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HHS reveals the reporting requirements for CARES Act Provider Relief Fund recipients

By Harsh P. Parikh and Laurie T. Cohen

Last week, on July 20, the U.S. Department of Health and Human Services (HHS) issued a notice to health care providers regarding their reporting obligations in connection with distributions from the HHS Public Health and Social Services Emergency Fund (Provider Relief Fund). Across the United States, all types of Medicare and Medicaid providers, including hospitals, skilled nursing facilities, clinics, pharmacies, labs, physician groups, and behavioral health and other providers, have received distributions from the Provider Relief Fund as the health care industry grapples with the coronavirus pandemic.

In the notice, HHS is advising all Provider Relief Fund recipients of their obligation to submit at least one report through an online reporting system. In accordance with forthcoming HHS guidance, providers will need to demonstrate that distributions from the Provider Relief Funds were used for health care-related expenses or lost revenue attributable to COVID-19.

Health care providers and their counsel should closely pay attention to the forthcoming reporting obligations described below, and review the applicable terms and conditions that the providers accepted as a condition of accepting these government funds from the various distribution pools under the Provider Relief Fund described below.

Provider Relief Fund — background

The bipartisan Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) and the Paycheck Protection Program and Health Care Enhancement Act provide **\$175 billion** in relief funds to health care providers. Congress appropriated these funds for “health care providers for health care related expenses or lost revenues that are attributable to coronavirus.” The new laws did not establish a particular process for distributing the Relief Fund, but directed HHS to establish “the most efficient payment systems practicable to provide emergency payment.”

Provider Relief Fund — general and targeted distributions

HHS did not establish an application process of distributing hundreds of billions of these federal dollars. Instead, HHS pushed out the funds to health care providers through general distributions and targeted distributions.¹

Medicare general distributions

Through two tranches of automatic payments in April, HHS allocated **\$50 billion** to certain Medicare providers. The total amount to each provider was about 2% of the provider's gross patient care revenues, regardless of payor mix.

Medicaid, CHIP, and dental providers

In June, HHS began distributing more than **\$15 billion** to providers that predominately serve Medicaid/CHIP populations. On July 10, HHS opened up a portal to specifically allow dentists to apply for the funds; dentists have until Aug. 3 to apply for funding through the Enhanced Provider Relief Fund Payment Portal.² Similar to the Medicare distributions, these providers are eligible to receive roughly 2% of reported revenue from patient care.

Targeted distributions

Over the past several months, HHS also allocated funds to providers in areas particularly impacted by the COVID-19 outbreak. These “targeted” distributions include **\$22 billion** to high-impact area hospitals, **\$13 billion** to safety net hospitals, **\$11 billion** to rural/small metro area providers, **\$4.9 billion** to skilled nursing facilities, and **\$500 million** to tribal hospitals, clinics, and urban health care centers.

HHS also developed a program to provide claims reimbursement to health care providers (generally at the Medicare rates) for testing uninsured individuals for COVID-19 and treating uninsured individuals with a COVID-19 diagnosis.³

Public listing of Provider Relief Fund recipients

Recipients of general distributions and targeted distributions should be aware that HHS is posting a [public list of providers and their payments](#) once they attest to receiving the money from the Provider Relief Fund and agree to their terms and conditions.⁴ All providers that received a payment from the Provider Relief Fund and retain that payment for at least 90 days without rejecting the funds are deemed to have accepted the terms and conditions.

Forthcoming reporting system

HHS states that despite the statutory language in the CARES Act, recipients of Provider Relief Fund payments do not need to submit a separate quarterly report to HHS or the Pandemic Response Accountability Committee. Instead, HHS is developing an online reporting system that

¹ See “[CARES Act Provider Relief Fund: General Information](#).”

² See “[CARES Act Provider Relief Fund Payment Attestation Portal](#).”

³ See “[COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured](#).”

⁴ See “[HHS Provider Relief Fund—Administrative Data](#).”

will contain required information for recipients of Provider Relief Fund payments to comply with the CARES Act provision.

HHS expects to release detailed reporting instructions by August 17, 2020, and the new reporting system should be available for use by October 1, 2020. Notably, all providers that received one or more payments exceeding \$10,000 in aggregate will be subject to the reporting requirements. This appears to be an expansion of the type of reporting requirements that were originally contemplated by the CARES Act.

The reports will enable recipients to demonstrate compliance with the terms and conditions, including that the funds were used for allowable purpose(s). All recipients must submit a report no later than February 15, 2021. A recipient that expends all of the funds prior to December 31, 2020, need only file a single report; recipients with unexpended funds after December 31, 2020, must submit a second and final report no later than July 31, 2021.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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