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Business Revival Toolbox – Focus on the Health Care, Wellness and Fitness Industries

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The health care industry – along with the related wellness and fitness industries – has been particularly hard-hit by the COVID-19 pandemic. Some facilities have been overburdened with COVID-19 care while others have been crippled by restrictions on elective procedures and routine visits. Most wellness and fitness businesses have had to shut down entirely due to state and local health measures.

As businesses prepare to re-open, there are a number of options that health, wellness and fitness enterprises can explore to assist in the revival of their business in a post-COVID environment. We call it our "Business Revival Toolbox."

Be Safe and Be Smart. First and foremost, all enterprises will want patrons to feel safe to return to their places of business. Evaluation of the risk to employees and clients will be crucial, particularly in those areas in which close contact is difficult to avoid. Physical controls and protective equipment will be essential, but policies and protocols to ensure safety will be paramount. Waivers and disclaimers can be employed where appropriate. Future legislation may provide some forms of protection from liability.

Maximize PPP Forgiveness. Most small enterprises took out a Paycheck Protection Program ("PPP") forgivable loan. It will be vital to plan for the most effective use of the funds to preserve maximum forgiveness. Any funds forgiven will be transformed from debt to equity.

Congress recently adopted the Paycheck Protection Program Flexibility Act of 2020 ("Flexibility Act") that extends the time period for businesses to spend PPP loan funds and makes certain other changes favorable to borrowers.

- The original eight-week timeframe is extended to 24 weeks for borrowers who need more time to make full use of the funds;
- The requirement that 75 percent of the forgiveness amount be spent on payroll is relaxed to 60 percent;
- Restoration of workforce and compensation to pre-pandemic levels can now extend to December 31 without penalty;
- Two new "safe harbors" are added: borrowers will not be penalized if they could not find qualified employees or if they were unable to restore business operations to pre-pandemic levels due to COVID-related operating restrictions;
- Borrowers will have five years to repay any non-forgiven amounts rather than two;
- Businesses receiving PPP forgiveness will also be permitted to defer payroll tax into 2021 and 2022, which had been previously limited.

The Flexibility Act should permit most PPP funds to be forgiven with sound planning.

Consider a PPP Loan if You Passed. The adoption of the Flexibility Act makes it easier for borrowers to get full or close to full forgiveness on their loans. Although there was a rush for PPP funds in April, there is still money remaining from the second round of the $310 billion PPP funding and from borrowers choosing to repay.

Businesses that passed on a PPP loan originally – due to concerns about lack of flexibility or inability to obtain forgiveness – should consider whether a PPP loan now makes sense.

The deadline for PPP applications is expected to remain as June 30.

Seek Federal Assistance. The Coronavirus Aid Relief and Economic Stability Act ("CARES Act") and the follow-up legislation has set aside significant funding to reimburse providers for expenses and lost revenues related to the pandemic. Distribution of funds began in April, and providers who received funds currently have the opportunity to submit requests for additional funding.

In addition, a fund has been created to reimburse providers for COVID-19 testing and services provided to uninsured individuals. Providers can apply for such funds beginning in May. Some Medicare providers are eligible for advance or accelerated payments to ease cash-flow disruptions.

All of the health-specific programs can be combined with other assistance such as PPP loans. Additional health-specific assistance programs are likely in future legislative responses.

Telehealth – With Regulatory Compliance. Remote access to services became commonplace during the pandemic and that will not change in the near term. In the health care field, regulatory and reimbursement restrictions on telehealth services were temporarily eased. For example, under Nebraska's applicable executive order, health care providers are not required to obtain a patient's signature on a written agreement prior to providing telehealth services, and insurance claims for telehealth will not be denied solely on the basis of lack of a signed written statement. Planning for continuing and expanded options for telehealth and other remote services -- while maintaining regulatory compliance -- will be important for all health, wellness and fitness enterprises.

Section 3701 of the CARES Act creates a temporary safe harbor for telehealth and High Deductible Health Plans (HDHP), allowing coverage for telehealth services without plan member cost before plan members' deductibles are met. This temporary safe harbor applies to all HDHPs, including those with plan members using health savings accounts (HSAs).

Tax Opportunities. Many tax filing deadlines have been extended and most time-sensitive decisions with tax implications have been deferred. There are new tax credits and incentives in the CARES Act, and additional incentives are likely to follow. The Flexibility Act permits PPP recipients to also defer payroll tax. In addition, changing economic conditions and legal revisions provide an opportunity to file amended returns that can produce refunds. Property taxes and other taxes based on valuation are subject to reduction or challenge. Health, wellness and fitness enterprises can all benefit from renewed tax planning.

Reorganize, Restructure, Renegotiate. In light of changing economic conditions, all enterprises should reassess their business structure and contractual relationships. It will be an opportune time to consider options for reorganization and streamlining of operations. Burdensome leases and contracts may be renegotiated. In extreme cases, bankruptcy using the expedited procedures now available may make business sense.

Tap Unexpected Sources of Capital. The legislative response to the pandemic – together with pre-existing programs that may not have been explored previously – provide all businesses with options for revival capital. Non-PPP loans through the Small Business Administration will offer six months of deferred interest and principal in the wake of the pandemic. Creditworthy enterprises may be eligible for favorable credit terms through the Federal Reserve's Main Street Loan program.

Investors will have a limited option to tap into 401(k) and IRA accounts via loans and/or distributions without penalty. Programs such as Qualified Opportunity Funds will be available in some cases. Unlike many other tax-advantaged programs, health, wellness and fitness businesses are eligible for favorable tax treatment under the opportunity zone program.

Draw Upon Your Community. Anticipate that local leadership – public officials, chambers of commerce, economic development officers and community-based nonprofits – will be offering heightened opportunities for support and public-private partnership. Programs could include economic development incentives, support services, mentoring, investment options or other programs.

Additional Resources. The University of Virginia offers a virtual platform comprised of telehealth and clinical experts to provide online accredited education courses for healthcare professionals. The National Consortium of Telehealth Resource Centers also provides assistance, education and information to organizations and individuals who are actively providing or interested in providing telehealth services. If you're located in Nebraska, you can access the Great Plaints Telehealth Resource and Assistance Center here.