

COVID-19 UPDATE

REOPENING CHALLENGES: FAQS ON PREPARING FOR ADDITIONAL WAVES OF COVID-19

Presented by:

Citrin Cooperman
Sheppard Mullin

July 23, 2020

REOPENING CHALLENGES: FAQs ON PREPARING FOR ADDITIONAL WAVES OF COVID-19

Introduction: Many areas of the country are experiencing resurgences of COVID-19, and it is foreseeable that second and perhaps third waves of the virus will hit pockets of the country throughout the remainder of 2020. As healthcare organizations struggle to balance their continued response efforts to the pandemic, with preparations for future waves, we have received many questions from provider organizations regarding how best to prepare their organizations.

The situation is further complicated by an impending expiration of the Public Health Emergency Declaration (under Section 319 of the Public Health Service Act), which served as a catalyst for many of the relaxed regulatory requirements that enabled providers to quickly go-to-market with telehealth services (e.g. relaxation of HIPAA requirements, etc.). Given the current political environment, we believe provider organizations should be prepared for the expiration of the Public Health Emergency Declaration on July 25, 2020; and, even if there is an extension, the termination of the emergency will likely occur in the next couple of months.

This Frequently Asked Question (FAQ) Document represents the continued collaboration between Citrin Cooperman and Sheppard Mullin to publish materials focused on COVID-19 related regulations and changes, and produce thought leadership that is both timely and useful for clients and partners. For access to our previous thought leadership materials, please visit our webpages: citrincooperman.com/CRU, citrincooperman.com/infocus/covid-19-transition-playbook, sheppardmullin.com/coronavirus-insights, and sheppardhealthlaw.com.

The table below: (i) does not address all of the applicable local, state, and federal changes that have been implemented in response to the COVID-19 crisis; (ii) is not intended to be a comprehensive summary of the various changes; and (iii) is for informational purposes and is not legal or consulting advice.

Category	Question	Response
<p style="text-align: center;">Regulatory and Compliance</p>	<p>What Federal and/or State stimulus or financial support programs can we expect in response to a potential second wave? If my organization received payments in connection with an existing program, will my organization be eligible to apply for any new programs?</p>	<p>There is still funding within the Provider Relief Fund that has not been distributed, so it is likely we will see these funds fully deployed. It is also possible that future legislation will have a focus on healthcare, so Congress may appropriate additional monies to the Provider Relief Fund or for distribution through similar mechanisms. Based on the political climate, however, additional appropriations may be stalled or blocked - providers should undertake business planning exercises, such as budgeting and cash flow planning, as though there will not be any additional government funding. It is important to consider the timing and impact of the recoupment of the Medicare Advanced Payments when undertaking this exercise.</p> <p>If you have already received government funding through an existing program, it is possible that you may be eligible for additional Provider Relief Fund payments, depending on how these funds are allocated, as well as to apply for any new programs, depending on their particular requirements.</p>
	<p>We understand that we need to comply with local governmental requirements for re-opening, but what are my organization's obligations if an employee tests positive (e.g., just send the employee home, conduct a tracing of other employees he/she may have come in contact with, close our office?). Does the organization have to pay employees who cannot work due to a high temperature or a positive COVID test result?</p>	<p>If an employee tests positive <u>and</u> is currently at the workplace, you should not only send them home but also close the workplace and disinfect the workplace per CDC and OSHA guidance. However, if the employee is already home and tests positive, you may be obligated to pay them leave under the Families First Coronavirus Response Act ("FFCRA") or applicable state and local laws. In all cases, you should comply with local government requirements for contact tracing and should notify employees who may have been in close contact with the employee who tested positive. Importantly, when notifying other employees that they have been in close contact with an employee that has tested positive, <u>never</u> reveal the name of the employee who tested positive.</p> <p>If an employee has a high temperature or suspects they may have COVID and/or is awaiting a test result, they may be eligible for pay under the FFCRA or applicable state or local laws.</p>

Category	Question	Response
	<p>There is so much information (and misinformation) available in the public and changes on a Federal, State and local level that we cannot keep up with all of the changes. Any recommendations on how my organization can easily stay on top of changes to the law, regulations, and recommendations in the healthcare industry? What is our organization’s potential exposure if we fail to implement one of these changes?</p>	<p>Work with your legal and financial advisors – they are actively tracking these changes. Citrin Cooperman and Sheppard Mullin are both publishing information about evolving COVID-19 related regulations and changes available here for Citrin Cooperman and here for Sheppard Mullin. Additionally, we would recommend carefully documenting the extra measures you are taking in response to COVID-19 related regulatory requirements, as well as legal waivers on which you’re relying, and task an individual within your organization with monitoring and updating leadership regarding any changes to these particular requirements and waivers.</p>
<p>Operations</p>	<p>Our practice has started using telehealth during the pandemic and for the patients that will try it, it has worked fairly well. That said, we still have many patients that want to receive services in person, but are nervous to visit an office. How do we make our patients feel comfortable with coming in for services they need, which will also provide the revenue that our practice needs to remain viable?</p>	<p>First and foremost, being honest with your patients and communicating effectively with them will be key to addressing patient concerns about changes in the care delivery model. We recommend that you evaluate your current policies and procedures in light of COVID-19 and safety recommendations. First, look at how you are scheduling your patients – is there enough time to appropriately clean the rooms? If patients have to wait in the waiting room, is there enough space to maintain social distancing? Can you change your procedures so that when patients arrive you are able to take them directly back to the examination room? We have heard of some providers that are dividing the day into specific blocks of time for well visits and for sick care to make patients more comfortable.</p> <p>Once you have the policies and procedures in place, consider proactively reaching out to patients one to two days prior to their appointment, to explain the new process for visits and answer any questions they may still have.</p> <p>Additionally, it will be important to continue to communicate with your patients about the type of care they can receive via telehealth. It may take some time to drive adoption, but similarly to the step curve with getting patients to adopt patient portals, it will be important to have a specific and proactive communication approach to drive adoption of telehealth where it is appropriate for services.</p>

Category	Question	Response
	<p>In response to COVID-19, I have had to adapt the way my practice operates and delivers care. We are now offering telehealth visits, spacing visit times further apart so we can appropriately clean the rooms, and maintain social distance requirements. How can I adapt my operating model, particularly with staffing and scheduling, to ensure I am operating with optimal efficiency? Also, what steps can we take now to prevent a complete shutdown of our offices in the event of a second wave?</p>	<p>In our work with providers, we have observed that it is essential that they look at the type of service mix that optimizes the efficiency of services provided and how that ultimately drives profitability for their practices. Start by evaluating the number of telehealth visits you are furnishing in a week versus the number of in-clinic visits. Then implement a schedule structure that efficiently utilizes the time demand and supply to complete visits (i.e., you may be able to complete more telehealth visits in a day than in clinic, so you may consider 2 ½ telehealth days and 2 in person clinic days). In this schedule, consider blocking certain days for certain visit types and adapting your staffing model accordingly. For the days that are dedicating to telehealth, you need fewer non-clinical staff, but for the in-clinic days you may need to leverage PRN or contract staff to meet the demand.</p> <p>Similarly, as a provider looks at the types of services being furnished via telehealth vs. in person, the provider should consider whether there is an optimal set of services to target for provision via telehealth, taking into account patient preference and the ability to provide in-person visits. Does it make sense to carve out a subset of clinicians to focus on providing telehealth services vs. trying to optimize with all clinicians? Is there some sort of rotation of services that makes sense for your practice? Some providers are rotating their clinicians on a weekly basis – one week in the hospital, as applicable, one week providing telehealth services, and then one week seeing patients in the office. Finally, as you are preparing to remain open during any future waves of COVID-19, consider evaluating safety policies and procedures now and adopting best practices for protecting patients and practitioners in your office. For instance, consider requiring masks for all persons entering the office, also consider scheduling and spacing measures that will allow patients to maintain social distancing and minimize contact with one another while visiting your office, as well as whether any other PPE are appropriate. Additionally, we recommend that you familiarize yourself with the CDC and/or OSHA guidance for organizations and incorporate the specific recommendations into your policies/procedures, as applicable.</p>

Category	Question	Response
	<p>Our practice did not have the recommended 90-day supply of emergency personal protective equipment (PPE) prior to COVID-19 and we are having difficulty finding (and paying for) supplies. How have other organizations addressed these shortages and do we really need 90 days?</p>	<p>Given the continued increase in the number of cases and ongoing concerns regarding the spread of COVID-19, we would recommend maintaining at least a 90-day supply of PPE. We also know there is legislation being contemplated that may require providers, or at least hospitals, to maintain a 90-day supply of PPE.</p> <p>There are a couple of ways your organization could address PPE shortages:</p> <p>(1) Look to other provider organizations in your market, particularly organizations that may have closed as a result of COVID-19 (ASCs, imaging centers, other ancillary providers) and see if they have excess PPE that your organization could leverage, at least until you are able to obtain the additional PPE from other sources. You could also look to hospitals in the area to see if they have excess supply.</p> <p>(2) You could also look to a hospital or other organization in the area that operates or works with a GPO to see if you could join that GPO and gain better access to PPE contracts. There are cases in which larger organizations are given priority for certain supplies.</p> <p>(3) Determine whether professional or charitable organizations in your area are offering access to PPE, including for free or at reduced cost.</p> <p>(4) Contact your Department of Health to see if they are offering assistance to provider organizations to fulfill PPE supply requests.</p> <p>In terms of paying for the supplies, make sure you are tracking the costs of the PPE you acquire and considering any potential funding support from local government or private organizations in your area.</p>

Category	Question	Response
<p style="text-align: center;">Finance</p>	<p>CMS has indicated that they plan to continue some level of expanded reimbursement for telehealth services post-COVID-19. Can I rely on these statements? The last thing I want to do is for our practice to focus on shifting a lot of our volume to telehealth and then experience untenable reimbursement levels long-term. Similarly, what will the commercial payors do long-term?</p>	<p>It is very unlikely that CMS will roll back all of its telehealth coverage expansion, especially given recent statements from the agency. For instance, it is widely expected that CMS will make some of the expansions to the telehealth services list permanent in its 2021 Physician Fee Schedule rule. The fate of other currently active regulatory expansions, however, is uncertain.</p> <p>In terms of other payors, approaches will differ payor to payor, but you can proactively work with your third party payors to discuss strategies related to telehealth services. When initiating these discussions, bring statistics on the utilization of telehealth services at your practice and the positive impact it has had on maintaining connection with patients and ensuring they are receiving the appropriate level of care. We believe a fundamental concern from payors is that patients are using telehealth as a bridge to office care – and that a telehealth visit is likely to result in a subsequent in-person visit for many patients. Good data will enable you to show the number of in-person visits that were ultimately avoided through telehealth, and also the number of telehealth visits that required a follow-up in-person visit. This will also enable you to show the number of lives impacted by telehealth services.</p> <p>With respect to the internal functioning of healthcare providers, we recommend financially modeling the potential impact of telehealth on such providers. What is the financial impact to your organization from shifts of services from in-person to telehealth? How does a transition impact expenses ranging from staffing, to the potential to centralize some services, to spacing considerations? We are having conversations with clients today about how to understand the financial feasibility of maintaining profitability with telehealth services potentially evolving to become a material piece of their service mixes.</p>

Category	Question	Response
	<p>My organization received funds pursuant to a governmental support program. What information and supporting documentation do I need to provide in order to certify that we have used the funds in accordance with the program? Any additional advice on reducing our audit risk?</p>	<p>The supporting documentation and reporting requirements will vary significantly depending on the program through which your organization received support. You should be sure to understand all types of funding you have received through programs such as the Provider Relief Fund, Paycheck Protection Program (PPP), FEMA Public Assistance, FCC COVID-19 Telehealth program, or other state and local programs.</p> <p>Once you have determined which funding mechanisms have provided support for your practice, it is critical to understand the expectations for each program. For most, providers should plan on tracking expenses at a receipt level, as well as collecting other key substantiating documentation such as general ledgers, bank statements, line-item budgets, and tax returns. Providers should also carefully track documentation substantiating their eligibility for the program. Again, documentation and reporting requirements vary widely depending on the program, so it is critical to understand the requirements of each program, and how programs interact with each other, in order to prepare for reporting and audit requests, as well as to avoid more severe legal ramifications for violating terms and conditions.</p>
	<p>Our practice was barely able to survive the first wave of COVID-19 as our volumes dropped virtually to zero overnight. What measures can we take today to better position ourselves, financially, if a second wave hits?</p>	<p>First, it is critical that your organization understands its cost structure and anticipated cash flow at a detailed level. What variable costs can you reduce quickly, either temporarily or permanently, if you need to? What is your cash flow forecast and do you have a clear line of sight into the impact of changes like Medicare Advance Payment recoupment and the end of the PPP? We suggest getting very specific in your scenario planning.</p> <p>Based on your cash and expense analysis, we also recommend exploring your access to additional working capital. Can you work with your vendors to stretch payment terms? Is there any avenue to reduce accounts payable? If it appears you may be facing a cash shortfall, consider moving forward with securing access to additional capital should you need it in the future. It is critical that you factor in your ability to service any new debt and to evaluate whether any government lending programs, like the Main Street Lending Program, may be advantageous.</p>

Category	Question	Response
<p style="text-align: center;">Technology</p>	<p>My practice/organization started providing telehealth services for the first time at the start of the pandemic. While we are happy that we could continue to provide much needed services to our patients during these challenging times, we are very concerned and are unsure of whether we will be paid for the services we have rendered. We have also heard that there will be increased scrutiny by regulators and payors on telehealth services rendered during the pandemic. What can I do to increase my practice/organization's likelihood of getting paid and reduce our potential audit risk?</p>	<p>Make sure that you have fully documented each service furnished via telehealth, including the reason for furnishing the visit via telehealth if the visit would typically be provided in an in-person setting. If you need to make additions or amendments to clinical documentation, be sure to follow CMS guidelines for such revisions. Check to be sure that any services furnished via telehealth to Medicare beneficiaries are on the Medicare telehealth services list; were provided by allowed clinicians; otherwise meet applicable coverage conditions; and, that appropriate modifiers are applied. Similarly, check telehealth services provided to other patients against coverage requirements for each applicable payor.</p>
	<p>My practice/organization has been using publicly available technology modalities (e.g., FaceTime, Skype) to provide telehealth visits. Will I be able to continue to use these services on a going forward basis?</p>	<p>The flexibility to use these modalities may well end with the expiration of the Public Health Emergency. Now is a good time to evaluate other, more secure modalities to determine whether one of these platforms would be a good fit for your practice. There are various HIPAA compliant platforms an entity could choose to implement. When evaluating these different platforms, one should consider, among others, the following considerations/questions: (i) is it supportable and compatible with my other technology platforms (e.g., electronic medical record system)?; (ii) what level of support is being offered by the vendor?; (iii) will remote patient monitoring be included?; (iv) is it patient/user friendly?; and (v) are all security and HIPAA concerns addressed? We would recommend that an entity begin researching the right platform for them by speaking with other providers and practices already using a telehealth platform as well as their trusted advisors, consultants and attorneys.</p>

AUTHORS



Heather Spillman
Principal, Healthcare Practice
hspillman@citricooperman.com
M: 404.849.7787



Matthew Shatzkes
Partner
mshatzkes@sheppardmullin.com
M: 212.634.3062



Sarah Hughes
Manager, Healthcare Practice
shughes@citricooperman.com
M: 214.796.9127



Denise Giraud
Partner
dgiraud@sheppardmullin.com
M: 202.747.1906



Erica Kraus
Associate
ekraus@sheppardmullin.com
M: 202.747.2645