



**BARCLAY DAMON** <sup>LLP</sup>

# **Keeping Your Organization Afloat: Leveraging Aid From the Federal Government**

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# Agenda

- » How to access loan programs established under the CARES Act
- » Tax credits available to employers who provide emergency paid and family leave under the Families First Coronavirus Response Act
- » Tax incentives under the federal “Employee Retention Credit”
- » New York regulatory and enforcement updates.



# CARES Act

Mid-Sized Companies

Small Companies

Roger Cominsky, Esq.





# CARES Act Overview


On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act to provide nearly \$2 trillion in aid and relief to individuals, businesses, and other entities in the wake of the spread of COVID-19. Included in the Act are tax and loan provisions intended to provide financial relief to people and businesses suffering as a result of the pandemic.

# Mid-Sized Companies

- » The CARES Act includes a \$500 billion authorization for the Treasury Department to make loans, guarantees and other investments to support eligible mid-sized businesses and as well as State and local governments.
- » Within the general loan program, the Act emphasizes that the Secretary of Treasury should “endeavor to” make financing to banks and other lenders so that they can make direct loans available to midsize businesses (including nonprofit organizations) with between 500 and 10,000 employees.

# CARES Act Loan Terms


The loans are to have an interest rate not higher than 2% with no payments of principal and interest for 6 months or such longer period as the Secretary may determine.



**Any entity wishing to take advantage of the loan program must make a good faith certification that:**

1. Economic uncertainty requires the loan to support the ongoing operations of the Company;


2. The funds will be used to retain at least 90% of the workforce at full compensation and benefits until 9/30/20;



**Any entity wishing to take advantage of the loan program must make a good faith certification that:**

3. The Company intends to restore not less than 90% of the workforce that existed on 2/1/20 and to restore all compensation and benefits to workers not later than 4 months after termination date of the public health emergency declared by the Secretary of Health and Human Services on 1/31/20 in response to COVID-19;

4. The Company will not outsource or offshore jobs for the term of the loan and two years thereafter;



**Any entity wishing to take advantage of the loan program must make a good faith certification that:**

5. The Company will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after repayment;

6. The Company will remain neutral in any union organizing effort for the term of the loan.

# Paycheck Protection Loans

## Small Companies

- » The CARES Act allocated \$350 billion to help small businesses keep workers employed amid the pandemic and economic downturn. Known as the Paycheck Protection Program, the initiative provides 100% federally guaranteed loans to small businesses who maintain their payroll and employee head-count during this emergency.

# Coronavirus Emergency Loans

- » These loans may be forgiven if borrowers maintain their payrolls and head-count during the crisis or restore their payrolls and head-count by June 30, 2020.



# Eligibility for the Paycheck Protection Program:

- » You are eligible if you are:
  - › A small business with fewer than 500 employees
  - › A small business that otherwise meets the SBA's size standard
  - › A 501(c)(3) with fewer than 500 employees
  - › An individual who operates as a whole proprietor

# Eligibility for the Paycheck Protection Program.

## cont'd:

- » You are eligible if you are:
  - › An individual who operates as an independent contractor
  - › An individual who is self-employed who regularly carries on any trade or business
  - › A Tribal business concern that meets the SBA size standard
  - › A 501(c)(19) Veterans Organization that meets the SBA size standard

## What Will Lenders Be Looking For:

- » In evaluating eligibility, lenders are directed to consider whether the borrower was in operation before February 15, 2020 and had employees for whom they paid salaries and payroll taxes or paid independent contractors.

# Lenders Will Require a Good Faith Certification that:

- » 1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
- » 2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments;

## Lenders Will Require a Good Faith Certification that, cont'd:

- » 3. Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here
- » 4. From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here (Note: There is an opportunity to fold emergency loans made between Jan. 31, 2020 and the date this loan program becomes available into a new loan)

## What Lenders Will NOT Require:

- » That the borrower sought and was unable to obtain credit elsewhere.
- » A personal guarantee is not required for the loan.
- » No collateral is required for the loan.

» Loans can be up to 2.5x the borrower's average monthly payroll costs, not to exceed \$10 million.

» Monthly Payroll Cost Calculation



# Included Payroll Costs for Employers

The sum of payments of any compensation with respect to employees that is a:

- » Salary, wage, commission, or similar compensation
- » Payment of cash tip or equivalent
- » Payment for vacation, parental, family, medical, or sick leave
- » Allowance for dismissal or separation
- » Payment required for the provisions of group health care benefits, including insurance premiums
- » Payment of any retirement benefit
- » Payment of state or local tax assessed on the compensation of the employee



# Excluded Payroll Costs for Employers

Excluded from an Employer's Payroll Costs are:

- » That portion of compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the period February 15, to June 30, 2020
- » Payroll taxes, railroad retirement taxes, and income taxes
- » Any compensation of an employee whose principal place of residence is outside of the United States
- » Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act; or qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act

# Possible Loan Forgiveness

A borrower is eligible for loan forgiveness equal to the amount the borrower spent on the following items during the 8-week period beginning on the date of the origination of the loan:

- » Payroll costs (using the same definition of payroll costs used to determine loan eligibility)
- » Interest on existing mortgage obligation incurred in the ordinary course of business
- » Rent on existing leasing agreement
- » Payments on utilities (electricity, gas, water, transportation, telephone, or internet)
- » For borrowers with tipped employees, additional wages paid to those employees

The loan forgiveness cannot exceed the principal.

# Possible Reduction in Loan Forgiveness

The amount of loan forgiveness calculated previously is reduced if there is a reduction of greater than 25% in employee head-count, or a reduction of greater than 25% in wages paid to employees.

# What if the Employer Brings Back Employees or Restores Wages?

Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act, shall not reduce the amount of loan forgiveness **IF** by June 30, 2020 the borrower eliminates the reduction in employee head-count or reduction in wages.

# Expanded EIDL Program:

The expanded Economic Injury Disaster Loans (“EIDL”) program offers up to a \$10,000 emergency cash advance. Businesses that apply for these EIDL loans should be able to get a cash advance within three days of applying. Eligible entities include small businesses, sole proprietors, private non-profits, independent contractors, cooperatives, ESOPs, and tribal units, all with under 500 employees that apply for loans in response to the COVID-19.

Upon verification, the government, through lending institutions that work with the SBA, will provide grants up to \$10,000. The applying entity had to have been in business for at least a year, which may be waived, but certainly before January 31, 2020. EIDL will get you a \$10k grant, even if you’re denied or decline EIDL loan itself.

# Expanded EIDL Program, cont'd.

- » You must request the grant when you apply for an EIDL with the SBA.
- » You don't have to repay the grant even if your application for the loan is denied.
- » You can still apply for a Paycheck Protection loan but the amount forgiven will then be decreased by \$10k,
- » But you can't apply for both "for the same purposes."

# Allowed Uses:

## » CARES

- › Payroll costs
- › Continuation of healthcare benefits
- › Salaries
- › Mortgage Interest
- › Rent
- › Utilities
- › Interest on other debt obligation

## » EIDL

- › Fixed debt
- › Payroll
- › Accounts payable
- › Other bills that could have been paid had the disaster not occurred



# CARES ACT

Employee Retention Credit

Pandemic Unemployment Compensation

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# Employee Retention Credit

- » CARES Act includes a significant tax incentive for employers to keep employees on the payroll

# Payroll Tax Credit

- » 50% of “qualified wages” paid by “eligible employers” to certain employees during the COVID-19 Crisis
- » Credit applies against the employer’s share of FICA
- » Cap of \$10,000/employee

# IRS

- » Authority to advance tax credit payments to eligible employers
- » Authority to waive failure to deposit penalties for employers who do not make payroll tax deposits in anticipation of receiving the credit
- » Credit applies to wages paid March 12-December 31, 2020

# Eligible Employer

- » Employer, including tax exempt, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings, or that experienced a reduction over 50% in quarterly receipts (against same quarter last year)

# Qualified Wages

- » > 100 full-time employees in 2019
  - » Wages paid to employee who is not performing services (furloughed remaining on payroll)

< 100 full time employees in 2019

All wages paid

# Coordination with FFCRA

- » For purposes of the CARES Act employee retention credit, qualified wages do NOT include wages taken into account for purposes of the mandatory paid leave credit

# Coordination with Other Employer Tax Credits

- » Retention Credit not available to an employee for which employer is allowed a work opportunity credit
- » Wages taken into account for FMLA credit under IRS Code 45S are not eligible for employee retention credit

# Other Limitations

- » Employee retention credit is NOT available to employers receiving small business interruption loans under CARES
- » NOT available for those who use Paycheck Protection Program



# Federal Pandemic Unemployment Compensation – the “extra \$600”

- The Act provides for “Federal Pandemic Unemployment Compensation”
- Those already eligible for benefits under state law are paid an additional \$600 per week by the federal government.
- This benefit is in addition to whatever amount the individual receives from the state.
- Benefit is available through July 31.

# Federal Funding of First Week of Unemployment

- Many states require a one-week waiting period before eligibility for unemployment benefits begins.
- Under the CARES Act, the federal government will fund the first week of benefits, eliminating the waiting period.
- Federal funding continues to December 31.
- In NY, Governor Cuomo has suspended the one-week waiting period.

# Pandemic Emergency Unemployment Compensation – the “extra 13 weeks”

- The Act creates “Pandemic Emergency Unemployment Compensation”
- Additional benefits available to those who have exhausted state/federal benefits
- Individuals may receive amount of state benefits for an additional 13 weeks beyond normal state limits (typically 26 weeks)

# Pandemic Emergency Unemployment Compensation

- Individual must be “able to work, available to work, and actively seeking work” in order to qualify
- “Actively seeking work” means: (1) registered for employment services with a state agency; (2) engaging in an active search for employment that is appropriate considering the labor market and the individual’s skills; and (3) has maintained a record of such work search.

# Pandemic Unemployment Assistance – Workers Not Otherwise Eligible

- The Act creates a “Pandemic Unemployment Assistance Program”
- Provides unemployment compensation benefits to workers impacted by COVID-19 who are not otherwise eligible for benefits
- Includes “gig economy” workers, independent contractors, self-employed, and those with limited work history.

# Pandemic Unemployment Assistance

- Workers eligible for a maximum of 39 weeks of benefits
- Workers will receive the weekly benefit amount authorized under state law, plus the additional \$600/week federal benefit.
- Available retroactively beginning on January 27 and ending on December 31.

# Pandemic Unemployment Assistance

- Individual must be able to work and available for work
- Exception: individual can still receive benefits if unable or unavailable to work because: (a) the individual or a family member has COVID-19; (b) providing care for a family member with COVID-19; (c) child is out of school; (d) unable to reach the place of work due to quarantine or advice of a health care provider; (e) had to quit job due to COVID-19; (f) place of employment is closed due to COVID-19.



# Families First Coronavirus Response Act

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# Overview

- » On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (FFCRA) into law.
- » The FFCRA became effective on **April 1**.

# Overview (cont'd.)

- » The FFCRA contains two main components:
  - › The Emergency Paid Sick Leave Act
  - › The Emergency Family and Medical Leave Expansion Act



# The Emergency Paid Sick Leave Act



# Covered Employers

- » Applies to “covered employers”
  
- » Private sector:
  - › Employers with *fewer* than 500 employees
  
- » Public sector:
  - › Employers with one or more employees
  - › Includes public agencies

# Entitlement to Leave

- » Employers must provide paid sick time to an employee who is unable to work or telework due to a qualifying need for leave.

# Reasons for Leave: Employee's Own Condition

- » The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- » The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- » The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

# Reasons for Leave: Caring for Others

- » The employee is caring for an individual who:
  - › Is subject to a federal, state, or local quarantine or isolation order
  - › Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19

# Reasons for Leave: Caring for Others (cont'd.)

- » The employee is caring for a child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19 precautions.



# Reasons for Leave: Exception

- » Employers may exclude employees who are health care providers or emergency responders from coverage.

# FMLA Definition of Health Care Provider

The FMLA defines “Health Care Provider” as:

- (1) A doctor of medicine, or osteopathy, who is authorized to practice medicine or surgery by the State in which the doctor practices; or
- (2) any other person determined by the Secretary to be capable of providing health care services.

# FMLA Definition of Health Care Provider (Cont'd)

Others “capable of providing health care services” are defined as including the following professionals:

1. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors;
2. Nurse practitioners, nurse midwives, clinical social workers, and physician assistants;
3. Any health care provider from whom an employer or the employer’s group health plan will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

# DOL Guidance Regarding FFCRA Definition of Health Care Provider

The FFCRA definition is much broader. For the purposes of identifying employees who may be exempted from emergency sick or FMLA leave under FFCRA, the term “health care provider” includes the following:

1. Anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, pharmacy, or any similar institution, employer, or entity;

# DOL Guidance Regarding FFCRA Definition of Health Care Provider (Cont'd)

The FFCRA definition of a health care provider also includes any individual employed by an entity that contracts with any of the foregoing institutions, employers, or entities to provide services to that entity or to maintain the operation of that facility.

- » To minimize the spread of COVID-19, the Department of Labor “encourages employers to be judicious” when using this definition to exempt health care providers from the FFCRA emergency leave provisions.

# Duration of Paid Sick Leave

- » Full-time employees: 80 hours of paid sick time
- » Part-time employees: The average number of hours worked over a two-week period
- » Paid sick time will cease beginning with the employee's next scheduled shift immediately following the termination of the need for paid sick time.

# Payments for Paid Sick Leave

- » For paid sick time because of an employee's own condition:
  - » The employee will receive the higher of their regular rate or the applicable minimum wage, not to exceed \$511 per day (\$5,110 total).

# Payments for Paid Sick Leave (cont'd.)

- » For paid sick time because the employee is caring for another individual or for a child whose school or care is unavailable:
  - » The employee will receive  $\frac{2}{3}$  the rate the employee would otherwise receive, up to \$200 per day (\$2,000 total).



# Other Paid Sick Time Provisions

- » Employees are **immediately** eligible for paid sick time, regardless of how long the employee has been employed by the employer.
- » Employers may **not** require employees to use other paid leave before using the paid sick time available to the employee under the Emergency Paid Sick Leave Act.

# Payroll Tax Credit

- » Employers will be entitled to a refundable payroll tax credit worth 100% of qualified paid sick time paid for each calendar quarter through the end of 2020.
  - › For an employee who is unable to work due to quarantine, has symptoms, or is seeking a medical diagnosis, credit for the employee's regular rate of pay: Up to \$511 per day and \$5,110 in the aggregate for a total of 10 days
  - › For an employee who is caring for a family member with COVID-19 or a child due to school closure: Credit for 2/3 of the employee's regular rate of pay up to \$200 per day and \$2,000 in the aggregate for 10 days

# Payroll Tax Credit (cont'd.)

- » Eligible employers are entitled to an additional tax credit based on costs to maintain health insurance coverage for the eligible employee during the leave period.
- » It's anticipated that the US Department of the Treasury will issue updated regulations concerning the Emergency Paid Sick Leave Act's tax implications.

# Payroll Tax Credit: Payment

- » Under forthcoming guidance, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes (including normally required income tax withholdings) equal to the amount of qualifying leave they paid, rather than depositing them with the IRS.

# Payroll Tax Credit: Payment (cont'd.)

- » Example: If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments.



# The Emergency Family and Medical Leave Expansion Act



# Entitlement to Leave

- » Employees who are unable to work or telework due to a need for leave to care for a minor child if the school or place of child care has been closed or the child care is unavailable due to a “public health emergency.”
- » The Emergency Family and Medical Leave Expansion Act defines “public health emergency” as “an emergency with respect to COVID-19 declared by a federal, state, or local authority.”

# Entitlement to Leave (cont'd.)

- » Employees are entitled to emergency FMLA leave if they have been employed for at least 30 days.



# Entitlement to Leave (cont'd.)

- » Unlike regular FMLA leave, which applies to employers with 50 or more employees, the Emergency Family and Medical Leave Expansion Act applies to employers **with fewer than 500 employees** and covered public sector employees.
- » Therefore, the Emergency Family and Medical Leave Expansion Act applies to employers with fewer than 50 employees.

# Entitlement to Leave: Exception

- » Again, employers may exclude employees who are health care providers or emergency responders from coverage.
- » Same definition of healthcare provider discussed above.

# Other Leave Provisions

- » The provisions of the Emergency Family and Medical Leave Expansion Act end on December 31.
- » The DOL secretary has the authority to issue regulations:
  - › Excluding certain health care providers and emergency responders from the definition of “employee”
  - › Exempting small businesses with fewer than 50 employees from these requirements if they jeopardize the viability of a business as a going concern

# Duration and Payment of Leave

» First 10 days:

- › May consist of **unpaid** leave
- › During this time period, an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave, but an employer may not require an employee to do so.

# Duration and Payment of Leave (cont'd.)

- » Subsequent 10 weeks:
  - › The employer will provide paid leave, generally at a  $2/3$  rate of the employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work.
- » Paid emergency leave will not exceed \$200 per day (\$10,000 total).

# Payroll Tax Credit

- » As with emergency paid sick leave, employers will be entitled to a refundable payroll tax credit worth 100% of qualified emergency FMLA leave paid each calendar quarter through the end of 2020.
  - › For an employee who is unable to work because of a qualifying need to care for a child, credit is equal to 2/3 of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate.
  - › Up to 10 weeks qualifying leave can be counted toward the child care leave credit.

# Payroll Tax Credit (cont'd.)

- › Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

# Payroll Tax Credit: Payment

- » Under forthcoming guidance, eligible employers who pay qualifying child care leave will be able to retain an amount of the payroll taxes (including normally required income tax withholdings) equal to the amount of qualifying leave they paid rather than depositing them with the IRS.





# New York State Developments

Executive Orders, OPWDD Guidance &  
Health Advisories, and Justice Center  
Guidance

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# OPWDD Providers Essential

- » Direct Support Professionals Essential:
  - › Clarifies that DSPs are classified as essential healthcare workers
  
- » Providers are Essential Businesses:
  - › Agencies are essential businesses and should remain in operation to the extent necessary to provide those services
  - › Includes administrative offices and those employees necessary to support the essential functions of the agency's mission

# Executive Orders

## » EO 202.1

- › Permits increase and/or exceeding certified capacity limits without site selection or prior notification \*\*\*

## » EO 202.5

- › Allows temporary changes to physical plant, bed capacities, and services provided, and the increase in and/or exceeding of certified capacity limits \*\*\*

## » EO 202.11

- › Permits certain services in uncertified settings \*\*\*

## » EO 202.13

- › Dispenses of need for some background checks

\*\*\* Commissioner approvals required

# Abbreviated/Refresher Training & Recertifications

- » Facilities and programs may immediately abbreviate certain training requirements for DSPs
- » Trainings required under Section 633.8 may be abbreviated to expedite onboarding processes to address staffing shortages
  - › New employees must meet pre-existing annual training requirements within 120 days of onboarding
  - › Current employees annual training requirements will be extended 90 days
- » Also includes expedited testing and training requirements related to tuberculosis

# Medication Administration Courses

- » Providers may utilize the abbreviated Medication Administration Course to train DSPs who have not yet been certified
- » DSP annual certification extended for 90 days, so long as:
  - › Staff has routinely administered medication since their most recent certification; and
  - › Facility's RN gives approval
- » Managers/supervisors who have received the training within the past 12 months or who have taken and passed the abbreviated course may administer medication when no DSP-AMAP is available

# COVID-19 Staffing Guidance

- » Staff Guidance for the Management of COVID-19 in OPWDD Operated/Certified Facilities or Programs:
  - › Staffing levels must be maintained in accordance with agency/program requirements and based on supervision needs
  - › Limit staff and maintain similar daily assignments to the extent possible in sites where there has been confirmed diagnosis or exposed to COVID-19
  - › Visitation suspensions and health check requirements continue to apply in ICFs
  - › Steps to be taken when a resident has suspected or confirmed COVID-19

# General COVID-19 Guidance

- » General Management of COVID-19 in OPWDD Operated or Certified Facilities or Programs:
  - › OPWDD following DOH and CDC guidance
  - › DSPs and clinical staff must be educated and trained on infection control, and providers should ensure all training requirements are up-to-date
  - › Cleaning and disinfecting practices, and environmental measures to be used
  - › Minimize potential exposures by suspending all visitation to residential settings except when medically necessary and screening all staff
  - › Identifies general recommendations for COVID-19 preparedness

# Article 16 Clinics

- » Article 16 Clinic Management of COVID-19 (3/25/20):
  - › Based on DOH and CDC guidance
  - › Facility must have policies and practices in place to minimize exposures
  - › Identified actions to be taken if COVID-19 is spreading in your community – *e.g.*, monitoring healthcare workers
  - › Instruct individuals and those accompanying them to appointments to call ahead if they have symptoms of a respiratory infection and to take appropriate preventive actions
  - › Instructions for individuals upon arrival and during clinic visit – *e.g.*, identify a separate, well-ventilated space for waiting individuals with symptoms



# Community Outings & Home Visits

- » All community outings and home visits for residents were temporarily suspended effective March 25 at 5pm
- » Providers should encourage virtual communication with loved ones to the extent possible
- » Individuals on home visits at the time of the guidance implementation must be allowed to return to the residence
  - › Should be screened for symptoms and have their temperature measured

# Community Outings & Home Visits, cont.

- » Restrictions on Community Outings:
  - › Reasonable restrictions should be placed on community outings
  - › Use alternative means whenever possible to meet goals and services related to community outings
  - › Provider has discretion to allow individuals to leave the residence to engage in low risk community outings – *e.g.*, sitting outside, taking a walk

# Community Outings & Home Visits, cont.

## » Restrictions on Home Visits:

- › If an individual and their family agrees that a long-term home visit is appropriate, the extended visit should be encouraged
- › OPWDD cannot provide an exact date for when the restriction on returns will be lifted
- › Providers should ensure that the family is prepared to meet the individual's needs at home
- › Time away from the facility may be billed as therapeutic leave

# Day Hab Interim Billing Guidance

- » Guidance governs claims for service dates from March 18 – March 31
  - › Further direction providing longer-term billing guidance is forthcoming
- » Effective March 18, may bill Medicaid for retainer day payments for individuals who are authorized to and were actively receiving services from the agency at suspension
  - › Bill in accordance with the individual’s existing schedule
  - › Use existing provider information, rate codes, and locator code, but with revenue code “0180 – Leave of Absence”

# Day Hab Interim Billing Guidance, cont.

- » Providers are expected to support individuals and their families during the crisis, and to use the revenue from the retainer day payments to support these efforts
  - › Providers have the flexibility to determine how best to safely do this
  - › Supports do not need to be provided on each day a retainer day is billed, but should be provided on at least a weekly basis

# Community Habilitation Services

- » Individual's needs should be assessed by the treatment team to consider how needs can be met while maintaining safe social distancing
- » Should consider whether services can be delivered remotely
  - › Must be implemented in accordance with OPWDD telehealth guidance
- » If services are essential and cannot be restricted or modified, staff should call ahead and screen the clients and family members (if applicable)

# Telehealth

- » Applicable to nonresidential facilities and programs certified or operated by OPWDD
- » Permitted and encouraged to deliver services via telehealth remotely to individuals whenever possible
- » Health and habilitation services are permitted for delivery via telehealth
- » Telehealth is not permitted when the staff's physical presence is required for the individual's health and safety, or when the service is inappropriate for telehealth
  - » *E.g.*, Residential habilitation, respite, and live-in caregiver services

# Telehealth, cont.

- » Reimbursement available for telehealth services delivered using technology that is not HIPAA compliant, and by modalities such as telephone
  - › Services must meet certain requirements and use appropriate billing rules and codes
- » Must meet all clinical record documentation and maintenance requirements, along with additional information requirements regarding telehealth encounters



# Return to Work: Essential Personnel

- » Agencies providing essential services may allow exposed or recovering personnel to return to work if doing so is necessary to maintain essential operations
  - › Applies to OPWDD staff and administrators, as well as other staff of OPWDD certified settings
- » Essential personnel who have been **exposed** to a confirmed COVID-19 case may work in the required workplace setting so long as 8 specific conditions have been met
  - › *E.g.*, being asymptomatic, temperature monitoring, symptom checks, and the use of facemasks, among others

# Essential Personnel, cont.

- » Essential personnel with **confirmed or suspected** COVID-19 may be permitted to work if:
  - › Working from home would adversely impact essential services or functions;
  - › The personnel has maintained isolation for at least 7 days after onset (*i.e.*, when symptoms first appeared), have been fever-free for at least 72 hours without the use of fever-reducing medications, and other symptoms have improved; **and**
  - › The personnel wears a facemask for 14 days following the onset of illness

# Return to Work: Clinical & DSPs

- » Programs may allow clinical and DSPs, or other staff, to return to work after **exposure** to a confirmed case of COVID-19 as long as 7 conditions have been met
  - › *E.g.*, be asymptomatic, maintain self-quarantine when not at work, and be assigned to individuals who are at low risk for complications, to the extent possible
- » Clinical or DSPs with **confirmed or suspected** COVID-19 may be permitted to work if the 6 conditions have been met
  - › Many of these conditions are similar to those identified in the guidance for essential personnel
  - › Additional requirements like assignment to lower risk individuals and maintaining self-isolation when not at work

# Health Advisory: COVID -19 Presumption

- » **Any** febrile acute respiratory illness or clusters of acute respiratory illness in ICF/IIDs, IRAs, CRs, and Private Schools in New York City, Long Island, Westchester County, or Rockland County should be presumed to be COVID-19 unless diagnostic testing reveals otherwise
  - › Testing is not necessary for additional infection control actions to be implemented
- » Facilities outside of these areas should continue to pursue testing to inform control strategies

# Health Advisory: COVID -19 Cases in ICF/ IIDs

- » Requirements that all ICF/IIDs statewide must take
- » Suspended all visitation except when medically necessary or for family members of residents in imminent end-of-life situations, and Hospice providers
- » All health care personnel and other facility staff must:
  - › Receive health checks at the beginning of each shift
  - › Must wear a face mask while within 6 feet of residents
- » Steps that must be taken when there is a confirmed or suspected case of COVID-19

# Health Advisory: Visitation in IRAs, CRs, & Private Schools

- » Suspended all visitation except when medically or clinically necessary
- » Any visitors must be screened for symptoms or potential exposure to COVID-19
- » Signage must be posted informing the public of the suspension of visitation at all facility entrances, in the parking lot, and on the facility's website and social media pages

# Informal Guidance on Emergency Relocation Plans

- » OPWDD has a COVID-19 emergency relocation plan template
- » Must be used if a provider is planning on using any certified or uncertified site for relocation of individuals due to COVID-19
- » Form must be completed and OPWDD approval must be received prior to relocation
- » Provider must include the rationale for the relocation and the use of the space, along with specific plans
  - › *E.g.*, staffing plans, RN coverage, fire evacuation

# NYS Justice Center

- » Report confirmed cases to JC
- » Toll of statutes of limitations (EO 202.8) applies to the Justice Center
  - › All limitations tolled from 3/20 through 4/19
- » Pre-hearing and status going forward
- » Hotline remains operational
- » Some investigation proceeding



# Conclusion

- » Unprecedented times ....
- » Thank you !!! and Stay Safe!
- » Questions and Answers