Kentucky Hospital Association

COVID-19
Federal Relief for Kentucky Hospitals

APRIL 2020

Kentucky's hospitals, their resources and their workforce have never been more important to citizens than in the face of the COVID-19 pandemic. This public health crisis has created the perfect storm as Kentucky hospitals take action to prepare to meet the surge of patients while losing money – jeopardizing their ability to retain essential staff.

- Kentucky's hospitals were among the first in the nation to cancel elective procedures beginning on March 18, 2020, as part of a mitigation strategy to curb the spread of COVID-19. Elective surgeries and diagnostic tests are the lifeblood of hospitals because they have the largest contribution to a hospital's margin and are needed to cover expenses and support the other money-losing services that hospitals offer.
- Since the shutdown of elective procedures occurred, revenues have declined, on average, by forty percent. According to a KHA survey, the estimated lost revenue is $1.3 Billion just for an eight-week period from all payers (Medicare, Medicaid and commercial patients).
- This translates into Kentucky hospitals losing approximately $20.4 million each day.
- With every passing day, the situation worsens, as more than a thousand hospital workers have been furloughed or had hours reduced, and more hospitals move to take similar actions.
- The willingness of the hospitals to follow state policies, which have deprived them of critical revenues, has endangered the operations of all hospitals and taken a particularly heavy toll on those treating the poorest and most vulnerable communities.
- The decline in elective procedures is expected to continue for several more months, and even if current restrictions are slowly lifted, it will take considerable time for hospital volumes to return to pre-COVID levels. Prior experience with cancellation of procedures during other emergencies (e.g., ice storm) indicates that hospitals will never regain all of the revenue lost during the shutdown. Thus, Kentucky hospitals have a critical need for cash now and will likely be unable to pay the funds back later.

KHA and Kentucky's hospitals thank Senator Mitch McConnell and the entire Kentucky congressional delegation for passing the CARES Act and for including provisions to help hospitals address shortages in cash flow. KHA estimates how funding from the CARES Act will impact Kentucky hospitals and future legislation could fine-tune these provisions in the following ways:

1. **$100 Billion Emergency Relief Fund –** Kentucky hospitals need to receive enough funds to cover their lost revenue from the cancellation of elective procedures. The Centers for Medicare and Medicaid Services (CMS) announced the release of $30 billion in funding, as an initial payment to hospitals and other health care providers, with the hospital portion to be paid out by April 10 in relation to the hospital's Medicare fee-for-service payments. KHA estimates this may result in payments to Kentucky hospitals of approximately $235 million – which pales in comparison to an estimated loss of $1.3 billion in just an eight-week period. Additionally, these initial funds result in uneven distributions. Kentucky has a high penetration of Medicare Advantage plans in many areas of the state. Kentucky's hospitals are disadvantaged by CMS not including Medicare Advantage payments in the distribution of $30 billion from the Relief Fund. Also, children hospitals have much lower Medicare payor mix than most acute care hospitals.

   KHA Recommendation: Request CMS to make a second distribution of relief payments to hospitals that would more fully cover Kentucky hospitals' eight-week revenue loss. Also, consider providing additional funding to the Relief Fund so there is sufficient money to cover hospital losses throughout the entire emergency period. KHA and Kentucky hospitals are concerned that future distributions may provide higher payments to "hot spots" which would disadvantage Kentucky hospitals and the Commonwealth. This would punish the state for more successfully "flattening the curve" by cancelling elective procedures and through other means, which have helped Kentucky avoid a large number of COVID-19 patients.

2. **Medicare Accelerated Payments –** When the CARES Act was in development, KHA recommended that each hospital be paid a percentage of their annual Medicare payments immediately to get cash flowing without requiring those funds to be repaid or recouped against future Medicare payments. The Association appreciates that the Medicare accelerated payment program will allow hospitals to apply for up to six months of their regular Medicare fee-for-service payments as an advance payment.

   KHA Recommendation: Because Kentucky hospitals have been required to forego the ability to generate the revenue needed for repayment by cancelling elective procedures, KHA asks for your consideration in making these advance payments forgivable in future legislation. If funds must be repaid, please ensure no interest is charged (the current program would charge 10.25% after one year).

3. **Loans– The CARES Act** contains generous loan programs to get cash into the hands of hospitals quickly. Under the Paycheck Protection Program, facilities with less than 500 employees can apply for a Small Business Administration (SBA) loan, while larger hospitals can obtain Treasury-backed loans to cover payroll and other operating costs. Many Kentucky hospitals can qualify for the SBA loans, which importantly provide needed loan forgiveness for eight weeks of payroll and other costs. However, larger hospitals with more than 500 employees have been hard hit financially and also need loan forgiveness.

   KHA Recommendation: KHA and Kentucky hospitals request that Congress provide the same terms for loan forgiveness under the Paycheck Protection Program for loans issued to mid-size employers with 500 to 10,000 employees, and that Congress consider extending the loan forgiveness period to cover payroll and operating expenses through the end of the public health emergency or the end of 2020, whichever occurs later. KHA also requests that the Paycheck Protection Program be prohibited from applying "affiliation" requirements, which count system-owned hospitals that individually have less than 500 employees as part of a system and thus disqualify them from an SBA loan.

4. **Delay Medicaid DSH Cuts –** Medicaid Disproportionate Share Hospital (DSH) funding provides a necessary funding stream to Kentucky hospitals, which are underpaid by Medicare and Medicaid, and which continue to provide coverage to the uninsured. When slated cuts take effect, Kentucky's DSH payments will be reduced initially by forty percent with additional cuts looming.

   KHA Recommendation: Congress should permanently repeal the Medicaid DSH cuts or, at a minimum, delay the cuts for at least another year beyond the existing delay (through October 2021).

5. **Assure Adequate Payment for Treatment of COVID-19 Patients**

   A. **Expand Payment for COVID-19 Treatment under Medicare Advantage and Medicaid–** Treatment costs for COVID-19 patients are higher due to longer lengths of stay and higher utilization of ICU services and PPE. The risk profile for COVID-19 patients are the elderly and those with underlying co-morbidities, suggesting many will be covered by Medicare and Medicaid. The CARES Act recognized these higher costs and provides a 20 percent DRG add-on under Medicare fee-for-service payments for COVID-19 patients.

      KHA Recommendation: Congress should require Medicare Advantage plans and state Medicaid programs –both financed with federal funds – to provide the same 20% DRG payment add-on for treatment of COVID-19 patients in recognition of higher treatment costs.

   B. **Eliminate Medicare Cuts in Payment for 340B Drugs during the Emergency –** Under the current Medicare rules, payments for 340B-acquired hospital outpatient drugs are being reduced by approximately 28.5 percent. These reductions come at a time when hospitals need adequate payment to cover operating costs and the higher costs of treating COVID-19 patients.

      KHA Recommendation: Congress should suspend Medicare cuts in payment to hospitals for 340B-acquired outpatient drugs.

6. **Proprietary Hospitals Should Qualify for FEMA –** The Federal Emergency Management Agency (FEMA) will be responsible for providing a portion of financial relief for costs associated with responding to the COVID-19 pandemic. Under current law, for-profit hospitals are not eligible for assistance from FEMA. For-profit hospitals make up nearly one-third of all Kentucky hospitals. They are often located in rural areas and may be the sole provider in the community. The COVID-19 pandemic is not isolated to certain geographic areas; therefore, all hospitals, including for-profit hospitals, should be made eligible for FEMA.

   KHA Recommendation: Include an exemption to the Stafford Act for the duration of the COVID-19 emergency to extend FEMA eligibility to for-profit hospitals.

7. **Minimize Regulatory Burden –** Existing regulatory burdens should be lifted and time frames extended for compliance in recognition of the need for hospitals to dedicate staff to addressing the COVID-19 emergency. Similarly, KHA asks that Congress not enact additional new mandates on hospitals at this time.

   KHA Recommendation: Congress should require HHS to suspend and extend the hospital price transparency reporting mandate and delay consideration of new mandates (e.g., surprise billing or new OSHA requirements pertaining to infection control).

8. **Fix Uncompensated Care Definition for Medicare DSH –** A regulatory change made to the Medicare DSH program is reducing Kentucky hospital Medicare payments by $31 million each year. In the August 2, 2017, Inpatient Prospective Payment System(IPPS) Final Rule, CMS changed the pay out of funds from the national Medicare DSH uncompensated care pool. Prior to the change, funds were paid out based largely on a hospital's Medicaid patient volume, but under the 2017 regulation, these funds are now paid out based on uncompensated costs, which exclude a hospital's Medicaid losses. Kentucky's Medicaid program payments cover only 75 percent of actual costs – creating significant uncompensated care. The exclusion of these losses is reducing Kentucky hospital Medicare DSH payments by $31 million annually. Correcting this regulation to include these Medicaid losses will NOT increase federal funding because the uncompensated care pool is a fixed amount – making the correction would just more appropriately account for Kentucky hospital uncompensated care costs and improve hospitals' pro-rata share of this national fund, which is paid out through Medicare DSH payments.

   KHA Recommendation: Legislation should require the inclusion of Medicaid losses (payments versus costs) as uncompensated care costs used in the Medicare DSH distribution of the uncompensated care pool.

9. **Sole Community Hospital (SCH) –** The 20% COVID DRG add-on does not help SCH hospitals at all because they settle to the hospital-specific rate. There is the potential of a change in volume additional payment for SCHs, but that does not occur until after the cost report is settled (3+ years) and may not cover the full costs.

   KHA Recommendation: Either allow SCHs to rebase their hospital-specific rates to cost reports ending in both calendar 2019 and 2020 or that SCHs receive the greater of their hospital-specific rate or full costs on inpatients for cost reports ending in calendar 2019 and 2020.

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