

PUBLICATION

DEADLINE TODAY: FEMA Produces First Substantive Proposed Approach on Duplication of Benefits for Hospitals

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On September 6, 2022, FEMA publicly released its "Proposed Approach" for dealing with the potential duplication of benefits (DOB) of patient care revenue to public assistance grants. Before this date, FEMA policy statement on this issue was much more general and issued in July as part of the agency's COVID-19 Public Assistance Programmatic Deadlines Policy (Policy). That Policy simply stated that "Recipients and Subrecipients are responsible for ensuring that they do not accept payment for the same dollar twice. Applicants must certify in the Project Application that assistance has not and will not be duplicated." Essentially this required subrecipients to self-certify that no DOB was received similar to the requirements of reporting to U.S. Department of Health and Human Services (HHS) for the Provider Relief Fund.

Now, however, FEMA has proposed a much more invasive audit-style line-by-line assurance requirement to determine whether hospitals may be receiving a duplication. This new approach, FEMA says, is to identify duplications and take project reductions.

FEMA's First Step: Determining an Applicant's "Risk"

FEMA will first seek to determine whether an applicant is "low" or "high" risk.

Low-risk applicants are those who do not bill and/or who do not receive patient care revenue "for the work claimed in the project." "Small projects" will also generally be assessed as "low risk."

Low-risk projects only require applicants to explain their approach in a brief narrative and certify they have reduced their request to FEMA to avoid duplication of proceeds.

For "high-risk" applicants, on the other hand, FEMA proposes a much more complicated process.

Three Potential Paths Are Available to High-Risk Project Applicants

A high-risk applicant can either provide its own "applicant-provided methodology," as the applicant's proposed "method" for identifying and addressing duplication with patient care revenue, or choose to let FEMA conduct the analysis. If the applicant submits its own methodology and FEMA approves it as "reasonable," a memorandum will be prepared to document the findings. This memo is then entered into the file and the project is considered compliant.

However, if an applicant does not provide its own proposed approach, there are two avenues based on the project total.

Option One: For projects totaling less than \$25M, an applicant may either provide its operating costs and revenue or publicly available financial information will be used. This information will then be reviewed by Homeland Security Operational Analysis Center (HSOAC) to determine potential duplication, document the findings, and take anticipated reductions.

Option Two: For projects totaling more than \$25M, an applicant is required to provide its detailed financial information, including operating costs and revenue information; publicly available information cannot be used. HSOAC will then review it, determine potential duplication, document the findings, and FEMA will take the anticipated reduction.

All Hospital Applicants Should Start Working With Their Disaster Recovery Experts Now to Document Their Methodology

Not only does FEMA strongly encourage applicants to choose to provide their own methodology, but it clearly provides a safer and more applicant-driven approach. Applicants are in the best position to explain their unique operations and costs, rather than a review by HSOAC.

Additionally, FEMA has not provided anticipated timelines it would take HSOAC to conduct these reviews. Not submitting a methodology can lead to continued project delays. Further, even if only one project submitted by an applicant is related to patient care revenue, FEMA has proposed that all of the projects by the applicant should be part of the review.

IMMEDIATE ACTION NEEDED: FEMA's Next Steps

FEMA is requesting feedback by September 15 by emailing FEMA-PA-PatientCareRevenue@fema.dhs.gov.

FEMA also plans to publish guidance and internal SOPs by the end of September 2022 and commence with project reviews as early as October 1. It appears that after a two-year delay to this guidance, applicants can now expect a rapid implementation and demand for detailed financial records, unless the applicant can produce a DOB methodology first.

Eligible entities should stay tuned for further developments. For more information about FEMA's Public Assistance Program and other resources potentially available to assist with response efforts to the COVID-19 pandemic, please contact [Wendy Huff Ellard](#), [Danielle Aymond](#) or any member of [Baker Donelson's Disaster Recovery and Government Services Team](#).