

MEMORANDUM

DATE: April 14, 2020

RE: Update for Healthcare Providers regarding the Public Health Emergency Fund

On April 10, 2020, the Department of Health and Human Services (HHS) began immediate release of \$30 billion of the \$100 billion Public Health and Social Services Emergency Fund made available under the Coronavirus Aid, Relief and Economic Security (CARES) Act. The fund reimburses eligible healthcare providers for expenses and lost revenue attributable to the 2019 novel coronavirus (COVID-19). The initial \$30 billion in relief began April 10, 2020, by direct deposit to all facilities and providers that received Medicare fee-for-service (FFS) reimbursements in 2019. There is a fact sheet available here: <https://www.hhs.gov/provider-relief/index.html>, and terms and conditions of receiving the grant are available here: <https://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions-04132020.pdf>.

A summary of the grant program, the terms and conditions, and open issues follows.

Who is Eligible?

All facilities and providers that received Medicare FFS reimbursements in 2019 are eligible to receive funds, subject to the terms and conditions discussed below. Group practices will receive payments under the group practice's TIN used to bill Medicare, not directly to the individual providers within the practice.

Payment Amount.

Practices should expect to receive a grant approximately equal to 6.19% of their 2019 Medicare FFS payments (excluding Medicare Advantage).

Method of Payment.

Practices will generally receive their payment via ACH, though providers who normally receive reimbursements via check will receive payment via check.

No Repayment.

The fund payments are grants, not loans, and HHS will not require repayment.

Terms and Conditions.

There are important terms and conditions that providers will have to attest are being met. Some important restrictions include:

- The practice must not "balance bill" any patient for COVID-19-related treatment.
- The practice must certify that the payment will only be used to prevent, prepare for, and respond to COVID-19, which includes healthcare-related expenses and lost revenues attributable to COVID-19. HHS has not yet provided further details regarding this condition.
- The practice must certify that it billed Medicare in 2019; provides or provided after January 31, 2020 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. It is unknown what these restrictions will mean for providers that would not typically be testing COVID-19 patients or for providers that limited their current operations due to stay-at-home orders or orders delaying elective procedures. The funding of these grants does not appear to have distinguished between such providers. More guidance from HHS is required to answer questions.
- The practice must certify that it will not use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse. Further guidance will determine how this limitation interacts with other financial support during the COVID-19 pandemic.
- The practice will have to submit reports to ensure compliance with these conditions, with additional quarterly reporting requirements for recipients receiving more than \$150,000 total in funds under the CARES Act, the Families First Coronavirus Response Act (FFCRA), and any other COVID-19 appropriated funds. Again, further guidance is needed.
- The practice will need to maintain records and cost documentation information to substantiate the reimbursement of costs under this award. The recipient must submit copies of these records, cost documentation, and fully cooperate in all audits to ensure compliance with the terms and conditions.
- In addition, the general statutory provisions in FY 2020 Consolidated Appropriation also apply. That means, for example, that none of the payments may be used to pay the salary of an individual, through a grant at a rate in excess of Executive Level II (\$197,300). Though we are awaiting further guidance from the secretary of HHS, this may limit providers from using the fund payments to pay physicians who receive production-based compensation if their annual compensation may exceed \$197,300.

Attestation.

Within 30 days of receiving the payment, the practice must sign an attestation confirming receipt of the funds and agreeing to the terms and conditions of payment. The portal for signing the attestation will be open the week of April 13, 2020, and will be linked in the fact sheet above.

Remaining \$70 Billion.

Organizations and healthcare providers that receive significant revenue from sources other than Medicare — such as Medicaid and other payors, including pediatricians, children’s hospitals, OB-GYNs, nursing homes and other providers — will be addressed in the near future. HHS also announced that the remaining \$70 billion will focus on providers in areas hard hit by the COVID-19 outbreak, rural providers, providers of services with lower shares of Medicare reimbursement or that predominantly serve the Medicaid population, and providers requesting reimbursement for the treatment of uninsured Americans.

Further details about the program should be coming soon, and we will monitor those developments. In the meantime, practices should continue to quantify and monitor all COVID-19 expenses and retain copies of all relevant documents and reports, including records relating to their treatment of uninsured individuals for COVID-19. Practices should also track the revenue streams and funding sources used to cover such COVID-19 expenses, as the interaction between programs will be an important consideration for providers.

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.