

CARES Act Provider Relief Fund – Acceptance of Funds Comes with Conditions

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Healthcare providers are among those financially adversely affected by the COVID-19 pandemic.

A survey conducted by the Medical Group Managers Association ("MGMA") on April 7 and 8, 2020, found that 97% of medical practices have experienced a negative financial impact directly or indirectly related to COVID-19. MGMA also indicates that, on average, practices report a

55% decrease in revenue and a 60% decrease in patient volume since the beginning of the COVID-19 crisis.

In response to the financial impact on healthcare providers, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, **signed into law on** March 27, 2020, appropriated \$100 billion in relief funds to hospitals and other healthcare providers under the Public Health and Social Services Emergency Fund, also called the "CARES Act Provider Relief Fund." **On April 10, 2020, the United States Department of Health and Human Services** ("HHS") released the initial terms and conditions related to the distribution of the initial \$30 billion of the \$100 billion. Rather than await the submission of applications by healthcare providers, HHS has begun a rapid delivery of relief funding to healthcare providers and suppliers that are enrolled in Medicare and received Medicare fee-for-service reimbursement in 2019. These eligible healthcare providers are being allotted a portion of the initial \$30 billion distribution based upon their proportionate share of the approximately \$484 billion of Medicare fee-for-service reimbursements made in 2019.

Healthcare providers identified as eligible to receive funds from this first distribution should have received an email to that effect. Eligible healthcare providers have begun receiving payments via the Automated Clearing House account information on file used for reimbursements from The Centers for Medicare and Medicaid Services ("CMS"). Healthcare providers that normally receive a paper check for reimbursement from CMS will receive a paper check in the mail.

These payments are not loans and, if used consistent with the applicable terms and conditions, will not need to be repaid. Healthcare providers must sign an attestation confirming receipt of the funds and agreeing to the terms and conditions of payment within 30 days via the online payment portal. Should a healthcare provider choose to reject the funds, the healthcare provider within 30 days of receipt of payment must complete the attestation to indicate this and remit the full payment to HHS. The portal will guide the healthcare provider through the attestation process – to accept or reject the funds.

The healthcare provider is required to certify, among other things, that it provides or provided after January

31, 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. In a recent update, HHS clarified that to meet this requirement, care does not have to be specific to treating COVID-19, as "HHS broadly views every patient as a possible case of COVID-19." HHS also clarified that a healthcare provider's eligibility is not adversely affected if it ceased operations as a result of the COVID-19 pandemic, so long as the healthcare provider provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.

In addition to imposing use restrictions for the funds and recordkeeping requirements, the CARES Act authorizes the HHS Office of Inspector General ("OIG") to audit both interim and final payments made under the program. Healthcare providers that elect to accept the funds must be prepared to submit to these OIG audits. Because the funds are limited to necessary expenses or lost revenues due to the pandemic not otherwise reimbursable from other sources, there may be differences in OIG's interpretation of whether the funds were used for an appropriate purpose. At a minimum, this may necessitate returning certain disallowed funds following an audit.

Failure to abide by the terms and conditions could result in False Claims Act liability for healthcare providers that do not make proper use of the funds. Thus, recipients of the funds should carefully consider their ability to comply with the terms and conditions and should ensure that proper controls are in place for proper use of the funds.

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