

MEMORANDUM

DATE: April 27, 2020

RE: Update for Healthcare Providers regarding Allocation of Emergency Funds

On Wednesday, April 22, 2020, the U.S. Department of Health and Human Services (HHS) explained how it will split up \$70 billion in relief funding for healthcare providers hit by the coronavirus crisis.

The funding comes from the \$100 billion designated for providers, which Congress included in the Coronavirus Aid, Relief and Economic Security (CARES) Act. Earlier this month, HHS began paying out \$30 billion of the \$100 billion, and the \$70 billion discussed Wednesday concerns the rest of the funds.

HHS Adjusts Formula for \$50B in Payments

Of the \$100 billion, \$50 billion is a "general allocation" that includes the \$30 billion announced previously and another \$20 billion announced Wednesday.

The initial \$30 billion distribution was based on a provider's Medicare Fee For Service revenue — a problem for providers who do not treat many seniors. To make up for that disparity, the \$20 billion distribution is being allocated so that the whole \$50 billion general distribution is allocated proportional to providers' share of 2018 net patient revenue from all sources.

Payments are expected to begin April 24th, and to roll out weekly as information is validated. Providers who receive funds from the general distribution have to sign an attestation confirming receipt of funds, agree to the terms and conditions of payment and confirm the CMS cost report. The Terms and Conditions include other anti-fraud measures. All recipients will be required to submit documents sufficient to ensure that these funds were used for healthcare-related expenses or lost revenue attributable to coronavirus. There will be significant anti-fraud and auditing work done by HHS, including the work of the Office of the Inspector General. Here is a link to the terms and conditions: <https://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions.pdf>.

Providers will submit their revenue information through a portal that HHS is launching this week, described in detail at <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>. Although all recipients must submit the information, some will get payments before doing so based on cost data that HHS already has on file.

Special Funding for High-Impact Areas

Another \$10 billion will go to hospitals in areas that have been particularly impacted by the COVID-19 outbreak. HHS gave New York as an example.

Cash Infusion for Rural Communities

An additional \$10 billion will go to rural hospitals. The money will start being paid out next week based on hospital operating expenses.

The \$10 billion doesn't include an extra \$165 million infusion that HHS also announced Wednesday to support new telehealth services, purchases of personal protective equipment and expanded COVID-19 testing at rural hospitals.

Money for Uninsured, Tribes

Much of the remaining \$30 billion is expected to be used to reimburse hospitals at Medicare rates for treatment of uninsured patients. The Trump administration elected to directly cover such costs instead of creating a special enrollment period under the Affordable Care Act, which is facing an existential legal challenge, supported by the administration, at the U.S. Supreme Court.

Claims will be submitted starting in early May at hrsa.gov/coviduninsuredclaim, a webpage that HHS launched Wednesday.

Separately, \$400 million of the \$100 billion will go to the Indian Health Service and will be allotted based on facility operating expenses.

Skilled nursing facilities, dentists and providers that only serve Medicaid patients will also be eligible for shares of the \$100 billion.

For more information, please contact our Healthcare attorneys, Jeff Kirtner and Andy Lewis.

This summary provides general information and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you have specific legal questions, you are urged to consult with your attorney concerning your own situation.