Additional Relief Possibilities for Health Care Providers Under PPP

Late on April 16, 2020, the SBA announced that its PaycheckProtection Program (PPP) was out of funding and the agency would not beaccepting any more applications for the $349 billion program. This left manysmall business owners – including medical practices and related health carecompanies – frustrated and disappointed as the logjam of applications meantthat many such businesses were unable to secure funding. Many hope that Congresswill replenish the PPP through an additional round of funding – if thishappens, there are potential opportunities for those in the health careindustry as highlighted below.

Updating the Existing Application to Properly Account for Self-Employed Income

One of the most frequently asked questions during the initial application process by practices and other health care-related businesses structured as partnerships or LLCs was whether the income generated by their owners in providing services to the business could be appropriately included in the calculation of payroll costs. Given the initial uncertainty on this issue, many practices excluded this income from their initial calculations which, at least in some cases, significantly reduced the amount of their requested loan.

Prior to the halt in funding, the SBA published guidance on April 14, 2020, further clarifying loan eligibility requirements for self-employed individuals under the PPP. This is significant now because this guidance provides confirmation that income paid to owners in a partnership or LLC taxed as a partnership can be included as payroll costs for purposes of calculating the eligible PPP loan amount for the partnership/LLC (subject to the $100,000 annualized cap for eligible compensation – more on this below). In light of this clarification, for those LLCs and partnerships still waiting on funding, there is potentially an opportunity to re-assess the initial application and determine whether the requested loan amount should be revised to include any owner-related income that was previously excluded. Depending on the number of owners, this could result in a significant increase in the requested loan amount.

If your practice falls into this category, we wouldrecommend contacting your bank or lender to see whether it is possible to nowamend your application[1]for this purpose as the financial benefits could be significant.

Submitting New Applications for Individually Earned Self-Employment Income

It is not just practices that can benefit from the delayed funding. Many physicians and other providers individually receive income, and in some cases substantial income, outside the “standard” employment or ownership capacity. This can include everything from medical director arrangements to supervision agreements, teaching and speaking engagements, and call coverage group participation – as many of you know, the list is extensive. In the overwhelming majority of these instances, the providers are treated as independent contractors and, therefore, compensated through Form 1099 arrangements. This is potentially significant under the PPP loan program for the reasons described below.

Per the current SBA guidance, sole proprietors, sole membersof LLCs, and *independent contractors*can apply for loan assistance on an individual basis. This raises the question,then, can a physician or other provider performing independent contractorservices for a third party other than his/her practice entity file for PPP loanrelief with respect to income earned under these arrangements? We believe theshort answer is *yes* (subject to therequirements below).

While the most recent SBA guidance does not directly addressthe submission by a physician for funds derived through independent contractorservices that are essentially "secondary" to the provider's main lineof work, we believe that such ancillary income falls squarely within thecategory of self-employment income that is intended to be covered by the reliefprovisions of the PPP. Specifically, the income generated from such independentcontractor services seems no different from a statutory perspective than incomethat is generated by sole proprietors and individual members of single-memberLLCs, two categories that are clearly covered on an individual basis under thePPP guidance.

Moreover, the guidance makes clear that the entity for whomthe independent contractor services are generated cannot submit these amountsfor loan reimbursement. So, if the individual physician providing the servicesis also excluded from applying for loan relief, then these amounts effectivelyfall outside the contours of the PPP assistance. Given that these amounts areoften critical components of a physician's overall compensation base, thisseems an inappropriate result given the stated intention of the relief program.Therefore, we believe it is certainly worth a physician's time and effort topursue an application process if these amounts are significant.

Note that if independent contractor income is eligible for loan subsidization, the underlying amount will be calculated using the same methodology that is applied to income generated in the practice setting process (see previous *Client Alert*[2]) and will require the provider to submit appropriate documentation to support the claims (which can be anything from the applicant's Form 1099 for 2019 to personal bank statements or tax returns). Depending on the amount of income that a provider earns through these types of "outside arrangements," the recovery could be fairly substantial – up to $20,833 for the period in question if the total amount of independent contractor income for 2019 exceeded $100,000. Note, however, that under the forgiveness provisions of the PPP, only 75% of the loan amount can be applied to payroll costs; the remaining 25% must be applied to rent, mortgage interest, or utilities. If these additional expenses do not apply to your independent contractor services, then only $15,625 of the potential eligible loan amount is subject to forgiveness. We know that for many of you, patient volumes may be down and third party payments may be delayed or in some instances reduced. We also know that many of your contract partners (hospitals, labs, ODCs, ASCs, universities, etc.) are facing the same economic pressures and, therefore, many previously "stable" payment arrangements are now potentially at risk. While there are numerous relief programs available for health care providers (see *Client Alert*[3]), pursuing this form of short-term relief is potentially another tool in your toolbox for navigating the oncoming economic downturn that is widely predicted.

Our hope is that this article provides our health care clients and friends with something to consider as you try to navigate the many challenges – both current and future – that this COVID-19 crisis is inflicting on your practices and livelihoods. Please contact a member of the Chambliss Health Care Section if you have any questions or would like to discuss your potential options in more detail.

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[1]Of course, as part of any conversation with your lender, we would recommendalso confirming that the processing of any such amendment would not adverselyaffect your "place in line" with respect to the original application.The answers may be different depending on the lender and, in some cases, couldbe determined on a case-by-case basis.

[2]See *CARES Article* – "How doself-employed individuals calculate the maximum PPP loan amount?"

[3] See *$100B Relief Article*

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