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HHS Updates Guidance on Provider Relief Payments

On Friday April 10, 2020, the US Department of Health & Human Services (HHS) began distributing $30 billion in grants to healthcare providers as part of the $100 billion in relief included in the CARES Act. As discussed in our previous post, Best Practices Related to Public Health and Social Services Emergency Fund Payments, the Relief Fund payments, while welcome, come with a series of Terms and Conditions requiring provider attestation that are vague and raise a series of questions that will necessitate additional guidance from HHS. Specifically, the Terms and Conditions create many questions about, for example, whether providers who are not actively treating COVID-19 patients may keep the Relief Fund payments, and, if they can, on what those Relief Fund payments may be spent. But when interpreting these Terms and Conditions, we keep in mind that HHS indicated on its website that it will interpret broadly what patients are "possible cases of COVID-19."

Terms and Conditions updated by HHS

On April 7, the Centers for Medicare & Medicaid Services Administrator, Seema Verma, when addressing the Relief Fund payments, said "There are no strings attached, so the healthcare providers that are receiving these dollars can essentially spend that in any way that they see fit." Yet the Term and Conditions attached to the Relief Fund payments, on their face, lack that flexibility. Instead they state, among other things, that the recipient must certify it *currently* provides diagnoses, testing or care for individuals with possible or actual cases of COVID-19; that the payment will only be used to prevent, prepare for and respond to coronavirus; and shall reimburse the recipient only for health care–related expenses or lost revenues attributable to coronavirus. The Terms and Conditions do not define, for example, who is a "possible" case of COVID-19.

Yet HHS says it will interpret at least some aspects of the Terms and Conditions broadly. Specifically, this week HHS updated the Terms and Conditions to remove the "currently" language. Instead, the Terms and Conditions now allow providers who deliver or delivered after January 31, 2020, diagnoses, testing or care for individuals with possible or actual cases of COVID-19 to accept these funds. Additionally, on its website, specifically the Provider Relief page, HHS explains that, in order to be eligible for the funds: **"Care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19."**

The Attestation Portal now open

As discussed in our previous post, all providers will be required to sign an attestation confirming receipt of the funds and agreeing to the Terms and Conditions of payment. **Importantly, on its Provider Relief page, HHS recently clarified that not returning the funds within 30 days will be viewed as acceptance of the Terms and Conditions.** Today, April 16, 2020, HHS opened the Attestation Portal. If a provider chooses to return the funds, if must follow the steps on the Attestation Portal.

We anticipate further guidance regarding the use of these funds and Husch Blackwell will be tracking this issue closely for our clients.

Comprehensive CARES Act and COVID-19 guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.