

HHS Provider Payments Update

By Christina M. Kuta

As detailed in our April 29, 2020 Alert “HHS Provider Payments: Lack of Clarity Means Risk of Retention,” many health care providers received payments pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act, with additional payments available by application as of April 24, 2020. Since that time, the Department of Health and Human Services (HHS) has issued additional requirements and guidance regarding the CARES Act payments.

1. Change in Attestation Deadline. CARES Act recipients will now have 45 days from the date they received payment to make the required attestations in order to retain payment. Otherwise, they must reject payment by that deadline. The previous timeline was 30 days. If an attestation is not made within 45 days, a recipient is deemed to have accepted the terms and conditions associated with retaining payment by default.
2. Patient Billing. HHS clarified its prior condition that providers may not bill out-of-network “actual or presumptive” COVID-19 patients directly for amounts greater than if they were in-network patients. A “presumptive” COVID-19 patient is defined as one whose “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.” HHS confirmed that providers are not so restricted with respect to billing insurers.
3. Payment Recoupment. As discussed in our prior Client Alert, the terms and conditions associated with retaining the CARES Act payments provided no concrete examples of the types of losses that would qualify a recipient to retain the CARES Act funds. In an updated FAQ, HHS provides:

Does HHS intend to recoup any payments made to providers not tied to specific claims for reimbursement, such as the General Distribution payments? (Added 5/6/2020)

The Provider Relief Fund and the Terms and Conditions require that recipients be able to demonstrate that lost revenues and increased expenses attributable to COVID-19, excluding expenses and losses that have been reimbursed from other sources or that other sources are obligated to reimburse, exceed total payments from the Relief Fund. Generally, *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*. HHS reserves the right to audit Relief Fund recipients in the future to ensure that this requirement is met and collect any Relief Fund amounts that were made in error or exceed lost revenue or increased expenses due to COVID-19. Failure to comply with other Terms and Conditions may also be grounds for recoupment. (emphasis added)

Although this FAQ update stops short of providing specific examples or categories of lost income, it suggests that demonstrating revenue loss related to COVID-19 in excess of the received CARES Act payment may justify retention of such payment. Providers should consult with their advisors before relying on the FAQ as a basis for retaining payments. Additionally, HHS is expected to provide additional guidance on the manner of reporting expenses and losses associated with CARES Act payments. This guidance should be available in advance of the June 30, 2020 reporting deadline for recipients receiving payments of at least \$150,000.

4. Returning Payments. HHS has indicated that providers who wish to return payments have two options, depending on the original form of payment:
- Electronic payments may be returned by initiating an ACH return with the bank where the funds were deposited. The specific return code is “R23 -Credit Entry Refused by Receiver.”
 - Payments made by paper check shall be destroyed by the provider prior to deposit. If deposited, a check should be paid and sent to UnitedHealth Group.

For either return option, the provider must initiate the return via the Attestation portal.

We will continue to provide additional updates and guidance as it becomes available. Please reach out to Roetzel’s health care team for continued assistance navigating your practice through the COVID-19 pandemic.

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