Private Nonprofit Health Care Organizations' Guide to FEMA Reimbursement for COVID-19 Related Expenses

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Categories:

Coronavirus Response Team
Health Law Matters

Recently, our Coronavirus Response Team discussed the potential for private nonprofit organizations to receive public assistance dollars through Federal Emergency Management Association (FEMA) for providing COVID-19-related services. With health care organizations, like hospitals, reporting numerous difficulties in responding to the pandemic, our Health Care Innovation Industry Team prepared this specific guide to assist those private nonprofit health care organizations to procure FEMA public assistance funding for the costs associated with emergency protective measures taken in response to COVID-19. Our goal, as always, is to help you help patients.

With the national emergency declaration under the Stafford Act (42 U.S.C. § 5191(b)) on March 13, 2020, private nonprofit organizations have up to 30 days after the end of the national emergency period (which has not been declared yet) to apply to receive public assistance from FEMA for emergency protective measures taken in response to the outbreak. If approved, these private nonprofit organizations can receive 75% of eligible costs associated with the emergency protective measures from the federal government.

While private nonprofit health care organizations can wait to apply, they are encouraged to apply now with their respective states' emergency management agency, in accordance with Section V of this Guide. Further, those intending to seek public assistance funding are strongly encouraged to begin documenting every detail about expenses for which they may seek such funds, in accordance with Section IV of this Guide. Final reimbursement determinations will be coordinated by FEMA and the Department of Health and Human Services (HHS). Note, private for-profit entities, including for-profit hospitals, are not eligible for assistance from FEMA for

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public assistance funding.

I. Hospitals, Outpatient Facilities, Rehabilitation Facilities, and Facilities for Long-Term Care Are Eligible for FEMA Public Assistance Funding

Private nonprofit health care organizations (demonstrated by their production of (1) an effective letter ruling from the Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or (2) satisfactory evidence from their respective state that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under state law) which own or operate one of the following private nonprofit health care facilities are eligible for public assistance funding (44 C.F.R. 206.221–222):

- **Hospitals**. Hospitals include general, tuberculosis, and other types of hospitals and related facilities, such as laboratories, outpatient departments, nursing home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities operated in connection with hospitals. This category also includes education or training facilities for health profession personnel operated as an integral part of a hospital. A medical organization that primarily furnishes home-based care is not considered a hospital under this definition.
- **Outpatient facilities**. Outpatient facilities are defined as facilities located in or apart from a hospital for the diagnosis or treatment of patients who are not actually admitted to a hospital. Such a facility may be one operated in connection with a hospital or one in which patient care is under the professional supervision of a doctor licensed in the State.
- **Rehabilitation facilities.** Rehabilitation facilities are defined as facilities that are operated for the purpose of assisting the rehabilitation of disabled persons through a program of medical evaluation and services; and for psychological, social, or vocational evaluation and services that are under

competent professional supervision. The major portion of these services should be furnished in the facility.

- **Facilities for long-term care.** Long-term care facilities are defined as facilities providing inpatient care for convalescent or chronic disease patients who require skilled nursing care and related medical services. Such facilities may be in a hospital, operated in connection with a hospital, or be in a location where services performed are under the professional supervision of a doctor licensed in the state (e.g. a nursing home or hospice).

II. Category B Emergency Protective Measures Taken By Private Nonprofit Health care Facilities Are Eligible for FEMA Public Assistance Funding

Generally, to be eligible for FEMA public assistance funds, the item of work provided by a private nonprofit health care facility (as defined in Section I of this Guide) must:

- Be required as the result of the COVID-19 national emergency (for example, emergency medical care costs related to a non-COVID-19 illness or injury are not eligible); and
- Be the legal responsibility of an eligible applicant.

Private nonprofit health care facilities are eligible to receive public assistance funding for their emergency work related to COVID-19 or what are known as "category b – emergency protective measures." Specifically, emergency protective measures taken to save lives, to protect public health and safety, and to protect improved property are eligible for FEMA's public assistance. Further, in the pertinent part, these emergency protective measures must eliminate or lessen immediate threats to life, public health or safety. 44 C.F.R. 206.225.

FEMA has provided the following list of examples of activities that may be eligible for public assistance funding:

1. Management, control and reduction of immediate threats to public health and safety:

- Emergency Operation Center costs.
- Training specific to COVID-19.
- Disinfection of eligible public facilities.
- Technical assistance to state, tribal, territorial or local governments on emergency management and control of immediate threats to public health and safety.

2. Emergency medical care:

- Triage and medically necessary tests and diagnosis related to COVID-19 cases.
- Emergency medical treatment of COVID-19 patients.
- Prescription costs related to COVID-19 treatment.
- Use or lease of specialized medical equipment necessary to respond to COVID-19 cases.
- Purchase of personal protective equipment, durable medical equipment, and consumable medical supplies necessary to respond to COVID-19 cases (note that disposition requirements may apply).
- Medical waste disposal related to eligible emergency medical care.
- Emergency medical transport related to COVID-19.
- Temporary medical facilities and expanded medical care facility capacity for COVID-19 for facilities overwhelmed by COVID-19 cases and/or to quarantine patients infected or potentially infected by COVID19.
    - Temporary facilities and expansions may be used to treat COVID-19 patients or non-COVID-19 patients, as appropriate.

Additionally, be aware that long-term medical treatment is not eligible for FEMA public assistance funding. This includes medical care costs incurred once a COVID-19 patient is admitted to a medical facility on an inpatient basis; costs associated with follow-up treatment of COVID-19 patients beyond the duration of the Public Health Emergency, as determined by HHS; and administrative

costs associated with the treatment of COVID-19 patients.

3.) Medical sheltering (e.g., when existing facilities are reasonably forecasted to become overloaded in the near future and cannot accommodate needs):

- All sheltering must be conducted in accordance with standards and/or guidance approved by HHS or Centers for Disease Control and Prevent (CDC) and must be implemented in a manner that incorporates social distancing measures.
- Non congregate medical sheltering is subject to prior approval by FEMA and is limited to that which is reasonable and necessary to address the public health needs of the event, is pursuant to the direction of appropriate public health officials and does not extend beyond the duration of the public health emergency.
- Household pet sheltering and containment actions related to household pets in accordance with CDC guidelines.
- Purchase and distribution of food, water, ice, medicine, and other consumable supplies, including personal protective equipment, hazardous material suits, and movement of such supplies and persons.
- Security and law enforcement.
- Communications of general health and safety information to the public.

III. Applying for FEMA Public Assistance Funding

Private nonprofit health care organizations interested in requesting FEMA's public assistance funding should apply now. There is no need to submit complicated documentation or expense forecasts for emergency protective measures that may be reimbursable. While FEMA's request for public assistance application is available here, it requires private nonprofit organizations seeking reimbursement to contact their local Emergency Management Department, or appropriate State Emergency Management

representative to apply for Public Assistance Funding.

The following is a list of the state emergency agencies within our firm's footprint:

- Ohio Emergency Management Agency
- Kentucky Emergency Management
- Indiana Emergency Management
- Tennessee Emergency Management Agency
- Texas Department of Emergency Management
- Pennsylvania Emergency Management Association
- Michigan Emergency Management Association
- West Virginia Division of Homeland Security and Emergency Management
- Virginia Department of Emergency Management

IV. Documentation of Emergency Protective Measures Taken is the Key to Receiving FEMA Public Assistance Funding for Private Nonprofit Health Care Facilities

The costs of performing any emergency protective measures must be directly tied to responding to the COVID-19 outbreak and must be rigorously documented. FEMA expressly cautions that "[t]he importance of maintaining a complete and accurate set of records for each project cannot be over-emphasized. Good documentation facilitates the project formulation, validation, approval, and funding processes."

The information required for documentation describes the "who, what, when, where, why, and how much," for each item of emergency work. This information should include a completed Project Worksheet (PW); completed Special Considerations Questions form; estimated and actual costs; force account labor; force account equipment, materials, and purchases; photographs of work underway and work completed; insurance information; environmental and historic alternatives and hazard mitigation

opportunities considered; environmental review documents; receipt and disbursement documents; and records of donated goods and services, if any. The applicant should have a financial and record keeping system in place that can be used to track these elements.

V. Prohibition on the Duplication of Benefits

In accordance with Section 312 of the Stafford Act, an applicant for FEMA public assistance funding may not receive funding from two sources for the same item of work. The Stafford Act prohibits such a duplication of benefits. If FEMA funds are duplicated by another source, including private insurance funds or funds from another governmental agency, the FEMA funds must be returned. If another federal agency has specific authority to fund certain work, then FEMA generally cannot provide funds for that work. A state disaster assistance program is not considered a duplication of federal funding. A duplication of benefits most commonly occurs with insurance settlements.

Grants and cash donations received from non-federal sources designated for the same purpose as FEMA public assistance funds are considered a duplication of benefits. However, such grants and donations, including disaster relief funds provided by the state, may be applied towards the non-federal cost share and are not considered a duplication of benefits. Grants and cash donations, including disaster relief funds provided by the state, that are received for unspecified purposes or ineligible work also do not constitute a duplication of benefits and can be applied to the non-federal cost share.

VI. Conclusion

If you are a private nonprofit health care organization providing services that you believe may be eligible for reimbursement, we encourage you to apply now. Our law firm has individuals with experience related to seeking public assistance under the Stafford Act, and we would be happy to assist you with your registration and documentation to help ensure receipt of funds.

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Visit our Health Law Matters blog for more insight into legal issues impacting the health care industry.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team, including a special team focusing on SBA financial assistance under the CARES Act. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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