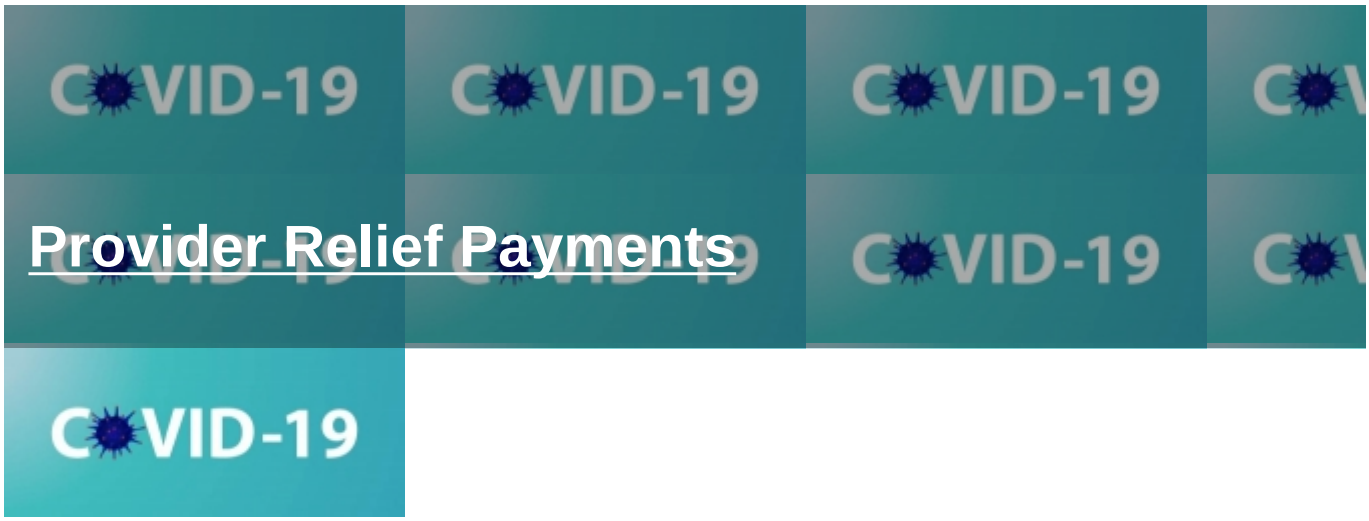

Provider Relief Payments

April 15, 2020

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The recently enacted CARES Act provides much needed relief for providers in areas impacted by the COVID-19 pandemic and providers struggling to keep their doors open due to healthy patients delaying care and cancelling elective services.

On April 10, 2020, the U.S. Department of Health and Human Services ("HHS") announced the creation of the CARES Act Provider Relief Fund (the "Fund") with an allocation of $30 billion in funding. The Fund provides immediate, automatic payments to eligible providers via direct deposit beginning April 10, 2020. These payments are grants, rather than loans, and will not need to be repaid. The Fund and its terms are nuanced and may raise specific questions not addressed herein. The summary below is not an exhaustive list of all information regarding the Fund, and there may be additional provisions that are relevant to your facility or practice. The entirety of the HHS guidance on the Fund may be found here.

Provider Eligibility:

All facilities and providers that participated in the Medicare program and received Medicare fee-for-service ("FFS") reimbursements in 2019 are eligible to receive payments from the Fund. Payments are made to the billing organization based on its Taxpayer Identification Number ("TIN").

Payments to professional practices that are part of larger medical groups will be sent to the group's central billing office. Large organizations will receive relief payments for each of their billing TINs that bill Medicare.

Solo practitioners who bill Medicare will receive a payment under the TIN used to bill Medicare.

Employed physicians and individual physicians and providers in a group practice should not expect to receive an individual payment directly. The employer organization or group practice will receive the relief payment as the billing organization. If a group practice employs physicians who are compensated by a percentage of collections, rather than through a salary, it is possible that the physician's contract requires a portion of the payment to be passed on to the individual providers. However, the HHS guidance on this point is unclear and such an arrangement may run contrary to the purpose of the Fund. Physician groups and other healthcare organizations employing physicians under this payment structure should seek advice regarding whether payments must be passed on to individuals.

Amount of Payment:

Providers will receive a portion of the $30 billion fund based on their share of total Medicare FFS reimbursements in 2019. This share does not include Medicare Advantage (managed care) payments. Total FFS payments were approximately $484 billion in 2019. Providers may estimate their payment from the Fund by dividing their 2019 Medicare FFS (not including Medicare Advantage) payments they received by $484 billion, and then multiplying that ratio by $30 billion. Providers may obtain their 2019 Medicare FFS billings from their organization's revenue management system.

Method of Payment:

Payments will be automatically debited to providers through ACH account information on file with UnitedHealth Group ("UHG") or the Centers for Medicare & Medicaid Services ("CMS"). The automatic payments will be sent to providers via Optum Bank with "HHSPAYMENT" as the payment description. These payments should be received this week. If a provider normally receives a paper check for reimbursement from CMS, the provider will receive a paper check in the mail for this payment as well, within the next few weeks.

Terms and Conditions of Payment:

While the payments will be made automatically and the provider need not submit a request or any type of documentation, providers must sign an attestation confirming receipt of the payment and agreeing to the Terms and Conditions of the payment within 30 days of receipt. The Terms and Conditions are available by clicking here. If a provider receives the payment and does not wish to comply with the Terms and Conditions, the Provider must contact HHS within 30 days of receipt of the payment and remit the full payment to HHS. Not returning the payment within 30 days of receipt will be viewed as acceptance of the Terms and Conditions.

While providers should review the Terms and Conditions in their entirety, portions of the Terms and Conditions are summarized below:

• Providers must certify that they: (i) billed Medicare in 2019; (ii) are not currently terminated from participation in Medicare; (iii) are not currently excluded from participation in Medicare, Medicaid, and other federal health care programs; and (iv) do not currently have Medicare billing privileges revoked.

• Providers must also certify that they currently provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. However, care does not have to be specific to treating COVID-19. HHS has stated that it broadly views every patient as a possible case of COVID-19, and even if a provider has ceased operation as a result of the COVID-19 pandemic, the provider is still eligible to receive funds.

• Providers must agree not to seek collection of out-of-pocket payments from a COVID-19 patient that are greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider.

• Providers must certify that the payment will only be used to prevent, prepare for, and respond to coronavirus, and to reimburse the provider only for health care related expenses or lost revenues that are attributable to coronavirus.
o Please note that, the first portion of this certification indicates that the funds may only be used to directly address coronavirus, but the second half allows reimbursement for losses due to the virus. Thus, it's not clear if this certification permits providers to obtain reimbursement for revenue lost as a result of the virus (e.g., cancelled elective surgeries, fewer in-office visits, etc.) if they are not directly involved in preventing, preparing for, or responding to the virus.

• Providers must agree not to use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
o The precise implication and scope of this certification is unclear. Until such time as HHS publishes guidance regarding this issue, providers should consider taking precautionary measures such as identifying other sources of relief (e.g., loans and insurance policies), keeping funds from all relief sources separated, and carefully monitoring and applying funds to avoid overlapping use. If a provider uses its Fund distribution for certain expenses or lost revenue and later receives reimbursement for those same expenses or revenues, the provider will have to repay the amount it received from the Fund.

• Providers must submit reports as determined by the Secretary of HHS to ensure compliance with the Terms and Conditions.

Finally, if a provider entity receives more than $150,000 total in funds under the CARES Act, Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, or any other Act related to the coronavirus, the provider must submit a Pandemic Response Accountability Committee report no later than 10 days after the end of each calendar quarter. The report must contain:

1. The total amount of funds received from HHS under the above mentioned Acts;
2. The total amount of funds received that were expended or obligated for each project or activity;
3. A detailed list of all projects or activities for which large covered funds were expended or obligated, including: the name and description of the project or activity, and the estimated number of jobs created or retained by the project or activity, where applicable; and
4. Detailed information on any level of sub-contracts or subgrants awarded by the provider or its subcontractors or subgrantees.

This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis so please monitor new developments and guidance. Readers with legal questions about how these orders apply to your business and your employees should consult the authors Mark Opara (mopara@sb-kc.com), Bailie Schnackenberg (bailies@sb-kc.com) or Emily Crane at (ecrane@sb-kc.com) or your regular contact at Seigfreid Bingham at 816-421-4460.

For more updates and information, visit our COVID-19 Resources page.