
The slide features a dark blue background with a pattern of lighter blue, curved, overlapping bands. In the top-left corner, there is a white logo consisting of several curved lines. The main text is centered in white. The date is positioned below the title. The California Hospital Association logo is in the bottom-right corner.

Provider Relief Fund
Compliance and Fraud-
Avoidance Webinar

June 29, 2020

 CALIFORNIA
HOSPITAL
ASSOCIATION

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Welcome

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Continuing Education

Continuing education credits will be offered for this program for compliance, health care executives, and legal. (Note: Approval still pending for compliance CEs.)

Full attendance and completion of the online evaluation and attestation of attendance are required to receive CEs for this webinar.

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Program Overview



Bob Mion
Director, Publishing & Marketing
California Hospital Association



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Questions

Online questions only

Type your question in the Q & A box,
press enter.

5



Faculty



Lloyd Bookman is a partner in Hooper, Lundy & Bookman's Los Angeles office. Since 1979, his practice has focused exclusively on the representation of health care providers in a wide variety of complex reimbursement, regulatory and transactional matters. He is a nationally recognized expert on Medicare and Medicaid reimbursement and has served as lead counsel in many highly significant cases.

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Faculty



Paul L. Garcia is an associate in the Regulatory Department of Hooper, Lundy & Bookman. Mr. Garcia is a former attorney with the California Department of Health Care Services, where he served as a member of the Health Care Financing and Rates Team. Mr. Garcia previously served as an Executive Fellow, through the Capital Fellows Programs, for Covered California, where he worked with the executive staff to implement state and federal health care reforms.

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Faculty



Vanessa-Lauren Massie has expertise in many areas of healthcare, and 20 years of experience in corporate finance, general accounting, investigative/forensic accounting, and healthcare operations management. Her specialties include crisis and transition leadership, management under Private Equity ownership, and physician practice, post-acute, and senior care spaces.

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Agenda

Provider Relief Fund Compliance and Fraud-Avoidance

- I. Provider Relief Funds Overview
 - General distribution
 - Targeted distributions (High-Impact & Safety Net Hospital Distributions)
- II. Provider Relief Funds Compliance Risks
 - Fraud and false claims exposure
 - How to mitigate exposure
- III. Practical Applications for Mitigating Exposure
 - Tracking and documentation
 - Accounting considerations

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Provider Relief Funds Overview

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Provider Relief Fund Appropriations

| <u>Authority</u> | <u>Appropriation</u> |
|-------------------------------------|----------------------|
| CARES Act | \$100 billion |
| PPP and Health Care Enhancement Act | \$75 billion |
| Total | \$175 Billion |

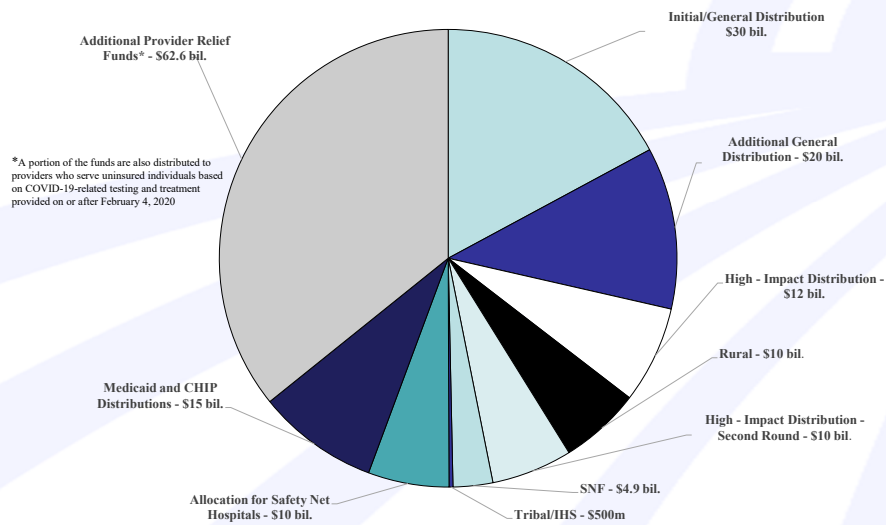
Purpose

- Prevent, prepare for, and respond to COVID-19
- For necessary expenses to reimburse eligible health care providers for:
 - health care related expenses, or
 - lost revenues that are attributable to COVID-19.

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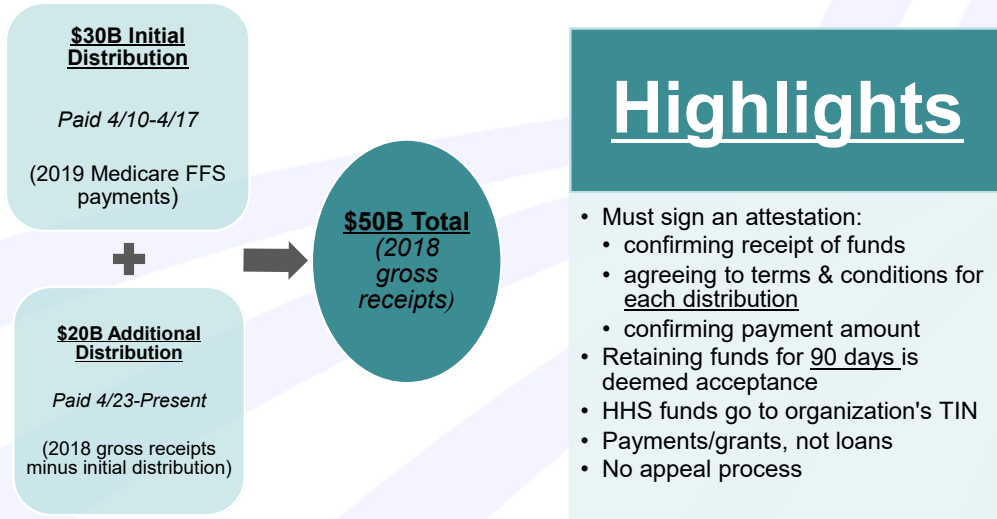
Provider Relief Fund Allocations



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\$50 Billion General Distribution



Highlights

- Must sign an attestation:
 - confirming receipt of funds
 - agreeing to terms & conditions for each distribution
 - confirming payment amount
- Retaining funds for 90 days is deemed acceptance
- HHS funds go to organization's TIN
- Payments/grants, not loans
- No appeal process

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Targeted Allocations

Highlights

- Targeted Distributions include:
 - High-Impact Distribution (\$12B)
 - Rural Distribution (\$10B)
 - Medicaid & CHIP Distribution* (~\$15B)
 - Safety Net Allocation (\$10B)
 - Others (SNFs, Tribal Hospitals, Clinics and Urban Health Centers)
- Specific formulas determine targeted allocations
- Each targeted distribution has its own terms and conditions (<https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/for-providers/index.html>)
- Additional targeted distributions?

Providers who received payments from the \$50B General Distribution are not eligible to receive payments via the Medicaid Targeted Distribution, regardless of the size of the payment received

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Targeted Allocations (cont.)

\$12B

High-Impact Distribution

- \$10B to 395 Hospitals with ≥ 100 COVID-19 inpatients between January 1 and April 10
 - (Number of COVID-19 Admissions) \times (\$76,975) = Payment
- Additional \$2B to 395 Hospitals based on DSH
 - (\$2 Billion) \times ([Hospital Medicare Funding] / [Sum of Medicare Funding for 395 Hospitals]) = Additional Payment
- How are payments distributed?
Automated Clearing House (via Optum Bank/UnitedHealthGroup) sends w/ "CARES Act HighImpactAreaPmt*HHS.GOV" in the payment description
Payments made based on TINs

Initial distribution on May 7, updated admissions were due June 15

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Targeted Allocations

\$10B

High-Impact Distribution: Second Round

- HHS has not specified the requirements to qualify
- Funding from first round will be taken into account in making payments under this round
- HHS requested admissions data through June 10, 2020 due June 15, 2020.

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Targeted Allocations (cont.)

\$10B

Safety Net Hospital Distribution

- Qualifying acute care hospitals will have:
 - Medicare Disproportionate Payment Percentage (DPP) of 20.2% or greater,
 - Average uncompensated care per bed of \$25,000 or more per bed, and
 - Profitability of 3% or less
- 2018 Medicare cost report data used to calculate eligibility
 - $$\frac{[\text{Hospital's "Facility Score"}]}{[\text{Cumulative Facility Scores across All Safety Net Hospitals}]} \times \$10 \text{ Billion} = \text{Payment}$$
 - Facility Score = Number of facility beds x DPP
- Distributions \$5M (min) to \$50M (max)

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Attestation Requirements

- If a provider chooses to retain the funds, it must attest that it meets the terms and conditions of the payment
- The CARES Act Provider Relief Fund Payment Attestation Portal will guide you through the attestation process to accept or reject funds: <https://covid19.linkhealth.com/#/step/1>
- Not returning the payment within 90 days of receipt is deemed acceptance of the terms and conditions

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Terms and Conditions



DEPARTMENT OF HEALTH & HUMAN SERVICES

Acceptance of Terms and Conditions

- Providers must certify that Provider Relief Fund monies:
 - *“will only be used to prevent, prepare for, and respond to coronavirus” and only to reimburse for “health care related expenses or lost revenues that are attributable to coronavirus.”*
 - Funds cannot be used to reimburse expenses or losses that have “been reimbursed from other sources or that other sources are obligated to reimburse.
 - Funds cannot be used to “pay the salary of an individual . . . at a rate in excess of Executive Level II” (\$197,300)

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Documentation Requirements

- Providers must maintain “appropriate records and cost documentation,” including:
 - source documentation
 - must be maintained for at least three years
 - must be promptly submitted to HHS upon HHS request

Consider longer retention periods associated with financial records and cost-reporting


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Provider Relief Funds Compliance Risks

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Overview

- Overpayment risk
 - Required to return funds if not in compliance with Terms and Conditions
 - Required to return any portion of accepted funds not expended in compliance with Terms and Conditions
 - Reporting
 - Government audits

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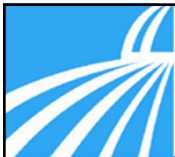


Overview (cont.)

- False Claims Act
 - Sanctions include up to treble damages and per claim penalties
 - Whistleblower provisions
 - Is there a “claim”?
 - Submission of erroneous data in connection with fund distribution
 - Submission of erroneous post-distribution reports
 - Improper expenditure of funds
 - 60-day Rule should not apply
 - Is there still liability for the retention of an “overpayment”?
- Other exposure

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Overview (cont.)

- “Scienter”
 - For False Claims Act liability, must act knowing you did something wrong, or with reckless disregard or deliberate ignorance of whether you acted lawfully
 - If there is no bad scienter, there should not be a larger problem than a refund if funds are determined to have been used improperly
 - Document what you are doing and why you are doing it to reduce exposure

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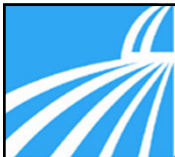


Risk Areas — Use of Funds

- Use of the funds
 - “The Recipient certifies that the Payment will only be used to prevent, prepare for, and respond to coronavirus, and that the Payment shall reimburse the Recipient only for health care related expenses or lost revenues that are attributable to coronavirus.”
 - Two ways to satisfy
 - Health care related expenses attributable to coronavirus
 - Lost revenue attributable to coronavirus

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Risk Areas — Use of Funds (cont.)

- Health care related expenses (FAQs)
 - “Healthcare related expenses attributable to coronavirus” is a broad term that may cover a range of items and services purchased to prevent, prepare for, and respond to coronavirus, including:
 - Supplies and equipment used to provide healthcare services for possible or actual COVID-19 patients
 - Workforce training
 - Developing and staffing emergency operation centers
 - Reporting COVID-19 test results to federal, state, or local governments

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Risk Areas — Use of Funds (cont.)

- More health care related expenses
 - Building or constructing temporary structures to expand capacity for COVID-19 patient care or to provide healthcare services to non-COVID-19 patients in a separate area from where COVID-19 patients are being treated; and
 - Acquiring additional resources, including facilities, equipment, supplies, healthcare practices, staffing, and technology to expand or preserve care delivery.
- Eligible expense may be incurred on any day, but “highly unusual” if incurred before 1/1/2020

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Risk Areas — Use of Funds (cont.)

- Lost revenue
 - Any revenue that the provider lost due to coronavirus
 - Fewer outpatient visits or elective services
 - More uncompensated care
- Can cover any cost that the lost revenue would have covered, so long as that cost prevents, prepares for, or responds to coronavirus
- Costs do not need to be specific to providing care for possible or actual coronavirus patients

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Risk Areas — Use of Funds (cont.)

- Examples of permissible costs tied to lost revenue
 - Employee or contractor payroll
 - Employee health insurance
 - Rent or mortgage payments
 - Equipment lease payments
 - Electronic health record licensing fees

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Risk Areas — Tips

- Do you have lost revenue attributable to coronavirus?
 - Can be measured in any reasonable way
 - Comparison of pre-pandemic revenue to post-pandemic revenue
 - Compare budgeted to actual performance
 - Document calculation
- If you have documented lost revenue
 - Can expend the funds broadly
 - Document expenditures in view of guidance

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Risk Areas — Tips

- If you do not have sufficient lost revenue to cover funds, do you have health care expenses attributable to coronavirus?
- If so, document what the expenses are and how they are attributable to coronavirus.

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Risk Areas — Other Responsible Party

- Provider must certify “it will not use the Payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.”
- Ambiguous
- No clarification from HHS

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Risk Areas — Other Responsible Party

- Consider
 - Cost reimbursement
 - No CMS guidance on how to report
 - DRG-based reimbursement
 - Other fee-for-service payments
 - Capitation
 - DSH and other supplemental payments
 - FEMA
- Document why you have concluded no other source of payment
- In the absence of guidance, explain cost report treatment in cover letter

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Risk Areas — Balance Billing

- For all care for a presumptive or actual case of COVID-19, Recipient certifies that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network Recipient.
- How to implement?
- Consequences of a violation?
- Written policy, training, internal monitoring

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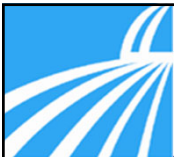


Risk Areas — Data Submission

- “The Recipient certifies that all information it provides as part of its application for the Payment, as well as all information and reports relating to the Payment that it provides in the future at the request of the Secretary or Inspector General, are true, accurate and complete, to the best of its knowledge.”
- Submission of data to obtain funding
- Subsequent reporting
- Include explanations where guidance is unclear

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Conclusion

- Dealing with the Government always entails risk
- What now seems to be generous in a time of emergency may later be looked at in a less forgiving manner
- Document what you do and why you do it
- Report accurately
- Make concurrent disclosures where there is a lack of clarity
- Think about defending your actions two years from now

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Practical Applications For Mitigating Exposure

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Tracking

- Create a dedicated business unit, department code, or other organizational entity dedicated solely to COVID-19 revenue and expenses.
 - Why not a General Ledger Account?* Because there will be many types of revenues and expenses incurred associated with the pandemic.
 - You should be able to run a P&L dedicated to this entity to see all line items associated with COVID-19. Below are a few examples of what may fall into the difference revenue and expense line items.
 - Time and invoices should be coded to this new entity when in support of caring for a presumptive or diagnosed COVID-19 patient.
- Capital Expenditures – To track capital expenditures, maintain all purchase orders, agreements, and document the spend for assets needed for support of the pandemic. This may be tracked within your fixed asset register in your GL by assigning an asset subtype under whichever asset category the project falls into. This may include projects like retrofitting a floor, building a temporary structure, equipment purchases, or other applicable spend.

Dept 05 - COVID-19
 From Jul 2019 to May 2020

| Financial Row | Mar 2020 Actual | Apr 2020 Actual | May 2020 Actual | Total Actual |
|---|--------------------|--------------------|--------------------|-----------------|
| Revenue | | | | |
| Other Revenue | 0.00 | 1,001,539.13 | 1,749,310.93 | 2,750,850.06 |
| Total Revenue | 0.00 | 1,001,539.13 | 1,749,310.93 | 2,750,850.06 |
| Operating Expense | | | | |
| Personnel | 117,051.97 | 744,746.03 | 839,088.33 | 1,700,886.33 |
| Professional Fees & Contract Services | 2,701.54 | 53,354.19 | 138,119.37 | 196,175.10 |
| Food, Drugs, & Supplies | 81,482.30 | 244,410.23 | 337,167.25 | 663,059.78 |
| Facilities & Equipment | 13,158.14 | 27,721.08 | 23,169.42 | 64,048.64 |
| Other | 11.90 | 2,587.15 | 5,693.96 | 8,293.01 |
| Total Operating Expense | 214,405.85 | 1,074,818.68 | 1,343,238.33 | 2,632,462.86 |
| Pension | 148.34 | 1,515.44 | 10.23 | 1,674.01 |
| EBITDA | (214,554.19) | (74,794.99) | 406,062.37 | 116,713.19 |
| Operating Income | (214,554.19) | (74,794.99) | 406,062.37 | 116,713.19 |
| Other Income & Expense | | | | |
| Net Contributions | (52,563.00) | (48,652.00) | (20,513.00) | (121,728.00) |
| Total Other Income & Expense | (52,563.00) | (48,652.00) | (20,513.00) | (121,728.00) |
| Net Income | (267,117.19) | (123,446.99) | 385,549.37 | (5,014.81) |

Hazard pay, dedicated workforce, screening time for COVID-19 patients or presumptive patients

Donations to support COVID-19 Efforts

Stimulus Funds, Loans, Insurance Reimbursements for COVID-19

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Documentation

Lost Revenues

"You may use a reasonable method of estimating the revenue during March and April 2020 compared to the same period had COVID-19 no appeared", for example:

1. If you have a budget prepared without taking into account the impact of COVID-19, the estimated lost revenue could be the difference between budgeted and actual revenue.
2. It is also reasonable to compare the revenues to the same period last year.
3. **Examples of Drivers** – lost outpatient visits, cancelled procedures, uncompensated care – Generate reports tracking metric trends, cancellation trends, or uncompensated visit trends to compare to the budget or prior year same period.

Expenses

- Personnel Costs - You should work with payroll administrator to:
 - Create new timecodes for COVID-19 care time and hazard pay.
 - Generate reports by pay period and by employee for these new codes, correlating to all personnel expense that will be recorded to the COVID-19 entity for that period.
- Other Expenses - For expenditures, either operating or capital, examples of documentation include, but are not limited to: invoices, purchase orders, receipts, other approval documents such as emails.

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Documentation (cont.)

Third Party Payments/Reimbursements

- Commercial Insurance – Providers have an obligation to bill commercial insurance where applicable. Maintain proper revenue cycle documentation per normal protocols. No writing off of COVID-19 expenses prior to commercial insurance billing submission.
- Business Interruption Insurance – You must keep records of application & acceptance/denial of claim for payment under any business interruption insurance coverage. These funds should be first applied to applicable COVID-19 expenses prior to applying any stimulus monies.
- PPP Funds – You must keep records of application & acceptance/denial for PPP funds. These funds must also be applied first as indicated above, no double dipping.

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Accounting Considerations

Revenue recognition standards, application of ASC 958-605

- The provisions of ASC 958-605 apply to all entities, including business entities who receive contributions within the scope of this topic. However, transfers of assets from governments to business entities are excluded. In situations where there is no GAAP that specifically addresses the accounting for a transaction, businesses should look to similar guidance for assistance in the application.
- Evaluate the assistance received to determine if it represents a payment that should be accounted for as an exchange transaction under ASC 606 or as a contribution under ASC 958-605.
- For assistance considered a contribution within the scope of ASC 958-605, revenue recognition will be dependent on whether it is deemed conditional (whether the agreement includes both a barrier and a right of return or release).
 - A stimulus grant typically would be considered revenue on the income statement (other/misc. revenue) versus a loan which is would be a liability on the balance sheet.

Massie - 41

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Accounting Considerations (cont.)

Tax Deferral Treatment – Payable

If you exercised the option to defer the employer portion of payroll taxes until the due dates of December 2020 and 2021, each period, you should recognize the expense in the applicable period on the income statement, but also record a liability payable on the balance sheet each period.

Sequestration Waiver Treatment – Accounts Receivable

With the waiver of the 2% sequestration on government reimbursements until December 2020, you should see an increase in your cash inflows. Accordingly, when billing CMS, you should be sure to record the 2% sequestration as now a collectible amount in the Accounts Receivable, removing it from the contractual allowance category on the income statement.

Massie - 42

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Thank You

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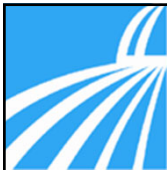
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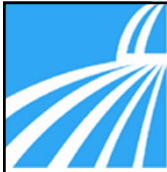
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Upcoming Webinars

- **TJC Surveys Resume – Know What to Expect**
June 30 – 9:00 – 10:30 a.m.
- **COVID-19 and Medi-Cal: Guidance from Enrollment to Payment Webinar**
July 1 – 10:00 – 11:30 a.m.

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Thank You and Evaluation

Thank you for participating in today's webinar. An online evaluation will be sent to you shortly.

For education questions, contact:

CHA Education at (916) 552-7637 or
education@calhospital.org