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SECOND TRANCHE OF PROVIDER RELIEF FUND PAYMENTS COMMENCES TODAY

by Jenny Givens

April 24, 2020

The long awaited initial tranche of payments from the $100 billion Public Health and Social Services Fund (the Relief Fund), authorized under the Coronavirus Aid, Relief and Economic Security (CARES) Act, began hitting providers' accounts on Friday, April 10, 2020. On the same day, the U.S. Department of Health and Human Services (HHS) issued a press release which provided a link directing the reader to a summary page providing some discussion points surrounding the Relief Fund and how the initial distribution was calculated and allocated among providers.

According to the summary, payments were determined on the basis of the provider's 2019 fee-for-service payments in proportion to all fee-for-service payments made by CMS in 2019 (approximately $484 billion), x $30,000,000,000. HHS provided the following example:

"A provider can estimate their payment by dividing their 2019 Medicare FFS (not including Medicare Advantage) payments received by $484,000,000,000 and multiply that ratio by $30,000,000,000." Thus a community hospital that received $121,000,000 in Medicare FFS reimbursements can expect to receive $7.5 million."

THE SECOND TRANCHE OF FUNDING IS HERE

The first round of funding begged the question - what about those providers who receive reimbursement mostly from payor sources other than Medicare Fee-For-Service? At an April 7, 2020 press briefing, CMS Administrator Seema Verma recognized that providers with mainly private pay and/or Medicaid populations (children's hospitals, nursing homes, certain physician practice groups like OB/GYNs and pediatricians) will receive priority in the next round of funding. The summary also stated that the Trump administration plans to make distributions to ". . . providers in areas particularly impacted by the COVID-19 outbreak, rural providers, providers of services with lower shares of Medicare reimbursement or who predominately serve the Medicaid population and providers requesting reimbursement for the treatment of uninsured Americans."

On April 22, 2020, HHS updated its April 10 summary to announce that a second tranche of funding in the amount of $20 billion will distributed starting April 24th. HHS collectively refers to the initial $30 billion and the additional $20 billion as a $50 billion "general distribution". This round of funding will be based on 2018 patient revenues and will be allocated using two different methodologies. First, HHS will distribute a portion of this general fund to providers who submit cost reports. Similar to the initial $30 billion distribution, these payments will be sent to providers automatically (there is no need to request the funds). However, they will be required to submit information regarding their revenues for verification purposes. Providers without adequate cost report data may request funding by submitting financial information through a General Distribution Portal.

PAYMENT TERMS AND CONDITIONS

Providers who receive grants from the $50 billion general fund are required to agree to certain Payment Terms and Conditions (Terms and Conditions) tied to both eligibility to receive the grant and how the funds may be used. Within 30 days of receiving payment, providers are required to sign an Attestation certifying that they will comply with the Relief Fund Terms and Conditions. Providers who are not willing to agree to the Terms and Conditions are asked to contact HHS within 30 days and remit the full payment to HHS. Providers who do not respond within 30 days are deemed to have accepted the Terms and Conditions.

(continued on next page)

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With its attestation, the provider certifies that it:

1. Provides (or after January 31, 2020 provided)[1] diagnoses, testing or care for individuals with possible or actual COVID-19;
2. Is not excluded from participating in a federal healthcare program;
3. Is not terminated from participating in Medicare and has not had its Medicare billing privileges revoked;
4. Will maintain appropriate records and cost documentation regarding its use of funds and will submit various reports to the Secretary, and if the provider receives over $150,000, the provider will submit quarterly reports detailing, among other things, the total amount of funds received through all stimulus and other bills making appropriations for responding to the coronavirus, a list of projects or activities for which large covered funds were expended and the amount expended on each;
5. Will use the payment solely for the prevention of, preparation for and responding to the coronavirus and to reimburse the provider for health care expenses and lost revenues attributable to the coronavirus;[2]
6. Will not seek to collect patient out-of-pocket expenses in an amount greater than what the patient would have been required to pay to an in-network provider (i.e., balance billing or "surprise bills" are not permissible); and
7. Will not use the funds, among other things: to reimburse expenses/losses that have been reimbursed from other sources; for lobbying, publicity or propaganda purposes; to advocate or promote gun control; to pay the salary of an individual at a rate in excess of Consolidated Appropriations FY 2020, Executive Level II; for abortions or embryo research; to promote the legalization of Controlled Substances; to enter into a contract with an organization that has an unpaid federal tax liability or has been convicted of a federal felony criminal violation within the prior 24 months; or to engage in the trafficking of persons.

THE REMAINING FUNDS

The HHS summary also updated the public as to how the remaining $50 billion of funds will be allocated:

Targeted Allocations[3]	Funds To Be Allocated	Application and Distribution Procedures and Date of Funding
Hospitals in COVID-19 High Impact Areas (high percentage of COVID-19 cases)	$10 billion	Hospitals will need to apply through a portal that became available on April 23rd and closes at 3 pm April 25th. HHS reports that it contacted hospitals directly to provide this information. See the summary page for information required by the application. Hospitals submitting applications are not guaranteed funding.
Rural Providers	$10 billion	These funds will distributed beginning next week. It is not clear if rural hospitals will be required to submit an application or financial data but the funds will be distributed proportionately based on each facility's operating expenses.
Indian Health Services Facilities	$460 million	These funds will be distributed beginning next week based on operating expenses.
Reimbursement of Providers Who Treat the Uninsured for COVID-19 Related Conditions	Unknown	Providers must have treated the uninsured for COVID-19 related issues after February 4, 2020. Providers will need to register for the program through HRSA. Registration will open on April 27th and Providers may begin submitting claims on May 6th.
Additional Allocations (skilled nursing facilities, dentists and providers who treat solely Medicaid beneficiaries)	Unknown	No additional details provided.

[1] The Relief Fund Payment Terms and Conditions published on April 10, 2020 required that the provider "currently" be treating, testing or caring for individuals with possible or actual COVID-19. However, on April 13, 2020, HHS updated this condition to state add "or after January 31, 2020 provided" making the funds available to a much broader group of providers. HHS also updated the summary page to clarify this point stating "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." This summary page was updated again on April 22, 2020 to add information regarding the additional $20 billion general distributions and information related to the targeted allocations.

[2] The CARES Act gave the following examples of preparing for and responding to the coronavirus: building or construction of temporary structures, leasing of properties, medical supplies and equipment, including personal protective equipment and testing supplies, increased workforce and training, emergency operation centers, retrofitting facilities, and surge capacity. This list is not intended to be comprehensive. Neither the CARES Act nor HHS provided examples of appropriate uses of the funds to reimburse providers for lost revenues.

[3] From the information currently available, it does not appear that providers receiving the above "Targeted Allocations" are required to agree to the Terms and Conditions.

(continued on next page)

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This means that nearly $70.5 billion of the $100 billion is spoken for, leaving over $29.5 billion remaining to compensate providers for COVID-19 related care rendered to the uninsured and the "Additional Allocations".

Providers who are afraid they may have been overlooked might be in luck. On April 24, 2020, President Trump signed into law the Paycheck Protection Program and Health Care Enhancement Act, a $480 billion stimulus package that, among other things, allocated an additional $75 billion to replenish the Relief Fund. The laws and guidance related to the management of the coronavirus pandemic are rapidly evolving, and there are reports of discussions regarding another stimulus bill that is already under way. We will continue to provide further updates as more information becomes available.

For an updated, more in-depth article, click here.

ABOUT THE AUTHOR

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As a former hospital administrator, Jenny has a unique understanding of the challenges facing healthcare providers and the ins and outs of their business operations. Health systems, physicians and providers of ancillary services trust Jenny to help them navigate complex regulatory matters and, more importantly, to craft realistic solutions that they can operationalize. Jenny is Board Certified in Health Law by the Texas Board of Legal Specialization and Certified in Healthcare Compliance by the Compliance Certification Board.