HHS Updates Provider Relief Fund General Distribution FAQs – Extends Attestation Deadline to 45 Days

The U.S. Department of Health and Human Services (HHS) has updated its Frequently Asked Questions (FAQs) regarding the $50 billion general allocation from the Provider Relief Fund and has extended the deadline for health care providers to attest to receipt of payments and acceptance of the Terms and Conditions.

Updated FAQs

On May 6, 2020, HHS revised its FAQs and clarified the following issues:

- **Balance Billing** – Although implicitly suggested in prior guidance, HHS emphatically reiterated that the Terms and Conditions do not require a provider to attest to a ban on balance billing for all patients and/or all care. The prohibition on balance billing only applies to care for presumptive or actual cases of COVID-19.
- **Presumptive Case** – A presumptive case of COVID-19 is a case where a patient's medical record documentation supports a diagnosis of COVID-19, even if the patient does not have a positive in vitro diagnostic test result in his or her medical record.
- **Recoupment** – If a provider believes it was overpaid or received a payment in error, HHS is now instructing the provider to reject the entire payment and submit the appropriate documentation through the General Distribution Portal to facilitate HHS' determination of the correct payment. However, the FAQs also provide that HHS does not intend to recoup funds as long as a provider's lost revenue and increased expenses exceed the amount of provider relief funding a provider has received. In other words, "if a provider does not have or anticipate having COVID-related lost revenues or increased expenses equal to or greater than the relief payments received, the provider should return the funds."
- **Returns** – A provider may return its general distribution payment by going into the CARES Act Provider Relief Fund Attestation Portal within 45 days (more on that below) and indicating they are rejecting the funds. As explained in the attestation portal, to return the money, the provider would need to contact its financial institution and ask the institution to refuse the received Automated Clearinghouse (ACH) credit.
- **Determining In-Network Rates** – HHS addressed the concern that it will be difficult for an out-of-network provider to determine appropriate in-network rates for purposes of billing a presumptive or actual COVID-19 patient for cost-sharing at the appropriate in-network rate. HHS advised that such a provider should submit a claim to the patient's insurer for its services, given that most insurers have publicly stated their commitment to reimbursing out-of-network providers at in-network rates for COVID-19 patients. However, if the insurer is not willing to do so, the provider may seek to collect from the patient out-of-pocket expenses (including deductibles, copayments, or balance billing) in an amount that is no greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider.

Extended Deadline

On May 7, 2020, HHS announced that recipients of payments from the Provider Relief Fund **will now have 45 days**, (increased from 30 days) from the date they receive a payment to attest to and accept the Terms and Conditions or return their funding.

This deadline extension includes recipients of payments from the general $50 billion allocation. For instance, a provider who received funding on April 10, 2020, from the initial $30 billion tranche now has until May 24, 2020, (rather than May 9, 2020) to accept the Terms and Conditions or return the funding.

Consistent with prior guidance, HHS also indicated that not returning the funding within 45 days of receipt of payment will be viewed as acceptance of the Terms and Conditions.

While this is no doubt a welcome relief to some providers, many others have already accepted the Terms and Conditions tied to the initial $30 billion wave as doing so is considered a prerequisite by HHS to applying for a portion of the second $20 billion wave.

Next Steps

While HHS is providing meaningful guidance with respect to the Provider Relief Fund, key issues still remain—including whether the funding is taxable and what specific expenses might be viewed as appropriate uses of the funding. As we have stated previously, the best practical advice at the moment for any provider intending to use Relief Fund payments, or any other relief program mechanism, is to document in detail how coronavirus-related expenses are being reimbursed, document prior and ongoing drops in patient volume, and exercise common sense in determining whether the use of funds is appropriate.

Additionally, because providers now have 45 days after the receipt of funds to determine whether they will retain or return the money, to the extent they have not already attested to the Terms and Conditions, it would be wise to hold the funding (if possible) and not provide any certifications in the hope that HHS may yet provide further guidance.

If you have any questions, please contact Jed Roebuck, Mark Cunningham, or your relationship attorney.

Visit our COVID-19 Insight Center for our latest legislative and legal updates, articles, and resources, including our prior posts regarding the Provider Relief Fund.

- Available Now: HHS Frequently Asked Questions Regarding General Distribution Portal
- Open Now: HHS General Distribution Portal
- Delivery of Next Wave of HHS Provider Relief Authorized
- Health Care Providers: What Can I Do With the Money I Just Received from HHS?
- CARES Act Provider Relief Fund

Our Chambliss team continues to monitor health care developments and other legal impacts of the COVID-19 pandemic. Please contact Jed Roebuck, Mark Cunningham, or your relationship attorney if you have questions or need additional information.

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