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CMS Rolls Out Relief Payments to Healthcare Providers Under CARES Act Provider Relief Fund

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On April 10, 2020, the U.S. Department of Health & Human Services (HHS) began to roll out the \$30 billion in Provider Relief Fund (PRF) payments authorized as part of the \$100 billion in financial assistance to healthcare providers under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").

In its Announcement,^[1] HHS makes clear that the payments received under the PRF are *not loans to healthcare providers and will not need to be repaid*. Instead, payments made are an "immediate infusion" of funding to assist the healthcare industry in combating the COVID-19 pandemic and ensure that all Americans, including those uninsured and underinsured, can receive COVID-19 testing and treatment. It is also important to note that the PRF is different than the Centers for Medicare & Medicaid Services (CMS) Accelerated and Advanced Payment Program, which is a loan available to healthcare providers to assist with obtaining the necessary resources and supplies to combat COVID-19.

All facilities and providers that received Fee-For-Service (FFS) payments from Medicare in 2019 are eligible for the PRF payment, subject to the provider's acceptance of and attestation to the applicable Terms and Conditions. These Terms and Conditions include quarterly reporting requirements, a certification that the provider will not "balance bill" any patient for COVID-related treatment, and requirements that funds will be used for certain actions relating to COVID-19^[2]. An "eligible provider" is one that: (i) provided after January 31, 2020, and continues to provide diagnosis, testing, and treatment to individuals with or suspect of having COVID-19; (ii) is not currently excluded from participation in any federal healthcare program; and (iii) is not currently terminated from participation in Medicare nor has Medicare billing privileges revoked.

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The amount of a provider's share of the \$30 billion is calculated based upon the provider's percentage of the total Medicare FFS payments made in 2019, which were \$484 billion. For example, a provider that billed Medicare \$121 million in 2019 would receive \$7.5 million, calculated as follows:

$$\$121,000,000 \div \$484,000,000,000 (.00025) \times \$30,000,000,000 = \$7,500,000$$

Payments will be made in the same manner in which the provider typically receives FFS payments, either through provider's Automated Clearing House (ACH) account or by paper check. Within 30 days of receiving payment, the provider must execute the Attestation on the HHS portal, which has been reported to be operating as early as April 13, 2020. If a provider does not wish to comply with the Terms and Conditions, which include reference to various other statutory restrictions on use of funds, it must notify HHS within 30 days and return the funds. Failure to do so will be deemed an acceptance.

This allocation of \$30 billion still leaves \$70 billion remaining of the \$100 billion CARES Act appropriations. HHS has indicated it will quickly work on distribution models that target areas that have been hit harder by COVID-19, rural providers, providers of services that have lower shares of Medicare FFS reimbursement and/or those that predominantly serve the Medicaid population, and providers seeking reimbursement for care for the uninsured. Plans for the use of the \$70 billion may be more complex—unlike Medicare billings, there is no comprehensive data source of providers who bill Medicaid or who have provided services to the uninsured without payment.

Because of these challenges, and because the HHS announcements and the initial \$30 billion in payments have come very rapidly, there will likely be additional guidance and clarification issued by HHS. For more information on these payments and other provider relief, please contact the authors of this alert or any member of the Butzel Long Healthcare Industry Team. For more information and resources on all COVID-19 related legislation, programs, and orders from both federal and state authorities, see the Butzel Long Coronavirus Resource Center.

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[1] HHS' April 10, 2020 Press Release for the PRF is available at: <https://www.hhs.gov/about/news/2020/04/10/hhs-to-begin-immediate-delivery-of-initial-30-billion-of-cares-act-provider-relief-funding.html>.

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[2] In an April 7, 2020 press briefing, the CMS Administrator made some statements on the permitted use of funds that appear inconsistent with the Terms and Conditions released April 13. We will continue to monitor additional CMS guidance on use of funds, but at this point recipients would be safer to assume they will have to certify that funds are used only as related to COVID-19.