

## **COVID-19: Key Legal Updates For Urology Groups**

By: Gary W. Herschman, Denise Dadika and Anjana Patel

Urology groups are struggling with the strain the coronavirus pandemic has put on their day-to-day operations. Many groups have had to postpone non-emergency appointments and surgeries, and have reduced or furloughed staff. This article summarizes some key legal issues for urology groups, including newly enacted Federal laws and agency guidance.

### **Telehealth and OIG Co-Payment & Stark Law Waivers**

The Telehealth Services during Certain Emergency Periods Act of 2020 eases Medicare restrictions on the reimbursement of telehealth services. A March 17<sup>th</sup> CMS waiver clarifies that: (1) any Medicare patient can receive telehealth for all services (even if unrelated to COVID-19), such as office visits, prescriptions, back pain, etc.; and (2) providers can reduce or waive cost-sharing for all telehealth visits. In addition, there are specific Stark law waivers for certain remuneration and referrals related solely to certain COVID-19 purposes regarding fair market value rent, loans to physicians and certain payments from hospitals to physicians.

### **Enhanced Patient Communications**

Issued March 20, 2020, FAQs encourage remote communications with patients and allowed technologies, including: Skype for Business/Microsoft Teams, Updox, VSee, Zoom for Healthcare, Doxy.me, Google G Suite Hangouts Meet, Cisco Webex Meetings/Webex Teams, Amazon Chime and GoToMeeting are acceptable HIPAA-compliant vendors. The following are NOT acceptable: Facebook Live, Twitch, TikTok, and similar public facing applications.

### **Ambulatory Surgery Center Options & Flexibility**

On March 30<sup>th</sup>, CMS announced that ASCs (many of which are restricted by States from performing elective surgeries) can contract with local healthcare systems to provide hospital space and/or services, including non-elective surgeries for hospitals, such as cancer, trauma and other essential surgeries. ASCs also can enroll and bill as hospitals subject to certain caveats.

### **CARES Act: Grants and Forgivable Loans**

On March 27<sup>th</sup> President Trump signed The Coronavirus Aid, Relief and Economic Security Act, which provides various economic stimulus, including:

1. \$349 Billion for loans through the “Paycheck Protection Program”. Many urology practices may be eligible to receive a loan under the program because businesses with under 500 employees may apply. Key requirements include:
  - a. Certify that economic conditions necessitate the loan for ongoing operations. Businesses that closed or reduced staff can still qualify.
  - b. The loan amount is the lesser of (i) average monthly payroll multiplied by 2.5 (based on certain time periods), or (ii) \$10 million. No personal guaranty or collateral is required.
  - c. The loan may only be used for payroll costs (for employees under \$100,000), benefit costs, rent, utilities, and interest on debt incurred prior to February 15, 2020.
  - d. Eligible costs incurred and paid over the 8 weeks following receipt of proceeds will be forgiven; except: (i) if there is a reduction in average number of employees versus prior year, or (ii) if 25% or more pay reduction of employees making under \$100,000 per year. (But if rehire and end any salary reductions prior to June 30, 2020, will still qualify for forgiveness).
  - e. The loans will be made through banks and guaranteed by SBA. Applications can now be obtained at: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf> (along with other details). SBA participating banks can start processing applications on April 3<sup>rd</sup>, and can directly approve loans, so a streamlined process is expected. Urology groups should prepare and submit their applications by April 3<sup>rd</sup> (or ASAP thereafter), as it is anticipated that the \$349 Billion will be allocated very quickly (and is “first come, first served”).
2. \$100 Billion is authorized to reimburse caregivers that “provide diagnoses, testing or care for individuals with possible or actual cases of COVID-19” for expenses or lost revenues attributable to COVID-19. Application details are not out yet.
3. \$562 million was added to existing SBA disaster loan programs, providing loans up to \$2 million to businesses suffering due to COVID-19. Although these loans must be repaid, applicants receive a \$10,000 emergency grant not requiring repayment. Applications are at: <https://covid19relief.sba.gov/#/>

### **All Payer Reimbursement**

For urology groups that are involved in testing patients for COVID-19, the [Families First Coronavirus Response Act](#), enacted March 18, 2020, requires coverage for COVID-19 testing without cost-sharing, prior authorization, or other medical management requirements across all payors throughout the country.

### **Bundled Payment & Quality Reporting Programs**

The pandemic may impact value-based (bundled) payment arrangements (e.g., Comprehensive Care for Joint Replacement). Further, on March 22, 2020, CMS announced that it will be granting exceptions for Medicare quality reporting requirements.

## **Employment & Workforce Issues for Urology Groups**

### ***Taking employees' temperatures?***

With the pandemic, the EEOC has clarified that employers may measure body temperature as the disease becomes widespread in the community as assessed by state or local health authorities or the CDC. Employers concerned about privacy implications or potential ADA violations may consider the alternative of requiring their employees to take their own temperatures and stay home if they determine they have a fever (100.4 degrees or higher).

### ***Refusals to Work?***

The Occupational Safety and Health Administration (“OSHA”) recently issued [Guidance on Preparing Workplaces for COVID-19, as well as](#) interim [guidance](#) for workers with potential occupational exposure to COVID-19, which should be followed.

Employees refusing to work due to a good faith belief that they are under “a real danger of death or serious injury,” may be protected under OSHA. Consult legal counsel before disciplining or terminating such staff.

### ***Sick Employees Compensation?***

Exempt employees must be paid their regular salaries if they work any portion of a workweek. Non-exempt (hourly) employees need be paid only for time worked, and may be able to use sick time or other PTO if they are ill or caring for a relative.

The Families First Coronavirus Response Act requires employers with fewer than 500 employees to provide up to 80 hours of emergency paid sick leave if experiencing symptoms of coronavirus, seeking a medical diagnosis, or advised by a health provider to self-quarantine. Employers, however, are permitted to exclude health care providers (including anyone employed at a physician office) from coverage under this law.

Employers also may consider paid administrative leave and advancing future PTO, and may extend telework options to non-exempt employees who can work remotely and track their time.

### ***Cost-Savings Measures***

Employers whose operations have been suspended or reduced due to COVID-19 may need to consider reducing employees' wages and/or hours. Reductions must be prospective and comply

with state-specific notice requirements. For exempt employees, salary rates should not be less than applicable federal (or state, if higher) required minimums. Another option is to place employees on a short-term furlough, i.e., an unpaid leave of absence, until operations resume. Employees on furlough may be eligible to continue participation in the group health plan for a period of time, or may qualify for COBRA coverage.

### **State-by-State Actions In Response to COVID-19**

Individual states are also taking actions to reduce the spread of the virus, and urology groups should check executive orders and other waivers from their States, possibly including:

1. Prohibition on elective surgeries, which has been devastating to many groups.
2. Relaxing facility licensure requirements to allow ASCs to house and treat patients.
3. Loosening of in-state licensure requirements for facilities, and expansion of mid-level providers' scope of practice and supervision reduction.
4. Mandatory reporting of essential medical equipment (e.g. PPE, Ventilators, Respirators, Anesthesia Machines, etc.).
5. Mandatory reporting of patients that show symptoms of COVID-19 infection.
6. Temporary state kick-back and self-referral waivers to treat coronavirus patients.
7. Loans or grants to assist small businesses including medical offices.

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Epstein Becker & Green, PC, a national law firm with 16 offices across the country, and around 300 attorneys, all of whom focus their legal practices exclusively on health care law and employment law matters. In light of the explosion of new legislation and information about the various impacts of the novel coronavirus (COVID-19) on employers and businesses, Epstein Becker Green has developed a [Coronavirus Resource Center](#) to help those who are grappling with how to deal with the various implications on their businesses and workforces.