COVID-19

PRACTICE VIABILITY TOOLKIT

Access to TMA's COVID-19 resources will be available to all physicians and practices for the duration of the pandemic

Physicians Caring for Texans

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Overview

Current State of Medical Practice Viability in Texas

During this COVID-19 public health emergency, the issue of medical practice viability is a multifaceted issue. Many physicians on the front lines are having to quickly augment their practices to telemedicine platforms while navigating compliance and payment issues. Meanwhile, physicians are having to quickly adapt to operational and business challenges like:

- Reduced billings, revenue, and cash flow;
- Decreased wages;
- Staff shortages and reductions;
- Restricted work hours and locations;
- Decreased and cancelled patient encounters;
- Limitations on non-urgent surgeries and procedures; and
- Cuts to operating expenses.

These challenges are negatively and greatly affecting standard practice operations, creating problems with paying rent, staff, and existing financial obligations. According to a recent survey conducted by the Texas Medical Association (TMA), 54% of respondents already have cash flow problems, with 40% having one or fewer months of reserves on hand. TMA will continue to monitor as physicians' needs will change throughout the stages of COVID-19.

Steps toward Practice Viability

As the COVID-19 curve rises, your practice revenue and cash flow may already be trending downward. To help you take decisive actions to shore up practice operations for the weeks (or months) to come, TMA's practice viability experts have organized the steps you can take to have a meaningful impact.

From evaluating staffing levels and talking to your CPA about available tax credits, to focusing on working old accounts receivable and rescheduling upcoming patient appointments, these steps provide you with the high-level guidance your practice might need to get headed in the right direction.

Practice Viability Toolkit Scope

This Practice Viability Toolkit collates much of the information, resources, and links physicians need to make informed decisions about their practice's viability during this pandemic.

*Please note that the information relating to COVID-19 contained in this publication was believed to be current at the time of publication; however, circumstances surrounding COVID-19 are continually evolving and the information provided herein is subject to change at any time. Contact the TMA Knowledge Center or view the appropriate agency's website for the most up-to-date information.

Refer to TMA's COVID-19 Practice Viability web page for additional tools, resources, and frequently asked questions regarding operational challenges that affect your practice's viability.

TELEMEDICINE

Physicians have the opportunity to augment their practice with telemedicine during this COVID-19 emergency. Several telemedicine-friendly waivers are in place that recognize the importance of helping medical practices continue to care for patients while maintaining appropriate social distancing. TMA has numerous resources to help you as you take the necessary steps to get started.

TECHNOLOGY

A key first step is determining the technology you would like to use to conduct your telemedicine visits. Telemedicine platforms range from very simple and easy to use to more sophisticated platforms that allow for remote patient monitoring.

TMA has gathered a variety of telemedicine platforms; some are stand-alone while others have integrations with various electronic health record (EHR) vendors. A few things to consider:

- During the COVID-19 public health emergency, the U.S. Department of Health and Human Services (HHS) Office of Civil Rights (OCR) will exercise its enforcement discretion and not penalize physicians for noncompliance with HIPAA in connection with good faith provision of telemedicine, through common nonpublic-facing communication technologies such as FaceTime or Skype. State privacy, security, and breach notification statutes and regulations may still apply though, and it is advisable to discuss these requirements with your privately retained attorney.
- TMA's telemedicine vendor evaluation tool provides a list of questions you may want to ask a vendor you are considering.
- If you do choose a secure, encrypted technology that is HIPAA-compliant, you should execute a business associate agreement (BAA) with the vendor. A sample BAA for members is available in TMA's HIPAA Resource Center at www.texmed.org/HIPAA.
- TMA members are eligible for a free technology contract review by the Coker Group.

Before getting started, set up your technology and equipment. If you plan to use a desktop computer to conduct telemedicine visits, be sure to have a camera, microphone, and speakers. A dual-screen setup will be helpful in allowing you to view the patient on one screen while documenting the encounter on the other. If you utilize a smartphone, download the appropriate application.

Test the technology. Be sure the camera and speakers are turned on and work. Make sure you can log into the technology. Conduct test visits with practice staff or family members.

For more information on vendor selection, contact Andrea Cobb at (512) 370-1369 or email andrea.cobb@texmed.org.

Additional Resource: American Medical Association Quick Guide to Telemedicine in Practice

Compliance

Physicians using telemedicine must consider various laws to ensure compliance. TMA's Office of the General Counsel (OGC) published a white paper on Texas Laws and Regulations Relating to Telemedicine, which provides general information regarding the Texas legal and regulatory requirements. It is advisable to discuss any legal requirements related to telemedicine, including both state and federal requirements, with your privately retained attorney. A few things to note:

- **Standard of care**. When providing telemedicine, the standard of care that applies is the same that would apply if you provided the same health care service in person.
- **Medical liability insurance**. Inform your medical liability insurance carrier that you intend to begin conducting virtual visits. Policies with Texas Medical Liability Trust (TMLT), TMA's exclusively endorsed liability carrier, cover telemedicine visits. Before coverage is active, TMLT typically asks policyholders to complete a questionnaire specific to telemedicine. However, during the COVID-19 crisis, that requirement is waived.
- **Patient location**. Physicians licensed in Texas may conduct virtual visits only with patients physically located in Texas.
- **Documentation**. Per the Texas Medical Board (TMB), the requirements for documenting a telemedicine visit do not change based on the setting in which the patient is seen. Physicians providing telemedicine services are under the same obligation to keep and maintain an adequate medical record as they are if the services are provided in person.

HIPAA Relaxation

As mentioned above, during the COVID-19 emergency declaration, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights will not penalize physicians for noncompliance with HIPAA when they serve patients in good faith through common, nonpublic-facing communications technologies, such as FaceTime or Skype. This applies to services provided via telehealth for any reason, not just diagnosis and treatment related to COVID-19.

HHS encourages physicians to notify patients of the potential security risks of using these services, but notification is not required. Physicians may not use public-facing communication services such as Facebook Live, Twitch, and TikTok.

While this temporary relaxation of HIPAA as related to telemedicine platforms allows physicians and patients to quickly use readily available platforms, it should not be the long-term solution. As soon as it is feasible, physicians should consider and evaluate HIPAA-compliant platforms that are secure and encrypted. Additionally, state privacy, security, and breach notifications laws may still apply.

Additional Resources:

- HHS OCR FAQs on Telehealth and HIPAA during the COVID-19 nationwide public health emergency
- Texas Medical Board FAQs Regarding Telemedicine During Texas Disaster Declaration for COVID-19 Pandemic

Telemedicine Across State Lines

The Texas Medical Board requires that in order to provide telemedicine medical services to residents of Texas, a person must be licensed to practice medicine in Texas. Though HHS Secretary Azar has sent a letter and guidance to the states recommending that they temporarily waive state licensure requirements, Texas has not yet taken that action.

Controlled Substances

If treating patients with chronic pain, a physician can temporarily prescribe certain controlled substances during a telemedicine visit under state and federal waivers issued in response to the COVID-19 pandemic. The TMB issued a waiver that allows telephone refills of valid prescriptions for treatment of chronic pain by a physician with an established chronic pain patient.

Due to the seriousness of the opioid crisis and the need to ensure there is proper oversight of chronic pain management, this suspension is only in effect until May 8, 2020. Physicians remain responsible for meeting the standard of care and all other laws and rules related to the practice of medicine. The standard of care must still be maintained related to the treatment of chronic pain patients.

The U.S. Drug Enforcement Administration (DEA) will allow DEA-registered physicians to issue prescriptions for all schedule II-V controlled substances via telemedicine as long as all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system;
- The practitioner is acting in accordance with applicable federal and state laws; and
- The Secretary of Health and Human Services' designation of a public health emergency remains in effect.

Prescriptions can be issued using any of the methods of prescribing currently available, including electronically (for schedules II-V), by calling in an emergency schedule II prescription to the pharmacy, or by calling in a schedule III-V prescription to the pharmacy.

As a reminder, you must still check the patient's history in the Prescription Monitoring Program (PMP Aware) before dispensing or prescribing opioids, benzodiazepines, barbiturates, or carisoprodol.

Coding and Billing

At Governor Abbott's direction, the Texas Department of Insurance (TDI) has issued an emergency rule requiring state-regulated health plans to pay for audio-visual and audio-only telemedicine visits provided by in-network health professionals at the same rate as in-person visits. The TMB posted frequently asked questions related to telemedicine that include TDI guidance on billing. It is important to note that in Texas, the plans regulated by TDI represent approximately 20% of the commercial insurance market. Refer to this guide to help determine which patients have TDI-regulated plans.

Medicare and Medicaid have indicated payment parity for some encounter codes. Refer to the telemedicine quick reference chart, which is updated as new information becomes available.

Coding: Telehealth Visits

- CMS has expanded access to telehealth services for Medicare beneficiaries and will now pay for more than 80 additional services.
- Service must be provided via synchronous audio and visual technology.
- Refer to the complete list of Medicare telehealth services and their related codes.

Coding: Virtual Check-ins

- Brief communication technology-based service, including telephone, audio/video, and store and forward.
- E-visits, previously limited to established patients only, are now open to new and established patients.
  - HCPCS code G2012 for brief communication technology-based service
  - HCPCS code G2010 for remote evaluation of recorded video or images submitted by the patient; this includes interpretation and follow up with the patient within 24 business hours.

Coding: e-Visits

- Online, digital, patient initiated service for established patients, for up to 7-days, cumulative time during the 7 days
  - CPT codes 99421-99423
- Licensed clinical social workers, clinical psychologists, physical therapists, occupational therapists, and speech language pathologists may provide e-visits.
  - HCPCS codes G2061-G2063

Coding: Remote Patient Monitoring

- Remote patient monitoring can be provided to new and established patients.
- These services can be used to monitor acute and chronic conditions, and to a patient with only one disease.
- Examples of remote monitoring include a pulse ox for oxygen saturations or a blood pressure cuff to monitor hypertension.
  - CPT codes 99091, 99453-99454, 99457-99458, and 99473-99474

Additional Resources:

- CMS Regulatory Changes Fact Sheet
- CMS Telemedicine Health Care Provider Fact Sheet

Coding: Audio Only Evaluation and Management (E/M) Services

CMS will allow physicians to provide telephone (audio only) E/M services to new and established patients.

- Services may be provided to a patient, parent, or guardian.
  - CPT codes 99441-99443

Additional Resources:

- CMS Regulatory Changes Fact Sheet
- CMS Telemedicine Health Care Provider Fact Sheet

Place of Service and Modifiers

To receive payment parity for telehealth visits:

- Use the service code you would have used had the visit been performed in person.
  - POS 11 for most independent practices
  - This is a change from initial guidance; if you use POS 02, you will be paid at facility rates, rather than at the full visit rate.
- Include modifier 95
- You must use both the POS for an in-person visit and the new modifier 95 to receive payment parity.
- The following scenarios require additional or different modifiers:
  - GO – Telehealth provided to diagnose and/or treat acute stroke
  - GQ – Telehealth Demonstration Project in Hawaii and Alaska

Incident-to Billing for Telemedicine

The need for supervision in the case of incident-to billing has essentially not changed. What is different during the COVID-19 public health emergency is the way that supervision is conducted. Supervision between physician and nonphysician practitioners can now be done virtually using real-time audio and video technology. Refer to CMS' Physicians and Practitioners document for more information.

POLICIES AND PROCEDURES

Policies and procedures (P&Ps) are necessary for several reasons. If properly customized to your workflow and kept up to date, they can be utilized by your staff for orientation and instruction on how to complete the various processes associated with telemedicine in your practice. An up to date P&P manual, annually reviewed by your medical director, can be a great risk management tool if adhered to consistently. Download TMA's telemedicine policies, procedures, and forms and customize to your practice.

EDUCATION

TMA has made a concerted effort to develop telemedicine education materials that are easily digestible and up to date with the latest changes related to COVID-19. There are also telemedicine offerings in the TMA Education Center.

Patient Education

Patients will also require education on the use of telemedicine. Here are a few things to consider when introducing your patients to the use of telemedicine in your practice:

- Explain why it is beneficial, especially in light of COVID-19.
- Provide a "cheat sheet" that outlines how a telemedicine visit is scheduled, conducted, and billed. Include any appropriate website or application links.
- Push information to patients through emails, your practice website, patient portal, and call center (or whomever is responsible for answering phones and scheduling appointments).

You can download TMA's Telemedicine Quick Reference Sheet for Patients to use as a template.

Cash Flow

If you're like most practices, you are likely becoming (or already very) concerned about your practice's cash flow. Know that there are several financial assistance programs available to help you meet your obligations. Visit TMA's COVID-19 Practice Viability webpage for various articles, tools, resources, and frequently asked questions regarding practice operations that affect a practice's viability.

Financial Worksheet

As revenue decreases, it will be important to closely examine your monthly expenses. If your practice management system is not able to automatically produce a dashboard report, consider utilizing a one-page financial worksheet to get an at-a-glance view of your practice's financial health. Consider adding comments into the worksheet to explain unusual variances (e.g. vacations and payor problems). The example below combines productivity, collections, and expenses into one document.

	19-Dec	Jan-20	Feb-20	Mar-20	Variance to AVG	Monthly AVG	FY 2020 Total
Production							
Physician Gross Charges	$ 91,546	$ 92,000	$ 79,950	$ 119,250	$ (7,592)	$ 85,623	$ 1,027,481
NPP Gross Charges	$ 32,895	$ 27,458	$ 34,587	$ 29,612	$ (8,012)	$ 28,863	$ 346,355
Total Gross Charges	**$ 124,441**	**$ 119,458**	**$ 114,537**	**$ 148,862**	$ (15,604)	$ 114,486	$ 1,373,836
Physician Gross Collections	$ 53,468	$ 51,246	$ 54,879	$ 39,458	$ (1,928)	$ 49,714	$ 596,568
NPP Gross Collections	$ 16,485	$ 15,234	$ 15,489	$ 14,785	$ 123	$ 14,685	$ 176,217
Provider Gross Collections	**$ 69,953**	**$ 66,480**	**$ 70,368**	**$ 54,243**	$ (1,805)	$ 64,399	$ 772,785
Reimbursement Ratio	56%	56%	61%	36%	$ 0	57%	
# of Visits	317	301	249	350	$ (10)	310	3,723
# of New Patients	28	34	29	40	$ 4	35	416
# of Consults	12	15	10	20	$ 1	11	128
Adjusted Collections							
Physician Adj. Collections	$ 49,876	$ 59,987	$ 66,487	$ 51,246	$ (1,610)	$ 51,030	$ 612,359
NPP Adj. Collections	$ 17,895	$ 19,874	$ 24,879	$ 22,561	$ 1,440	$ 21,290	$ 255,481
Ancillary Gross Collections	$ 1,256	$ 2,963	$ 2,487	$ 2,659	$ (12)	$ 2,738	$ 32,859
Lab Adj. Collections	$ 5,689	$ 4,875	$ 6,166	$ 3,987	$ 376	$ 3,954	$ 47,445
Other/Subsidy Adj. Collections	$ 500	$ 500	$ 500	$ 500	$ -	$ 500	$ 6,000
Total Monthly Adj. Collections	$ 75,216	$ 88,199	$ 100,519	$ 80,953	$ 194	$ 79,512	$ 954,144
Expenses							
Staff Compensation	$ 15,000	$ 15,000	$ 17,000	$ 15,000	$ (1,667)	$ 15,333	$ 184,000
Benefits	$ 3,000	$ 3,000	$ 3,000	$ 3,000	$ 150	$ 2,850	$ 34,200
Medical Supply Cost	$ 1,500	$ 1,500	$ 1,500	$ 3,000	$ 125	$ 1,625	$ 19,500
Building Costs	$ 6,000	$ 6,000	$ 6,000	$ 6,000	$ -	$ 6,000	$ 72,000
Medical Record Storage	$ 400	$ 400	$ 400	$ 400	$ -	$ 400	$ 4,800
EMR/Technology Fee	$ 600	$ 600	$ 600	$ 600	$ -	$ 600	$ 7,200
CME and Licensure	$ -	$ -	$ 761	$ -	$ 63	$ 63	$ 761
Other	$ -	$ -	$ -	$ 1,200	$ 100	$ 100	$ 1,200
Total Monthly Expenses	$ 26,500	$ 26,500	$ 29,261	$ 29,200	$ (1,228)	$ 26,972	$ 323,661
Gross Margin	$ 48,716	$ 61,699	$ 71,258	$ 51,753	$ 1,422	$ 52,540	$ 630,483
Physician Compensation	$ 30,000	$ 30,000	$ 30,000	$ 30,000	$ -	$ 30,000	$ 360,000
Total Monthly Margin/Loss	$ 18,716	$ 31,699	$ 41,258	$ 21,753	$ 1,422	$ 22,540	$ 270,483

Note: Illustration Purposes Only; Variance to Avg., Monthly Avg., and FY 2020 totals include data from hidden cells for Apr.–Dec. 2020.

SBA Loan Assistance (4/17/2020)

The federal Coronavirus Aid, Relief, and Economic Stability Act (CARES Act) was signed into law on March 27, 2020. Among the CARES Act's many provisions, the Act provides important new loan assistance for small businesses through the U.S. Small Business Administration (SBA). As of April 16, all of SBA's initial funds have been allocated.

- Paycheck Protection Program (PPP). This program can provide eligible small businesses (fewer than 500 employees) with a loan of up to $10 million for payroll and certain other expenses. Additionally, under this loan program, if the employer maintains his or her workforce, SBA will forgive the portion of the loan proceeds that are used to cover the first eight weeks of payroll and certain other expenses (e.g. rent, utilities, interest on mortgages) following loan origination. The last day to apply for and receive a loan is June 30, 2020 and is first-come, first-served.
- Economic Injury Disaster Loan Advance (EIDL Advance). Eligible small businesses may apply for an EIDL advance of up to $10,000. This advance will provide economic relief to businesses that are currently experiencing a temporary loss of revenue. Funds will be made available within three days of a successful application. This loan advance will not have to be repaid.

In addition to the assistance provided under the CARES Act, Texas is included in the SBA's Economic Injury Disaster Declaration. This means that the SBA may offer low-interest EIDL or federal disaster loans for working capital statewide to eligible small businesses suffering substantial economic injury as a result of COVID-19. The SBA's Economic Injury Disaster Loans offer up to $2 million in assistance and may be used to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster's impact. Refer to TMA's article on Federal Loans Available to Help Your Practice during Disaster for more details.

The SBA Express Bridge Loan (EBL) Pilot Program allows certain SBA lenders to offer expedited SBA-guaranteed bridge loans on an emergency basis for disaster-related purposes to eligible small businesses, while applying for and awaiting long-term financing. Amounts up to $25,000 may be provided. EBL loans can be made up to six months after the date of disaster declaration. For COVID-19, EBL loans can be approved through March 13, 2021. Refer to the Express Bridge Loan Pilot Program Guide for eligibility and detailed information.

Other Financial Products (4/4/2020)

Due to the number of businesses needing financial relief, it is strongly advised that you work with a bank with whom you have an established relationship. Multiple financial options are available to help you meet your expense obligations including:

- **Lines of Credit** provide access to funds that can be used for any business expense. There's no lump-sum disbursement made at account opening. Many lines of credit are revolving (like a credit card), and interest begins to accumulate once funds are drawn.
- **Advancing Term Loans** convert the balance of a line of credit into a fixed short-term loan to be repaid with regular monthly payments.
- **Loan Payment Deferrals** can typically be requested for 90 days on existing loans. Lenders will expect your practice to resume regular payments once the deferment period ends.
- **Extensions of Interest-only Payment Periods** are often available to new practices (or recently opened practices.) An extension affords new practices additional time to pay only the interest on loans rather than principal plus interest.

- **Loan Refinancing** occurs when an existing loan is revised in terms of interest, payment schedule, and terms, often lowering the recurring payment obligations.
- **New Conventional Loans** require less paperwork and time to process than SBA loans. Borrowers typically must have stable cash flow, collateral, and an established operating history.

For the majority of these products, the standard qualifying requirements for applicants, documentation, and the underwriting process remain in place. Before reaching out to your bank to discuss options, talk with your certified public account (CPA) about the practice's current and projected financial status. Specifically, address line-item operating expenses, payroll obligations, and any tax implications of securing financial assistance.

Also, it would be beneficial to know how much financial assistance you might need. TMA's Net Cash Flow Calculator can help you estimate that number. Whether you intend to utilize reserve funds or secure a grant or loan, getting an idea of the big picture will help you hone in on your overall needs to make payroll, pay rent, and plan for operating expenses.

Other Funding Sources

- Texas Women's University offers the **AssistHer Emergency Relief Grant** to assist Texas-based, woman-owned businesses impacted by COVID-19. A total of $1,000,000, spread between 100 grant awards, is available.
- Facebook offers $100 million in cash grants and ad credits through their **Small Business Grants Program**.
- **JPMorgan Chase & Co.** has pledged a $5 million to support to support Black, Hispanic, and Asian Pacific Islander-owned small businesses in the U.S.
- **Opportunity Fund** lends money to small businesses owned by women, immigrants, and people of color and is collaborating with investors and nonprofits to put together coronavirus relief fund that will provide grants and low-interest rate loans.
- **PeopleFund** provides small business loans with flexible underwriting and no pre-payment penalties. They also offer loans up to $350,000 with additional benefits for veterans.
- **LiftFund** provides loans to small businesses and entrepreneurs who do not have access to loans from commercial sources throughout Texas.
- **William Mann Jr. Community Development Corporation** provides financing to small, minority- and women-owned businesses in and around Dallas/Fort Worth.

Commonly Requested Documentation

Regardless of which direction you choose to go for financial assistance, most lenders will request much of the same documentation. Begin collating the following information to avoid any additional delays:

- General business information:
  - Type of business
  - Business owner(s) name and contact information including:
    - Phone number
    - Email address
  - Business mailing and property address
  - Business URL
  - Date the business started
  - Number of employees
  - Description of loan purpose
- 2019 Federal Tax Return if filed, or complete 2019 financials including the business'
  - Profit and Loss Statement and
  - Balance Sheet.

- IRS Form 941 (Employer's Quarterly Federal Income Tax Return) for all four quarters for 2019
- List of employees paid more than $100,000 per year
- Total and average monthly employee payroll during the applicable base period, excluding amounts paid above a prorated annual salary of $100,000, on an annualized basis for each employee
  - New businesses: average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020
- Entity documents including:
  - Articles of Incorporation or Organization;
  - Bylaws; and
  - Partnership Agreements.
- Certificate of good standing
- Copy of Borrowing Authority – IRS letter assigning employer identification number, Certificate of Incorporation filed with the state, Articles of Incorporation and By-Laws (or Operating Agreement if LLC), Partnership Agreement, and Assumed Name Certificate filed with the state, if applicable

Keep in mind that each lender will have their own specific and/or proprietary list of requirements and forms.

Questions to Ask Financial Lenders

When working with lenders for financial assistance, be sure to ask the following questions:

- Do I need to be an existing customer to get a loan from your bank?
- I have an existing loan. Can I defer payments or revert to interest only for a specified time period?
- What loan programs can you offer?
- How long will the loan application process take?
- How long will the underwriting process take?
- How long until I receive the funds?
- What financial documents do you require?
- What other documentation is required?
- What are the interest rates and the total cost of initiating a new loan?
- Is there a personal guarantee required?
- How much can I borrow based on my collateral?
- Do I have adequate cash flow to repay the loan?
- How long until I pay this loan off?
- Is there a prepayment penalty?
- What will the payment schedule be?
- When would the first payment be due?
- How do I make periodic payments?
- May I speak to a few of your current and past customers?

TAX BENEFITS UNDER FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) (4/2/2020)

Beginning April 1, 2020 through December 31, 2020, covered employers under the FFCRA must provide eligible employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. Generally, a covered employer includes a private employer with fewer than 500 employees and certain public employers. However, it is important to note that an employer of a health care provider or emergency responder is not required to pay such paid sick leave or expanded family and medical leave, on a case-by-case basis. Additionally, certain small businesses may exempt employees if the leave would jeopardize the company's viability. For more details on these exceptions, see TMA's additional information on exceptions, as well as the Department of Labor's Families First Coronavirus Response Act: Questions and Answers website.

Importantly, covered employers receive 100% reimbursement through tax credits for all qualifying wages paid under the FFCRA (i.e., wages paid to an employee who takes FFCRA leave for a qualifying reason) up to the applicable daily and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.

> Example 1: The employer pays $5,000 in sick leave and is otherwise required to deposit $8,000 in payroll taxes, including taxes withheld from all its employees. The employer could use up to $5,000 of the $8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining $3,000 on its next regular deposit date.
>
> Example 2: The employer pays $10,000 in sick leave and is required to deposit $8,000 in taxes. Now the employer can use the entire $8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining $2,000.

In order to claim the tax credits from the IRS, employers are advised to maintain the following records for four years:

1. Documentation to show how the employer determined the amount of paid sick leave and expanded family and medical leave paid to employees that are eligible for the credit, including records of work, telework, and paid sick leave and expanded family and medical leave;
2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages;
3. Copies of any completed IRS Forms 7200 that the employer submitted to the IRS;
4. Copies of the completed IRS Forms 941 that the employer submitted to the IRS or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third-party payer regarding the employer's entitlement to the credit claimed on IRS Form 941, and
5. Other documents needed to support its request for tax credits pursuant to IRS applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit.

For more information, refer to the IRS's website.

FEDERAL INCOME TAXES

The Treasury Department and the Internal Revenue Service (IRS) are providing tax filing and payment relief to individuals and businesses in response to COVID-19. The deadline to file tax returns has been extended to July 15, 2020. Refer to the IRS website for more information.

Medicare Accelerated and Advance Payment Program

CMS expanded their Accelerated and Advance Payment Program to more Medicare Part A and B providers and suppliers to lessen the financial hardship during the COVID-19 pandemic. Most providers and suppliers can request up to 100% of their historical Medicare payment for a three-month period (inpatient acute care hospitals, children's hospitals, and certain cancer hospitals are eligible to request up to 100% of the Medicare payment for a six-month period, and critical access hospitals can request up to 125% for a six-month period). Requests from Texas should be submitted to Novitas Solutions. This expansion is only for the duration of the COVID-19 public health emergency. Refer to CMS' Accelerated and Advance Payment Fact Sheet for more information.

Extended Quality Reporting (4/20/2020)

For the 2019 Quality Payment Program (QPP), CMS extended the Merit-Based Incentive Payment System (MIPS) data submission deadline 30 days to April 30, 2020 to help provide relief to physicians during the COVID-19 pandemic.

Additionally, CMS has implemented the 2019 Automatic Extreme and Uncontrollable Circumstances Policy and reopened the 2019 exception application to create additional flexibilities.

- To avoid the 7% MIPS payment penalty in the 2021 payment year, individual MIPS eligible clinicians and groups can apply for an exception if they are unable to start or complete their data submission for the 2019 performance period. The application deadline is April 30 and is available to:
  - Individual clinicians who started, but are unable to complete, their data submission;
  - Small practices that were automatically scored as a group on Medicare Part B claims quality measures;
  - Groups that started, but are unable to complete, their data submission;
  - Virtual groups that are unable to start or complete their data submission; and
  - Individual clinicians and groups eligible for facility-based measurement.
- CMS will automatically apply the extreme and uncontrollable circumstances exception to individual MIPS eligible clinicians who do not submit data by the April 30th deadline, they will receive a neutral payment adjustment in the 2021 payment year.
- Extreme and uncontrollable circumstances applications submitted between April 3-30, citing COVID-19, and approved by CMS, will reweight performance categories to 0%, override previous data submission, and result in a neutral payment adjustment in the 2021 payment year.
- Physicians who participated in a Medicare Shared Savings Program Accountable Care Organization or other type of MIPS alternative payment model (APM) in 2019 and who are unable to complete their data submission due to COVID-19 should refer to their respective extreme and uncontrollable circumstances policies or have their APM administrators contact CMS to obtain accurate guidance.

Refer to the CMS QPP website and QPP COVID-19 Response Fact Sheet for more information. For questions, contact the QPP Service Center at (866) 288-8292 or by email at QPP@cms.hhs.gov.

Commercial Leases (4/1/2020)

As a result of the COVID-19 pandemic, many physicians may be struggling to pay rent and may feel they need to terminate their commercial leases. But whether that is legally possible largely depends on the language in the lease. For instance, some commercial leases may have "force majeure" clauses. A force majeure clause generally provides that if an event occurs outside of the reasonable control of the parties (like a fire, a flood, an act of government, or even an epidemic), and as a result, a party cannot fulfill the terms of the contract, the party may be entitled to temporarily suspend performance under the contract or even terminate. Force majeure clauses can vary significantly, however, so physicians must review their leases carefully and should consult with their private attorneys. Often, even if the lease contains a force majeure clause, payment of rent is not excused.

Without such a clause, physicians should be aware that failure to pay rent or otherwise fulfill the terms of their lease agreement may entitle the landlord to pursue certain remedies under the law, including eviction. Note, however, that some jurisdictions have temporarily suspended commercial property evictions due to COVID-19. If physicians are facing eviction, it would be prudent to review local orders and declarations. See TMA's Can I Get out of My Commercial Lease? FAQ for more details.

Telehealth Implementation

The aforementioned expanded opportunities for telehealth and telemedicine, and payment of those services can provide physicians the opportunity to expand their care to patients. Refer to the Telemedicine section of this Toolkit for detailed information.

Medical Professional Liability Insurance Policy Updates

TMLT

- Will not cancel any policy for non-payment due to the challenges of COVID-19 pandemic.
- Physicians who have temporarily closed their practice may be able to change their status to a "leave of absence" or "part time basis." This change could assist with reducing your premium during the time when you are unable to practice.

MedPro Group

- Postponed due dates for outstanding premiums until June 30, 2020.
- Premium discounts may be possible if practice was suspended/reduced hours.

The Doctors Company

- Will adjust policy cancellation and premium installment due dates.
- Tail coverage is safe for former members returning to practice.
- Coverage at no cost for physicians returning to practice as volunteers.

ProAssurance

- Will suspend cancellations due to non-payment of premiums for active policies until June 30, 2020 for invoices due after April 1, 2020.
- Physicians returning to practice from retirement on a temporary basis due to COVID-19 will not jeopardize the premium waiver reporting endorsement issued by ProAssurance.

PAYORS, CODING AND DOCUMENTATION

Patient care is of the utmost importance, especially in times of crisis. Coding and billing should not add to the frustration you and your staff are feeling. TMA created a quick reference chart to provide an at-a-glance view of what payors are covering.

MEDICARE

Enrollment (4/2/2020)
CMS is offering flexibilities with physician and non-physician enrollment. They will waive site visits and criminal background checks associated with fingerprint-based background checks. Revalidations will also be postponed.

Testing for COVID-19

- Medicare provides coverage for COVID-19 testing as a medically necessary clinical laboratory test, which is usually not subject to coinsurance or deductible.
- Medicare beneficiaries requiring hospitalization for COVID-19 related symptoms/conditions are covered by Medicare Part A. Beneficiaries may be required to pay a deductible or coinsurance.

Refer to CMS' Medicare COVID-19 Fact Sheet for more coverage information.

For COVID-19 testing-related services furnished on or after March 18, 2020, physicians will need to append modifier CS to receive 100% payment.

Telemedicine Visits (4/2/2020)
CMS has said that Medicare will temporarily pay physicians and other health care professionals to provide certain in-home services via telehealth for beneficiaries. CMS published an interim final rule and clarified what providers will be reimbursed for "in-person" visits. For instance, if services were normally billed in the office (POS 11), providers will be paid the non-facility, or office rate.

Since the start of this emergency waiver, however, CMS has changed its billing guidance. They now advise physicians "who bill for Medicare telehealth services to report the place of service (POS) code that would have been reported had the service been furnished in person." CMS continues to say that they use the POS code on the claim to identify Medicare telehealth services, and are finalizing on an interim basis the use of the CPT telehealth modifier (95), which should be applied to claim lines that describe services furnished via telehealth.

Care Modality	Billing Codes
Telemedicine/Telehealth	99201–99205, 99211–99215 POS: Regular POS used for billing in-person visits Modifier 95

Audio Only Phone Calls (4/2/2020)
In addition to relaxing telehealth restrictions, CMS has also expanded how physicians are paid for audio only phone calls. Historically, they have paid for phone calls via their virtual check-in code, G2012. On March 30, the administration expanded this. They will now pay the following for physicians to examine Medicare patients via the phone:

Care Modality	Billing Codes
Phone Calls (Audio Only)	99441 – 99443 (telephone E/M codes) physician or other qualified health care professional
	98966-98968 qualified nonphysician healthcare professional

New Patient Visits (4/2/2020)
CMS is not enforcing the requirement that physicians can only care for established patients via telemedicine and phone calls. Physicians can treat both new patients and established patients through these methods. CMS will not be conducting any reviews to determine if care was provided to an established patient.

Care Modality	Billing Codes
Virtual Check-ins	G2012 Brief communication technology-based service, e.g. virtual check-in, by a physician or other qualified health care professional
	G2010 Remote evaluation of recorded video and/or images submitted (e.g. store and forward)

More telemedicine specifications can be found here.

MEDICAID AND THE CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP) (4/2/2020)

The state has suspended CHIP office copayments until April 30, 2020, with the opportunity for extension. Additionally, there is no cost-sharing for telemedicine or telehealth services provided to CHIP enrollees (Texas Medicaid has no cost sharing requirements).

Enrollment (4/2/2020)
TMHP is offering an expedited enrollment process for physicians and health care professionals. If you are typically required to provide proof of Medicare participation, this will be waived.

Revalidation
On April 1, Medicaid extended the revalidation deadline for all physicians and providers by 30 calendar days. An additional 30 day extension is anticipated to be formally announced soon, extending the deadline until May 30, with the opportunity for additional extensions

Testing for COVID-19
Testing for COVID-19 is a benefit of both Medicaid and CHIP without prior authorization. Testing codes include U0001 (for CDC lab testing) and U0002 (for non-CDC lab testing). Additionally, effective April 1, 2020, but retroactive to Feb. 20, 2020, Texas Medicaid and CHIP also recognize the COVID-19 diagnosis code U071.

Telemedicine and Telehealth Visits
Texas Medicaid pays for certain telemedicine and telehealth services, including when the place of service is the patient's home. Refer to the Medicaid Telecommunications Handbook or the TMA telemedicine quick reference guide for additional details.

Medicaid managed care organizations (MCOs) must abide by the same telemedicine policies as Medicaid fee-for-service, though the state has authorized MCOs to cover additional telemedicine and telehealth services not otherwise covered by Medicaid fee-for-service. Refer to the provider manual or health plan website for any of the contracted Medicaid MCOs with which you contract.

In response to the emergency, telemedicine coverage also has been temporarily extended as a benefit for patients enrolled in the Healthy Texas Women and Family Planning Program, retroactive to March 1, 2020.

Texas Medicaid pays physicians the same rate for telemedicine services as all other services.

To keep apprised of new Medicaid COVID-19 flexibilities, regularly check the Medicaid and CHIP resource guides provided by TMHP and the Texas Health and Human Services Commission.

Audio Only Phone Calls

In response to the COVID-19 emergency, Medicaid will temporarily pay for telephone (audio only) calls for medical, women's health and behavioral health services provided between March 20 and April 30, 2020 (with the opportunity for extension). Audio only services must be billed in accordance with the state's telephone-only policy using designated procedure codes and the 95 modifier.

Phone Calls (Audio Only)	
Medical Services	99201, 99202, 99203, 99204, 99205 99211, 99212, 99213, 99214, 99215
Women's Health (Healthy Texas Women and Family Planning Program)	99201, 99202, 99203, 99204, 99205, 99211, 99212, 99213, 99214, 99215, 90791 and 90972
Behavioral Health	
Psychiatric Diagnosis Evaluation	90791, 90729
Psychotherapy	90832, 90834, 90837, 90846, 90847, 90853
Peer Specialist Service	H0038
Screening, Brief Intervention, and Referral to Treatment (SBIRT):	99408, G2011, H0049
Substance Use Disorder Services	H0001, H0004, H0005
Mental Health Rehabilitation	H0034, H2011, H2012, H2014, H2017

Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs)

Physicians and health care professionals practicing in FQHCs and RHCs also may provide services via telemedicine or telehealth. Refer to the FQHC and RHC policies and billing guidance.

Pediatric Preventive Care

Texas Medicaid excludes Texas Health Steps (well-baby and child) exams from its telemedicine policy. On April 1, the state issued guidance on the provision of Texas Health Steps services during the emergency. The Texas Pediatric Society and TMA submitted comments in late March requesting that the agency temporarily authorize such coverage for children older than 18 months. Texas Medicaid is evaluating the recommendation.

CHIP MCOs also must cover telemedicine and audio only services in accordance with state requirements.

Miscellaneous Coverages

Both Medicaid and CHIP cover preventive, primary and specialty care, telemedicine and telehealth, prescription drugs, vaccines, diagnostic laboratory and imaging services, and outpatient and inpatient hospitalizations, among other services.

Medicaid Eligibility Maintenance

Patients enrolled in Medicaid on or after Mar. 18, 2020 will continue to receive coverage through the end of the emergency, including postpartum women who would otherwise lose coverage 60 days' following delivery. Refer to COVID-19 FAQs for People Receiving Medicaid, SNAP and TANF for more information.

Children enrolled in CHIP whose eligibility would have expired in April will also receive a one month automatic extension.

COMMERCIAL PLANS

Changes are coming fast and furious. TMA is dedicated to help you navigate through these payor changes so that you have what is most important at your fingertips.

Aetna (4/17/2020)

- Visit Aetna's website for the most current updates.
- CPT 99421, 99422, and 99423 (online digital evaluation and management service) will be covered when an audiovisual connection is established.
- HCPCS G2010 and G2012 (Brief communication technology-based services) and CPT 99441, 99442, and 99443 (telephone E/M) are allowed with an audiovisual connection or by telephone only.
- Aetna will waive member cost-sharing for any covered telemedicine service regardless of diagnosis. They encourage the use of virtual care to limit exposure in physician offices. Self-funded plans can opt-out, so we encourage you to check patient plans that fall in this category.
- Aetna reimburses all providers for telemedicine at the same rate as in-person visits.
- No changes to timely filing.

BCBS of Texas (4/17/2020)

- Visit the BCBS website for the most current updates.
- Two-way live interactive telephone and digital video consultations will be covered.
- On a temporary basis, audio-only consultations will be covered.
- Cost share is waived for covered, medical necessary services.
  - Append modifier CS to applicable claim lines.
- BCBS will reimburse in-network professionals at least the same rate for a telemedicine/telehealth service as it reimburses for the same service when provided in-person.
- Credentialing process will be simplified; however, providers must meet certain requirements.
- No changes to timely filing.

Cigna (4/17/2020)

- Visit Cigna's website for the most current updates.
- Cigna will waive cost share for services related to COVID-19.
  - Exception: Virtual check-ins (G2012) including non-COVID-19 related services.
  - The appropriate ICD-10 code MUST be billed and in some instances modifier CS needs to be appended.
- Providers will be reimbursed for virtual care services consistent with their typical face-to-face rates.
- General guidance for both COVID-19 and non-COVID-19-related is provided in a comprehensive chart.
- Effective April 1, accelerated credentialing is available to providers identified as providing COVID-19 related services.
- For a DOS on or after March 15, at least May 31 timely filing is extended 90 days for all claim types.

UnitedHealthcare (4/17/2020)

- Visit UHC's website for the most current updates.
- General guidance for both COVID-19 and non-COVID-19-related is provided in a comprehensive chart.
- Telehealth services will be reimbursed, based on national reimbursement determinations, policies and contracted rates, as outlined in a care provider's participation agreement.
- Provisional credentialing temporarily in place.
- Claims submitted on or after January 1 will not be not denied if failure to submit through June 30, 2020.

Humana (4/17/2020)

- Visit Humana's website for the most current updates.
- Allows audio-only visits and requests that you follow CMS or state-specific guidelines.
- Humana is waiving member cost share for all telehealth services provided by participating providers.
- Temporarily reimbursing for telehealth visits with participating/in-network providers at the same rate as in-office visits.
- State and federal regulations on credentialing will be applied.

TEXAS DEPARTMENT OF INSURANCE (TDI/DOI REGULATED PLANS) AND TMB (4/2/2020)

TDI regulates fully-funded state plans and the patient's insurance card will have the initials TDI or DOI on the front. Under TDI's Telemedicine emergency rule, state regulated plans and HMOs must:

- Pay in-network professionals at least the same rate for telemedicine services as if provide in person,
- Cover telemedicine using any platform permitted by state law, and
- Not require more documentation than they would for in-person services.

The TMB issued further guidance to allow patient-physician relationships to be established via phone consultations.

WORKERS' COMPENSATION (4/2/2020)

The Texas Division of Workers' Compensation (DWC) has issued guidance regarding the impact of COVID-19 on the Texas workers' compensation system.

Workers' Compensation Insurance Carrier Operations

Workers' compensation insurance carriers must continue or begin:

- Providing timely claims adjusting services;
- Processing and delivering indemnity benefits and medical payments in a timely manner; and
- Authorizing payments to pharmacies up to a 90-day supply for any prescription medication, subject to the remaining number of days authorized by the prescribing provider, regardless of the date the prescription was most recently filled.

Exam Suspension

DWC is taking the following action regarding designated doctor (DD), required medical, and referral examinations:

- Ceasing orders for DD exams and holding requests. If you encounter special circumstances as a result of this suspension, contact DWC at (800) 252-7031 and select option one.

- Suspending RME, DD, and referral exams that have already been ordered. Any RME, DD, or referral exams ordered and scheduled on or before the date of this bulletin are now suspended and should not occur until further notice from DWC.

Tolling of Medical Billing Deadlines

Failure to submit a timely medical claim will be deemed an exception due to a catastrophic event under Texas Labor Code § 408.0272(b)(2). DWC will take into account the challenges system participants are facing when considering enforcement actions. In addition, Governor Abbott has suspended the following requirements:

- Work search compliance standards for supplemental income benefits under Labor Code Section 408.1415(a) and 28 Texas Administrative Code Section 130.102(d);
- Testing, training, and application requirements for designated doctor and maximum medical improvement and impairment rating recertification under 28 TAC Sections 127.110(b)(1) and (3), 127.110(d), and 180.23; and
- Required medical exams under 28 TAC Section 126.6(a).

Refer to the DWC COVID-19 resource page for updates.

CODING AND DOCUMENTATION

Accuracy of documentation remains important. Medical necessity is of greatest importance and must be supported in all circumstances. Refer to the CMS MLN Fact Sheet for a refresher on what is required.

Diagnosis Coding (4/2/2020)

The CDC published official diagnosis coding for COVID-19 and related illnesses, effective April 1, 2020.

CDC Coding Guidelines	Code	
Positive (even asymptomatic patients) COVID-19 test result	U07.1	
Respiratory illness due to COVID-19:	**Code**	**with:**
Pneumonia	U07.1	J12.89
Acute bronchitis	U07.1	J20.8
Lower respiratory infection, unspecified	U07.1	J22
Respiratory infection, NOS	U07.1	J98.8
Acute respiratory distress syndrome	U07.1	J80
Exposure to COVID-19 but ruled out	Z03.818	
Exposure to COVID-19 and not ruled out	Z20.828	
Screening for COVID-19, asymptomatic, no known exposure, unknown or negative test results	Z11.59	
Signs and symptoms without a definitive COVID-19 diagnosis	**Code**	
Cough	R05	
Shortness of breath	R06.02	
Fever, unspecified	R50.9	

When COVID-19 meets the definition of principal diagnosis, it should be sequenced first, followed by appropriate code for the manifestation.

CPT Coding (4/17/2020)
On an interim basis only, CMS will allow evaluation and management (E/M) service levels to be determined by the extent of medical decision making or time. Time is defined as all of the time associated with the E/M service. The requirement to document history and physical exam is temporarily removed.

Telemedicine Coding (4/2/2020)
There is a multitude of CPT codes allowed under telemedicine and the lists will vary by payor. The following codes are currently recognized for telemedicine/telehealth visits:

99201-99205	Office or other outpatient visit - New patient
99211-99215	Office or other outpatient visit - Established patient
99441	Physician/Qualified Health Professional telephone evaluation 5-10 min
99442	Physician/Qualified Health Professional telephone evaluation 11-20 min
99443	Physician/Qualified Health Professional telephone evaluation 21-30 min
99421	Physician/Qualified Health Professional online digital evaluation 5-10 min
99422	Physician/Qualified Health Professional online digital evaluation 11-20 min
99423	Physician/Qualified Health Professional online digital evaluation 21+ min
G2010	Remote evaluation of recorded video and/or images submitted by an established patient
G2012	Brief communication technology-based service, e.g. virtual check-in, by a physician or other qualified health care professional who can report evaluation and management services, provided to an established patient

Modifiers

95	Synchronous Telemedicine Service Rendered Via Real-Time Interactive Audio and Video
GT	Via interactive audio and video telecommunication systems
GQ	Via asynchronous telecommunications system
CR	Catastrophe/disaster related
CS	Cost-share

Refer to Telemedicine: Coding and Billing in this Toolkit for further guidance.

Coding Scenarios (4/2/2020)
AMA and Cigna have published specific scenarios with coding guidance.

CLAIMS SUBMISSION (4/2/2020)
We encourage you to continue to file claims as normal. Payors have not waived the timely filing limit so it is important for you to get them submitted on time. However, if a physician is unable to meet the timely filing deadline due to the COVID-19 outbreak, TDI has authorized the tolling of the submission deadline. Physicians must notify TDI within 10 business days after operations return to normal. The certification is a sworn affidavit that identifies the specific nature and dates, as well, as the length of time the event caused the interruption to the claim filing process. Failure to do so will result in forfeiture of payment.

FAMILIES FIRST CORONAVIRUS PREVENTION ACT (FFCPA) – HEALTH COVERAGE PROVISIONS

The Families First Coronavirus Prevention Act, which among other things, will require most insurers, including employer-sponsored health plans, grandfathered plans, Medicare, Medicaid, and CHIP to cover testing during the emergency period. FFCPA does not apply to short term plans; however, individual carriers for such plans may opt to waive testing-related costs.

Private Health Insurance

Requires private health plans, including both fully-insured and self-insured private health plans, to cover COVID-19 testing and related office visits without cost-sharing or prior approval (throughout emergency declaration). The newly enacted CARES Act amends FFCPA to clarify that testing done in clinical labs on an emergency basis, including public health labs and state-developed labs, also will be exempt from cost-sharing.

Medicare, Medicare Advantage, Tri-Care, Veteran's, and Indian Affairs

Requires traditional Medicare and Medicare Advantage Plans and other plans to cover testing and diagnosis of COVID-19 without cost-sharing or prior approval (throughout emergency declaration).

Medicaid and CHIP

- Increases Federal Medicaid Assistance Matching Fund (FMAP) by 6.2% retroactive to Jan. 1, 2020 and available until the emergency declaration ends.
- To benefit from the higher Medicaid FMAP, the law requires states to comply with important patient protections, including directing states to:

    1) Maintain the Medicaid eligibility levels in place as of Jan. 1, 2020;
    2) Sustain coverage for people who enroll in Medicaid on or after March 18 (the date President Trump signed the FFCPA) through the end of the emergency declaration unless the patient requests voluntary termination, moves out of state, or dies. This means Texas must maintain coverage for children on Medicaid whose enrollment otherwise would be terminated if the parents miss a monthly income check, as well as coverage for postpartum women who otherwise would lose coverage 60 days postpartum. However, the act would not preclude Texas from conducting periodic income checks for children enrolled in Medicaid;
    3) Provide coverage for COVID19 testing, services, and treatment, including vaccines, without cost-sharing for Medicaid enrollees.

- Requires states to cover COVID-19 testing without cost-sharing for CHIP and CHIP-Perinatal enrollees;
- Establishes new optional Medicaid eligibility category to pay for COVID-19 testing (not treatment), paid at 100% federal funding;
- Provides $1 billion in federal funding to the National Disaster Medical System to pay the cost of testing for the uninsured who do not qualify for Medicaid, including undocumented immigrants and people with short-term health plans.

HUMAN RESOURCES

COVID-19 and the workplace. It is becoming increasingly uncertain about the future of our workforces. Below are some answers to frequently asked questions (FAQs) about the latest developments and guidance from both state and federal agencies.

WAGES AND HOURS

Can an employer reduce the leave of a salaried exempt employee? (3/30/2020)
According to the U.S. Department of Labor, an employer can substitute or reduce an exempt employee's accrued leave (or run a negative leave balance) for the time an employee is absent from work, even if it is less than a full day and even if the absence is directed by the employer because of lack of work, without affecting the salary basis payment, provided that the employee still receives payment equal to the employee's predetermined salary in any week in which any work is performed even if the employee has no leave remaining.

Can a salaried exempt employee volunteer to take time off work due to lack of work? (3/30/2020)
If the employer seeks volunteers to take time off due to insufficient work, and the exempt employee volunteers to take the day(s) off for personal reasons, other than sickness or disability, salary deductions may be made for one or more full days of missed work. The employee's decision must be completely voluntary (U.S. Department of Labor).

In general, can an employer reduce an otherwise exempt employee's salary due to a slowdown in business? (3/30/2020)
According to the U.S. Department of Labor, reductions in the predetermined salary of an employee who is exempt under Part 541 of the Department of Labor's regulations will ordinarily cause a loss of the exemption. Such an employee must then be paid at least the federal minimum wage and overtime pay required by the federal Fair Labor Standards Act (FLSA). In some circumstances, however, a prospective reduction in salary may not cause a loss of the exemption.

FLSA section 13(a)(1) requires payment of at least $684 per week on a "salary" basis for those employed as exempt executive, administrative, or professional employees. A salary is a predetermined amount constituting all or part of the employee's compensation, which is not subject to reduction because of variations in the quality or quantity of the work performed. Beginning January 1, 2020, employers may use nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more frequent basis, to satisfy up to 10 percent of the standard salary level.

An employer must pay an exempt employee the full predetermined salary amount "free and clear" for any week in which the employee performs any work without regard to the number of days or hours worked. However, there is no requirement that the predetermined salary be paid if the employee performs no work for an entire workweek. Deductions may not be made from the employee's predetermined salary for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available. Salary deductions are generally not permissible if the employee works less than a full day. Note that physicians are not subject to any salary requirements, and deductions from the salary or pay of such employees will not result in loss of the exemption.

Is it legal for an employer to reduce the wages or number of hours of an hourly employee? (3/30/2020)
The federal Fair Labor Standards Act (FLSA) requires that all covered non-exempt employees receive at least the applicable Federal minimum wage for all hours worked. In a week in which employees work overtime, they must receive their regular rate of pay and overtime pay at a rate not less than one and one-half times the regular rate of pay for all overtime hours. The FLSA does not preclude an employer from lowering an employee's hourly rate, provided the rate paid is at least the minimum wage, or from reducing the number of hours the employee is scheduled to work.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

Family and medical leave and paid sick time (4/1/2020). This topic specifically focuses on tax benefits under the FFCRA for employers with fewer than 500 employees, and exceptions under the act.

Small Business Exception (4/2/2020)
Beginning April 1, 2020 through December 31, 2020, covered employers under the federal FFCRA must provide eligible employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. Generally, a covered employer includes a private employer with fewer than 500 employees and certain public employers; however, there are exceptions. One exception relates to small businesses.

An employer, including a religious or nonprofit organization, with fewer than 50 employees, is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; **or**
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

To elect this small business exception, the employer must document that the determination by its authorized officer that it is eligible for the exemption pursuant to these criteria and retain such documentation for four years. Note: Employers should not send this documentation to the Department of Labor. Employers must retain the records for their own files.

Importantly, regardless of whether the employer chooses to exempt one or more employees under this exception, the employer must still post the required notice. See the Department of Labor's FAQs for more information on the notice.

The Department of Labor encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

For more details on this exception, see the Department of Labor's Families First Coronavirus Response Act: Questions and Answers website.

Health Care Provider and Emergency Responder Exception (4/2/2020)
Beginning April 1, 2020 through December 31, 2020, covered employers under the federal FFCRA must provide eligible employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. Generally, a covered employer includes a private employer with fewer than 500 employees and certain public employers; however, there are exceptions. One exception applies to health care providers and emergency responders. An employer whose employee is a health care provider or an emergency responder *may elect* to exclude the employee from the paid sick leave and expanded family and medical leave under the FFCRA.

- A "health care provider" is defined as anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions. This definition also includes:

    - Any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility where that individual's services support the operation of the facility.
    - Anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.
    - Any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider necessary for that state's or territory's or the District of Columbia's response to COVID-19.

- An "emergency responder" is defined as anyone necessary for the provision of transport, care, health care, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

    - This also includes any individual whom the highest official of a state or territory, including the District of Columbia, determines is an emergency responder necessary for that state's or territory's or the District of Columbia's response to COVID-19.

For more information, see the Department of Labor's website.

FFCRA Poster (4/2/2020)
Beginning April 1, 2020 through December 31, 2020, covered employers under the federal FFCRA must post and keep posted on its premises, in conspicuous places, a notice explaining the FFCRA's paid leave provisions and providing information concerning the procedures for filing complaints of violations of the FFCRA with the Department of Labor. Employers may use the Department of Labor's model notice. An employer may satisfy this requirement by emailing or direct mailing the notice to employees, or by posting the notice electronically on an employee information internal or external website. See the Department of Labor's FAQs for more information on the notice.

Recordkeeping (4/2/2020)
Beginning April 1, 2020 through December 31, 2020, covered employers under the FFCRA must provide eligible employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. An employer is required to retain all documentation the employee is required to provide to the employer for four years, regardless of whether leave was granted or denied. If an employee provided oral statements to support his or her request for paid sick leave or expanded family and medical leave, the employer must document and maintain such information in its records for four years. There are specific recordkeeping requirements in order to claim tax credits from the IRS. See TMA's information on tax benefits under the FFCRA, as well as the IRS's website.

TERMINATION AND UNEMPLOYMENT BENEFITS

When terminating staff becomes your only option.

Terminating Staff (4/1/2020)
Before terminating staff, ask your staff if anyone would volunteer because of current circumstances beyond their control. Assess your overhead and see if it is necessary to terminate staff. If you ultimately decided to terminate staff, they may be eligible for unemployment benefits through the state (also see this Texas Workforce Commission page). Remember that as an employer in Texas, you must pay in full an employee who is involuntarily terminated from employment not later than the sixth day after the date the employee is terminated (Texas Workforce Commission). Consulting with your CPA is highly suggested.

Unemployment Benefits (3/30/2020)
Unemployment benefits are generally available for those who become unemployed through no fault of their own and meet certain eligibility requirements. Unemployment insurance is a joint state-federal program that provides cash benefits to eligible workers. The Department of Labor outlines Unemployment Insurance with more detail. Each state administers a separate unemployment insurance program, but all states follow the same guidelines established by federal law. The Texas Workforce Commission has a step by step guide on how to claim unemployment. With the COVID-19 stimulus package being approved, employees will be eligible for additional unemployment benefits on top of the state benefit of $600 per week for up to four months, until July 31, 2020. Unemployed workers will receive 39 weeks of unemployment benefits which will carry them through the end of 2020.

Payout of Leave Benefits (3/30/2020)
No Texas or federal law requires employers to make payouts of accrued but unused paid leave, although in rare instances, usually involving express contracts, some courts have required such payments to former employees. That is a matter left to employers to specify in their company policies. For more information, see the Texas Workforce Commission's Vacation and Sick Leave website.

Effects on Medical Insurance and Employee Benefits (4/1/2020)
During this crisis, many carriers are waiving their eligibility criteria for furloughed workers. For instance, some carriers have indicated that they will consider the furloughed employee still eligible for benefits provided that the employer continue to pay the employer portion of the premium during the furloughed period. Check with your carrier for specific details. Once the employee is formally terminated by the employer, Texas continuation rights (if the employee has been covered for three consecutive months prior to termination) or the Consolidated Omnibus Budget Reconciliation Act (COBRA) may apply and generally, the employee would then be responsible for the premium. Although many employers do subsidize COBRA, especially as part of a severance package, this is not required. Under COBRA, an employer can require an electing employee to pay up to 102% of the cost of the medical coverage (the employee's share plus a 2% administrative fee) in order to continue coverage. Refer to the Department of Labor for additional COBRA questions.

Applicable Employment Laws (3/30/2020)
The area of employment is governed by a long list of both federal and state laws and regulations. The U.S. Department of Labor (DOL) publishes a tool called the FirstStep Overview Advisor, which helps employers determine which of the DOL-regulated laws apply to them.

In addition, several state and federal agencies have created guidance documents related to COVID-19 and employment issues. Below are links to some of those documents:

- U.S. Equal Employment Opportunity Commission (EEOC):
  - Americans with Disabilities Act and the Rehabilitation Act
- U.S. Department of Labor:
  - Fair Labor Standards Act (minimum wage and overtime pay)
  - Families First Coronavirus Response Act (family and medical leave and paid sick time)
    - Employee Fact Sheet
    - Employer Fact Sheet
    - FAQs
  - Family and Medical Leave Act
  - Occupational Safety and Health Act
- Texas Workforce Commission:
  - Resources for Employers
  - Resources for Jobseekers

ADVOCACY

The state of health care economy is an ever-changing issue nationwide affecting physicians and TMA staff will continue to monitor and advocate accordingly. Close contact with the Texas Health and Human Services Commission (HHSC), Texas Department of Insurance (TDI), and the Governor's office will be critical.

MASS CRITICAL CARE GUIDELINES

TMA submitted a letter to the office of Governor Abbott urging his order and support of the use of mass critical care guidelines during the COVID-19 public health emergency. The Governor was also asked to instruct all relevant agencies and offices to suspend license reviews, penalties, and damages for following mass critical care guidelines. No action has been taken by the Governor in response to the letter to date.

TMA has met and will continue to meet with the appropriate state leaders regarding critical care guidelines and will work to provide CME educational opportunities regarding critical care.

NON-URGENT, ELECTIVE SURGERIES AND PROCEDURES

Governor Abbott, through an executive order, temporarily suspended non-urgent, elective surgeries and procedures. The TMB adopted emergency rules to reflect the governor's order. To assist physicians with understanding the order and TMB's rules, the TMB published FAQs providing some guidance on what surgeries and procedures have been temporarily suspended. TMA also prepared a white paper to further assist physicians in understanding the order and the board's rules.

If uncertain about what surgeries and procedures are considered non-urgent/elective, as well as what you will be required to report, TMA's Office of the General Counsel produced FAQs to help better clarify the emergency rules. In addition, physicians can contact or visit resource centers by their American Board of Medical Specialty member board and their national specialty societies for guidance on non-urgent and elective surgeries and procedures during the COVID-19 pandemic.

On Friday, April 17, TMA was made aware of Governor Abbott's new executive order (GA 15) on elective procedures. The previous order, per TMB's guidance, left physicians with many questions of what they could and could not perform in the way of elective procedures during the COVID-19 pandemic. While this order is intended to loosen the previous restrictions, we have yet to see guidance from the TMB as it relates to the implementation of GA 15. The exact text from GA 15 is as follows:

All licensed health care professionals and all licensed health care facilities shall postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician; provided, however, that this prohibition shall not apply to either of the following:

- *Any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster; or*
- *Any surgery or procedure performed in a licensed health care facility that has certified in writing to the Texas Health and Human Services Commission both:*
  (1) That it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-l9 patients; and (2) that it will not request any personal protective equipment from any public source, whether federal, state, or local, for the duration of the COVID-19 disaster.

GA 15 is effective at 11:59 pm on April 21, 2022, and continues until 11:59pm on May 8, 2020. TMA will work closely with TMB to ensure the clearest possible guidance regarding the executive order.

Coronavirus Aid Recovery and Economic Security Act (CARES Act)

The CARES Act is the relief package passed by Congress in response to the COVID-19 pandemic. TMA has signed on to an AMA-driven letter to congress asking for action on direct financial support by way of grants and/or interest free loans. Specifically, the example of the relief given during 9/11 was referenced. Additionally, the point was made that both practices that qualify as small businesses and larger practices are struggling during this difficult time. The request was made to add additional funding for the SBA loan program: the Payroll Protection Program (PPP), as it is currently overwhelmed, as well as expanding eligibility to larger practices who have less than 500 employees per location, much like what has been done for the accommodation and food services industry. TMA is also in contact with the Texas Bankers Association to help with coordination of information regarding SBA loans and will continue to research and monitor opportunities that come out of this for physicians and their practices.

Additional Resource:
AMA Summary of the CARES Act
Private Equity-owned Practices Locked out of CARES Act Loans

Payment Parity for Telemedicine Services

Governor Abbott directed TDI to release an emergency rule on telemedicine services. As indicated in the TDI Summary, the emergency rule requires "state-regulated health insurers and health maintenance organization [to]:

- Pay in-network health professionals at least the same rate for telemedicine services as for in-person services, including covered mental health services.
- Cover telemedicine services using any platform permitted by state law.
- Not require more documentation for telemedicine services than they require for in-person services."

Additional Resources:
TMA Story on Lack of Health Plan Uniformity (3/31/2020)
TMA Need to Know on Telemedicine Expansion (3/23/2020)
TMB FAQ's on Telemedicine (3/19/2020)
TMB Temporary Suspension Press Release (3/14/2020)

Families First Coronavirus Response Act (FFCRA)

The relief package that focuses more on the public health and resource side of fighting the COVID-19. TMA will continue to research and monitor opportunities that come out of this for physicians and their practices.

Payment Parity for ERISA

Governor Abbott's executive order regarding telemedicine payment parity and the TDI emergency rules do not apply to ERISA self-funded plans. TMA is working at the federal level with AMA and national specialty societies to address this issue regarding ERISA self-funded plans. TMA has most recently signed on to an AMA-driven letter urging Congress to require ERISA plans to provide coverage for telemedicine services, much in the way the private health plans are doing.

Telemedicine Coding Parity

To help ease the coding burden for practices and prevent the artificial slowing of payments, TMA is advocating for CMS intervention to standardize telemedicine coding across health plans in Texas. Further clarity is needed on claims that have already been submitted and if they will need to be re-submitted at a later date.

Advance Payments from All Payers

CMS has implemented advance payment in the Medicare system for physicians and providers. TMA is now evaluating if this is possible in the private market and Medicaid. TMA has made initial contact with the relevant parties to discuss the feasibility of broadening this program beyond Medicare. TMA recently sent a letter to Governor Abbott regarding physician practice viability, in which advance payments, similar to that of Medicare, were recommended to be implemented for state-regulated plans, ERS, TRS, and Medicaid. This letter has also been distributed to the Texas Association of Health Plans and the Texas Department of Insurance. Additionally, TMA signed on to an AMA-driven letter to Congress supporting the implementation of advanced payments for federally regulated health plans.

Liability Protection to All Physicians and Health Care Providers

On April 3, 2020, TMA, along with several other health care organizations, sent a letter to Governor Abbott requesting immediate expansion of the volunteer liability protections under Chapter 79 to all physicians, health care providers, and health care facilities battling COVID-19. The organizations requested broad protection, not just for those directly treating COVID-19 patients, but also for those:

- Having to delay non-COVID-19 patient care;
- Being reassigned to provide patient care outside of their facility's credentialing policies; or
- Being reassigned outside their specialty to remedy personnel shortages caused by COVID-19.

Under the requested protection, physicians and health care providers licensed, registered, certified, or otherwise authorized to practice in Texas, as well as licensed health care facilities providing health care services in support the state, would be immune from liability for a claim arising from any injury or death that results from providing care, assistance, or advice in response to the COVID-19 pandemic during the declared state of disaster unless the injury or death is the result of reckless conduct, or intentional, wanton, or willful misconduct by such physician, health care provider, or health care facility.

TMA has signed on to an AMA-driven letter to Congress asking for further liability protections during this time of emergency. No gubernatorial action has been taken in response to TMA's letters to date.

Prescription Prior Authorization Changes

TDI issued an emergency rule that requires a TDI-regulated health plan to pay for an additional one time 90-day supply of a covered drug and extend existing prescription prior authorization approvals for 90 days, excluding controlled substances. In-network cost-sharing applies when no in-network pharmacy is able to timely fill the prescription. While a health plan can direct a patient to a specific mail-order pharmacy or pharmacy that is in-network to timely fill the prescription, it cannot be more than 30 miles away. Additionally, if a preferred drug is not available, a health plan must provide alternatives available on-formulary, or in the same preferred tier. If an alternative drug has the same active ingredients and provides the same therapeutic effect as the originally prescribed drug, the TDI-regulated health plan cannot require prior authorization. Additionally, a TDI-regulated health plan may not refuse or reduce payment solely because the drug was delivered by a local pharmacy.

TMA sent a letter to Governor Abbott recommending all prior authorizations required for patient care be removed during this time of emergency for all state regulated plans and Medicaid, easing physician burden. This letter has also been conveyed to the Texas Association of Health Plans and the Texas Department of Insurance.

Additional Resource:
TDI Actual Rule

STAY AT HOME GUIDANCE

Governor Abbott has issued stay at home orders through April 30, 2020. TMA will continue to monitor as the situation evolves.

Additional Resource:
TMA: What Physicians Need to Know about Stay at Home Orders (3/26/2020)

Additional TMA Resources

TMA Knowledge Center – Let the TMA Knowledge Center keep you up-to-date with the latest articles and developments in medicine and the business of medicine. Services include electronic access to the latest journals, custom bibliographies, material for ACCME needs assessments, even CME credit for searching the literature. Contact TMA Knowledge Center staff at (800) 880-7955 or knowledge@texmed.org.

TMA Payment Advocacy – Physicians can speak directly with TMA's certified coders and staff experts for assistance with regulatory compliance, billing and coding, payer reimbursement, and licensure issues. Contact TMA's reimbursement specialists at (800) 880-1300 ext. 1414 or paymentadvocacy@texmed.org.

Hassle Factor Program – TMA helps resolve insurance-related payment problems by meeting with private insurers and the Centers for Medicare and Medicaid Services (CMS) to discuss specific problems that members bring to our attention. Download the Hassle Factor Log and business associate agreement.

Health Information Technology – TMA staff are available to assist physicians and their staff with health information technology-related questions including telemedicine, e-prescribing, cyber security, interoperability, and more. Contact HIT staff at (800) 880-5720 or hit@texmed.org.

TMA Practice Consulting – TMA members have exclusive access to affordable, highly-rated practice consulting services and expertise. Whether you're a solo practitioner in a rural area, or a member of a 50-physician group, the TMA team of certified coders, compliance officers, and other experienced professionals can provide comprehensive practice management help. Contact TMA Practice Consulting at (800) 523-8776 or practice.consulting@texmed.org,

TMA Insurance Trust – As you reestablish your practice and financial stability, consider contacting TMA Insurance Trust for your insurance needs. Their trusted advisors are dedicated to working exclusively with physicians and focus on what's important – your family, assets, practice, and staff. Contact TMA Insurance Trust at (800) 880-8181.

Texas CPA Referral List

Next Steps

To provide assistance and relief for physicians and all practices impacted by the COVID-19 pandemic, TMA continues to work at the local, state, and federal levels. This Practice Viability Toolkit will be updated as changes take place and new information becomes available.