Hospice Insights: The Law and Beyond

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HUSCH BLACKWELL

COVID-19 Hospice How-To Series: Episode 12: Legal and Accounting Perspectives on Commonly Asked Provider Relief Fund Questions

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Introduction	Hello, welcome to Hospice Insights, The Law and Beyond, where we connect you to what matters in the ever-changing world of hospice and palliative care. COVID-19 Hospice How-To Series: Legal and Accounting Perspectives on Commonly Asked Provider Relief Fund Questions. Many hospices understand the general framework established for use of relief payments from the U.S. Department of Health and Human Services. However, questions remain about how to evaluate whether specific expenses and losses may be covered by the Relief Fund. In this episode, Husch Blackwell's hospice and palliative care attorneys, Meg Pekarske, Bryan Nowicki and Andrew Brenton, and Crowe's accounting professionals, Bucky High, Dan Yunker and Stephanie Cerney, discuss commonly asked questions from hospices across the country. The group shares legal and accounting perspectives, as well as practical considerations to help hospices as they operationalize their use of relief payments.
Bryan Nowicki	Hello everybody, this is Bryan Nowicki. I am the moderator for today's COVID-19 Town Hall for Hospices, Legal and Accounting Perspectives on Commonly Asked Provider Relief Fund Questions. I'm an attorney at Husch Blackwell, a law firm with a national scope. And we at Husch Blackwell have a hospice team of attorneys devoted to helping hospices in every aspect of the work they do and, for the past number of weeks, a lot of our attention has been focused on the impact of COVID-19 on hospices and, in particular, the CARES Act Provider Relief Funds, which has been a dynamic is maybe a kind word to say it, fluid situation

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	in terms of the rules, the terms and conditions that come out and have changed and caused us all to try to grapple with how do we apply these funds? Can we use them? Do we need to return them, and all sorts of questions. I'm going to try to cover a lot of that today. To help in doing that, we have a really tremendous panel to discuss all of those questions about the CARES Act Provider Relief Funds. I'm going to take a few minutes to introduce these panelists first. My partner and good friend, Meg Pekarske, who has really dedicated her entire career to helping hospices in any number of situations, is going to take us through a few slides to orient us all on the issue and then she'll be joining the Q&A panel after that. Andrew Brenton is another Husch Blackwell attorney who is part of our hospice team, and he has become the go-to person at our firm for information about the CARES Act Provider Relief Funds and its ever-evolving, ever-changing rules, terms, conditions and how to apply them in a way that's going to keep you out of trouble, or at least help you do that. We're also joined by our good friends at Crowe, a consulting, accounting, auditing firm that has a lot of experience in this area and that we've partnered with on a few occasions to talk about these particular kinds of issues, and I think you're going to find their insights very helpful. First there's Bucky High. Bucky is going to present a few slides along with Meg. He's the Managing Director of the Audit Group at Crowe, specializing in audits as well as mergers and acquisitions. Dan Yunker is also joining us. He's with Crowe and has over 28 years of experience in healthcare. He serves as a principal at Crowe and leads the strategic direction of the Health Care Internal Audit Practice and Risk Services and Solutions within Healthcare Consulting. Also joining us is Stephanie Cerney. She's a Managing Director with Crowe's Methodology Group. She has over 18 years of experience serving primarily not-for-profit hospice and healthcare entities, and for 17 years, Stephanie led the management and service delivery of audit engagements and consulting matters, primarily for not-for-profit entities. As I mentioned, Meg and Bucky are going to lead us through some slides, and at the end of that brief orientation to the issue, we're going to get to the questions that are hopefully at the top of your mind and in our experience have been in the number of settings that we've presented information about these relief funds. It's going to be essentially a verbal FAQs session where we have a number of questions that have come up

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	repeatedly, and we're going to give you our thoughts and insights. The questions aren't going to get all that fact-specific. Every situation is very different and nothing replaces a detailed consideration of all the facts and the resulting case-specific legal advice. We can't give legal advice in the webinar format but we do want to equip you with the insights and tools you'll need to help evaluate the situation. But now without further ado, my friend Meg is going to get us started. Go ahead Meg.
Meg Pekarske	Bryan, you're like newscaster quality presentation there.
Bryan Nowicki	I practiced all night so--
Meg Pekarske	I know; it shows. It was spectacular. So Bryan I appreciate that introduction and I thought what would be helpful before we launch into questions is not to give a rehash of what everyone has probably already heard us or others talk about. But I really wanted to do a little rehash of the framework because I think that getting back into this at a high level so then the questions make sense. Unlike some of the other sessions we've given, we're really intending to help you operationalize the framework. So we've provided a lot of suggestions about how do you define reasonableness and what not but here we're going to just devote most of our time to really helping you operationalize those top of mind of questions as Bryan said. This list of four things, I sound like a broken record but in many, many conversations I've had with hospices throughout the country, they have come in handy. So I think keeping them in your back pocket throughout today's conversation, which is balanced decisions on the details with the big picture optics, and so this whole idea of I don't want to be better off as a result of COVID from a relief funding perspective. The government, despite there being a lot of "FAQs," there has not been a lot of formal guidance about what these standards really mean and how to interrupt the terms and conditions. The FAQs are a fairly informal method and they change their answers to questions on a pretty regular basis. So the other thing to keep in mind is the risk continuum mindset. So as Bryan laid out, we can't get into every single fact scenario but hopefully you'll get enough of the book to understand where you want to fall on a risk continuum basis. Here's a visual as to what you can use this money for. Payment will only be used to prevent, prepare for and respond to COVID, and frankly this

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	is isn't where the money's at in terms of where people are really scratching their heads. It's not that these are not important questions, but I think it's really the second one that is going to be part of the focus of most of the conversation today and the questions, which is it can only be used to reimburse for healthcare-related expenses. Again, that defined or lost revenues that are attributed to coronavirus. And so that is probably eight percent of the questions we get are in that second bucket. The third criteria is it cannot be reimbursed from other sources or other people cannot be obligated to make these payments to you. So next slide Andrew. So the evaluation strategies and you've heard me say this before; you need this defense mindset so expect that the government is going to knock on your door and if you prepare for that now and know how you would answer those questions and what you would be comfortable explaining. I think that that's how I would approach this. The reasonableness standard which we're going to revisit briefly in the second, this risk continuum where you want to fall. But there are no yes and no answers; where do you want to fall on this risk continuum because I think that we have clients that are pushing the envelope. I don't know if I heard anyone necessarily use those terms but I think some people are making different choices in some of these areas. Another thing to keep in mind is what's the purpose of these payments. So the payments weren't to enrich the bank accounts of healthcare providers or others that were receiving these funds but really intended to make you whole because there's an understanding that there were people's businesses being hurt as a result of COVID or they're having a lot of unforeseen expenses that were due to COVID. Finally, the number one thing I think, and it's nothing that's written down anywhere, is just this big picture optics. How when you put all of your puzzle pieces together, what does that picture look like, and are you in a position that the government may say geez, you look like you did really well after COVID. That wasn't really our intention with providing these funds. Now that can be a difficult situation to navigate, which is I think the purpose of some of today's conversation is to say, I don't put that on the side, to say oh, there is such an easy answer to this big picture optics thing. But we're not talking about PPE funds here. The standard for PPE funds, I mean your business might recover very well and consequently your loan might be forgiven and that might be helpful to your bottom line. Relief funding is I think a little bit different and while you want to keep all of those buckets of money in mind, I think that this is something that's more of a practical approach than it is a true legal or accounting principle. So next slide Andrew. So the reasonableness and what we mean by that

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	and so as we start going through these questions, what I would have in the back of your mind is am I approaching things consistently? So like expenses, like revenue, am I treating those things the same or would someone argue that I'm gaming the system because when it's advantageous I treat these things in this way but when it's not I do something different? This correlates to the idea of what benchmark are you going to use as a comparative. So I think if you do a lot of mixing and matching that that at least could be questioned by the government. I've talked to a number of different people where in certain circumstances it does make sense to use your budget for 2020 for one thing and maybe historical numbers on something else because again unique factors and that is just the necessity of the expense. I think this is obviously on the expense side as opposed to the revenue side but it's something again as you're trying to brain out why something does or doesn't feel good. Then you've got obviously in quotes is what we sort of put a pin is, is this idea of well it doesn't feel very necessary. It feels like something I'm choosing to do, whether it be morale boosting or otherwise and it's not necessary and then coverage from another source. That will come up more as we work through these questions, the risk talents and of course the big picture when you add up all of the details, does it look like you're going to have a lot. Next slide Andrew. And this is a slide that you all probably have seen before. It might be your right-hand drawer. This is just a visual depiction of the standards and some considerations we have. This is where that but-for COVID test came in. So but-for COVID I wouldn't have this expense or but-for COVID I wouldn't have had this great of an expense or this great of a loss. And so that's what this slide is intended to cover. So next slide. And so Bucky I wanted to turn it over to you now to give that broad framework from the accounting perspective.
Bucky High	Sure, thank you, Meg. Yeah just again, some high level accounting reminders as you all think through accounting for this. Again, these were unsolicited funds, at least the first thirty million, thirty billion, sorry; were unsolicited funds. And so they landed in your bank account and so upon receipt for the CFO, the accounting nerds on the call. That's a debit to cash and a credit to deferred revenue. Until the point when the conditions begin to be met and so that's whenever that loss of revenue occurs and those additional but-for expenses that Meg just spoke of. When those start to be incurred and then you can start to release some of this, release it to operations on your statement of operations, your income statement. So that's all under ASC958-605, for our not-for-profit friends on the call.

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	For the for-profit hospice folks on the call, it's not quite as straightforward. There is no specific guidance for you as it relates to receiving government funding or government grants. However, the FASB has allowed for analogizing to other guidance. And we think a lot of those will be analogous to this same guidance, but we do want to make you aware if you have received funding in the past, you need to have accounting policies and procedures that are consistent. With that being said, there are two other sources of accounting guidance that you may lean on or at least want to research as you're deciding and making your accounting policy election where you haven't made it previously. And that's International Accounting Standards 20 (IAS 20), which deals specifically with governmental funding grants and then also the gain contingency model that's under ASC 450. And so both of those have kind of the same spirit to them in the sense that initially upon receipt, you're going to set up a deferred reliability. And you're not going to start releasing to your statement of operations until the conditions are met. There's a little bit of a nuance as it relates to timing on perhaps some classifications depending on the elections you make within IAS 20 and ASC 450. But again I just want to bring that to your attention for the for-profit folks on the call, that you may need to make a policy election where you have not in the past to establish precedence. So again, not to beat the dead horse that Meg has already covered, but applying that defense mindset and how do you do that, substantial documentation. How do you insure that documentation is correct. I mean it's procedures and controls in place to kind of govern what's being tracked and recorded that's ultimately going to be the basis for which you release these funds into your income statement. Andrew, you can go to the next slide. One other point we wanted to bring up on this call. HHS has not provided written guidance on this. There's no conclusion yet but given most folks would not have dealt with this in the past. This could be a big deal and that's related to single audits, the uniform guidance considerations. So typically governmental grants come with a CFDA number which has not been assigned here so nothing to follow there. But when that happens and you've received more than $750,000 in federal funds, you are required to have the single audit. That single audit really hones in on the financial aspect of these grants, the sources and uses as well as the compliance or controls and usually those controls are defined and again they haven't been defined here. So this could change if it comes out and this is required, companies

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	could have to go out and engage an auditor to perform the procedures around this. We believe if you're doing everything Meg and team has laid out and you have substantial documentation, the additional effort should be minimal. It becomes more of a reporting and a compliance exercise at that point. So that's all I have to say Andrew. I'll turn it back over to you all.
Meg Pekarske	And there we are.
Bryan Nowicki	All right. And I'm trying to come back on the screen because I think we would now like to dive into these frequently asked questions that we've gathered up from a number of sources and get into those. I'd like to start out with some of the nuts and bolts of the CARES Act relief funds and Andrew I know you probably have this information at the top of your head. So I'll direct these to you but welcome anyone to comment. What is the period of time that is covered by these funds? In other words, when do you have to have incurred these increased expenses or lost revenues in order for them to be eligible for reimbursement from those funds?
Andrew Brenton	Thank you, Bryan. The short answer is that HHS has not articulated a specific timeframe for the use of the funds but as we've kind of mentioned and hinted to that earlier. One of the criteria for using your relief payments is that the healthcare-related expense or the lost revenue has to be attributable to coronavirus. So that is sort of inherent timeframe to consider. You probably did not have many of these losses before coronavirus; the country and people started preparing for that. So I would say the short answer isn't a specified timeframe but let us keep in mind the purpose of these funds. The terms and conditions requiring that the qualifying losses and expenses be attributable to coronavirus and that should sort of guide when you would consider applying or kind of from what period of time these expenses and losses occurred, but you would want to apply your funds to.
Meg Pekarske	And Bryan maybe a thing to add there is that we expect that HHS will define that at some point, because naturally as you were saying Andrew, we think it is probably going to be the end of this pandemic but again no definition around that. I think similar to we expect there's going to be a format for reporting since that comes due July 10. This is one of those areas that we think that there were will be a sunset period on the use of this money. But as Andrew said, nothing that we know right now, so I think what we have been saying to folks and I think is something to keep in mind. Maybe I don't need with this audience because you guys are

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	living this is. No, we're not through this yet so to know how long you are going to continue to incur expenses and lost revenue, especially now we're hearing dips in routine homecare census and what not. That could continue on for several months. I think that the horizon, practically speaking in terms of what you laid out, Andrew, so we are far from that.
Bryan Nowicki	Let's talk about the possibility of returning funds. Andrew, this might be one for you as well. Are these funds an all or nothing proposition? Do you have to have use all the funds, and if you can't, do you have to return all of the funds or can you use some of them, and is there a process for returning the unused funds?
Andrew Brenton	That is a complicated but a good question. So I think that there are kind of two different answers that I want to talk about here. So the first has to do with how we're interpreting HHS's currency items on when a provider should return relief payments. Suffice it to say, there has been a lot of confusion about this area given that HHS has been fluid in this area. That's absolutely true. They had put out some kind of confusing guidance in this area, but the under the current FAQs that have been updated several times in May, we're interpreting HHS to be saying that you should reject and return your relief payment if either you think HHS paid you in error or paid you an erroneous amount or if you think that, or if you anticipate that you're qualifying losses and expenses are going to be materially less than your relief fund amount, then HHS says to return that.
Meg Pekarske	And, Andrew, let's stop there, because that is such an important and very new thing that came out of this whole materiality standard last week, sort of out of the blue from left field. So the error thing – and I think we're interpreting error to be pretty substantial – and people get loads more money that there is just no way that it is truly a mistake, but I think this idea of materially – what was the language exactly? It's like …
Andrew Brenton	If you anticipate that your bottom-line losses and expenses will be materially less than your relief fund amount.
Meg Pekarske	Yes, and so, you know, I think that it's hard to interpret this, because, again, we're not through this. It's not clear when we're going to be through this or what your time horizon is. So while there have been a few people we've called that are just saying I really haven't had that many expenses, my census has gone up fairly dramatically, blah, blah, blah, state of affairs, that's a little bit different than I think most people are still feeling, and actually the lost revenue is starting to pick up more. Andrew, you and I have spent a lot of time talking about that, and I don't

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	know that that changes what we've been saying to folks all that much. But I just wanted to pause there because it's something that came out that I don't know that a lot of folks have been talking about. You didn't may big hay out of it because of the reasons we just described, but it's important for people to be aware of it.
Andrew Brenton	Absolutely, and I guess the other kind of piece that I wanted to address, Brian, in light of your questions has to do with the logistics of returning payments. So HHS right now has not set up a mechanism by which you can return a partial relief fund amount. So they're saying you either accept it all or you reject and return it all. If you do accept it, obviously, you'll want to kind of ensure that you're sending it appropriately, which I'm sure we'll get into with specific examples later. Then ultimately you'll want to be prepared for returning the amounts that you don't spend on qualifying losses and expenses, even though at this point the specific mechanism for doing that is a bit unclear. So then if you decide you want to reject your relief refund payment because notwithstanding the things Meg just mentioned, you just really don't think you're going to have that much losses and expenses to account for here. So what you would do then is you would go into that attestations portal, you'd reject the funds, you would return the payment if you got it through an HCH. You have to contact your bank essentially and ask them to reject that. If you got the payment by check, you would return the check, and then, importantly, you would want to go in to this different general distribution portal and submit some revenue information. HHS says that if you reject the payments, you submit this revenue information and it will essentially recalculate what they believe to be your correct amount. So a long answer to a pretty complicated question, but I hope I addressed it, Brian.
Bryan Nowicki	Yes. Thank you. Andrew, one last one on kind of the nuts and bolts. The deadlines for taking certain action have been a bit of a moving target. What are the current deadlines that the hospices should be aware of for attestations and submitting financial information?
Andrew Brenton	Okay. So for the attestations piece, HHS very recently just extended the deadline for attesting to a (*inaudible*) payment and that you agree to the terms and conditions. So originally it was 30 days. You had to do that within 30 days of receipt. Then it was 45 days of receipt. Most recently, in the past several days, HHS came out and said you have 90 days from receipt of your payment to go in and attest to your receipt of it and that you agree to the terms and conditions. If you don't do that, then HHS says that after 90 days of receipt you will be deemed to have accepted the terms and conditions anyway.

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	With respect to the revenue information, this is a separate portal that you go in and you submit this information. HHS last week said that you have until June 3 to submit this information if you want to be considered for a tranche 2 payment from the tranche 2, the $20 billion for the general distribution. I guess technically if you don't want to be considered for that payment, that June 3 deadline may not apply, but if you are going to be submitting that information, especially if you want to be considered for initial payment because you think your first payment was too small, then you'll want to make sure you do that by June 3, which is next week.
Meg Pekarske	And maybe, Brian, just to tap onto that because I think it leads into a question that we get a lot, which is if I don't need second tranche money, do I still need to submit that revenue information and tax information that Andrew was referencing? And our recommendation to date, this moment in time, May 27 at 12:30 Central, has been it appears that you should still submit that information if you got a first tranche payment, even if you don't want or aren't requesting additional funds. So that is a little unclear, I think, to laypeople, for lack of a better word, that maybe don't spend every single work hour thinking about this. But, anyway, I guess that has been our best thinking, that indeed you should put that in. I walked through this on a Zoom call with a client last week, so I got to see it sort of firsthand. It's very simple to do that. So, anyway, just to put a closure on that point in case it doesn't come up again later, Bryan.
Bryan Nowicki	All right. Thanks, Meg. Let's open this up now and get the Crowe folks involved and start talking more about those losses and expenses, and let's start from kind of a higher level. What if you have increased revenue and increased expenses? Are those expected to offset one another such that you really don't qualify for any relief funds or the qualified expenses? Any comment? What's your take on that?
Dan Yunker	I guess maybe you want me to take a stab at that. First of all, what I would say is – and this is Dan Yunker. How are you? A lot of the reasonability test goes into this thinking, so because you received some revenues in your business, so for example, maybe the local area hospital did some additional discharges, patients and you saw the influx of patients. You still incurred all their COVID-related expenses to handle that patient population that you otherwise would not have incurred. So you don't need to do the math of offsetting that if it's in the course of business. We've gotten some discussion today of make sure you're not double-dipping sources of funds in regards to double recognizing a reimbursement on an expense or a lost revenue and you had another federal source of funds to do so. So it's not an offset for business. It's not

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	like you have to net that out, but you do need to make sure you're very careful in regards to the source of funds and making sure there's not another double dipping. I'd ask my team to expand on that, but I think that's the logical way to go at it.
Bryan Nowicki	What about lost revenues relating to fundraising events or donations? We've heard a number have needed to cancel fundraising events because those in-person settings just aren't compatible with all the restrictions. Are those lost revenues able to be reimbursed through the relief funds?
Dan Yunker	Yes, so there's a lot of conversation around this, and, obviously, for all of the non-investor owned entities on the call and in the healthcare delivery system, this is an important area of revenue source for providers, and it is in my daily conversations with HHS. I have some clarity, though it's not in writing yet. I'm hoping to see this in written guidance at some point. But the way that it appears that they're comfortable is, first of all, they recognize this as an important source of income for non-investor owned entities – you know, tax exempt. What the guidance and the conservativeness that I would follow, and I come leading the risk practice here, where I come from a risk standpoint is if at a specific event you can actually recognize the loss net gain that you would have had from that specific event. So in giving an example, you have a gala. A gala is the example that HHS used in the conversation that I had with them. You had a gala and that gala nets you a million dollars or five hundred thousand dollars or a hundred thousand, whatever it is, that's your gain on that event. You had potentially expenses incurred to promote that event that you had to cancel, so that could be in the form of marketing materials and so forth, maybe contracts that you had to cancel for hotels or space or other obligations, caterer – those kind of things. You can capture all of those related expenses. Where there doesn't seem to be a comfort level is in general fundraising area of focus. So, for example, it would probably be unreasonable or probably a bit aggressive to say that, oh, we were expecting this big donation from a benefactor and now, because of COVID, that's not coming through. That's a kind of "maybe we are expecting" kind of moment, and that would not be reasonable. But if you can tie it to an event, and a formula for that we had dialog about was how do you determine what that is. Was it your budget for the year? Did it include a double in size of that event? Is that reasonable. Well, it's probably not reasonable because you never performed at that level. So the conservative approach would be to take a three-year average or last year's, and what makes HHS comfortable is whichever one is lower. So is your last year lower or is your three-year average is lower – whatever

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	one of those is lower is the conservative approach to say okay, that's a reasonable management decision associated with the loss revenue of that event. There are other charitable areas. Some of you may operate thrift shops, second storefront type of entities, and you had maybe because of state-related matters shut those down, you can recognize that as well.
Bryan Nowicki	All right, thank you, Dan. I have a question about sequestration. It has been suspended, I think, to relieve some of the financial pressure, and as a result of the absence of sequestration, that is additional revenues to the hospices. How does that get calculated or evaluated when you're trying to identify lost revenues?
Dan Yunker	Probably through that calculation question. Now to Andrew, if you want to jump on that one if you're willing to do so.
Andrew Brenton	Well, I guess my thought on that would be – and, Dan, you were kind of talking earlier about offsetting – I would think that if you were to add up your COVID-attributable losses, I don't know that you necessarily need to kind of offset that against potential revenue gains resulting from the sequestration suspension. To get out points we brought up earlier, this is about our risk continuum. It's not like there's a very clear answer from HHS on this, so a conservative approach may be to kind of offset that. But there's certainly nothing that HHS has put out that would require that. I think it's just a matter of kind of assessing the reasonableness of that and how comfortable you are defending that decision in the event that you are audited in the future or other enforcement is initiated against you.
Dan Yunker	Yes, and I can piggyback on that. I think, as it relates to your lost revenue calculation, your lost revenue is going to be lessened because of the two percent up-kick because of the sequestration lift on the revenue side.
Meg Pekarske	Yes, I agree with that, and I think that when I've talked to folks about that, another thing to think about too is the difference in GIP rates and when people have been talking about lost revenue. The GIP rate went up fairly significantly, and so comparing that to budget, I think that this sort of falls in that kind of camp. Obviously, it probably makes sense to do what you budgeted for that in terms of the real-time dollars and not the lower rate you got last year because it's loss revenue as of today. So I agree with you on the sequestration issue.
Bryan Nowicki	Let's ask a question about lost revenue that's attributable to patient census. With nursing facilities being hesitant to allow outside personnel

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	into their offices, and there may be situations where hospice censuses are decreasing, and that could be for routine home care or general inpatient care, and that decrease in census covered as a lost revenue under the CARES Act, and, second, what if there's a difference? What if you have loss in your GIP census compared to past years, but perhaps an increase in routine home care? How do you try to reconcile those two, or do you treat them completely separately?
Dan Yunker	Again, I think you need to take a step back and look at the aggregate impact that COVID would cause on the business revenue loss perspective, and then you kind of back off of there, right? And so it's like the goal here, again, of HHS is to provide relief funding to try to create relief. And that's a strong word – relief – and so your role is to say okay, in management's perspective, what are we applying the relief to. So we received X amount of dollars and we believe in aggregate we lost this amount in revenue because of COVID, and we incurred this much in expense. What is that offset? So it's not like trying to say well, in this area we had an uptick and in this area a downtick, but we're not going to recognize the uptick and we're only going to recognize the downtick. Unless they're in totally separate entities and those entities received separate payments, that's a unique situation, right? So I, in creating those defensible statements with substantial documentation, would be looking at the net effect of that.
Meg Pekarske	This is Meg. I would agree with that, and this sort of gets into the big picture optics. If you're looking at things at a micro level, I could defend it. See, my routine home care went down. See that line item. But then you don't sort of dial back and see the whole picture. Again, this is not happening from what I am hearing, but my GIP went through the roof, and obviously the payment rate for that is so much more. So I agree with you. You need to look at the net effect, but I do think when you're evaluating your revenue, breaking it down in those different ways, you can see how the pieces fit together. So instead of just saying I'm looking at my bottom line, I think it is a helpful exercise to break up things and look at them at that micro level as opposed to just discounting that exercise. You've probably heard me say I think it's better to throw more at the wall and then distill your thinking than say I don't have anything and you never went through the exercise. Even as we've struggled to advise people, I think the more you think about it, you refine your thinking a little bit more and get more comfortable with the decisions that you're making.
Bryan Nowicki	Yes, that's that word – substantial documentation, right? So you're creating defensibility, and the exercise we're going through with our clients in dissecting this is you start in the aggregate and you kind of come backwards from it. And we go through an exercise and say just

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	throw everything – revenue lost and here's expenses incurred. Throw everything you can possibly imagine on the board, and let's just do a snicker test on that, right? You'd be amazed how many times, "oh, yeah." That's actually from your situation, your management's consideration, that's reasonable. And there's other times like "hmm, yeah, I get what you're trying to say here, but I'm not quite sure about that."
Meg Pekarske	Yeah, totally, totally. And I think that it is, in talking with people, that folks are so nervous about scrutiny that it's like they don't even want to engage in that exercise. It's like "oh, no, this is a hot potato. I don't want it." But I think the exercise will help you engage in the process, but then when things come around, if the government ever knocks on your door, you're going to feel very comfortable with the decisions you made because you went through the painful experience of sitting in a room for hours and hours and reevaluating and evaluating again. For providers, I think this is a very fluid situation. You're bound to look fairly good right now and then even though you have a drop-off of census from your nursing home by 10 percent in a week, that can have lingering effects for a very long time. So things can turn on a dime here. I think it's sort of constant evaluation, but I think once you put in the effort on the front end, it becomes an easier exercise and much more efficient as you move through this.
Bryan Nowicki	Yes, and you're going through a process here where you're taking this as almost a liability and you're drawing down on it as you recognize these negatives and expenses incurred. You've got a perfect trail mechanism there for defense. That's what you want to do, right? That's the right way to approach this. Let's do one last lost revenue question and then we'll get into expenses. I think we've all felt in some way the economic impact of COVID-19 with a lot of these state-ordered shutdowns, the loss in the stock market, and so on. What about investment losses? Is that a source of lost revenue that can be covered by CARES Act funds?
Dan Yunker	Well, I'd like to start this conversation because it's a hot one. Yesterday's market was over 500. Today we're off 2497, okay. So most of our type of organizations in the industry, with their audit committees and boards, have very conservative investment policies. So I think if you can materially defend financial investment impact, then I think it's one of those things that you throw on there and you've got to say okay, well this is because of COVID. There's a risk in investing, so depending on your investment policy and

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	so forth, maybe if one of your lenders, maybe you have outside lending when you're a lender – an example that came up in one scenario – you defaulted on something because whenever something happened and you had expense incurred with securing additional financing and had to get that at a higher rate – I'm kind of drawing at a scenario here. But this is the process you'd go through, but general investments in the conversations I've had with HHS is there's a lot of sighing on that one. I think the market the last two days – investments in the market, there's risk, and the market is over 25,000 today and could come back. If we had a vaccine tomorrow and 350 million people were able to get it in the United States, the market probably ends over 30. It's a really hard one. I think there's other ways to assign a max to the amount of monies received than trying to tackle this one. I'd love the other panelists' thoughts on that, but that's where – that's kind of where I'm at from a risk standpoint.
Brian Nowicki	All right, anyone else?
Meg Pekarske	Well, my non-accounting brain thinks the same way, for whatever that's worth.
Bryan Nowicki	Yeah, I'll go with Dan on this one.
Meg Pekarske	It feels right, Dan.
Dan Yunker	That's the process you'd go through with the absolute right question. It's a hard one to defend, so you get to this kind of point of mmm, there's a doubt in my head. I'm not sure the market's increasing right now. Yeah, I've got to look somewhere else.
Bryan Nowicki	Well, let's talk about expenses, and one of the most knotty areas of that is with staffing costs. Everybody who has been affected by this has had their staff devote an exceptional amount of time to dealing with COVID that they've never had to deal with before. What do we do about the additional time devoted to addressing all of the COVID-related items in terms of just human resources, and does it make a difference if the staff who are devoting that time are hourly or salaried employees?
Andrew Brenton	I'll start, and I know the panel has a lot to say here. So first of all, you've got to kind of go through that process again. So there's a couple of things that are going on that we hear a lot of. We have some organizations from a staff morale standpoint issue kind of what they're calling a COVID bonus. That is very different than, for example, providing what I also hear a lot in the marketplace, hazard pay. Those are two very very distinct things. Hazard pay is recognizing that because of COVID, you

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	may be more exposed to something that's harmful to you as an employee than you otherwise would have been. And for several of you in California, as you know, now you've got the worker compensation insurance into this conversation if they're working in the office or in the home front. That's very different, and that's something you can recognize. There's other scenarios that you have that you have to explore, but you can measure that. If you just gave kind of a morale-builder bonus, a hundred dollars or five hundred dollars or gift card, or whatever it is, that was a human resource decision and a cultural morale decision. I would not try to recognize that. So that's my initial response on this, but this is an hour-long topic on its own, so I'll let some of the other panelists give their perspective.
Meg Pekarske	Well, I think this has got in the opening slides that necessity one is something that I'd like to do versus necessary, and this the exact one that made us come up with that, where it's like the morale boost doesn't seem justified. However, mission pay, hazard pay, whatever you want to call it, does. I think some of the other questions you're getting to staffing, which I feel like come up in every single conversation I have, is about the salaried folks, too. Bryan, I don't know if you want to go there now or hold off on that. But I think that that one, to me, is fairly clear. I think having Dan talk about that and getting the accounting perspective is helpful.
Bryan Nowicki	Yeah, why don't we get into that, and when I've encountered that issue, I've considered salaried folks too. They're being paid a salary to do a job, whatever happens because of that job, and it might be harder to say that now that salaried folks are working 60 hours a week instead of 40. That extra 20 is all attributable to COVID, and, therefore, the government should be paying part of that salary, which doesn't go up because of that. Hourly people, you could just track the information a little bit better in terms of what they're doing and why. So it's a little easier to allocate that, but what's your take on that distinction?
Dan Yunker	So, the one discussion that I had is if you can track and document, which many of you probably are, that there are specific related work that salaried, exempt or non-exempt, staff are doing, for example serving on a committee, you can track the specific hours. The committee only exists because of COVID and it required things. Again, it's almost like the investment. If you really need this one, you probably could create some defensibility around this, but there are some nuances to that. So if it's a salary-related person, say an executive in the organization and they're above a 190 – I think it's 192.4 – that's the number I think is in that ballpark, which is an executive level 2 within the federal government,

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	take that back out by 2,080 hours, a typical normal work week, and have a dollar value that, and then the time spent on that committee. As long as the committee's documented, there are minutes and everything discussed in that committee was COVID related, now you've got some defensibility. So it's again one of these gray areas of trying to determine if you need to account for that or not. But, again, remember – again and again and again – we come back in this in every single conversation, and I know some of you on the call here we've been on the phone together talking about things. This is not about tying of rules; it's about fraud and abuse, right? It's about this is relief funding to assist the U.S. healthcare delivery system. Part of this is stimulus, and it's driving this through and doing the right thing. So trading documentation and making a management decision that's defensible is really the answer to this question.
Meg Pekarske	And if I could just add, Dan, it's like the amalgamation of – I mean, they're not rules, right? But these principles or whatever we want to talk about them, you just talked about purpose. What is the purpose of these funds? How you got to that answer is partly well what's the purpose of this, and also where do I want to fall in the risk continuum, and this defense mindset is you're going to have to dig a lot deeper. There's going to be a lot more questions if you're looking for investment income or allocating salaried expenses. And then I think the more you probably count those things that might be harder to defend, suddenly from an optics big picture standpoint, that principle sort of comes into play. It's like oh, my gosh, I was more aggressive here and then I add this up and it's like oh, my goodness. That added time to my bottom line. So I think that's a great way to see these principles in action and how you calm beyond does that feel right. Part of me is trying to put words to that, and then, because again, the other principle was consistency, right?
Dan Yunker	Yes.
Meg Pekarske	And so you have some filters that you're using. I think then you can make consistent decisions about, you know, all of this in terms of how aggressive you want to be and whatnot. So, anyway, I thought that was a great way to put all those principles into action.
Bryan Nowicki	I do want to get to a technology question, because that's another big area, if you don't mind me interrupting.
Dan Yunker	No, that's great.
Bryan Nowicki	With COVID, telehealth has expanded virtual visits, and to accomplish those effectively, hospices may need to buy additional technology, laptops, the ability to do that – that could be software, it could be

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	outfitting your facility and fiber internet to accommodate that sort of stuff, and some of these things could have a useful life that hopefully will extend beyond coronavirus. So is that entire cost attributable to coronavirus? Do you amortize it? Or how do you deal with those kinds of expenses in the use of relief funds?
Dan Yunker	Well, I'd say check, check and check, right? You touched on so many things. Technology's a very nice clear, defensible thing. So you may have had plans to put telemedicine in for a long time. But because of this, and because of the safety of the patient because of COVID, because of the safety to your employees, your physicians because of COVID, these are all very very defensible. It's all invoice tracked, which is also defensible. Right now, we're looking at our first quarter statements and capturing that expense. There is no guidance yet, and I actually am waiting for a response. You know, I'm on my back phone here and am waiting on the text response on this particular topic, which is July 10 reporting requirements. There is no guidance yet, and I think Andrew mentioned that as well, or Megan – I can't remember which one of you did. So we're going to watch that really closely. We'll know very clearly if we have to look at maker's tables and all these things to determine useful life of this equipment. But the reality is again you take this step back and you say okay, well would we have gotten into that as immediately as we have. Even if you only get 50 percent. If you look at a typical spread on that, you get 50 percent on the front end, that's still a pretty sizeable amount. Right now there's no guidance, so if we continue to get no guidance up to the 10th, we'll probably look to capture this as an expense. There are other things. There are remarkable things going on in the marketplace. I mean the healthcare delivery system. It's unbelievable what's going on right now, and we have executives telling us that the mobilization of things that are happening that would have taken a year of planning to even have occurred, are occurring in a week or in two weeks. I think that's absolutely terrific, because I think the long-term effect is very positive. We even have clients who are actually, because the community that they serve doesn't have access, providing them with technology to be able to interface with the caregivers. Again, check the box. So we have phones going out to people. iPads. I'm here. There are a lot of things that have been acquired by those that are being innovative in the delivery of care. Kudos to all of you that are doing that.
Bryan Nowicki	And I see we have about one minute left. Was there any final closing comment anyone would like to make to address something we didn't

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	have time to get to?
Dan Yunker	Well, you've heard my high button. Sometimes I feel like I'm the sensible police, right? From a risk perspective, when in doubt pretend I'm the OIG Office of Inspector General and I'm in your office questioning something. How would you feel about your answer? That's really the best gut-check you could possibly have.
Meg Pekarske	So, you're talking about feeling. How would you feel about your answer? It think it's really well said, and I know that we sounded like a broken record with the defense mindset and reasonableness, but I go back to them all the time. They took a long time for us to develop those and hone those and put our feelings into words. But when you start using them, I do think they're really helpful, and I think today's discussion shows how these can be put into action, because, again, when you're in the gray, I think you can get pulled in a lot of different directions. So having these things down as you're going through these endless meetings of talking about these things, this will be, I think, incredibly helpful and hopefully you saw that in action today and that we met our objective of having a live discussion and working through these gray areas and how the tools we've provided you here can really help you make good decisions.
Bryan Nowicki	And I want to thank everybody who listened and watched today's webinar. I agree, Meg, it was a lively discussion and the kind of discussion we have very frequently with people who come with questions. If we didn't get to a particular question at the top of your mind, please feel free to reach out to any one of us, and we'd be able to answer the question or give you guidance and help you answer that question to make the best decisions possible. I want to thank the panelists, also our friends at Crowe, Stephanie, Bucky, Dan, and, of course, Andrew and Meg. I appreciate everybody's work with this. Thanks all for joining our program.
Meg Pekarske	Well, that is it for today's episode of Hospice Insights: The Law and Beyond. Thank you for joining the conversation. To subscribe to our podcasts, visit our website at huschblackwell.com or sign up wherever you get your podcasts. Until next time, may the wind be at your back.
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