

Holland & Knight

COVID-19 FUNDING AND RECOVERY OPPORTUNITIES FOR HEALTH CARE PROVIDERS

Congress has provided an unprecedented infusion of funding and other financial relief through a variety of new and existing programs to address the COVID-19 outbreak. This memorandum outlines how the federal funds are flowing and how hospitals and health care providers will be able to access them to the extent that such information is available. Accompanying this memo is a 39-page FAQ recently developed by Congressional staff that provides additional useful information.

We stand ready to assist you. Please contact the H&K healthcare policy team with specific questions/opportunities – [Lisa Hawke](#), [Rob Bradner](#), [Miranda Franco](#), and [Ethan Jorgensen-Earp](#).

I. EXPANSION OF MEDICARE HOSPITAL ACCELERATED PAYMENT PROGRAM

Congress has temporarily expanded the ability of hospitals to receive accelerated payments under the Medicare program under the Social Security Act Section 1815(e). This allows the Secretary to provide to under subsection (d) hospitals with periodic interim payments (PIPs) if they are experiencing significant cash flow problems resulting from operations of its intermediary or unusual circumstances of the hospital's operation. The CARES Act also expands the types of hospitals (including critical access, children's and cancer hospitals) that are eligible to apply for accelerated payments during the COVID-19 national emergency. **Update: The Administration is using the new statutory language to expand the program to include inpatient and outpatient services as well as to Part B suppliers and providers.**

Upon receiving a request from a hospital, the Secretary may:

- A. make accelerated payments on a lump sum or periodic basis;
- B. increase the amount that would be available to hospitals under the program to 100% of prior payments for most hospitals and 125% for critical access hospitals;
- C. extend the period for up to 6 months.

Upon receiving a request from a hospital, the Secretary shall:

- A. Provide up to 120 days before claims are offset to recoup the accelerated payment;
- B. Allow not less than 12 months from the date of the first accelerated payment before requiring that the outstanding balance be paid in full.

How to Access Funding: Hospitals and providers should contact their Medicare Administrative Contractor (MAC). The MACs have set up hotlines to answer questions. Those who opt to submit an application will be required to request a specific payment amount. Most providers will be able to request up to 100% of Medicare payment amounts for a three-month period. Inpatient hospitals may request payment for up to a six-month period. Payments will be made within seven days of receiving an application.

Applications for the payments are available from each MAC website. Each MAC has its own application. To locate your MAC, visit [here](#). The program includes a recoupment process. At the end of the eligible

period, every claim submitted by the hospital/provider/supplier will be offset from new claims to repay the accelerated/advanced payment.

For more information, please see the [CMS Fact Sheet](#).

II. PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND (PHSSEF)

Congress has provided \$127 billion to the PHSSEF. It is not yet clear how this fund will be administered, as HHS will need to set out criteria it will use to allocate the funds.

- A. **\$100 Billion Program for Hospitals and Health Care Providers.** \$100 billion, to remain available until expended, is provided for a new program to provide grants to hospitals, public entities, not-for-profit entities, and Medicare and Medicaid enrolled suppliers and institutional providers to cover unreimbursed healthcare-related expenses or lost revenues attributable to the public health emergency resulting from the coronavirus. Allowable use of funds is to prevent, prepare for, and respond to coronavirus and to provide grants or other funding mechanisms to eligible health care providers for healthcare-related expenses or lost revenues attributable to coronavirus.
- a. Funds cannot be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse. How this requirement will be effectuated by the federal government and providers is not yet known.
 - b. Eligible entities are public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit and nonprofit entities as the Secretary may specify that provide diagnosis, testing, or care to individuals that have or may have COVID 19. This excludes providers that are not diagnosing, testing or caring
 - c. Recipients shall maintain documentation as determined by the Secretary.
 - d. Applications will be on a rolling basis.
 - e. These funds shall be available for building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and training, emergency operation centers, retrofitting facilities, and surge capacity.
 - f. Payment means a pre-payment, prospective payment, or retrospective payment, as determined appropriate by the Secretary.
 - g. The payments shall be made in consideration of the most efficient payment systems practicable to provide emergency payment
 - h. To be eligible for a payment under this paragraph, an eligible healthcare provider shall submit to the Secretary of Health and Human Services an application that includes a statement justifying the need of the provider for the payment and the eligible health care provider shall have a valid tax identification number (TIN).
- B. **\$27 Billion to Improve Response Capabilities for COVID-19.** \$27,014,500,000, to remain available until September 30, 2024, to prevent, prepare for, and respond to coronavirus, domestically or internationally, including the development of necessary, countermeasures and vaccines, prioritizing platform-based technologies with U.S.-based manufacturing capabilities, the purchase of vaccines, therapeutics, diagnostics, essential medical supplies, as well as medical surge capacity, addressing blood supply chain, workforce modernization, telehealth access, and infrastructure, initial advanced manufacturing, novel dispensing, enhancements to the US Commissioned Corps, and other preparedness and response activities:

- a. Not more than \$16 billion for the Strategic National Stockpile for critical medical supplies, personal protective equipment, and life-saving medicine;
- b. \$3.5 billion for Biomedical Advanced Research and Development Authority (BARDA) to advance construction, manufacturing, and purchase of vaccines and therapeutics to the American people. This is in addition to the significant investments provided for these activities in the first supplemental.
- c. \$250 million for the Hospital Preparedness Program (HPP), including the National Ebola and Special Pathogens Training and Education Center (NETEC), regional, state and local special pathogens treatment centers, and hospital preparedness cooperative agreements (this is in addition to prior funding for HPP which was just announced and is referenced in C below);
- d. Funding for innovations in manufacturing platforms to support a U.S.-sourced supply chain of vaccines, therapeutics, and small molecule active pharmaceutical ingredients;
- e. Funding to support U.S.-based next-generation manufacturing facilities;
- f. Increased medical surge capacity at additional health facilities;
- g. Enhancements to the US Commissioned Corps;
- h. Funding to support research related to antibiotic-resistant secondary infections associated with coronavirus; and
- i. Workforce modernization and increased telehealth access and infrastructure to increase access to digital healthcare delivery.

How to Access Funding: ASPR will likely provide NETEC and HPP funding for special pathogens treatment centers through amendments to existing cooperative agreements and grants, or through new Funding Opportunity Announcements (FOAs). BARDA's additional funding of \$3.5 billion will support foster manufacturing of therapeutics in the US and includes funding for construction and manufacturing. BARDA has issued a solicitation on its website to which a brief proposal may be provided, followed by a more extended ten-page proposal under the existing Broad Agency Announcement (BAA). The additional Strategic National Stockpile (SNS) funding will allow for more supplies of available products, but it is unlikely to help with ventilator shortages due to the lack of production capacity. Existing ventilators in the stockpile are being apportioned to states and localities based on need. SNS flows through the states, and most Governors have made requests and supplemental requests. SNS has not been able to meet demand with current stockpile items.

C. \$100 Million in Hospital Preparedness Program. Based on the prior COVID 19 funding legislation, ASPR has [released a funding announcement](#) that will be provided as follows:

- [\\$50 million to NETEC and Ebola & Special Pathogen Treatment Centers](#)
- \$50 million, which will be divided among State Hospital Associations to provide additional support to hospitals for special pathogen preparedness and response.

How to Access Funding: Contact your State hospital association. If you are a special pathogen treatment center, funding will be provided through existing mechanisms.

III. CENTERS FOR DISEASE CONTROL (CDC) -- PUBLIC HEALTH FUNDING

The Congress is providing \$4.3 billion to support federal, state, and local public health agencies to prevent, prepare for, and respond to the coronavirus, including:

- A. **Funding for State/Local Public Health Departments.** \$1.5 billion to support States, locals, territories, and tribes in their efforts to conduct public health activities, including:
- a. Purchase of personal protective equipment;
 - b. surveillance for coronavirus;
 - c. laboratory testing to detect positive cases;
 - d. contact tracing to identify additional cases;
 - e. infection control and mitigation at the local level to prevent the spread of the virus; and
 - f. other public health preparedness and response activities.

Every current grantee under the Public Health Emergency Preparedness (PHEP) program is guaranteed to receive not less than the amount provided to them in the fiscal year 2019.

- B. **Flexible Funding for CDC.** The legislation provides \$1.5 billion in flexible funding to support CDC's continuing efforts to contain and combat the virus, including repatriation and quarantine efforts, purchase and distribution of diagnostic test kits (including for state and local public health agencies) and support for laboratory testing, workforce training programs, combating antimicrobial resistance and antibiotic-resistant bacteria as a result of secondary infections related to COVID-19, and communicating with and informing the public, state, local, and tribal governments and healthcare institutions.
- C. **Other Funding Streams.** The legislation also provides specific amounts as follows:
- a. \$500 million for global disease detection and emergency response;
 - b. \$500 million for public health data surveillance and analytics infrastructure modernization; and
 - c. \$300 million for the Infectious Diseases Rapid Response Reserve Fund, which supports immediate response activities during outbreaks.

How to Access Funding: State and local public health departments will be receiving substantial amounts of funding. Hospitals and providers should be working directly with their state and local health departments. CDC's flexible funding may provide another opportunity for grants or cooperative agreements in support of their activities on testing, training, and communicating with the public.

IV. NATIONAL INSTITUTES OF HEALTH (NIH)

\$945 million -- \$103 Million for the National Heart, Lung, and Blood Institute (NHLBI); \$706 million for National Institute of Allergy and Infectious Diseases (NIAID), \$60 million for National Institute of Biomedical Imaging and Bioengineering (NIBIB), \$10 million for the National Library of Medicine (NLM), \$36 million for National Center for Advancing Translational Sciences (NCATS), and \$30 million for the Office of the Director – to remain available through FY 2023. Funds will support the expansion of research plans under the first supplemental, including developing an improved understanding of the prevalence of the COVID-19, virus its transmission and the natural history of infection, and novel approaches to diagnosing the disease and past infection, and developing countermeasures for prevention and treatment.

How to Access Funding: NIAID has [issued a Notice of Special Interest](#), which can expedite extramural awards. Additional notices are likely.

V. HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)

The Congress has provided \$275 million to HRSA as follows:

- A. \$90 million for Ryan White HIV/AIDS programs;
- B. \$180 million to support rural critical access hospitals, rural tribal health and telehealth programs; and
- C. \$5 million for poison control centers.

How to Access Funding: Ryan White and Poison funds should be spent as a supplemental award to existing grantees. Accordingly, if you are currently receiving funds via these HRSA sources, we suggest you reach out to your existing programmatic contacts at HRSA.

VI. OTHER FUNDING STREAMS OF INTEREST TO HOSPITALS AND PROVIDERS

- **\$425 million for Substance Abuse and Mental Health Services Administration (SAMHSA)** – 425 million to remain available through FY 2021 apportioned as follows –
 - \$250 million for the Certified Community Behavioral Health Clinic Expansion Grant Program,
 - \$50 million for suicide prevention programs, and
 - \$100 million under Section 501(o) of the Public Health Service Act (PHSA) for —non-competitive grants, contracts, or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities.
- **\$955 million for Administration for Community Living (ACL)** – The bill includes \$955 million for ACL to support nutrition programs, home, and community-based services, support for family caregivers, and expand oversight and protections for seniors and individuals with disabilities.
- **\$200 million for CMS for Nursing Home Infection Control.** The bill includes \$200 million for CMS to assist nursing homes with infection control and support states’ efforts to prevent the spread of coronavirus in nursing homes.
- **\$200 million Emergency Food and Shelter Program** – \$200 million for shelter, food, and supportive services to individuals and families in sudden economic crisis.
- **\$25 million for Rural Development** – The bill provides \$25 million to support the Distance Learning and Telemedicine program. This increase will help improve distance learning and telemedicine in rural areas of America. Additionally, \$100 million is provided to the ReConnect program to help ensure rural Americans have access to broadband, the need for which is increasingly apparent as millions of Americans work from home across the country. The bill also includes \$20.5 million to support \$1 billion in Business and Industry loans.
- **\$1 billion for Indian Health Service (IHS)** – Provides \$1.032 billion in critically needed resources to support the tribal health system during the pandemic, including expanded support for medical services, equipment, supplies and public health education for IHS direct service, tribally operated and urban Indian health care facilities; expanded funding for purchased/referred care;

and new investments for telehealth services, electronic health records improvement, and expanded disease surveillance by tribal epidemiology centers.

- **\$5 billion for Community Development Block Grant** – \$5 billion is provided for the Community Development Block Grant (CDBG) program to enable nearly 1,240 states, counties, and cities to rapidly respond to COVID-19 and the economic and housing impacts caused by it, including the expansion of community health facilities, child care centers, food banks, and senior services.
- **\$4 billion for Emergency Solutions Grants** – \$4 billion is included to address the impact of COVID-19 among individuals and families who are homeless or at risk of homelessness, and to support additional homeless assistance, prevention, and eviction prevention assistance. Eviction prevention activities, including rapid rehousing, housing counseling, and rental deposit assistance, will mitigate the adverse impacts of the pandemic on working families.
- **\$3 billion for Rental Assistance Protections for Low-Income Americans** – \$3 billion is included for housing providers to help more than 4.5 million low-income households made up of more than 9.6 million individuals currently assisted by HUD to safely remain in their homes or access temporary housing assistance in response to economic and housing disruptions caused by COVID-19. This includes \$65 million for Housing Opportunities for Persons with AIDS to maintain rental assistance and expand operational and administrative flexibilities for housing and supportive service providers to assist nearly 61,000 households. Given that this population is particularly vulnerable, the bill includes temporary relocation services to contain and prevent the spread of COVID-19 for these at-risk households.

VIII. TREASURY FUNDING

The CARES Act allocates \$500 billion to what is called an Exchange Stabilization Fund (ESF), which is an emergency reserve fund that provides the Treasury Secretary with authority to distribute emergency funding to assist companies of all sizes. A portion is set aside for critical industries. The balance of \$454 billion is to be transferred to the Federal Reserve Banks to establish a program of loans and loan guarantees to “eligible business.” The definition of eligible business is extremely broad, encompassing virtually any business that is adversely impacted by COVID-19. Unlike the SBA program, loans are to be repaid. There are various conflicts of interest provisions and other constraints. The program requires consumer credit scores to be maintained as “current” if a lender enters into an accommodation agreement with a consumer. While the ESF will support businesses of all sizes, the new Fed facility will seek to address the gap between the relief provided to small businesses of fewer than 500 employees, and some of the largest and most sophisticated companies that have access to other relief.

How to Access Funding: Treasury and the Federal Reserve have yet to provide details on how the funds will be accessed. It is understood that existing financial institutions backstopped by the Fed will be the vehicle for loans.

IX. SBA-NONPROFIT FUNDING

Small Business Administration (SBA) – The CARES Act includes the “Keeping American Workers Employed and Paid Act,” which authorizes \$350 billion worth of 100 percent guaranteed SBA loans, a portion of which SBA will forgive based on allowable expenses for the borrower. Working through the existing network of SBA lenders (which will also be expanded), SBA will provide loans of up to \$10

million for small businesses (generally defined as fewer than 500 employees) and 501(c)(3) organizations with fewer than 500 employees. During the eight weeks following the approval of the loan, costs incurred for payroll and several other qualifying expenditures will be forgiven. In other words, a lending vehicle is being used to provide eight weeks of bridge funding to program participants.

The bill also provides \$562 million to ensure that SBA has the resources to provide Economic Injury Disaster Loans (EIDL) to businesses that need financial support. SBA has signed emergency declarations for all 50 states, the District of Columbia, Puerto Rico, and the US Virgin Islands, so the EIDL program will be available to assist small businesses across the country that have been adversely impacted by COVID-19. The small business package also includes \$10 billion in direct grants for businesses that do not qualify for the EIDL program and \$17 billion to have SBA step in and make six months of principal and interest payments for all SBA backed business loans. All these measures combined will relieve financial stress from struggling businesses and inject much-needed capital into the economy.

In addition to the EIDL grants and increased SBA 7(a) loans, the CARES Act establishes a third loan program for small businesses called the Paycheck Protection Program (PPP). PPP loans are designed to help small businesses avoid closure or layoffs, and can be used to cover payroll, utilities, insurance premiums, and rent and mortgage interest payments on a facility. This program concludes on June 30, 2020, and is tailored for businesses that typically would not qualify for a loan at an average local or national bank. The loans require no collateral, credit test, or personal guarantees from a business, the only proof that the business was open and operational on February 15, 2020. To attract lenders, the government is offering a 100% guarantee on loans through the end of 2020.

How to Access Funding: Existing SBA processes will be used. SBA disaster loan application materials related to COVID-19 are available on the [Agency's website](#). Applications can be submitted electronically or by mail. Additional SBA guidance is expected.

X. PAYROLL/ECONOMIC RELIEF

Unemployment Insurance (UI). Expanded UI. Benefits are provided in the CARES Act. Unemployed workers will be eligible for the amount of benefit determined under their state program plus an additional \$600/week.

Refundable Tax Credits. The Treasury will be making payments of \$1,200 to individual filers, \$2,400 to joint filers, and an additional \$500 per dependent.

Employee Retention Credit for Employers Substantially Impacted by COVID-19. The Social Security Administration will administer payment of 50% of qualifying wages (up to \$10,000) per employee per calendar quarter to businesses (including nonprofits) whose operations were “fully or partially” suspended due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19. The credit is available for any calendar quarter after December 31, 2019, in which gross receipts are less than 50% of the amount for the prior year comparable quarter. The credit will end when gross revenues in a calendar quarter reach 80% of the amount in the comparable previous year quarter. It is limited to employees unable to provide services during the quarter due to the governmental order. A small business or nonprofit entity participating in the SBA program may not also participate in this credit.

How to Access Funding: Unemployment Insurance applications are submitted through state offices. Tax Credits will be sent directly by the IRS. The Social Security Administration will establish a process for obtaining employee retention credits.

XI. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

The supplemental increases the Disaster Relief Fund by \$45 billion to provide for the immediate needs of the state, local, tribal, and territorial governments to protect citizens and help them recover from the overwhelming effects of COVID-19. Reimbursable activities may include medical response, personal protective equipment, National Guard deployment, coordination of logistics, safety measures, and community services nationwide.

On March 13, 2020, the President declared the COVID-19 outbreak a national emergency, retroactive to March 1, 2020. This proclamation technically invoked two separate laws, the National Emergencies Act¹ and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act),² representing the first time that these two laws have been invoked for the same disaster at the same time.

Currently, the FEMA Disaster Relief Fund is funded at \$17.863 billion in the FY 2020 appropriations legislation signed into law in December 2020. This does not include previously appropriated, unspent funds, which would bring total available funding to over \$40 billion. The recently considered *Coronavirus Aid, Relief, and Economic Security Act* in the US House of Representatives and the US Senate would increase supplemental appropriations to the Disaster Relief Fund by \$30 billion, which would be directed through the FEMA to eligible recipients and their applicants. By law, these funds may be available until consumed. Additional information on applying for these funds may be found below.

National Emergencies Act

The President invoked the National Emergencies Act under [Proclamation 9994](#) on March 13. This authority by the President was most recently invoked in response to the H1N1 influenza outbreak in 2009. The NEA allows the President to invoke standby authorities and expands his authority to utilize federal resources to respond to a national emergency. Several of these national emergencies under the NEA are active, including those related to actions on the US southern border and those creating limitations on trade in other countries, such as Mali and Syria, and may be reauthorized annually, if needed.

Most importantly for healthcare, Proclamation 9994 also partially authorized a process to grant the Secretary of Health and Human Services (HHS) additional authority to waive or modify certain requirements of the Medicare, Medicaid, and Children's Health Insurance Program as well as applications of the Health Insurance Portability and Accountability Act (HIPAA) under section 1135 of the Social Security Act.³ Waivers and modifications of requirements under Section 1135 were fully authorized by HHS Secretary Alex Azar's declaration of a public health emergency pursuant to Section 319 of the Public Health Service Act on January 31, 2020.

This flexibility has already been applied in numerous instances to the healthcare community, including several instances related to telehealth, provider enrollment, and suspensions of CMS' enforcement

¹ 50 U.S.C §§1601 et seq.

² 42 U.S.C. §§5121 et seq.

³ 42 U.S.C. 1320b-5.

discretion on survey inspections. The type of overall flexibilities and their legal justification may be found [here](#). Flexibilities under Section 1135 on the state level may be triggered. Thirteen states have sent communications to HHS seeking and receiving flexibilities under the Section 1135 waivers. These requests may be found [here](#).

It should be noted that national emergencies declared under the NEA do not trigger any additional dedicated or supplemental funding streams.

Stafford Act

The President invoked sections 501(b) as well as sections 401(a), 502, and 503 of the Stafford Act on March 13 by [declaration](#). The declaration under Section 501(b) simply triggered the responsibility for Stafford Act-authorized activities under the federal government (as opposed to Indian tribal governments). Within the Stafford Act, two separate declarations may be made: emergency declarations and major disaster declarations. Under the March 13 declaration, funding and assistance will be routed through FEMA, with additional actions or coordination requested from the Departments of Health and Human Services, Treasury, and Homeland Security. Typically, individual states or territories must request assistance under the Stafford Act, which is then approved by the President in consultation with FEMA. This is a rare incident where a nationwide emergency was declared without a prompt from the states or territories.

Major Disaster Declarations (Title IV)

Major Disaster Declarations authorize a wider range of federal assistance to states, territories, local governments, and the like compared with emergency declarations outlined below. Typically, major disasters are natural catastrophes. However, the President noted in the March 13 letter that the severity of the situation made such a declaration appropriate. Typically, an Emergency Declaration is a prerequisite for a Major Disaster Declaration, but in this case, both were invoked simultaneously by the President.

A Major Disaster declaration can allow the President to direct any federal agency to utilize its resources to mitigate the impact of a disaster. The declaration also unlocks reimbursement for Public Assistance, which includes assistance with state and local governments in the distribution of health and safety measures, medicine, and food. More importantly, the declaration, under Section 403(a) of the Stafford Act, allows support and reimbursement for “essential assistance,” or assistance “essential to meeting immediate threats to life and property resulting from a disaster.” This includes:

- Disseminating medicine, durable medical equipment, food, and other consumable supplies;
- Search and rescue;
- Emergency medical and mass care;
- Emergency shelter;
- Movement of supplies and persons.

Title IV of the Stafford Act also authorizes numerous other types of assistance that may be used to address social determinants or other wraparound services to healthcare, including:

- Food coupons and food distribution;
- Emergency public transportation;
- Food commodities for mass feeding.

Under both Title IV and V of the Stafford Act, reimbursement may be made for eligible emergency protective measures relevant to healthcare as a form of Public Assistance undertaken by eligible entities, including:

- Emergency medical care:
 - Non-deferrable medical treatment of infected persons in a shelter or temporary medical facility
 - Related medical facility services and supplies
 - Temporary medical facilities and/or enhanced medical/hospital capacity (for treatment when existing facilities are reasonably forecasted to become overloaded in the near term and cannot accommodate the patient load or to quarantine potentially infected persons)
 - Use of specialized medical equipment
 - Medical waste disposal
 - Emergency medical transport
- 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 per standards and/or guidance approved by HHS/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
- Purchase and distribution of food, water, ice, medicine, and other consumable supplies, to include personal protective equipment and hazardous material suits Movement of supplies and persons

Section 403 of the Stafford Act also allows the President to tap into Department of Defense (DoD) resources, including the National Guard, to supplement any disaster relief services, which can provide much-needed resources and personnel for addressing various issues of pandemic response.

The President has the additional authority beyond these provisions to determine who and what qualifies as an “essential service provider” during this declaration. Typically, essential service providers coordinate electrical power, gas, water, etc. but this may be expanded. Under this provision (Section 427), essential service providers also include municipal entities, nonprofit entities, or for-profit entities. It is unclear whether the President will provide greater specificity in this section in the coming days. Finally, major disasters open the federal tap for funds to restore damaged facilities, buildings, etc. However, these functions are not wholly relevant for healthcare entities, not experiencing a traditional major disaster such as a flood or hurricane.

Under the Stafford Act, costs associated with Major Disaster relief under Title IV and Emergency Declarations (see below) shall be shared between the federal government and the recipient, with the federal government not paying less than 75 percent of the share. The state recipient decides how the non-federal share (25 percent or less) is shared between sub-recipients of any grant, such as state and local governments. *The President has the authority to waive the non-federal cost-share for Public Assistance activities and has done so for the states of California, Washington, and New York.* These

states are receiving at 100 percent federal cost-share for disaster-related funding due to the intensity of the outbreak in those states. National Guard has also been mobilized in these states.

Emergency Declarations (Title V)

Emergency Declarations may be used broadly and are technically defined as “any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement State and local efforts...to save lives and...public health and safety...”⁴ These particular declarations authorize a form of Public Assistance, typically to reduce threats to public health and safety and include emergency shelter and medicine. Although not currently activated, an Emergency Declaration may also trigger Individual Assistance, which may be used to help families and individuals respond to issues following a disaster.

Under Section 502 of the Stafford Act, eligible emergency protective measures (see above) may be reimbursed under the Public Assistance program as long as they are not duplicative with efforts undertaken by other federal agencies, such as HHS and the Centers for Disease Control and Prevention (CDC). It should be noted that Emergency Declarations come with a funding limit of \$5 million per declaration unless the President authorizes additional funding. Congress must be notified if the \$5 million thresholds will be exceeded.

How to Access FEMA Funding: Those seeking public assistance through FEMA and in coordination with other federal agencies may apply for such assistance through a simplified [federal portal](#) after contacting the state or local emergency management agency to set up an account. **It is important to reach out to your state emergency management agency.** Please note that by law, applicants must seek reimbursement through a legal recipient of Stafford Act-authorized federal dollars, i.e., a state, locality, or tribe. Applicants may be state, local, tribal, and territorial governments as well as eligible nonprofits and facilities of public entities, including and especially state emergency management agencies. More specifically, a public facility is one that a state, the territorial, tribal, or local government owns or has legal responsibility for maintaining. A private nonprofit facility is one that provides certain types of care, including emergency and medical care, and care for the aged and disabled.⁵

FEMA has resources and updates for most states. For instance, videos on operating the portal and submitting requests for public assistance (RPAs) may be found [here](#). An additional fact sheet with application information may be found [here](#). Other FEMA resources may be found [here](#).

XII. Other Funding

Coronavirus Relief Fund. Of the \$150 billion, a total of \$3 billion is available to DC, and the territories and \$8 billion is available for tribes. The remaining funds would be distributed based on population, but each of the 50 states is guaranteed to receive at least \$1.25 billion for FY 2020. These funds must be used to cover necessary expenditures incurred due to the coronavirus that was not accounted for in the government’s budget and incurred between March 1 and December 20, 2020

⁴ 42 U.S.C. §5122(1)

⁵ Means “any hospital, outpatient facility, rehabilitation facility, or facility for long-term care as defined in Section 645 of the Public Health Service Act similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous (44 CFR § 206.221).