HHS's CARES Act Provider Relief Fund Payment Attestation Portal Is Open!

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On April 16, 2020, the Department of Health and Human Services (HHS) opened the Portal for attestation and acceptance of the funding as required by the CARES Act and the Provider Relief Fund (PRF) program.

On April 14, 2020, we issued a Client Alert discussing the PRF program and the limited information surrounding the eligibility and attestation requirements. In a provider's acceptance of the funds and the applicable Terms & Conditions, the 4-step inquiry in the Portal simply asks for the following:

- Step 1 Eligibility: Asks if the individual or entity completing the Attestation is a "billing entity that received Medicare fee-for-service (FFS) payments from the Centers of Medicare and Medicaid Services (CMS) in 2019?"
- Step 2 Billing TIN(s): Requests the Taxpayer Identification Number (TIN) for the billing entity (either Employer Identification Number or an individual provider's Social Security Number)
- Step 3 Verify Payment Information: Requests verification of the account to which the PRF payment was made, as well as the exact amount of that payment, for each TIN reported in Step 2.
- Step 4 Attestations: Requires the provider to acknowledge and accept the Terms & Conditions for the payment, which HHS notes is "not an exhaustive list" and states that compliance with "other relevant statutes and regulations, as applicable" is ***material*** to the Secretary's disbursement of funds.

While the steps for attestation appear to be straightforward, providers should make sure that they have read and fully understand the Terms and Conditions as well as any other laws and regulations that govern recipients of federal grants, which

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include reporting obligations, cost considerations, and accounting principles for expenditures, which can be quite cumbersome. Attestation is supposed to be completed within 30 days of the receipt of funds. Providers who do not wish to accept the Terms and Conditions must contact HHS within 30 days of receipt of payment and then remit the full payment to HHS as instructed. Providers who fail to do so will be deemed to have accepted all Terms and Conditions.

Furthermore, there are ongoing quarterly reporting requirements. The exact form of these reports has not been determined, but based upon the Terms & Conditions' references to regulations governing federal grants generally, it is likely that the standard Federal Financial Report for Grants (Form SF-425) will be utilized, which is available at www.grants.gov.

Bottom line: What strings are attached to "no strings attached" money? Providers do not know yet—the script has not been written. HHS has not provided further guidance on what expenses qualify for PRF payment. Nor has HHS offered much guidance on what level or type of "care" is sufficient to render a Medicare provider "eligible" for the funds. The ambiguity that exists between the "eligibility" criteria and the "utilization" criteria is confusing. Providers are cautioned to take a conservative approach to determine their eligibility before accepting the funds in light of HHS's insertion of materiality language in the Attestation. Ensuring that providers are truly "eligible" providers and the funds are used for proper purposes is critical to avoid problems in the future, such as repayment offset and/or False Claims Act liability.

Because these HHS announcements and payments have come very rapidly, there will likely be additional guidance and clarification issued by HHS. For more information on the PRF program and other provider relief, please contact the authors of this alert or any member of the Butzel Long Healthcare Industry Team. For more information 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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