HHS Pays Out $30 Billion of Relief Funds Based on Medicare Revenue, Indicates Future Distributions will be Based on Medicaid and Other Factors

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Health care providers began receiving direct deposits into their bank accounts on April 10, 2020 as part of the first disbursement of the $100 billion in provider relief funds allocated under the CARES Act. Providers are eligible to receive payments if they received Medicare fee-for-service payment (FFS) in 2019. The Lathrop GPM Health Law Team held a webinar on CARES Act developments, including distribution of the $30 billion on Friday April 10. A recording of the webinar is available here. The U. S. Department of Health and Human Services (HHS) is in the process of paying out $30 billion to providers.

The Practicalities

The funds at issue come from the Public Health and Social Services Emergency Fund, which received an infusion of $100 billion under the CARES Act. The $30 billion in payments that began on Friday are being made by UnitedHealth Group (United) through Optum Bank. Distributions will have "HHSPAYMENT" as the payment description. Payments are proportional based on the amount of FFS Medicare billing by providers in 2019 relative to the other providers that billed FFS Medicare. Since FFS Medicare payments during 2019 were approximately $484 billion in 2019, providers should expect to see an amount close to 6.2% of their total Medicare FFS billings in 2019 as their share of these payments. Medicare Advantage revenue is not part of the calculation.

Distributions will be paid based on the taxpayer identification numbers of organizations that submitted claims to Medicare. This means, for example, that employed physicians will see payments go to their employer since it is the billing organization. Large organizations will receive payments for each of their billing taxpayer identification numbers that bill Medicare. Providers that normally receive paper checks will receive checks in the next few weeks.

The Good News

The $30 billion in payments are not loans and do not need to be repaid. This stands in contrast to certain other programs being used to address the financial challenges providers face in responding to the COVID-19 pandemic, such as the Advance Payment Program, which is essentially a loan against future

Medicare payments. The payments are intended to be used by providers in addressing the many financial, patient care and other challenges they face in coping with the unprecedented demands placed on the U.S. health care system by the pandemic.

The Strings

There are some strings attached to the funds, however. In order to keep the funds, within 30 days, providers must accept a set of terms and conditions issued by the Department of Health and Human Services (HHS). If a provider does not want to agree to the terms and conditions, the provider must return the payment to HHS within 30 days. The terms and conditions are 10 pages. The process for providers to agree to the terms and conditions will apparently be rolled out this week, with HHS launching an online portal to be used by providers.

Some of the relevant provisions in HHS' terms and conditions include:

1. Providers cannot collect out-of-pocket cost sharing from a patient in amounts that exceed what the patient would have paid if care had been provided by a provider that was in the patient's network. This commitment reflects an effort to target "surprise billing," the idea being that patients may not be able to obtain care from in-network providers as a result of the crisis. So providers will essentially need to treat patients as in-network for treatment related to COVID-19.
2. Providers must currently be providing care for, diagnosing or testing individuals with possible or actual cases of COVID-19.
3. The funds must be used for preparing for or responding to the coronavirus or for expenses or lost revenues attributable to the coronavirus.
4. The funds must not be used to reimburse expenses or losses that have already been reimbursed or are required to be reimbursed.
5. Providers will have reporting obligations in relation to use of the funds.

There are other commitments as well, including that a number of specific statutory restrictions from the Fiscal Year 2020 Consolidated Appropriation. All of the restrictions are set forth in HHS terms and conditions.

Priorities for Future Payments

HHS has indicated that the remaining balance of the $100 billion in relief funds will be directed to areas hit particularly hard by the pandemic, providers that serve a greater proportion of Medicaid patients, providers seeking relief for treating uninsured patients and providers in rural areas. This is consistent with statements made by CMS Administrator Seema Verma at a White House press conference on April 7, where Administrator Verma noted that "pediatricians, children's hospitals, OB-GYNs, even our nursing homes" would receive priority in the second tranche of payments. The methodology and timing of future distributions

is not yet clear.

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If you have questions about the Public Health and Social Services Emergency Fund please contact Jesse Berg, Tony Fricano, Health & Nonprofit Organizations Practice Group Chair Jennifer Reedstrom Bishop, or your regular Lathrop GPM contact.