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More Provider Relief Funds on the Way: Beware Updated Terms and Conditions

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On April 22, 2020, HHS announced specifics concerning the next round of the \$100 billion Provider Relief Fund payments, some of which should reach provider bank accounts today.

<https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>. As with the initial \$30 billion, the additional payments come with more strings attached.

Additional Payments.

1. General allocation. An additional \$20 billion will go to providers who rendered diagnoses, testing or care of individuals with possible or actual cases of COVID-19 after January 31, 2020, including such providers who were largely left out of the initial \$30 billion disbursement. The initial \$30 billion was allocated based on the providers' 2019 Medicare fee for services payments. The next \$20 billion will also reach providers who receive only a small amount of Medicare revenue, e.g., children's hospitals. The \$20 billion will be allocated so that the combined \$50 billion in payments reflects the providers' 2018 net patient revenue.

Beginning April 24, providers will automatically begin receiving their portion of the \$20 billion based on the revenue data submitted in their CMS cost reports. Providers without adequate cost report data on file must submit their revenue information through a portal at

<https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html> beginning next week. The updated Terms and Conditions require that recipients submit general revenue data for calendar year 2018 to HHS when applying for a portion of the \$20 billion payment or within 30 days of having received such a payment. Accordingly, it appears that providers who received the payment automatically may still need to provide data as requested by HHS within 30 days.

As with the initial \$30 billion, recipients must attest to and agree to comply with the Terms and Conditions at <https://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions.pdf>. Those Terms and Conditions were updated twice this week; providers should review the updated Terms and Conditions to verify continued compliance. Among other things, the following prefatory comments were added:

If you receive a payment from funds appropriated in the Public Health and Social Services Emergency Fund for provider relief

("Relief Fund") ... and retain that payment for at least 30 days without contacting HHS regarding remittance of those funds, you are deemed to have accepted the following Terms and Conditions. Please also indicate your acceptance below. This is not an exhaustive list and you must comply with any other relevant statutes and regulations, as applicable.

Your commitment to full compliance with all Terms and Conditions is material to the Secretary's decision to disburse these funds to you. Non-compliance with any Term or Condition is grounds for the Secretary to recoup some or all of the payment made from the Relief Fund.

These Terms and Conditions apply directly to the recipient of payment from the Relief Fund. In general, the requirements that apply to the recipient, also apply to subrecipients and contractors under grants, unless an exception is specified.

(<https://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions.pdf>). In addition, the Terms and Conditions now require each recipient to certify 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. The Recipient acknowledges that any deliberate omission, misrepresentation, or falsification of any information contained in this Payment application or future reports may be punishable by criminal, civil, or administrative penalties, including but not limited to revocation of Medicare billing privileges, exclusion from federal health care programs, and/or the imposition of fines, civil damages, and/or imprisonment.

(*Id.*). Other key terms and conditions remain in place with some slight modification, including but not limited to the following:

- Recipients must attest that they (i) billed Medicare in 2019; (ii) provide or provided after January 31, 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19; (iii) are not currently terminated from participation in Medicare; (iv) are not currently excluded from participation in Medicare, Medicaid, and other Federal health care programs; and (v) do not currently have Medicare billing privileges revoked. The updated HHS website continues to affirm that the \$100 billion in relief funds are intended to "address both the economic harm across the entire healthcare system due to the stoppage of elective procedures, and addressing the economic impact on providers incurring additional expenses caring for COVID-19 patients..." (<https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>). Accordingly, the website affirms, "If you ceased operation as a result of the COVID-19 pandemic, you are still

eligible to receive funds so long as you provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. Care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19.” (*Id.*).

- Recipients must use the payment only to prevent, prepare for, and respond to coronavirus, and that the payment shall reimburse the recipients only for health care related expenses or lost revenues that are attributable to coronavirus.
- Recipients may not use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
- Recipients may not collect out-of-pocket expenses from a patient for a presumptive or actual case of COVID-19 that are greater than what the patient would have been required to pay in-network.
- Recipients may not use the funds for certain proscribed purposes, including paying employees whose salary exceeds \$197,000 per year.
- Recipients will need to submit reports as required by HHS. We are still waiting on the details for such reports.
- Recipients must maintain required documentation and cooperate in HHS audits to ensure compliance with the Terms and Conditions.

Significantly, the updated Terms and Conditions require compliance with existing as well as future regulations and statutes. Providers must continue to monitor additional guidance or conditions to ensure continued compliance. The updated guidance affirms that the government will be actively auditing compliance. Misrepresentations in the attestations and the improper retention or misuse of funds may subject providers to significant fines and penalties, including potential False Claims Act penalties. Providers must carefully document their compliance and proper use of the funds and respond properly to the reporting requirements when issued.

2. Rural hospitals and RHCs. An additional \$10 billion will go to hospitals in rural areas and rural health clinics (“RHCs”). These payments will begin going out next week and will be based on operating expenses using a methodology that distributes payments proportionately to each facility and clinic. This funding is in addition to the \$165 million that HHS will provide to rural facilities to support new telehealth services, purchases of personal protective equipment and expanded COVID-19 testing. (See <https://www.hhs.gov/about/news/2020/04/22/hhs-awards-nearly-165-million-to-combat-covid19-pandemic-in-rural-communities.html>).

3. Hospitals in hard-hit areas. \$10 billion will go to hospitals in the nation's hardest hit areas, such as New York. Hospitals eligible to apply for the funds should have received an e-mail. The application deadline was originally scheduled for April 23, but has been extended to Saturday, April 25, at 3:00 p.m., EST.

4. Indian Health Services. \$400 million will go to the Indian Health Services. Distribution will begin next week based on operating expenses.

5. Care for Uninsured. Much of the remaining \$30 billion is expected to reimburse providers for COVID-19 treatment of the uninsured at Medicare rates. On Wednesday, HHS launched a new website for the program, <https://www.hrsa.gov/coviduninsuredclaim>. According to the website,

Health care providers who have conducted COVID-19 testing or provided treatment for uninsured COVID-19 patients on or after February 4 can request claims reimbursement through the program electronically and will be reimbursed generally at Medicare rates, subject to available funding. Steps will involve: enrolling as a provider participant, checking patient eligibility, submitting patient information, submitting claims, and receiving payment via direct deposit.

To participate, providers must attest that:

- They have checked for health care coverage eligibility and confirmed that the patient is uninsured, i.e., that the patient does not have individual, employer-sponsored, Medicare or Medicaid coverage, and that no other payer will reimburse for COVID-19 testing and/or care for that patient.
- The provider will accept the program reimbursement as payment in full and will not balance bill the patient.
- The provider agrees to program terms and conditions and may be subject to post-reimbursement audit review.

The signup period begins April 27. On Demand training starts April 29. Claims may be submitted beginning May 6. Providers should begin receiving reimbursement in mid-May. Because program is subject to available funding, providers should act quickly to submit their claims.

Additional Funding. An additional \$75 billion will be added to the Provider Relief Fund under the latest relief fund bill that was passed by Congress yesterday. We will address these and other developments at our next COVID-19 Legal Update webinar on Monday.

We encourage you to visit Holland & Hart's Coronavirus Resource Site, a consolidated informational resource offering practical guidelines and proactive solutions to help companies protect their business interests and their workforce. The dynamic Resource Site is regularly refreshed with new topics and updates as the COVID-19 outbreak and the legal and regulatory responses continue to evolve. Sign up to receive updates and for upcoming webinars.

For questions regarding this update, please contact:

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