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Public Health and Social Services Emergency Fund Payments

Many healthcare providers received an unanticipated cash infusion on or around April 10, 2020 ("Emergency Fund Payment"). Accompanying the payments was a list of terms and conditions attached to the funds. The U.S. Department of Health and Human Services (HHS) has stated that forms and additional information will be forthcoming; but in the meantime, the only available guidance is a letter to providers and the list of terms and conditions.

Providers must, within thirty (30) days of receipt of the funds, either accept the terms and conditions or return the payment to HHS. Providers who have or will receive funding from other programs (e.g. Advance Payment Program or Payroll Protection Program) should consider how such other program funding will coordinate with the Emergency Fund Payment—considering whether they will be able to certify as to the use of the funds as described below.

In short, until additional information is available, providers should be judicious in any use of these funds and maintain careful documentation of any such use.

The conditions applied to these funds relate to the following:

- **Provider eligibility**
  - Billed Medicare in 2019
  - Provides diagnosis, testing, or care for possible or actual COVID-19 cases
  - Not terminated or excluded from Medicare and Medicare billing privileges not revoked
- **Purpose for which the funds are used**
  - To prevent, prepare for, and respond to COVID-19

- **Limitations on the expenses or revenues for which reimbursement is available**
  - Payment shall reimburse Provider only for health care related expenses or lost revenues that are attributable to COVID-19
- **A dollar limit on the amount of salary ("executive level payment") that can be reimbursed**
- **No double-dipping with other COVID-19 program funds**
  - Provider will not use the funds to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse
- **Prohibition on billing out-of-network rates or balance billing**
- **Reporting requirements**
  - Form and content of reporting requirements to be specified by the Secretary of HHS
  - Providers that receive more than $150,000 in total funds from any Act making appropriations for COVID-19 response and related activities ("Acts") must make quarterly reports to the Secretary and the Pandemic Response Accountability Committee, to include:
    - total amount of funds received from HHS under one of the Acts;
    - the amount of funds received that were expended or obligated for reach 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 recipient 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 $50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

This blog post was drafted by Laura Bond, an attorney in the Spencer Fane LLP Overland Park, KS office. For more information, visit www.spencerfane.com.