Healthcare Law Alert: HHS Announces a Phase 3 Distribution of Provider Relief Fund Payments

10/6/2020

The Department of Health and Human Services (HHS) has announced that it will be distributing an additional $20 billion in Provider Relief Fund payments to healthcare providers. Under this Phase 3 General Distribution, providers that have already received Provider Relief Fund payments may apply for additional funding that considers financial losses and changes in operating expenses caused by the coronavirus. In addition, previously ineligible providers may now apply, including those providers who began practicing in 2020 as well as an expanded group of behavioral health providers, including addiction counseling centers, mental health counselors, and psychiatrists. Providers may begin applying for funds on Monday, October 5, 2020, and the **deadline to apply is November 6, 2020.**

Providers who previously received, rejected, or accepted a General Distribution Provider Relief Fund payment are eligible to apply for the Phase 3 payment.

Payment Methodology

All submissions for a Phase 3 payment will be reviewed to determine whether the applying provider has already received a Provider Relief Fund payment equal to approximately 2% of patient care revenue from prior Provider Relief Fund general distributions. Applicants that have not yet received Provider Relief Fund payments of 2% of patient revenue will be eligible to receive a payment under Phase 3 that, when combined with prior payments, if any, equals 2% of patient care revenue.

With the remaining balance of the $20 billion budget, HHS will then calculate an equitable add-on payment that considers the following: a provider's change in operating revenues from patient care, including expenses incurred related to coronavirus, and payments already received through prior Provider Relief Fund distributions.

Eligibility for Phase 3

To be eligible to apply for a Phase 3 payment, the applicant must meet at least one of the following:

- Billed Medicaid/CHIP programs or Medicaid managed care plans for health-related services between January 1, 2018 and March 31, 2020; or
- Billed a health insurance company for oral healthcare-related services as a dental service provider as of March 31, 2020; or
- Was a licensed dental service provider as of March 31, 2020, who does not accept insurance and has billed patients for oral healthcare-related services; or
- Billed Medicare fee-for-service between January 1, 2019 and March 31, 2020; or
- Was a Medicare Part A provider that experienced a CMS-approved change in ownership prior to August 10, 2020; or
- Was a state-licensed/certified assisted living facility as of March 31, 2020; or
- Was a behavioral health provider as of March 31, 2020 who has billed a health insurance company or who does not accept insurance and has billed patients for healthcare-related services as of March 31, 2020.

In addition, the applicant must meet all of the following requirements:

- Filed a federal income tax return for fiscal years 2017, 2018, and 2019 if in operation before January 1, 2020; or was exempt from filing a return; and
- Provided patient care after January 31, 2020 (Note: patient care includes healthcare services and support as provided in a medical setting, at home, or in the community); and
- Did not permanently cease providing patient care directly or indirectly; and
- For individuals providing care before January 1, 2020, had gross receipts or sales from patient care reported on Form 1040 (or other tax form).

A provider's receipt of SBA and FEMA funds for coronavirus recovery or of Medicaid Home and Community Based Services (HCBS) retainer payments would not preclude a healthcare provider from being eligible.

Required Documentation

Providers can apply for the Phase 3 distribution on the Provider Relief Fund Application and Attestation Portal. The following documentation is required to be submitted with the application:

- Most recent federal income tax return for 2017, 2018, or 2019, unless exempt;
- Revenue worksheet (provided); and
- Operating revenues and expenses from patient care.

HHS is urging all eligible providers to apply early and not to wait until the last day or week of the application period. Since the add-on payment amount will be determined based on cumulative review of provider applications received, applying early will help to expedite HHS's review process and payment calculations, and accelerate the distribution of all payments.

All payment recipients will be required to attest to receiving the Phase 3 General Distribution payment and accept the Terms and Conditions within 90 days of receipt of the payment. To reject the funds, recipients must return the funds within 15 calendar days of the attestation.

If you have any questions about this alert or any other Healthcare Law issue, please contact:

John D. Fanburg, Managing Member and Chair, Healthcare Law, at 973-403-3107 or jfanburg@bracheichler.com

Carol Grelecki, Member, Healthcare Law, at 973-403-3140 or cgrelecki@bracheichler.com

Joseph M. Gorrell, Member, Healthcare Law, at 973-403-3112 or jgorrell@bracheichler.com

Lani M. Dornfeld, CHPC, Esq., Member, Healthcare Law, at 973-403-3136 or ldornfeld@bracheichler.com

Susan E. Frankel, Associate, Healthcare Law, at 973-364-5209 or sfrankel@bracheichler.com