

NEW FEMA GUIDANCE ON ELIGIBLE MEDICAL CARE COSTS AND ALTERNATE CARE SITES

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Building upon our prior Alerts summarizing the President's March 13 nationwide emergency declaration for the COVID-19 pandemic and subsequent state and territory specific Major Disaster Declarations, and information provided regarding the resulting eligible emergency protective measures costs, including specific tips for hospitals and other medical providers applying for these funds, we now provide an update on eligibility of medical costs available pursuant to the Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program. FEMA Assistant Administrator, Keith Turi, approved FEMA Policy FP 104-010-04 on May 9, 2020, which provides details on eligible reimbursement for medical care costs. FEMA followed this policy with the Fact Sheet issued on May 12, 2020 to provide more information regarding FEMA's reimbursement for temporary and expanded medical facilities (Alternate Care Sites).

First, it's important to note that the guidance issued by FEMA on May 9 is in the form of a **policy** (FP 104-010-04) as opposed to the more casual Fact Sheet format used for prior guidance documents for this event. The policy is viewed as a stand-alone document, therefore repeats a good bit from the prior guidance. One purpose for this is to help support **consistency across the declarations**. Because FEMA's PA funds are generally administered by state and FEMA Region, we have seen some differences in application of FEMA's prior Fact Sheet guidance. Hopefully, the policy will help to promote greater consistency going forward.

Notwithstanding, the policy generally follows FEMA precedent and uses similar language found in the Public Assistance Program and Policy Guide and previous FEMA COVID-19 Fact Sheets. However, there are several clarifications and policy specifications applicable only to the COVID-19 pandemic declarations and worthy of special mention:

1. **Inpatient Care.** FEMA's previous Fact Sheet included language that could be interpreted to limit payment for inpatient care. The new policy states that **inpatient clinical care is eligible** and includes, but is not limited to, the following:
 - Emergency medical transport related to COVID-19;
 - Triage and medically necessary tests and diagnosis related to COVID-19 patients;
 - **Necessary medical treatment of COVID-19 patients**
 - Prescription costs related to COVID-19 treatment.

A previous FEMA COVID-19 Fact Sheet (that has now been removed from FEMA's website) stated that medical care costs incurred once a COVID-19 patient is admitted to a medical facility on an inpatient basis would not be eligible. It only listed emergency transport, triage and testing, and prescription costs as eligible medical care costs. The new policy clarifies and confirms that eligible work may include both emergency and inpatient treatment of COVID- 19 patients to include both confirmed and suspected cases

of COVID-19. The policy also confirms that an eligible "primary medical care facility" includes traditional hospitals as well as facilities dedicated to outpatient, rehabilitation, or long term care.

2. **Consideration of Suspected Cases.** Eligible costs now include those related to both confirmed and suspected cases of COVID-19. However, the policy confirms that costs for medical care related to treatment of a non-COVID-19 illness or injury is not eligible. It is still unclear how FEMA will treat the costs of suspected cases that later test negative.
3. **Temporary and Expanded Medical Facilities** may be used to treat COVID-19 patients, non-COVID-19 patients, or both, as necessary. More detailed guidance for temporary medical facilities, includes:
 - Need (based on capacity and capability) must be supported by **predictive modeling**.
 - Costs can include:
 - All otherwise eligible costs as if in a primary medical care facility;
 - Lease, purchase, construction, or reasonable alternations to an existing facility;
 - Demobilization/mobilization, operating costs including wraparound services; and
 - Maintenance of a temporary or expanded medical facility in an operationally ready, but unused status, available for surge capacity for COVID-19 readiness and response **when necessary to eliminate or lessen an immediate threat to public health and safety** based on public health guidance, location of areas expected to be impacted, and local/state hospital bed/ICU capacity.
 - For contract costs related to establishing and/or operating a temporary or expanded medical facility, contracts must include **a termination for convenience clause that will be implemented if the site is ultimately not needed, or the needs are less than projected, as determined by the legally responsible entity. You must document the review process to support decision making.**
 - Costs related to expanding a primary medical care facility to effectively respond to COVID-19 must be feasible and cost effective. In most cases, **permanent renovations are not eligible unless** the applicant can demonstrate that the **work can be completed in time to address COVID-19 capacity needs and is the most cost-effective option**. Permanent renovations and other improvements to real property with PA funds are subject to real property disposition requirements.
 - **FEMA Fact Sheet on Alternate Care Sites, Consideration of "Warm Sites."** On May 12, FEMA issued additional guidance and documentation requirements for temporary or expanded medical care sites that have been established but may now be lesser, or no longer, used – but which may be needed again at a later date due to a subsequent surge. In the Fact Sheet issued to cover how FEMA will handle what it terms "warm sites," FEMA indicates it will assess public health guidance, whether the facility is strategically located for areas projected to be most impacted by a resurgence, and local bed capacity when determining whether and how to fund continuing costs of any particular site. FEMA Regions will work the applicable state, territory, or tribe acting as the funding recipient when making these determinations. Continuing need will be assessed on a monthly basis and funding will be limited to maintaining the site no longer than is necessary and reasonable based on projected needs and in accordance with public health guidance.
4. **Duplication of Benefits.** FEMA has consistently been a strict follower of the statutory limitation that they cannot provide assistance for costs that are eligible for funding by other federal agencies. **Applicants should be incredibly careful** and intentional when tracking and claiming costs under any

available source to mitigate duplication of benefits issues that could reduce an otherwise eligible FEMA PA award. FEMA lists ten potentially duplicative sources of funding in the Policy:

The Public Health Emergency Preparedness Cooperative Agreement Program;

The Public Health Crisis Response Cooperative Agreement;

The Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Diseases;

The Hospital Preparedness Program Cooperative Agreement;

The Regional Ebola and Other Special Pathogen Treatment Centers Cooperative Agreement;

The National Emerging Special Pathogens Training and Education Center Cooperative Agreement;

The Hospital Association COVID-19 Preparedness and Response Activities Cooperative Agreement;

The Coronavirus Relief Fund and the Provider Relief Fund;

The COVID-19 Uninsured Program; and

The Paycheck Protection Program.

5. **Calculation of Costs.** The new policy confirms that, for COVID-19 declarations, FEMA will use Medicare rates, **as in place prior to the 20 percent increase in COVID-19 Medicare diagnosis-related group (DRG) rates implemented by the CARES Act**, as the basis to determine reasonable costs for eligible clinical care not covered by another funding source. Both patient payments and insurance payments are considered another funding source; clinical care for which providers have received or will receive payments from patients or insurance is not eligible.

Baker Donelson continues to monitor coronavirus developments and we will provide updates on guidance from FEMA as it becomes available. If you have any questions regarding this Alert or the impact of COVID-19 on your organization, please contact the authors or any member of Baker Donelson's [Disaster Recovery Team](#). Also, please visit the [Coronavirus \(COVID-19\): What you Need to Know](#) page on our website.