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Checklist - Disclosures for Health Care Providers With Outstanding Tax-Exempt Bonds.

If your organization is a hospital, nursing home, life plan community, ambulatory surgery facility, or behavioral health provider with publicly held tax-exempt bonds outstanding, it is essential that you consider enhancing public disclosures of your organization arising from the COVID-19 pandemic. Although most municipal bond issuers are obligated to make periodic public disclosures as negotiated at the time of the bond issuance, the Securities and Exchange Commission (SEC) is urging conduit issuers, which commonly issue bonds through state and local public bond authorities, to enhance those disclosures by making more frequent voluntary disclosures regarding the impact of COVID-19 on the issuing organization. These disclosures should, at a minimum, include information relating to the impact of COVID-19 on the facility's employees, patients, the community at large, and perhaps on operations and revenue.

The [SEC's statement on May 4, 2020](#) follows [formal guidance](#) released by the SEC for public issuers of securities. As the SEC does not have formal jurisdiction over municipal bond issuers, the statement was directed to underwriters, investors and market participants over which the SEC does maintain some oversight. Health care providers, a large subset of issuers in the municipal bond market, often utilize conduit authorities for the facilitation of tax-exempt debt, which is the major preferred source of capital for nonprofit providers of all types. As a result of the COVID-19 pandemic, health care providers that have issued tax-exempt bonds are facing many issues, such as care for vulnerable patients and protecting the community and employees from the further spread of COVID-19.

The SEC's advisory recognizes that there is much unknown about the impact of COVID-19, and stresses the importance of municipal bond issuers making at least minimum disclosures about its impact.

We have developed a checklist of disclosures below, which is specifically tailored for health care providers, to assist with preparing disclosures discussing the impact of COVID-19. You can utilize this checklist to make certain you have considered many of the ramifications you are facing as a result of COVID-19.

Disclosure Checklist

Describe the impact of COVID-19 on patients and staff in your organization. You should consider the following disclosures:

- The number of patients who have been infected with COVID-19, and any deaths of patients resulting from COVID-19
- The number of staff who have been infected with COVID-19, and any deaths of staff resulting from COVID-19
- Any measures taken by your organization to protect staff and patients from further infection, such as screening, isolation

- areas, testing, meal delivery and limitations on communal activities and outside visitors
- Communications by your organization with patients, families and the community

Describe the impact of COVID-19 on the procedural and financial operations of your organization. You should consider the following disclosures:

- Any operational interruption or loss of operational opportunities, for example reduced hours or services
- Any orders to halt normal and elective procedures or treatments
- Any increased expenses for additional personnel, increased housekeeping, payment of hazard pay or overtime, and cost of supplies, such as personal protective equipment (PPE)
- The impact of telehealth or other virtual services, such as virtual tours
- Any lost revenue, for example resulting from reduced capacity or services
- Any savings, for example resulting from reduced personnel or reduced lab costs
- Any state or local shutdown orders
- The impact on investment performance resulting from negative financial market performance

Describe any funding received from federal or state programs as a result of the impact from COVID-19. You should consider the following disclosures:

- The receipt of funds in connection with the CARES ACT and the Paycheck Protection Program
- The receipt of any provider relief funds, both targeted and general
- The ability to attest to federal government-required terms and conditions, such as:
 - Limitations on abortions
 - Caps on executive salaries
 - Elimination of balance billing for presumptive or actual COVID-19 patients
 - Whether calculations of amounts funded were accurate
 - Whether the provider rejected the federal relief funds for health care providers
- The receipt of Medicaid or Medicare funding under programs designed to assist paying for COVID-19 expenses

Describe any donations received or partnerships formed as a result of the impact from COVID-19. You should consider the following disclosures:

- Donations of PPE supplies
- Purchase of needed equipment, such as ventilators
- Leasing of space for offsite facilities, such as testing areas in parking lots and use of ambulatory surgery centers for isolation or quarantine
- Contracting for needed personnel, such as infectious disease specialists, additional morgue space or refrigeration and nursing and ancillary personnel or temporary workers from partnering institutions
- Any coordination with local, state and federal health authorities

Some general cautions are in order relating to the disclosure of information about the impact of COVID-19.

- You should not rush to provide forecasted data on the future operations of your organization. "Safe

harbors” for forward-looking statements that are provided to registered corporate issuers are not provided to municipal issuers. Municipal issuers have no obligation to forecast results.

- You should be absolutely certain that any public disclosure that is made is consistent with other certifications and filing requirements of federal programs, cost reports and financial reporting in audited statements.
- Please consult your legal and accounting advisers before filing disclosures.
- Consider making your disclosures on EMMA, even if you issue press releases or hold investor calls, since doing so will retain the information for historical purposes in one easily identifiable site.

Conclusion

While the SEC is attempting to enhance disclosures in the public tax-exempt bond market, many market participants, especially issuing authorities and underwriters that participated in the issuance of health care provider bonds, are clearly recommending that COVID-19 disclosures be made to demonstrate that these institutions are coping with the pandemic. We hope our checklist will assist health care providers in formulating relevant disclosures for their bondholders.

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