

Phase Three Healthcare Provider Relief Funds

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On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") into law, allocating $100 billion in funding for the CARES Act Provider Relief Fund (the "Fund"). As outlined in previous alerts, the U.S. Department of Health and Human Services ("HHS") automatically distributed $50 billion of the Fund to eligible healthcare providers in two waves throughout the month of April 2020 ("Phase One") and an additional $15 billion distribution in June 2020 ("Phase Two").

Late last week, HHS announced a third distribution of $20 billion from the Fund to eligible healthcare providers ("Phase Three"). This announcement has implications for those providers who received relief in Phase One and Phase Two as well as for those who were ineligible for the first and second rounds of Fund relief.

Please note that the Fund and the related HHS guidance are nuanced and may raise specific questions not addressed herein. The summary below is not an exhaustive list of all information on this issue, and there may be additional provisions that are relevant to your facility or practice. The entirety of HHS guidance on the Fund may be found here.

Phase Three General Distribution of Provider Relief

On October 2, 2020, HHS announced that certain providers could apply to receive a portion of the $20 billion in Phase Three funding. Providers can begin applying for funds on Monday, October 5, 2020, and may apply until the deadline on November 6, 2020.

The announcement also outlines which providers are eligible to apply for Phase Three funding. In addition to the eligibility requirements outlined in the Phase One and Phase Two announcements, providers that fall into one of the following categories are now eligible for a Phase Three distribution:

- Providers who were eligible for a Phase One or Phase Two payment.
- Behavioral Health providers, including those that previously received funding and new providers.
- Healthcare providers that began practicing January 1, 2020 through March 31, 2020, including Medicare, Medicaid, CHIP, dentists, assisted living facilities, and behavioral health providers.

Providers that are otherwise eligible for Phase Three funding remain eligible regardless of if they were eligible for, applied, received, accepted, or reject a Phase One or Phase Two payment. Additionally,

provider eligibility for Phase Three funding is not affected by the provider's receipt of funds from the Small Business Administration ("SBA") or the Federal Emergency Management Agency ("FEMA") for COVID-19 relief, or of Medicaid HCBS (Home-and Community-Based Services) retainer payments.

The full HHS guidance on provider eligibility with regard to Phase Three payments may be found here.

Eligible providers who apply to Phase Three may receive up to a total of two percent of revenue reported from patient care. Providers that have not yet received Fund payments of two percent of patient revenue will receive a payment that, when combined with prior Fund payments (if any), equals two percent of patient care revenue. Providers that have already received payments of up to a total of two percent of revenue may submit more information to become eligible for an additional payment. This additional payment will be calculated on an equitable basis based on the following:

- A provider's change in operating revenues from patient care;
- A provider's change in operating expenses from patient care, including expenses incurred related to coronavirus; and
- Payments already received through prior Provider Relief Fund distributions.

These payments will be distributed on a rolling basis, so applying early may boost a provider's chance of receiving funding.

As with all other healthcare provider relief distributed from the Fund, the providers who do receive payment must attest to the terms and conditions of payment within 90 days. The terms and conditions for Phase Three payments track with the previous terms and conditions required with previous phase payments (outlined in detail here).

If you believe you may be eligible for Phase Three funding, you may submit an application on the HHS portal here.

This article is general in nature and does not constitute legal advice. Readers with legal questions should consult the authors, Mark Opara (mopara@sb-kc.com), Emily Crane (ecrane@sb-kc.com), Bailie Schnackenberg (bailies@sb-kc.com) or any shareholders in Seigfreid Bingham's Health Law Group, including Mark Thompson, Lori Beam, Joseph Hiersteiner, Mark Gilgus, John Neyens, Heath Hoobing, and John Fuchs, or your regular contact at Seigfreid Bingham at 816-421-4460. For more information and updates, visit our COVID-19 Resources page.