Alert

April 14, 2020

COZEN O'CONNOR

CMS Releases Details on $30 Billion Payment to Hospitals and other Health Care Providers

On Friday, April 10 the Centers for Medicare & Medicaid Services released details on the disbursement of $30 billion from the $100 billion health care provider relief fund in the CARES Act (the Public Health and Social Services Emergency Fund) slated for hospitals and other health care providers. This first tranche of funding was distributed to health care facilities and providers that received Medicare fee-for-service (FFS) reimbursements in 2019 (providers). Providers received a portion of the initial $30 billion based on their share of total Medicare FFS reimbursements in 2019.

When CMS Administrator Verma announced this first round of funding, she described it as "no strings attached" and that providers would be free to use the funds as they saw fit. There are a number of terms and conditions, however, of which providers should be aware. Within 30 days of receiving payment providers must sign an attestation confirming receipt of the funds and agreeing to the terms and conditions of payment. If a provider receives payment and does not wish to comply with the CMS terms and conditions, it must contact the U.S. Department of Health and Human Services (HHS) within 30 days of receiving the payments and remit the payment back to HHS.

The terms and conditions to which the providers must agree in order to receive their share of the $30 billion payment (payment) are the following:

The provider must certify that it billed Medicare in 2019; currently provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19; is not currently terminated from participation in Medicare; is not currently excluded from participation in Medicare, Medicaid, and other federal health care programs; and does not currently have its Medicare billing privileges revoked.

The provider must certify that the payment will only be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the provider only for health care related expenses or lost revenues that are attributable to coronavirus.

The provider must certify that it will not use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.

The provider shall submit reports as the Secretary of HHS (Secretary) determines are needed to ensure compliance with conditions that are imposed on this payment, and such reports shall be in such form, with such content, as specified by the Secretary in future program instructions directed to all provider recipients.

Not later than 10 days after the end of each calendar quarter, any provider that receives more than $150,000 total in funds under the CARES Act, the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, or any other Act primarily making appropriations for the coronavirus response and related activities, shall submit a report to the Secretary and the Pandemic Response Accountability Committee. This report shall contain: the total amount of funds received from HHS under one of the foregoing enumerated Acts; the amount of funds received that were expended or obligated for each project or activity; 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 detailed information on any level of sub-contracts or subgrants awarded by the covered provider or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 allowing aggregate reporting on awards below

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$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

The provider shall maintain appropriate records and cost documentation to substantiate the reimbursement of costs under this award. The provider shall promptly submit copies of such records and cost documentation upon the request of the Secretary, and the provider agrees to fully cooperate in all audits the Secretary, Inspector General, or Pandemic Response Accountability Committee conducts to ensure compliance with these terms and conditions.

The provider must certify that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider.

Along with these conditions, providers must follow a number of listed statutory provisions. For example, providers receiving the payment are prohibited from using any of the appropriated funds for items such as excessive executive pay, gun control advocacy, abortion services, embryo research, promotion of legalization of controlled substances, funding the Association of Community Organizations for Reform Now (ACORN), needle exchange programs, and other enumerated restrictions.