

## Coronavirus Q&A: Holland & Knight Health Team Leader

By Jeff Overley

*Law360 (July 9, 2020, 9:01 PM EDT)* -- In this edition of Coronavirus Q&A, Holland & Knight's health team leader in Florida discusses how hospitals expect to allocate finite resources as Sunshine State infections surge, how "outright criminals" scammed health care providers on protective equipment, and how fixed-income reimbursement arrangements are helping providers weather the pandemic's financial storm.

Maria T. Currier has helped lead the national health practice at Holland & Knight LLP, one of the largest Florida-based law firms, for more than a decade. Currier also serves as general counsel for the South Florida Hospital & Healthcare Association, and she worked as a nurse and taught at the University of Miami School of Nursing before becoming a health care lawyer.

Florida has seen COVID-19 spread rapidly in recent weeks, with more than 10,000 new cases confirmed on some days, and state officials reported 120 new deaths Thursday, a single-day record for the state. Currier shared perspective on the crisis as part of a series of interviews Law360 is conducting with prominent attorneys about the pandemic's legal and business challenges.



Maria Currier

This interview has been edited for length and clarity.

### What COVID-19 issues are you working on most right now?

We've been working a lot with the pandemic relief funds [approved by Congress] and the related record-keeping issues. There's a required purpose and use for the funds, and criteria that the funds need to be used for COVID care, and that the funds would not have been reimbursed by other sources. And so that has become quite interesting.

Obviously when there's a lot of money being poured into an industry, there's always the potential for misuse. We've learned that [the U.S. Department of Health and Human Services] recently hired McKinsey & Co. to audit a lot of the providers that received funding. And so we anticipate that this will be an area of focus for the government. We're trying to help our hospitals and physician practices identify how funds are being used, and where they're being used, and then sufficiently document that

they're related to COVID care.

### **Congress has approved \$175 billion in relief funds for providers. How long will all this auditing take?**

This will take years. This will be a long-term project, and we anticipate a significant amount of effort that will need to be made by the providers to deal with these audits. With all the money that's been given out, you can anticipate that the government's going to make sure it was used appropriately.

### **Any other pandemic issues you're especially focused on?**

Another area is helping a lot of our hospital clients deal with making decisions on allocation and rationing of health care resources. We developed forms of governance that would allow those decisions to be made not by the clinicians that are actually treating the patients, but by a team of others who would make decisions based on the severity of the patients and the like. That's been an interesting exercise.

### **Can you talk more about how those difficult decisions might be made?**

Some of the issues raised in these kinds of situations are if you have, for example, one ventilator, how do you decide which patient gets that ventilator? And you would consider other morbidities of the patient, their potential for survival and their age.

Those are the kinds of ethical and legal issues that are coming up as we prepare for potential resource allocation issues that certainly might be a result of too much demand on our system.

### **How are providers doing in South Florida? It sounds like they're increasingly having to suspend elective procedures and keep an eye on capacity.**

I think we're at another inflection point right now, because when Florida reopened, the state's Agency for Health Care Administration approved elective surgeries. So the hospitals were recovering, they were filling up again with what I'll call their fee-for-service revenue that is very important for financial stability.

We had started seeing some recovery, and the pandemic relief funds were coming in. And now we're starting to see some concern again about the reclosure of the state. The Miami-Dade County mayor has issued an order that the restaurants are closing again. And so we feel like there's a step backward here, and that hospitals are again trying to prepare and gear up for a surge, which means that they'll have to start decreasing the amount of elective, nonessential services that are a very significant portion of their revenue.

### **What will happen if a hospital uses all its capacity?**

Many of the hospitals have entered into transfer agreements to help one another. And in Miami, they opened up a shuttered hospital. They've renovated it and opened it to have it available as a 150-bed facility for COVID patients. I don't think any of those beds have been used yet, so there seems to be sufficient amount of capacity in the event that the surge continues.

### **That's good to hear, and it gets to my next question. How did hospitals in Florida benefit from the extra time they had to prepare compared with hospitals in earlier epicenters of the pandemic?**

They were preparing for the first wave to hit us sooner, and that helped. Obviously, until it hits, you may not anticipate all that's needed to deal with it. But I think we have learned from some mistakes that have been made in other parts of the country.

The nursing home situation has been probably one of the hardest to deal with and the saddest, because those are the most vulnerable people we need to protect. In Florida, we now have several nursing homes that are only for COVID patients. We're able to keep the elderly patients with COVID out of most of the nursing homes so that we can contain the spread of it.

**Some states have given legal immunity to nursing homes, hospitals and other providers for good-faith actions involving COVID-19 care. Where do things stand in Florida?**

Unlike some other states, Florida never did issue an executive order [granting immunity], so there's still a little bit of concern and exposure there.

We were trying to do that with the governor's office, but we haven't gotten the relief that we thought we were going to be able to get. There is some immunity in the CARES Act [for volunteer providers]. But we were hoping for [broader] state-based immunity, which we're still hoping we can get.

**There's been renewed concern at the national level about shortages of personal protective equipment. What's been the experience of hospitals in Florida?**

There are a lot of brokers that have gotten involved in this particular aspect of the pandemic. Some of them are good, some of them aren't. And some of our clients have come across some problems in that area.

The problems have been that the materials weren't available, or the materials were not compliant with the grade level that they needed. And there's just some outright criminals that have been stiffing clients and setting up escrows that were used and then stolen. So, anywhere from materials not being appropriate, all the way to outright fraud. There's been litigation and referrals to enforcement authorities.

**You have a lot of experience in mergers and acquisitions. How might the pandemic affect transactional work?**

I primarily represent providers in transactions, and I can tell you that we have been seeing for some time now a move to redeploy assets into the outpatient setting. We were seeing a lot of activity in developing strategic affiliations involving technology and health care delivery. There may have been a slowing down of some of the deals that people were thinking about, but I have a feeling that's going to pick up a lot in the next several months, basically to accelerate the transformation we were already seeing.

There are some health care systems that have very healthy financial balance sheets, and there are opportunities in crises for buyers to find a good target or a seller that may have some financial issues. It would obviously be a buyer's market at that point. I do think M&A is going to pick up quite a bit as we move through this.

**In closing, is there anything you've seen during the pandemic that hasn't received as much attention as it deserves?**

One thing that is not talked about is, for a long time, providers felt they were better off having fee-for-service arrangements [with health insurers]. And managed care arrangements with fixed income or capitation or other per diem payments were not as attractive.

But in this time of crisis, when a lot of fee-for-service revenue went out the door because elective procedures were not being done, facilities that had larger amounts of fixed-income contracts were able to manage this a little better. So that's an interesting kind of fallout from this, and I wonder if we'll see more interest in a fixed-income type of mix for health care systems.

--Editing by Aaron Pelc.