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HEALTH CARE PROVIDERS AND FEMA'S COVID-19 PUBLIC ASSISTANCE

Health care nonprofits and other qualified entities should submit applications for FEMA Public Assistance ("PA") to support their COVID-19 responses as soon as possible. This funding will cover eligible protective measures for response efforts across the country. Recipients should heed FEMA's guidance on applications as well as carefully document their protective measures from inception through completion.

BACKGROUND

President Trump's March 13, 2020, National Emergency declaration for the COVID-19 pandemic activated a Public Assistance Grant Program opening up funding to eligible entities, administered by FEMA. Requests for Public Assistance ("RPA") should be submitted as soon as possible. FEMA waived the previous April 12 deadline in light of the scope of the emergency. Eligible entities can submit RPAs through the duration of the Public Health Emergency until 30 days after the end of the declaration.

ARE HEALTH CARE PROVIDERS ELIGIBLE?

Private nonprofit ("PNP") health care entities and covered state, local, tribal or territorial entities may be eligible for PA. For a PNP health care entity to receive FEMA funding, the entity must:

- Be a 501(c), (d), or (e) tax-exempt nonprofit or be owned or operated by one;
- Operate an eligible facility, such as a medical facility; and
- Provide eligible services such as clinics, in-patient acute care, in-patient convalescent and chronic care, nursing homes, facilities that support the provision of health care such as central services facilities, extended-care facilities, laboratories, long-term care facilities, outpatient facilities, ambulance operations and rehabilitation facilities.

Private entities—including private hospitals—are ineligible for PA. But private entities may contract with covered government entities to implement emergency protective measures. Under these arrangements, FEMA may reimburse the government entity for services it paid a private entity to provide.

WHAT EMERGENCY PROTECTIVE MEASURES ARE ELIGIBLE?

FEMA funding allows a recipient to share the costs of disaster response with the federal share of assistance being at 75 percent of eligible costs. Importantly, FEMA only covers costs not available from other sources, such as donations, other relief funds, private insurance, Medicaid or Medicare. This includes assistance provided by HHS, CDC or other federal agencies.

The following emergency protective measures are eligible for PA:

1. **Efforts to manage, control or reduce immediate threats to public health and safety, including**:
   - Setting-up and operating Emergency Operation Centers;
   - COVID-19 training;
   - Disinfection of public facilities;
   - Providing technical assistance to government entities related to emergency management; and
   - Work necessary as a direct result of the Public Health Emergency.
2. **Emergency Medical Care and Activities**:
   - Non-deferrable medical treatment to individuals in shelters or temporary medical facilities;
   - Medical facility services and supplies;
   - Temporary facilities to either enhance hospital capacity for patient surges threatening to overload the hospital or to quarantine

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potentially infected patients;

- Specialized medical equipment;
- Medical waste disposal; and
- Emergency medical transport.

PNPs that own or operate medical or custodial care facilities are also eligible for COVID-19 patients and their treatment:

- PPE for health care providers working in hospitals/facilities treating COVID-19 patients;
- DME, and consumable medical supplies;
- Triage and medical testing and diagnosis for COVID-19 cases;
- Emergency medical treatment;
- Prescriptions costs;
- Use or lease of specialized medical equipment;
- Medical waste disposal generated because of eligible emergency medical care;
- Temporary facilities to extend capacity for patient surges or patients infected or potentially infected by COVID-19; and
- First-aid assessment and provision of first aid.

3. **Medical Sheltering Related to Patient Surges**:

- Sheltering must follow HHS/CDC guidelines for social distancing;
- Non-congregate medical sheltering approved by FEMA for:
  - COVID-19 patients that do not need hospitalization, but need isolation;
  - Patients exposed to COVID-19 who do not need hospitalization; and
  - Asymptomatic, but high-risk individuals needing social distancing as a precautionary measure.

4. **Other Eligible Costs**:

- Purchase and distribution of medicine and other consumable goods;
- Household pet sheltering and containment;
- Security and law enforcement;
- Public health and safety communications; and
- Overtime for responding to COVID-19.

SPECIFIC MEDICAL CARE THAT IS INELIGIBLE

Insured care—including care insured by Medicaid and Medicare—are not covered because of FEMA's duplicate assistance prohibition.

Inpatient care, follow-up treatments beyond the duration of the Public Health Emergency and administrative costs of treatment are all ineligible. This includes emergency medical care costs for non-COVID-19 illness.

Health care administration and business that are not directly linked to COVID-19 may not be covered, including revenue and business disruption, canceled or rescheduled services.

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HOW TO APPLY?

PNPs should apply through FEMA's Portal, and use the simplified PA application process to submit their RPA:

- Attend a virtual applicant briefing.
- Access the applicant portal here.
- Execute the final grant.

Applicants are encouraged to finalize RPAs as soon as possible, to ensure that they document their entities' needs and connect those directly to reasonable estimates of costs to cover the same.

DEADLINE TO APPLY

Eligible entities can submit RPAs through the duration of the Public Health Emergency until 30 days after the end of the declaration.

This is an extension of the normal 30-day deadline from the date of the declaration. FEMA's notice extending the deadline provided that a later determination may alter this current timeframe, but the decision to do so will give 30-days advance notice of the change.

NAVIGATING THE ROAD AHEAD

While FEMA's coordinated efforts to simplify this process and make PA broadly accessible to eligible health care providers for their COVID-19 response efforts is welcome, there are key considerations for all applicants and recipients of FEMA assistance:

- Many health care facilities are unfamiliar with FEMA and its processes—and vice versa. It's critical in any contact with FEMA and its state partners not to assume that they understand the day-to-day business of health care entities. Clear and concise explanations of hospital and health care entity operations will be critical to securing funding.
- The devil is in the documents. Put into place an organized process for documenting covered response measures now. FEMA requires detailed documentation for all reimbursable expenses, including specifics about the pressures the emergency is placing on the facility, the needs for items purchased and the uses. Track internal timing and rates for work incurred.
- Detailed accounting of estimates, bids, expenditures, invoices, payments and receipts is critical. Not only for justifying the requests being made now and in the future, but for anticipating any need for appeals of challenges or funding denials.
- Compliance matters. While the COVID-19 pandemic is presenting an unprecedented strain on health care providers around the country, requests for and use of FEMA PA funds still require compliance with federal regulations. Some of these regulations have been modified or loosened to allow rapid responses—such as sole-sourcing procurement contracts. Consult with your counsel carefully to ensure continued compliance.
- Be cautious in making purchases of products that have not been approved through normal regulatory processes. The COVID-19 emergency has made it necessary to purchase and use items obtained outside the normal supply chain process, which have not been cleared for use by regulatory agencies. There is a high risk of sub-standard and counterfeit products, which may be unusable and not eligible for reimbursement. Consult with skilled procurement counsel to navigate these dangerous waters and help control this risk.
- Familiarize yourself with your entity's emergency protocol and ensure your applications are consistent with that protocol, including any adjustments to normal procurement or supply chain practices.
- Monitor developments. FEMA—like many federal agencies—is rapidly responding to the evolving COVID-19 threat. This includes daily guidance and updates on eligibility. Stay up-to-date on these developments to maintain compliance and access to available funding.

For more information about FEMA's relief efforts for health care providers, for assistance related to FEMA Public Assistance, or any questions related to this matter, please contact:

- Melissa Markey at (248) 457-7853 or mmarkey@hallrender.com;
- Drew Howk at (317) 429-3607 or ahowk@hallrender.com;
- Dwayne Barrs at (241) 615-2008 or dbarrs@hallrender.com;

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- Lauren Rodriguez at (317) 977-1453 or lrodriguez@hallrender.com; or
- Your regular Hall Render attorney.

Special thanks to Macauley Rybar, law clerk, for his assistance with the preparation of this article.

Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources at our COVID-19 Resource page, through our 24/7 COVID-19 Hotline at (317) 429-3900, or your regular Hall Render attorney.

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