



Planning for Your Practice's Future

HOW DO YOU DECIDE WHEN IT IS TIME TO TEMPORARILY SUSPEND OR SHUT DOWN YOUR PRACTICE?

One method of establishing a guidepost or trigger to making the decision on either of these actions is to create a “shutdown budget.” As you approach a cash position which is at or near the shutdown budget amount, that is when it is important to have those tough discussions with your partners, or board of directors and/or officers. You never want to spend your cash below that amount. Your shutdown budget should include line items such as final payroll and withholding obligations, real and personal property rental payments which will need to be made during that period, costs of retaining a skeletal staff to be available during the shutdown, costs of a tail on D&O or malpractice insurance, and costs of professionals (CPAs to prepare tax returns and W-2s, attorneys to help guide you through the process). Finally, always be sure to be sure you are current on, or retain sufficient cash for, items which may carry personal liability, like payroll/withholding taxes.

I HAVE HEARD ABOUT THIS “ZONE OF INSOLVENCY.” AS AN OFFICER OR DIRECTOR, WHAT FIDUCIARY DUTIES DO I HAVE AND TO WHOM ARE THEY OWED?

Officers and directors owe the duties of care and loyalty to the practice and its shareholders. However, once the practice approaches the zone of insolvency (which can be defined by any number of things, including that it is unable to pay its debts as they become due), you have to add the creditors to the list of those to whom those duties are owed. The duty of care should be thought of as acting in good faith, and as a prudent person would in a like situation. The duty of loyalty is acting in a manner reasonably believed to be in the best interest of the practice (i.e. no self-dealing for personal gain).

WHAT WILL HAPPEN UNDER EXISTING CREDIT FACILITIES IF I CAN'T MAKE LOAN PAYMENTS OR MEET REQUIRED PERFORMANCE METRICS UNDER THE LOAN OR CREDIT AGREEMENT?

Most loan agreements do not include exceptions from payment and financial covenant obligations resulting from generalized economic disruption. However, many lenders are offering temporary deferrals of payments during this period. Deferrals are generally not automatic and not currently mandated by law, so it may be useful to reach out proactively to your lender to negotiate suspensions of payments and financial covenants.



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WHAT TYPES OF FUNDING PROGRAMS ARE AVAILABLE TO HELP RESPOND TO COVID-19?

There are several items in the new [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act, passed and signed into law on March 27, 2020](#), intended to relieve the pressure on businesses caused by the COVID-19 outbreak. One of the key pieces of this relief package is the \$349 billion “[Paycheck Protection Program](#),” under which participating lenders will provide short-term Small Business Administration (SBA)-backed loans to small business for purposes of funding payroll, rent, utilities and certain other items. Borrowers may be eligible for forgiveness of these loans, to the extent used for permitted purposes and so long as the borrower maintains its levels of full-time equivalent employees and salaries during the 8-week period following the making of a loan. Please refer to Smith Anderson’s [COVID-19 Business Resource Center](#) for more information on this program as it becomes available.

The SBA also offers [Economic Injury Disaster Loans](#) (EIDLs) of up to \$2 million, based on financial impact from COVID-19, to small businesses. Under the CARES Act, a loan advance of \$10,000 may be available, which does not need to be repaid if certain conditions are met, even if the application is subsequently denied. For more information, visit the SBA’s [COVID-19 relief page](#) for applications.

In addition, there are likely to be a growing number of traditional and non-traditional financing options. For example, in North Carolina, the COVID-19 rapid Recovery Lending Program, created by a consortium of public, private, and nonprofit partners, including the North Carolina Department of Commerce, provides for loans up to \$50,000, including a six month payment and interest deferral. For more information, refer to <https://ncrapidrecovery.org/>.

On April 9, 2020, the Federal Reserve [announced](#) the details of the Main Street Lending Program pursuant to the CARES Act. This program will make up to \$600 billion of loans available to small and medium-sized businesses employing up to 10,000 employees or with 2019 revenues of less than \$2.5 billion. Loans will be made by eligible lending institutions that participate in this program, so you may want to inquire at banking institutions with which you have a relationship. For more information, [see this extended summary of the program](#), including eligibility and loan terms.



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ARE THERE PROGRAMS SPECIFIC TO MEDICAL PRACTICES THAT ARE AVAILABLE?

CMS has [expanded the Accelerated and Advance Payment Program](#) for enrolled Medicare providers to provide temporary funding for COVID-19 relief. CMS has published a [fact sheet with a step-by-step guide](#) on applying for advance payments against future Medicare reimbursements.

Enrolled Medicare providers should [consult this page for Medicare Administrative Contractors \(MACs\)](#) to determine which MAC to apply through. For example, the MAC for Medicare Part B providers in Georgia, North and South Carolina, Virginia, and Tennessee is Palmetto GBA. [Here](#) is Palmetto GBA's page on the Accelerated/Advance Payment Request program.

The MAC for Medicare Part B providers in Delaware, District of Columbia, Maryland, New Jersey, and Pennsylvania is Novitas Solutions Inc. [Here](#) is Novitas Solutions' page on the Accelerated/Advance Payment Request program.

The CARES Act [Provider Relief Fund](#) began making initial payments totaling \$30 billion to enrolled Medicare providers via direct deposit on April 10, 2020. It is not necessary to apply for such funds. If you are eligible for them, then HHS, through United Health, will disburse them to you via the usual manner in which you receive payments for Medicare services. If you received payments from United Health (HHS's fiscal agent for the Provider Relief Fund), then you should review the [terms and conditions](#) for the program and accept them within 30 days of receipt of payment (the required attestation will be available from DHHS soon). If you do not accept the terms and conditions, then you should make provisions to return the funds you received.

The relief payments are payments, not loans. If you agree with the terms and conditions, you do not need to repay the funds. Please note that HHS broadly views every patient as a possible case of COVID-19. Therefore, it is not necessary to document treatment of a COVID-19 patient in order to receive the funds.

WHAT SHOULD I DO ABOUT PREMIUM PAYMENTS ON MY GROUP HEALTH AND OTHER INSURED WELFARE PLANS?

You will want to check with your carriers to see if there are any premium deferral programs that may be of meaningful help to you. Your state may have an advance notice requirement. For example, North Carolina generally requires 45 days' advance notice before terminating or ceasing employer contributions to group health and group life insurance plans. Although the 45-day time requirement may not be strictly enforced in all cases, it is important to be sure as much notice is provided as possible and that all employee premium amounts withheld go to the payment of group premiums. This can sneak up on businesses and violations can be enforced as felonies.



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COULD REDUCING THE HOURS OF MY EMPLOYEES MAKE THEM INELIGIBLE TO PARTICIPATE IN MY HEALTH PLAN?

Yes. Reach out to your broker or insurer to confirm the consequences of any changes in employment status, and if you are given assurances that employees will remain eligible, ask them to confirm that in writing.

COBRA COMPLIANCE REQUIRED IF COVERAGE IS LOST?

Remember that a termination of employment or reduction in hours that triggers a loss of group health plan coverage will entitle employees to COBRA coverage (or state “mini COBRA” for those with fewer than 20 employees). Notify your COBRA administrator about such changes so COBRA notices are sent in a timely manner.

IS IT IMPORTANT TO CONTINUE REMITTING 401(K) SALARY DEFERRALS IN A TIMELY MANNER?

Yes. If employees continue to make deferrals, it is important that you send them to the plan right away. Do not, under any circumstances, use employee deferrals to support your business operations.

SHOULD I CONSIDER REDUCING OR SUSPENDING EMPLOYER CONTRIBUTIONS TO MY 401(K) PLAN?

Certain of the relief programs described above may provide funds that you can use to make matching contributions on employee deferrals (e.g., as a safe harbor 401(k) plan) or future profit sharing contributions. Nevertheless, some employers may consider ceasing those now. The degree to which you can, and the steps required (e.g., plan amendment, update to safe harbor notice) will depend on your plan terms. For more on that, please [click here](#).

COULD SIGNIFICANT LAYOFFS HAVE AN IMPACT ON MY RETIREMENT PLAN?

Yes. Employees who terminate employment will be able to take distributions. A termination of 20% or more of the employees who participate in the plan could trigger a “partial termination” of the plan, meaning that impacted employees would have to become fully vested. Make sure to notify your TPA if you anticipate significant layoffs.



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