can target support where it is most needed
 - \$15 million for tribal communities

Behavioral Health Guidance: SAMHSA

- Flexibility for SAMHSA Discretionary Grant Recipients
 - May re-budget 25% or \$250,000 whichever is less in response to COVID-19 requirements without a COVID-19 post-award adjustment (maintain documentation)
 - Data Due Dates extended and can be collected over the phone/electronically
 - No Cost Extensions and Carryover Requests Available
 - Grant funds may be used for Personal Protective Equipment for grant activities only
 - Conversion to virtual activities and telehealth encouraged
 - Grant funds may be used to purchase equipment for the use of telehealth and technology used to deliver grant services
 - Grant funds may not be used to purchase technology or internet access for clients
- No extension of application due dates for FY 2020 SAMHSA grants due to statutory limitations

Behavioral Health Guidance: SAMHSA

- SAMHSA Guidance in Response to COVID-19: 42 CFR Part 2
 - Goal: SUD treatment uninterrupted during PHE – Increased use of Telehealth required
 - Patient Consents may be difficult to obtain if SUD provider treatment not in person
 - Part 2 prohibitions on use and disclosure of patient identifying information do not apply if a medical emergency exists – documentation required

Patient identifying information may be disclosed by a Part 2 program or other lawful holder to medical personnel, without patient consent, to the extent necessary to meet a bona fide medical emergency in which a patient's prior informed consent cannot be obtained

- Re-disclosure also permitted for purposes of patient treatment

Behavioral Health Guidance: SAMHSA

- Training and Technical Guidance
 - Addiction Technology Transfer Centers
 - Mental Health Technology Transfer Centers
 - Prevention Technology Transfer Centers
 - <https://www.samhsa.gov/sites/default/files/training-and-technical-assistance-covid19.pdf>

The background of the slide is a dense field of 3D cubes in various shades of red. The cubes are arranged in a somewhat chaotic pattern, with some appearing larger and more prominent than others, creating a sense of depth and texture. The overall color palette is monochromatic, ranging from deep red to a lighter, almost white-red.

Lending Options

SBA Disaster Assistance Loans

Who is eligible?

- Small business or business, nonprofit organization, veterans' organization, or Tribal business, which employs not more than 500 employees, unless the covered industry's SBA size standard allows more than 500 employees.
- That have suffered substantial economic injury (*business is unable to meet its obligations and pay its ordinary and necessary operating expenses*) due to COVID-19.

How much money is available?

- Up to \$2 million
- Funds to be used to help meet financial obligations and operating expenses that could have been met had the disaster not occurred.
- Loan amount will be based on actual economic injury and company's financial needs.

SBA 7(a) Loans

Who is eligible?

- Small business or business, nonprofit organization, veterans' organization, or Tribal business, which employs not more than 500 employees, unless the covered industry's SBA size standard allows more than 500 employees.

How much money is available?

- Maximum of \$10 million.
- Based on average total monthly payroll costs multiplied by 2.5.

SBA Disaster Assistance Loans

What is the time frame?

- Jan 31, 2020 – Dec 31, 2020 (Covered Period)

Is there a repayment schedule?

- Repayment term not to exceed 30 years; determined by ability to repay the loan with 3.75% interest rate.

Are there advances or loan forgiveness?

- Applicant is allowed to request an advance, separate from the loan, in an amount not to exceed \$10,000 within three days after SBA receives an application.
 - *An advance may be used to maintain payroll, provide sick leave related to COVID-19, and meet costs due to interrupted supply chains, among other provisions.*
- An applicant shall not be required to repay any amounts of an advance provided, even if subsequently denied a loan.
- Advance amount must be considered when determining certain loan forgiveness if the applicant transfers into a 7(a) loan program.

SBA 7(a) Loans

What is the time frame?

- Feb 15, 2020 – Jun 30, 2020 (Covered Period)

Is there a repayment schedule?

- 2 years from loan origination with 1% interest rate.
- Complete payment deferment relief for a period of not less than 6 months, but not to exceed 1 year.

Are there advances or loan forgiveness?

- Recipients are eligible for forgiveness of a portion of the loan in an amount equal to the sum of
 - payroll costs
 - interest payments on mortgage obligations
 - payments on covered rent obligations
 - and any covered utility payments, but not to exceed the principal amount
 - ***The amount of loan forgiveness will be reduced in accordance with any reduction in the number of employees or employee salaries during the covered period.***

SBA Disaster Assistance Loans

Is collateral required?

- Collateral is required for EIDL loans over \$25,000.
- SBA takes real estate as collateral when it is available.
- SBA will not decline a loan for lack of collateral, but requires you to pledge what is available.

Is a personal guarantee required?

- Personal guarantee on advances and loans of not more than \$200,000 are waived during the covered period.

Application

- Application is available [here](#).

SBA 7(a) Loans

Is collateral required?

- No collateral is required.

Is a personal guarantee required?

- No personal guarantee is required.

Application

- Applications can be submitted April 3, 2020 for businesses and April 10, 2020 for sole proprietorships and independent contractors.
- Application is available [here](#).
- You must apply through an eligible 7(a) lender.
- You should prepare: payroll documentation and application. All owners of 20% or more of equity must sign the application.

Paychecks Protection Program: 7(a) Loan Forgiveness Stipulations

What is the maximum amount eligible for loan forgiveness?

- The sum of payroll costs, rent, utilities and payments on mortgage interest in the 8 weeks following origination of the loan. Capped at 100% of the loan amount.

How do layoffs impact the maximum amount eligible for loan forgiveness?

- The maximum amount eligible for loan forgiveness may be reduced by any layoffs. *However*, if the layoffs occur from 2/15/20 – 4/26/20 and you rehire the employees 6/30/20, there will be no reduction in the amount eligible for loan forgiveness.

What about reductions in salaries or furloughs?

- The maximum amount eligible for loan forgiveness may be reduced by reductions in salary that exceed 25% of an employee's salary. *However*, if the salary reductions occur from 2/15/20 – 4/26/20 and you eliminate that reduction by 6/30/20, there will be no reduction in the amount eligible for loan forgiveness.

Main Street Lending Program

- Available to U.S. businesses with fewer than 10,000 employees or \$2.5 billion in annual revenue
- New loans (Main Street New Loan Facility, or MSNLF) or additional tranches on existing loans (Main Street Expanded Loan Facility or MSELF), originated by U.S. banks to eligible borrowers, with a 95% participation interest sold to Federal Reserve SPV and the bank retaining remaining 5%
- Not eligible for forgiveness, so this potentially provides funding but does not shift the economic loss away from the borrower
- The Federal Reserve published term sheets for the facilities on April 9, solicited comments by April 16 (~2,000 received), and has indicated detailed terms and conditions will be forthcoming

Main Street Lending Program (Continued)

- Loan terms:
 - 4 year maturity
 - No amortization period stated
 - 12 months principal and interest deferred
 - Variable rate – secured overnight financing rate (SOFR) plus 250 to 400 bps
 - Unsecured (MSNLF) or (for MSELF) pro rata with any security under existing loans; no stated guaranty requirement
 - Prepayment permitted without penalty
 - Fees – up to 100 bps origination, 100bp “facility fee” for new loans that can be passed through to borrower
 - Borrowers may not utilize both facilities (MSNLF and MSELF), and may not use either facility if they are also utilizing the Federal Reserve’s Primary Market Corporate Credit Facility for borrowers with investment grade credit ratings
- Loan amounts:
 - Minimum \$1m
 - Maximum:
 - MSNLF – lesser of (i) \$25m and (ii) an amount equal to 4x EBITDA, less the amount of any committed but undrawn debt;
 - MSELF – lesser of (i) \$150m, (ii) 30% of committed but undrawn debt and (iii) an amount equal to 4x EBITDA, less the amount of any committed but undrawn debt.

Main Street Lending Program (Continued)

■ Required attestations:

- No repayment (voluntary prepayment) or refinancing existing debt
- Will not cancel or reduce existing credit lines
- “Requires financing due to exigent circumstances”, and will use the proceeds to “make reasonable efforts to maintain its payroll and retain its employees” for the term of the loan
- Accuracy of EBITDA for calculation of loan maximum
- Will comply with CARES Act restrictions on compensation (limits for \$425k employees, reductions for \$3m employees), buybacks of listed equity securities and capital distributions, for term of loan plus 1 year.

● Significant open questions:

- Bank credit underwriting process and whether entities in distress or without access to collateral or guaranties will be excluded
- Whether common ownership or control has any effect on eligibility or loan maximum calculations
- Whether significant borrowers will be excluded because of limited 2019 EBITDA, or the references to committed but undrawn debt in the loan maximum calculation

Policy changes, gaps and opportunities

Telehealth: Opportunities & Challenges

- Broad legislative response to opening federal payer reimbursement to enable telehealth
 - Families First Coronavirus Response Act changes
 - CARES Act changes (incl. authority to waive Sec. 1834(m))
- CMS waivers
 - March 17 telehealth [waivers](#)
 - COVID-19 Interim Final Rule [waivers](#)
- Remaining issues (ex. audio-only visits beyond opioid treatment)

FCC Telehealth Grants: *Good News*

- On March 31, 2020, the Federal Communications Commission [adopted](#) a \$200 million telehealth program to implement the Coronavirus Aid, Relief, and Economic Security (CARES) Act to support healthcare providers responding to the ongoing coronavirus pandemic. Through the **COVID-19 Telehealth Program**, the FCC will help healthcare providers purchase telecommunications, broadband connectivity, and devices necessary for providing telehealth services.
- The FCC also adopted final rules to stand up a **Connected Care Pilot Program**. This separate three-year Pilot Program will provide up to \$100 million of support from the Universal Service Fund (USF) to help defray health care providers' costs of providing connected care services and to help assess how the USF can be used in the long-term to support telehealth.

FCC Telehealth Grants: *Bad News*

- The two telehealth programs are limited to **nonprofit and public eligible health care providers** that fall within the categories of health care providers in section **254(h)(7)(B)** of the 1996 Act, including:
 - post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
 - community health centers or health centers providing health care to migrants;
 - local health departments or agencies;
 - community mental health centers;
 - not-for-profit hospitals;
 - rural health clinics;
 - skilled nursing facilities; or
 - consortia of health care providers consisting of one or more entities falling into the first seven categories.

Medicaid Flexibility: Waivers and Impact

FMAP Increase 6.2%

1. No Premium Cost Increase
2. No COVID out of pocket
3. Continuous Coverage
4. MoE Eligibility Criteria

1115(a) Waivers

1. No Budget Neutrality
2. Self-Attestation of Resources
3. Public Notice/Timing Waived

1135 Waivers

1. Prior Authorizations
2. Long Term Services & Supports
3. Fair Hearings
4. Provider Enrollment
5. Alternative Settings

HCBS Attachment K

1. Broad Flexibilities for HCBS
2. Provider Qualifications and Supervision Requirements

Policy Opportunities: Coalition Opportunities in response to COVID

- New Medicaid Eligibility for Uninsured Individuals | 100% FMAP
 - COVID-19 Testing and Testing Related Services Only
 - Additional Opportunity: Inclusion of COVID-19 Treatment
 - Parity and Equity for COVID-19 Diagnosed Individuals
 - When does coverage end?
 - Additional Opportunity: Behavioral Health if Impacted by COVID-19
 - Expansion of Coverage for health impacts resulting from COVID-19
 - When does coverage end?
- Medicaid Provider Agreements

Crystal Ball – Phase 4 Legislative Response

- Congress working on additional stimulus funding and policy issues (COVID 3.5/4 and beyond)
- Moving target of this week for stimulus re-up, May-ish for larger vehicle
- Majority Leader McConnell (R-KY) acknowledged Phase 4 will occur with health care a top priority
- Subject to change - policies under consideration:
 - Take Responsibility for Workers and Families Act (H.R. 6379)
 - Additional funding for health care providers, small businesses, state and local government, and individuals
 - Workforce Protections

Key COVID-19 Relief Legislation Negotiators

- Senate Majority Leader Mitch McConnell (R-KY)
- Senate Minority Leader Chuck Schumer (D-NY)
- Treasury Secretary Steve Mnuchin
- House Speaker Nancy Pelosi (D-CA)
- House Minority Leader Kevin McCarthy (R-CA)
- Vice President and Coronavirus Task Force Chair Mike Pence

Chairs and Ranking Members of Key Healthcare Committees

- **Senate Committee on Finance**
 - Sens. Chuck Grassley (R-IA) and Ron Wyden (D-OR)
- **Senate Committee on Health, Education, Labor, and Pensions**
 - Sens. Lamar Alexander (R-TN) and Patty Murray (D-WA)
- **House Committee on Ways & Means**
 - Reps. Richard Neal (D-MA) and Kevin Brady (R-TX)
- **House Committee on Energy & Commerce**
 - Reps. Frank Pallone (D-NJ) and Greg Walden (R-OR)
- **House Committee on Education & Labor**
 - Reps. Bobby Scott (D-VA) and Virginia Foxx (R-NC)

Behavioral Health Advocacy

Where do we go from here?

Advocacy—*what we can do..*

Behavioral Health Issues for Congress

- Opportunities for Relief Funds outside of Medicare Services
- Extend PHE Waivers beyond the end of the PHE 90/120 days
- Double/Triple Covered Services for Mental Health and SUD in Federal Health Care Programs to Respond to COVID impacts
- Remove Institutional Barriers to Behavioral Health Coverage
 - Co-pays and deductibles for MH and SUD treatment
 - Eliminate Treatment Location Discrimination (IMD/Detox/Residential)
- Expand COVID-19 Eligibility Coverage: Treatment and BH

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