May 9, 2020

MEMORANDUM FOR: FEMA Regional Administrators
FEMA Regions I – X

ATTENTION: Regional Recovery Division Directors

FROM: Keith Turi
Assistant Administrator
Recovery Directorate

SUBJECT: Issuance of FEMA Policy FP 104-010-04, *Coronavirus (COVID-19) Pandemic: Medical Care Costs Eligible for Public Assistance*

The purpose of this memorandum is to issue the attached FEMA Policy FP 104-010-04 *Coronavirus (COVID-19) Pandemic: Medical Care Costs Eligible for Public Assistance*. On March 13, 2020, the President of the United States declared a nationwide emergency for the COVID-19 pandemic. FEMA is releasing this policy to provide clear guidance on eligible work and costs under the FEMA Public Assistance Program related to medical care needs in response to the COVID-19 Public Health Emergency.

This policy defines the framework, policy details, and requirements for determining the eligibility of medical care costs to ensure consistent and appropriate implementation across all COVID-19 emergency and major disaster declarations. Except where specifically stated otherwise in this policy, assistance is subject to PA Program requirements as defined in Version 3.1 of the *Public Assistance Program and Policy Guide*.

If you have any questions, please contact Traci Brasher, Acting Director, Public Assistance Division at traci.brasher@fema.dhs.gov.

Attachment

Coronavirus (COVID-19) Pandemic: Medical Care Costs Eligible for Public Assistance

FEMA Policy FP 104-010-04

BACKGROUND

Under the President's March 13, 2020 COVID-19 emergency declaration[1] and subsequent major disaster declarations for COVID-19, state, local, tribal, and territorial (SLTT) government entities and certain private non-profit (PNP) organizations are eligible to apply for assistance under the FEMA Public Assistance (PA) Program. This policy is applicable to eligible PA Applicants only and is exclusive to emergency and major disaster declarations for the COVID-19 pandemic.

PURPOSE

This policy defines the framework, policy details, and requirements for determining the eligibility of medical care costs under the PA Program to ensure consistent and appropriate implementation across all COVID-19 emergency and major disaster declarations. Except where specifically stated otherwise in this policy, assistance is subject to PA Program requirements as defined in Version 3.1 of the Public Assistance Program and Policy Guide (PAPPG).[2]

PRINCIPLES

A. FEMA will provide assistance for medical care provided under COVID-19 declarations to improve the abilities of communities to effectively respond to the COVID-19 Public Health Emergency.

B. FEMA will implement this policy and any assistance provided in a consistent manner through informed decision making and review of an Applicant's supporting documentation.

C. FEMA will engage with interagency partners, including the U.S. Department of Health and Human Services' (HHS) Office of the Assistant Secretary for Preparedness and Response (ASPR) and the Centers for Disease Control and Prevention (CDC), the Health Resources

[1] www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration.
[2] The current version of the Public Assistance Program and Policy Guide (PAPPG), Version 3.1, is available on the FEMA website at www.fema.gov/media-library/assets/documents/111781.

and Services Administration (HRSA), and the Centers for Medicare and Medicaid Services (CMS) to ensure this assistance is provided in a coordinated manner without duplicating assistance.

REQUIREMENTS

A. APPLICABILITY

Outcome: To establish the parameters of this policy and ensure it is implemented in a manner consistent with program authorities and appropriate to the needs of the COVID-19 Public Health Emergency.

1. This policy applies to:

    a. All Presidential emergency and major disaster declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, issued for the COVID-19 Public Health Emergency.

    b. Eligible PA Applicants under the COVID-19 emergency declaration or any subsequent COVID-19 major disaster declaration, including:
        i. SLTT government entities; and
        ii. PNP organizations that own and/or operate medical facilities, as defined in Title 44 of the Code of Federal Regulations (44 C.F.R.) §206.221(e)(5).

    c. This policy does not apply to any other emergency or major disaster declaration.

B. GENERAL ELIGIBILITY CONSIDERATIONS FOR COVID-19 MEDICAL CARE

Outcome: To define the overarching framework for all eligible medical care work related to COVID-19 declarations.

1. All work must be necessary as a direct result of the emergency or major disaster in accordance with 44 C.F.R. §206.223(a)(1).

2. Medical care and associated costs refer to assistance to support the provision of medical care, including eligible facility, equipment, supplies, staffing, and wraparound services (as defined in the **Definitions** section at the end of this document), as well as assistance for clinical care of patients not covered by another funding source as described throughout this policy.

C. ELIGIBLE MEDICAL CARE WORK AND COSTS BY FACILITY TYPE

Outcome: To establish parameters for eligible medical care work and costs for COVID-19 declarations based on the type of facility providing medical care.

1. Primary Medical Care Facility.

    For medical care provided in a primary medical care facility (as defined in the **Definitions** section at the end of this document), work must be directly related to the treatment of

COVID-19 patients. Work may include both emergency and inpatient treatment of COVID-19 patients; this includes both confirmed and suspected cases of COVID-19. Medical care related to treatment of a non-COVID-19 illness or injury in a primary medical care facility is not eligible. The following medical care activities and associated costs are eligible in primary medical care facilities:

a. Emergency and inpatient clinical care for COVID-19 patients, including, but not limited to:
   i. Emergency medical transport related to COVID-19;
   ii. Triage and medically necessary tests and diagnosis related to COVID-19 patients;
   iii. Necessary medical treatment of COVID-19 patients; and
   iv. Prescription costs related to COVID-19 treatment.

b. Purchase, lease, and delivery of specialized medical equipment necessary to respond to COVID-19 (equipment purchases are subject to disposition requirements[3]);

c. Purchase and delivery of PPE, durable medical equipment, and consumable medical supplies necessary to respond to COVID-19 (supply purchases are subject to disposition requirements[4]);
   i. This includes the costs of eligible SLTT government Applicants providing PPE to any public or private medical care facility that treats COVID-19 patients.

d. Medical waste disposal related to COVID-19; and

e. Certain labor costs associated with medical staff providing treatment to COVID-19 patients may be eligible as outlined below. Any labor costs for medical staff that are included in patient billing and/or otherwise covered by another funding source (as described in **Section D.4 Duplication of Benefits** of this policy) are not eligible for PA. Otherwise, the following labor costs may be eligible:
   i. Overtime for budgeted medical staff providing treatment to COVID-19 patients;
   ii. Straight time and overtime for temporary medical staff providing treatment to COVID-19 patients; and
   iii. Straight time, overtime, and other necessary costs for contract medical staff providing treatment to COVID-19 patients. Work and associated costs must be consistent with the scope of the contract and may include costs for travel, lodging, and per diem for contract medical staff from outside the local commuting area.

[3] As described in Chapter 2:V.E. Disposition of Purchased Equipment and Supplies of the PAPPG (V3.1).
[4] Id.

f. For primary medical care facilities, increased operating costs for administrative activities (such as medical billing) are not eligible.[5]

2. Temporary and Expanded Medical Facilities.[6]
FEMA may approve work and costs associated with temporary medical facilities or expanded medical facilities when necessary in response to the COVID-19 Public Health Emergency. These facilities may be used to treat COVID-19 patients, non-COVID-19 patients, or both, as necessary. Medical care activities and associated costs related to treating both COVID-19 and non-COVID-19 patients in a temporary or expanded medical facility may be eligible.

   a. Costs must be reasonable and necessary based on the actual or projected need. The projected needs (i.e., capacity and capability) for a temporary or expanded medical facility must be supported by predictive modeling or other substantiating information used to determine the projected need.

   b. Eligible costs for temporary and expanded medical facilities include:
      i. All eligible items and stipulations included in **Section C.1 Primary Medical Care Facility**, but applicable to both COVID-19 and non-COVID-19 patients;
      ii. Lease, purchase, or construction costs, as reasonable and necessary, of a temporary facility as well as reasonable alterations to a facility necessary to provide medical care services;[7]
      iii. Mobilization and demobilization costs associated with setting up and closing the temporary or expanded medical facility;
      iv. Operating costs including equipment, supplies, staffing, wraparound services (as defined in the **Definitions** section at the end of this document), and clinical care not covered by another funding source; and
      v. 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 lesson 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.

   c. 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.
      i. Ongoing and projected needs regarding continuing operations at a temporary or expanded medical facility should be based on regular assessments and the Applicant must document the review process to support its decision making.

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[5] See Chapter 2:VI.B.2. Expenses Related to Operating a Facility or Providing a Service of the PAPPG (V3.1).
[6] Temporary medical facilities may include Alternate Care Sites or Community Based Testing Sites if eligible work and costs related to these facilities are incurred by eligible PA Applicants.
[7] As described in Chapter 2:VI.B.17(e) and (g) of the PAPPG (V3.1).

ii. The assessments should include adjustments to projected needs based on guidance from public health officials, caseload trends, and/or other predictive modeling or methodologies; lead times and associated costs for scaling up or down based on projected needs; and any other supporting information.

iii. The assessments and supporting information are necessary to determine eligibility of claimed costs and should align with PA reasonable cost guidance provided in the PAPPG[8] and the *Public Assistance Reasonable Cost Evaluation Job Aid*.[9]

d. 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.[10]

e. For temporary and expanded medical facilities, and the specific type of temporary medical facilities known as Alternate Care Sites, administrative activities and associated costs necessary for the provision of essential medical services are eligible.

D. GENERAL ELIGIBILITY CONSIDERATIONS FOR COVID-19 COSTS

Outcome: To provide additional information about eligible costs and cost-related considerations.

1. Eligible claimed costs must be necessary in order to respond to the COVID-19 Public Health Emergency and reasonable pursuant to Federal regulations and Federal cost principles.[11] A cost is considered reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. All costs are subject to standard PA program eligibility and other Federal requirements. For COVID-19 declarations, FEMA will use Medicare rates[12] 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.

2. Cost Share for COVID-19 Declarations. PA funding authorized under COVID-19 declarations is subject to the following cost share provisions:

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[8] As described in Chapter 2:V. Cost Eligibility of the PAPPG (V3.1).

[9] The Public Assistance Reasonable Cost Evaluation Job Aid is available on the FEMA website at www.fema.gov/media-library/assets/documents/90743.

[10] As described in Chapter 2:V.F. Disposition of Real Property of the PAPPG (V3.1).

[11] 2 CFR §200.404.

[12] FEMA will use standard Medicare rates that do not include the 20 percent increase in COVID-19 Medicare DRG rates implemented by the CARES Act.

a. Eligible costs incurred by an eligible Applicant claiming reimbursement through PA are subject to the non-federal cost share established for the respective emergency or major disaster declaration. Pursuant to sections 403(b) and 503(a) of the Stafford Act, the federal share for FEMA PA funding is not less than 75 percent of eligible costs.

b. Direct Federal Assistance provided under Stafford Act authorities is also subject to the cost share established for the respective emergency or major disaster declaration, unless otherwise stipulated.

c. Federal assistance provided by other federal departments and agencies, including instances in which provision of the assistance is facilitated by FEMA, is funded at the cost share of the other federal department or agency, some of which may be provided at 100 percent federal funding.

d. In most cases, federal assistance provided by other federal departments and agencies cannot be used to cover the non-federal cost share. The Applicant can only apply other federal award funds toward the PA non-federal cost share if the other federal award has specific statutory authority allowing it to be utilized to meet cost-share requirements, or is otherwise allowable under the other federal source of funding.

e. The Applicant cannot apply PA funds toward the non-federal cost share of other federal agency funding. For example, States may not use PA funding to meet the State share of Medicaid or the Children's Health Insurance Program (CHIP).[13]

3. Procurement Requirements for COVID-19 Declarations.[14]

a. States and territorial governments are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of required contract provisions per 2 C.F.R. §§ 200.317, 200.322, and 200.326 and Appendix II to 2 CFR Part 200.[15]

b. Tribal governments, local governments, and PNPs must comply with the requirements of 2 C.F.R. §§ 200.318-200.326.

c. In accordance with the March 17, 2020, memorandum from David Bibo, Acting Associate Administrator for the Office of Response and Recovery, and Bridget E. Bean, Assistant Administrator, Grant Programs Directorate, for the duration of the Public Health Emergency, as determined by HHS, local governments, tribal

[13] See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.
[14] Additional guidance regarding procurement standards is available at https://www.fema.gov/procurement-disaster-assistance-team.
[15] For additional guidance regarding required contract clauses, see the Procurement Disaster Assistance Team's "FEMA Contract Provisions Template" (2019 ed.), available online at https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_ContractProvisionsTemplate_9-30-19.pdf.

governments, nonprofits, and other non-state entities may proceed with new and existing non-competitively procured contracts using the exigent/emergency circumstances exception in 2 C.F.R. § 200.320(f)(2). The March 17, 2020 memorandum and other information related to procurement specific to COVID-19 declarations are available on the FEMA website at www.fema.gov/media-library/assets/documents/186350. Additional resources on COVID-19 specific to grants are also available at www.fema.gov/grants under "News and Announcements" and www.fema.gov/coronavirus.

d. SLTT governments may contract with medical providers, including private entities, to carry out any eligible activity described in **Section C. Eligible Medical Care by Facility** of this policy.

e. Contracts must include an actionable termination for convenience clause that will be implemented if any part of the scope of the contract is ultimately not needed, or the needs are less than projected, as determined by the legally responsible entity. Ongoing and projected needs should be based on regular reviews and the Applicant must document the review process to support its decision making. All claimed contract costs must be necessary and reasonable pursuant to applicable Federal regulations and Federal cost principles.

4. Duplication of Benefits.

Pursuant to Section 312 of the Stafford Act, FEMA is prohibited from providing financial assistance where such assistance would duplicate funding available from another program, insurance, or any other source for the same purpose.

a. FEMA cannot duplicate assistance provided by HHS or other federal departments and agencies. This includes, but is not limited to, funding provided by the programs listed below. FEMA is providing this list as a helpful reference, but SLTT government entities and PNPs should consult with the appropriate federal agency and the terms and conditions of each program or source of funding to determine what funding may be considered duplicative.
   i. The Public Health Emergency Preparedness Cooperative Agreement Program;
   ii. The Public Health Crisis Response Cooperative Agreement;
   iii. The Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Diseases;
   iv. The Hospital Preparedness Program Cooperative Agreement;
   v. The Regional Ebola and Other Special Pathogen Treatment Centers Cooperative Agreement;
   vi. The National Emerging Special Pathogens Training and Education Center Cooperative Agreement;
   vii. The Hospital Association COVID-19 Preparedness and Response Activities Cooperative Agreement;
   viii. The Coronavirus Relief Fund and the Provider Relief Fund;

ix. The COVID-19 Uninsured Program; and
x. The Paycheck Protection Program.

b. FEMA cannot provide PA funding for clinical care costs funded by another source, including private insurance, Medicare, Medicaid/CHIP, other public insurance, a pre-existing private payment agreement, or the COVID-19 Uninsured Program for uninsured patients.[16] The Applicant will certify that it has not received and does not anticipate receiving assistance from these sources or any other source for the same work or costs. FEMA will deobligate any PA funding that has been provided in the event that another source provides funds to the Applicant for the same clinical care costs.

c. At no time will FEMA request or accept any Personally Identifiable Information related to the medical care of individual COVID-19 patients.

d. FEMA will reconcile final funding based on any funding provided by another agency or covered by insurance or any other source for the same purpose. FEMA will coordinate with HHS to share information about funding from each agency to assist in preventing duplication of benefits.

5. Time Limitations for the Completion of Work.

a. Costs for eligible medical care for COVID-19 declarations are limited to those incurred within six months of the date of the declaration in accordance with regulatory timeframes for emergency work at 44 C.F.R. §206.204(c) or until the end of the COVID-19 Public Health Emergency, whichever comes first.

b. For all COVID-19 declarations, FEMA may extend the deadline in accordance with 44 C.F.R. §206.204(d) if the duration of the COVID-19 Public Health Emergency extends beyond six months or for work required after the end of the Public Health Emergency, such as demobilization of temporary medical facilities, or to address localized needs as appropriate.

Keith Turi
Assistant Administrator, Recovery Directorate

May 9, 2020
Date

[16] The COVID-19 Uninsured Program reimburses for testing and clinical care costs for the uninsured which is being provided at Medicare rates.

ADDITIONAL INFORMATION

REVIEW CYCLE

This policy will be reviewed periodically during the COVID-19 Public Health Emergency period. The Assistant Administrator for the Recovery Directorate is responsible for authorizing any changes or updates. This policy will sunset with the closure of the national emergency declaration for COVID-19 and any subsequent major disaster declarations for COVID-19.

AUTHORITIES and REFERENCES

Authorities

- Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207, as amended
- Title 44 of the Code of Federal Regulations, Part 206, Subpart H
- Title 2 of the Code of Federal Regulations, Part 200

References

- Public Assistance Program and Policy Guide, Version 3.1

DEFINITIONS

To establish consistent terminology for purposes of implementing this policy, the following definitions are provided below. These definitions are specific to this policy and may differ from definitions prescribed for the same or similar terms in other policies.

1. **Medical Care:** Medical Care refers both to assistance provided to support the provision of medical care and assistance for clinical care. Examples of medical care support include eligible facility, equipment, supplies, and staffing costs.

2. **Clinical Care:** Clinical Care refers to medical treatment of individual patients including testing, diagnosis, treatment, hospitalization, prescriptions, and other costs associated with individual patient treatment typically billed to individual patients, their insurance carriers, Medicare, Medicaid, or other pre-existing payment agreements.

3. **Primary Medical Care Facility:** A primary medical care facility is the facility owned and/or operated by an eligible PA Applicant that provides medical care services. This includes any licensed hospital, outpatient facility, rehabilitation facility, or facility for long-term care.

4. **Temporary Medical Facility:** A temporary medical facility is a facility separate from the primary medical care facility that is used to provide medical care services when the primary medical care facility is overwhelmed by the declared event.

5. **Expanded Medical Facility:** An expanded medical facility is part of the primary medical care facility and refers to an expansion of the primary medical care facility to increase its capacity when the primary medical care facility is overwhelmed by the declared event.

6. **Alternate Care Sites:** Alternate Care Site is a type of Temporary Medical Facility and broadly describes any building or structure of opportunity converted for healthcare use. It provides additional healthcare capacity and capability for an affected community separate from a traditional, established healthcare institution, though healthcare institutions may partner with eligible Applicants operating an Alternate Care Site.

7. **Community-Based Testing Sites:** Community-Based Testing Sites are strategically located sites within a community operated by a SLTT government for the purpose of providing COVID-19 testing to members of the community.

8. **Wraparound Services:** Wraparound services in the context of this policy are the same as those defined in the Alternate Care Site Toolkit. The services will differ at each temporary medical facility. Such services include, but are not limited to, the following: linen and laundry services; food preparation and delivery; biomedical waste removal, including contaminated items such as personal protective equipment; perimeter fencing; contracted security guards; professional cleaning; and other related services. The toolkit and other Alternate Care Site resources are available on the HHS website at https://asprtracie.hhs.gov/technical-resources/111/covid-19-alternate-care-site-resources.

MONITORING AND EVALUATION

FEMA will closely monitor the implementation of this policy through close coordination with regional and field staff, as appropriate, as well as interagency partners and SLTT stakeholders.

QUESTIONS

Applicants should direct questions to their respective FEMA regional office.