Republic Healthcare

Analysis of HHS Rules for $30 Billion disbursed for Medicare Fee For Service Providers as a Result of the CARES Act and the Coronavirus

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All Medicare Providers who billed Medicare Fee For Service in 2019 received an automatic payment to assist in the testing, treatment or preparation of the Coronavirus. Each Provider/Organization receiving funds must attest to the following conditions within 30 days. If they don't attest within 30 days and don't return the money, the Provider/Organization will have been deemed to have attested to the Terms and Conditions. If any of the Terms and Conditions are violated the Office of Inspector General and the Department of HHS will be auditing the allocation of funds and can require the complete recoupment of all funds paid to the Provider/Organization.

The distribution received is specifically conditioned on the following:
(The bolded terms are of particular significance and need careful consideration and planning).

General Distribution Terms and Conditions

- The "Payment" means the funds received from the Public Health and Social Services Emergency Fund ("Relief Fund"). The Recipient means the healthcare provider, whether an individual or an entity, receiving the Payment.
- The Recipient certifies that it billed Medicare in 2019; provides or provided after January 31, 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19; is not currently terminated from participation in Medicare or precluded from receiving payment through Medicare Advantage or Part D; is not currently excluded from participation in Medicare, Medicaid, and other Federal health care programs; and does not currently have Medicare billing privileges revoked.
- **The Recipient certifies that the Payment will only be used to prevent, prepare for, and respond to coronavirus, and that the Payment shall reimburse the Recipient only for health care related expenses or lost revenues that are attributable to coronavirus.**
- **The Recipient certifies 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 Recipient shall submit reports as the 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 Recipients.**
- The Recipient certifies that all information it provides as part of its application for the Payment, as well as all information and reports relating to the Payment that it provides in the future at the request of the Secretary or Inspector General, are true, accurate and complete, to the best of its knowledge. **The Recipient acknowledges that any**

deliberate omission, misrepresentation, or falsification of any information contained in this Payment application or future reports may be punishable by criminal, civil, or administrative penalties, including but not limited to revocation of Medicare billing privileges, exclusion from federal health care programs, and/or the imposition of fines, civil damages, and/or imprisonment.

- **Not later than 10 days after the end of each calendar quarter, any Recipient that is an entity receiving more than $150,000 total in funds under the Coronavirus Aid, Relief, and Economics Security Act (P.L. 116-136), the Coronavirus Preparedness and Response Supplemental Appropriations Act (P.L. 116-123), the Families First Coronavirus Response Act (P.L. 116-127), or any other Act primarily making appropriations for the coronavirus response and related activities, shall submit to the Secretary and the Pandemic Response Accountability Committee a report. 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 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.
- **The Recipient shall maintain appropriate records and cost documentation including, as applicable, documentation described in 45 CFR § 75.302 – Financial management and 45 CFR § 75.361 through 75.365 – Record Retention and Access, and other information required by future program instructions to substantiate the reimbursement of costs under this award.** The Recipient shall promptly submit copies of such records and cost documentation upon the request of the Secretary, and Recipient 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.

For HHS Guidance:
https://www.hhs.gov/sites/default/files/terms-and-conditions-provider-relief-30-b.pdf

What does this mean for you, the Provider/Organization?

It is important to note, that if you keep the money you are agreeing to the above terms and conditions, period. Interestingly, the monies were tied originally to attesting that the Provider/Organization "diagnose, treat or test patients for COVID-19." HHS has clarified this language, stating that **every patient is a possible case of COVID-19**. It also provide guidance identifying "If you ceased operations as a result of the COVID-19 pandemic, you are still eligible to receive funds so long as you provided diagnoses, testing or care for individuals with possible or actual cases of COVID-19. Care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19". Additionally, the attestation states that they did this after January 31, 2020. From the reading of the HHS guidance, basically you meet the "diagnose, treat or test patients for COVID-19" as long as you saw **ANY** patient after January 31, 2020 for **ANY** reason because those patients would be deemed possible COVID-19 patients.

NOW THAT WE KNOW MOST PROVIDERS/ORGANIZATIONS QUALIFY TO RECEIVE THE MONIES, LET'S LOOK TO THE SPECIFIC TERMS AND BREAK THEM DOWN.

- **The Recipient certifies that the Payment will only be used to prevent, prepare for, and respond to coronavirus, and that the Payment shall reimburse the Recipient only for health care related expenses or lost revenues that are attributable to coronavirus.**

This clause requires a condition on how you spend the money, not whether you are qualified to receive it. Three important words; **prevent, prepare for, and respond**. The Payment shall reimburse you for healthcare related expenses or lost revenues that are attributable to coronavirus based on these three categories of allowable uses.

WHAT WOULD BE EXAMPLES OF PREVENT, PREPARE FOR, AND RESPOND?

While there exists no guidance as of yet from the HHS on specific examples, we will attempt to extrapolate what types of activities would qualify in our opinion which is subject to further guidance from HHS.

- o Buying and Stocking Sufficient PPE for a Second Wave;
- o Specialized Sanitizing and Protection Services and products to protect the integrity of the medical facility;
- o Additional training for staff related to COVID-19 including PPE training, infectious disease training and proper workplace policies and procedures
- o Software or Programs that assist in employee screening, planning and workplace safety for COVID-19 potential positive employee cases and contact tracing related to such potential COVID-19 positive employees and staff;
- o Telemedicine systems and expenses not directly related to a billable event for the safe screening, diagnosis and treatment of potential COVID-19 patients or high risk patients that could not be seen in office as a result of COVID-19;

These are just a few examples of what may be considered under the prevent, prepare for and respond categories and not all inclusive nor definitive without specific HHS guidance. The second part of the sentence: **"…and that the Payment shall reimburse the Recipient only for health care related expenses or lost revenues that are attributable to coronavirus."** is a conjunction meaning you must satisfy the prevent, prepare for and respond before you can begin to analyze what can fall into those categories. Basically, lost revenues or related expenses in any of three categories will qualify as long as it is attributable in some way to coronavirus. It is likely that the "attributable to coronavirus" will be construed liberally given HHS' previous guidance.

- **The Recipient certifies 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.**

This is a tricky one. Many Providers/Organizations have taken advantage of the Paycheck Protection Program (PPP) loan program and/or EIDL Program. You must consider those programs in the context of this specific term and condition. Additionally, if you were paid by Medicare or another payment source for your services, you cannot point to those expenses for work that you were or will be paid for pursuant to your contracts with others.

As an example, if you took the PPP and recovered lost payroll which was forgiven, the condition could limit you to not applying lost revenues as a result of having to pay for employees when you have benefited from the PPP program. It's really important to be able to identify and plan for what resources are allocated to each activity and possible CARES Act resource.

The next few terms and conditions require the Provider/Organization to report how the funds were used for the prevent, prepare for, and respond. If you received more than $150,000 from all of the applicable CARES Act monies, you must report on a quarterly basis. It is important to total up all aid received from the CARES Act monies, not just the amount you received from HHS. This would include the PPP Program. **The terms and conditions provide some pretty significant penalties for not correctly reporting how the monies were used including revocation of Medicare billing rights, exclusion from Federal Healthcare Programs, recoupment of the monies and imprisonment.**

- **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 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.**

What do we need to report as a Provider/Organization?

Basically, the terms and conditions require you to provide an ongoing accounting of how you are spending the monies with a granular level of detail as prescribed by HHS. It appears they expect these funds to be spent/obligated for projects and activities that will address the prevent, prepare for and respond categories. You will need to detail the project or activity, who is performing the project and the monies spent or obligated in furtherance of the project or activity. Remember, none of these projects or activities can be the subject of any other CARES Act monies to qualify under these terms and conditions.

This document was written as opinion based on interpretation of the Cares Act, and is not to be considered as legal or tax advice. Please consult your company's CPA firm and legal team for specific guidance for your facility.

How can we help?

At Republic Healthcare, we provide solutions that meet the critical prevent, prepare for and respond categories that will assist your practice or organization in providing a safe environment for your staff and patients, turn key solutions to address your readiness for a future outbreak and policies and procedures that will give you a specific plan to implement while navigating the COVID-19 crisis.

To find out more, please visit us at **www.republic.healthcare/reopen** or call for a free consultation at 404.822.6481 to speak with us today. Remember, there are only sixty days left before the end of the second quarter. Do you have your plan in place?