Healthcare Law Alert: Clarification of Usage of Paycheck Protection Funds & HHS Announces Additional Distributions of Provider Relief Funds

April 24, 2020

Clarification of Usage of Paycheck Protection Funds

During our April 20, 2020 webinar "Part 6, COVID-19 Crisis: CARES Act Provider Relief Fund Grants and the Medicare Accelerated and Advance Payments Program – Rules of the Road," we discussed permitted usage of the HHS Provider Relief grants in conjunction with loan proceeds from the SBA's Paycheck Protection Program (PPP). We are clarifying one point regarding usage of PPP loan proceeds.

PPP loan proceeds are to be used for payroll costs (for employees with a principal place of residence in the U.S.) which include the salary, wages, and tips up to $100,000 of annualized pay per employee, as well as covered benefits for employees and owners receiving a W-2. Benefits for other owners appear to be excluded, but further guidance is needed concerning benefits for partners, members of an LLC, sole proprietors, and independent contractors.

We will provide additional updates as any new guidance is released regarding the PPP program. We have updated our webinar slide deck to include this information; click here.

HHS Announces Additional Distributions of Provider Relief Funds

The Department for Health & Human Services (HHS) has announced on its webpage for the Provider Relief Fund that another round of payment distributions to healthcare providers will begin on Friday, April 24, 2020. As we discussed in our prior alerts on April 13 and April 16, the CARES Act funded $100 billion for provider relief due to the COVID-19 pandemic, and HHS began distribution of the first $30 billion on April 10.

The new payment distributions will be made as follows:

- Another $20 billion in grants from the CARES Act funding will be distributed beginning April 24.
- The payments will be based on providers' 2018 net revenue (apparently from all payers, not only Medicare). This is to provide additional relief to healthcare providers with low Medicare fee-for-service revenue, such as pediatrics.
- The result will be that the combined $50 billion in general distribution will be allocated proportional to providers' share of 2018 net patient revenue.
- HHS does not currently specify on its website what should be included in the 2018 net revenue calculation.
- Some providers will automatically receive a payment on April 24 based on revenue data submitted in CMS cost reports.
- Providers with no cost report data on file with CMS will need to submit their revenue information to a new portal that will open this week on the HHS webpage.
- Providers who automatically receive a payment will still need to submit their revenue information for verification.
- Payments will go out weekly on a rolling basis as revenue information is validated.
- Providers who receive these new payments will need to sign an attestation agreeing to what appears to be the same Terms and Conditions as the first payment, and also confirming the CMS cost report.

- All recipients must submit documentation to prove the funds were used for healthcare-related expenses or lost revenue attributable to coronavirus.
- HHS comments that there will be significant anti-fraud and auditing work done by HHS, including the Office of Inspector General.

In addition, HHS announced the following additional relief allocations:

- $10 billion will be distributed to hospitals in COVID-19 high-impact areas.
- Payments for treating the uninsured:
    - Every healthcare provider who has provided treatment for uninsured COVID-19 patients on or after February 4, 2020, can request claims reimbursement through the program and will be reimbursed at Medicare rates, subject to available funding. It appears, although it is not clear, that these payments are for actual COVID-19 patients (as opposed to possible COVID-19 patients, where HHS has previously said it broadly views every patient as a possible COVID-19 patient).
    - Steps will involve: enrolling as a provider participant, checking patient eligibility and benefits, submitting patient information, submitting claims, and receiving payment via direct deposit.
    - Providers can register for the program on April 27, and begin submitting claims in early May. See the HRSA website for additional information.
    - As a condition, providers must not balance bill any patient for COVID-19-related treatment.
- Another $10 billion will be allocated and distributed next week for rural health clinics and hospitals on the basis of operating expenses, using a methodology that distributes payments proportionately to each facility and clinic.
- Another $400 million will be allocated and distributed next week for Indian Health Service facilities, on the basis of operating expenses for facilities.
- Some providers will receive further, separate funding, including skilled nursing facilities, dentists, and providers that solely take Medicaid. No further details were provided on this funding.

Any providers with questions regarding these new payment distributions or the previous grant payment, please contact:

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