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New York City COVID Resource Center

Principles for Fulfilling Compliance Requirements for Federal CARES Act Provider Relief Funds

Providers receiving federal funding through the CARES Act to support their COVID-19 response will need to ensure compliance with a variety of attestation requirements in order to minimize exposure to government audits and False Claims Act investigations. This document, while not all encompassing, is designed to provide high-level principles for navigating compliance issues to inform planning efforts for compliance officers and general counsels at provider organizations. This document focuses on the CARES Act Provider Relief Fund, but the compliance and documentation best practices described herein can be applied to other funds that hospitals receive.

Overview of Relevant Provider Relief Fund Allocations

- **General Distribution Fund** ($50B)
  - $30B to Medicare providers based on their share of total 2019 Medicare FFS expenditures; distributed on April 10 and April 17
  - $20B to Medicare providers based on 2018 net patient revenue from all payers; distributed on a rolling basis beginning April 24
- **High Impact Provider Relief Fund** ($12B)
  - Allocated to hospitals based on (1) total number of COVID-19 admissions through April 10 and (2) the hospital's Medicare and Medicaid disproportionate share and uncompensated care payments; distributed around May 1
- **HRSA Uninsured Relief Program**
  - Unspecified amount based on claims submitted to HHS by providers for testing or treating uninsured COVID-19 patients on or after February 4 (reimbursed at Medicare rates)
  - Providers could begin submitting claims on May 6; the first payments are expected on May 18

Review and Analyze Attestations and Terms & Conditions

- Carefully review the terms and conditions for each allocation of the Provider Relief Fund to determine how you can apply for, retain, and use these funds.
  - **Evaluate the eligibility requirements of each portion of the Provider Relief Fund** to ensure that you satisfy the criteria to retain the funds.
  - **Evaluate the restrictions on use of funds** to ensure that your use will comply with statutory requirements as well as administrative guidelines and interpretations from HHS, and you can properly document and account for such use.
  - **Ensure that the Provider Relief Fund is not used to cover expenses reimbursable by other available funding sources.**

- **General Distribution Fund:** Review the attestation guidance, and submit requested revenue information for verification by HHS.
  - Estimate lost revenue by comparing actual revenue during March and April 2020 to prior years or by comparing actual revenue to a budget prepared prior to the crisis.

- If you believe that you have received an overpayment based on actual or anticipated lost revenue and expenses, return the funds and submit appropriate revenue documents. Providers may reject funds by going into the attestation portal within 45 days of receiving payment.

➢ **High Impact Provider Relief Fund:** Review attestation and accept Terms & Conditions within 45 days of receipt or return the funds.

➢ **HRSA Uninsured Relief Program:** Develop and document an approach that providers will use to submit claims only for patients that the provider has checked for healthcare coverage eligibility and confirmed "to the best of their knowledge" were "uninsured" (according to the definition used in the terms & conditions) at the time of services and no other payer will reimburse for COVID-19 testing and/or care.

Monitor Updates on Funding Use & Reporting Requirements

- **Monitor HHS and other relevant government websites** on a regular basis to track updates on reporting requirements.[1]
- **Cross-reference the terms and conditions for each program with subsequent HHS guidance for consistency**. Retain screen shots of relevant HHS website announcements used to guide your use of funds for general audit and reporting purposes.

Account for Use of Funds

- **Consider depositing federal funds in segregated accounts** to track use of funds. Consider limiting access to the account and a two-signature requirement to maintain control over federal funds.
- **Document that each expenditure of these segregated funds complies with the terms and conditions**. Ensure that documentation is clear and 'audit ready.'
- **Review amount received against actual and anticipated lost revenue and expenses**.

Track & Document COVID-related Activity

- **Diligently track and document COVID-19 related incremental expenses, including:**
  - New services (e.g., drive-thru testing)
  - Overtime, agency, and locums tenens staffing
  - Unexpected city morgue related costs
- **Track ongoing revenue loss** to justify use of federal funds to fill gaps in revenue.

[1] As of May 8th, all of the Terms and Conditions for the two tranches of the General Distribution Fund, the High Impact Relief Fund, the FFCRA Relief Fund, and the Uninsured Relief Fund indicate that providers will need to submit information on:

- The amount of funds received that were expended or obligated;
- A detailed list of all projects or activities for which the funds were expended or obligated;
- The estimated number of jobs created or retained related to the funding if applicable; and
- Detailed information on any level of subcontracts or subgrants related to the funding.

Additional guidance will be posted on the CARES Act Provider Relief Fund website with details on reporting. Recipients also may receive correspondence directly from HHS with further guidance.

- Track lost revenue from closed services and note patient volumes for all sites and services, including hospital inpatient/outpatient services, physician practices, and ambulatory centers.

❖ **Develop a budget for ongoing expenses to project how funds will be used over time.** This can help providers determine when/whether to make claims through other sources (e.g., FEMA).

❖ **Maintain internal documentation regarding the treatment of confirmed COVID-19 patients and 'presumptive' COVID-19 patients** who have one or more of the CDC-recognized symptoms of COVID-19. Document billing codes, medical records and reports of COVID-related testing.

❖ **Ensure that COVID-related claims are appropriately documented** with COVID-specific billing codes and modifiers. Provide guidance to frontline staff and payers on billing to ensure appropriate reimbursement for services, and tracking of COVID-specific expenses.

Confirm Billing Practices Comply with Terms & Conditions

❖ **General Distribution and High Impact Provider Relief Funds:** Establish processes to confirm that out-of-network COVID-19 patients[2,3] are not improperly charged for deductibles, copayments, or balance billing relative to what they would have been billed for in-network services.

- Attempt to bill the patient's insurer or at least seek information about the patient's in-network rate, deductible and co-pay first. If neither approach works, then document the methodology used to set the proper rate for out-of-network patients.

❖ **HRSA Uninsured Relief Fund:** Establish processes to ensure that provider will not engage in 'balance billing' or charge any type of cost sharing for any items or services provided to 'uninsured' (according to the definition in the terms & conditions) individuals receiving care or treatment for a positive diagnosis of COVID-19. Document that provider treats HRSA reimbursement as payment in full.

Additional Resources

❖ CARES Act Provider Relief Fund
❖ HRSA Uninsured Relief Fund
❖ General Relief Fund FAQs
❖ HRSA FAQs
  - FAQ #1
  - FAQ #2
❖ NYC Federal Funding Checklist for Hospitals

[2] Recipients of Provider Relief Funds may not issue surprise bills to out-of-network care for "presumptive or actual" COVID-19 patients. HHS FAQs define a "presumptive patient" as 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.
[3] HHS FAQs (page 4) note that "Most health insurers have publicly stated their commitment to reimbursing out-of-network providers that treat health plan members for COVID-19-related care at the insurer's prevailing in-network rate."

Questions or comments? Send them to the NYC COVID-19 Resource Center at COVIDProviderSupport@cityhall.nyc.gov