

HHS Releases Notices of \$30 Billion to Healthcare Providers and Suppliers

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On March 27, 2020, President Trump signed the CARES Act, providing in part for \$100 billion in relief funds to eligible health care providers and suppliers affected by COVID-19. The funding is intended to support healthcare-related expenses, including lost revenue, attributable to the pandemic.

Many providers and suppliers received notice on Friday, April 10 that they are recipients of relief funds. HHS emphasized that these are not loans and will not need to be repaid by recipients. Below is a summary of the guidance issued by HHS in connection with the initial \$30 billion infusion and a brief description of the terms and conditions to which recipients must adhere.

Eligibility

All facilities and providers that received Medicare fee-for-service (“FFS”) reimbursements in 2019 are eligible to receive these funds. As noted above, the payments are intended to provide relief to providers in areas impacted by COVID-19 and those providers and suppliers who have been impacted financially by the crisis as a result of healthy patients delaying care and the cancellation of elective procedures. As a condition of receiving these funds, providers and suppliers must agree not to seek out-of-pocket payments from a patient treated for COVID-19 that are greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider.

The relief payments will be made according to taxpayer identification numbers (“TIN”) in accordance with the following:

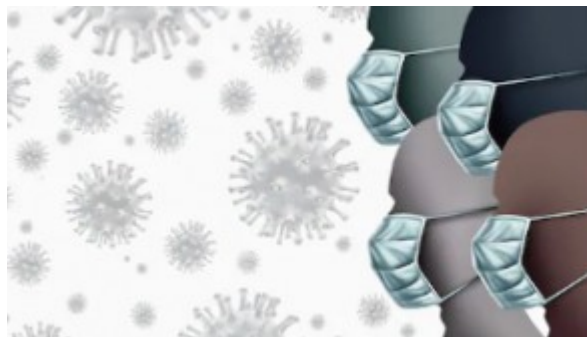
- *Large Organizations and Health Systems:* Large Organizations will receive relief

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payments for each of their billing TINs that bill Medicare. Each organization should look to the part of their organization that bills Medicare to identify details on Medicare payments for 2019 or to identify the accounts where they should expect relief payments.

- *Employed Physicians:* Employed physicians should not expect to receive an individual payment directly. The employer organization will receive the relief payment as the billing organization.
- *Physicians in a Group Practice:* Individual physicians and other clinicians in a group practice are unlikely to receive individual payments directly, as the group practice will receive the relief fund payment as the billing organization.
- *Solo Practitioners:* Solo practitioners who bill Medicare will receive a payment under the TIN used to bill Medicare.

Determining Distributions

HHS indicated that these payments will be based on the provider's or supplier's share of total Medicare FFS reimbursements in 2019. HHS estimates that total FFS payments in 2019 were approximately \$484 billion. Providers and suppliers can estimate their payment by dividing their 2019 Medicare FFS (not including Medicare Advantage) payments they received by \$484,000,000,000, and multiply that ratio by \$30,000,000,000. Providers and suppliers can obtain their 2019 Medicare FFS billings from their organization's revenue management system.

Example: A community hospital that billed Medicare FFS \$121 million in 2019 would divide that amount by the total Medicare FFS payments (i.e. \$484B) and multiply that by the total amount available (i.e. \$30B).

$(\$121,000,000 / \$484,000,000,000 \times \$30,000,000,000 = \$7,500,000)$

How Will I Receive These Funds?

HHS has partnered with UnitedHealth Group ("UHG") in an effort to provide rapid payment of these funds. Eligible recipients will be paid via their ACH account information on file with UHG or on file with the Centers for Medicare and Medicaid Services ("CMS"). The payments are automatic so recipients do not need to take further action to receive them. Recipients that receive payments electronically should look for a payment via Optum Bank with "HHSPAYMENT" as the payment description. Recipients who normally receive a paper check for reimbursement from CMS can expect to receive a check in the next few weeks. Within 30 days of receiving this payment, recipients must sign an attestation confirming receipt of these funds and agree to the terms and conditions of payment. The portal for signing the attestation will be open the week of April 13, 2020.

Terms and Conditions

Within 30 days of receiving payment, recipients must attest to receiving the funds and agree to the Terms and Conditions posted by HHS. Below is a brief summary of those terms and conditions.

- The recipient must certify the following: that it billed Medicare in 2019; currently

provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19; is not currently terminated from participation in Medicare; is not currently excluded from participation in Medicare, Medicaid, and other Federal health care programs; and does not currently have Medicare billing privileges revoked.

- The payment may only be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the recipient only for health care related expenses or lost revenues that are attributable to coronavirus.
- Payment may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
- The recipient must provide reports to HHS as the Secretary determines at a later date.
- Not later than 10 days after the end of each calendar quarter, any recipient that is an entity receiving more than \$150,000 total in funds under any of the stimulus packages making appropriations for the coronavirus response and related activities shall submit to the Secretary and the Pandemic Response Accountability Committee a report containing the following information:
 - the total amount of funds received from HHS under one of the foregoing enumerated Acts;
 - the amount of funds received that were expended or obligated for each project or activity; and
 - a detailed list of all projects or activities for which large covered funds were expended or obligated.
- Recipients are required to maintain appropriate records and cost documentation as required by 45 CFR § 75.302 and 45 CFR § 75.361 through 75.365, and other information required by future program instructions to substantiate the reimbursement of costs under this award. Entities who have received federal awards in the past may already be familiar with these regulations. These regulations set forth financial management and standards for federal awards, including maintaining accurate and complete documentation and having written policies and procedures detailing the accounting systems in place to perform the following:
 - The ability to report revenue and expenditures separately by federal program;
 - Identification in its chart of accounts of all federal awards received and expended under which federal program; and
 - The process of maintaining records pertaining to the source and application of receipts and disbursements, federal awards, authorizations, obligations, unobligated balances, assets, expenditures, and income and interest, which must be supported by source documentation.
- For all care for a possible or actual case of COVID-19, the recipient must certify 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 provider.

The Terms and Conditions include a number of statutory provisions that also apply to recipients. More relief funds will be made available in the coming weeks. HHS indicated that the next round of funding from the remaining \$70 billion would be targeted to providers and suppliers in areas particularly impacted by the COVID-19 outbreak, rural providers, providers of services with lower shares of Medicare reimbursement or those who predominantly serve the Medicaid population, and providers requesting reimbursement for the treatment of uninsured patients.

If you have any questions about the CARES Act, please contact the authors or your regular Dorsey & Whitney LLP attorney. Dorsey is closely monitoring the rapidly evolving legal landscape related to the COVID-19 pandemic.