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Client Alert: Strings Attached - CARES Act Health Care Provider Relief Fund Payments Are Not Free Money

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UPDATE: On May 7, 2020, the United States Department of Health & Human Services ("HHS") announced that it extended the deadline for providers to attest to receipt of payments from the provider relief fund and accept the Terms and Conditions. Providers now have 45 days, increased from the original 30-day deadline, to either accept the relief funds and accompanying Terms and Conditions or to return the funds. Failure to return the funds within 45 days will be deemed an acceptance of the Terms and Conditions.

On April 10, 2020, as part of the national response to the COVID-19 public health crisis, the Department of Health and Human Services ("HHS") commenced delivery of an initial $30 billion in Coronavirus Aid, Relief, and Economic Security ("CARES") Act provider relief funds to eligible health care providers. HHS will distribute the initial relief funds to providers in the manner in which they typically receive Medicare payments, either electronically to the provider's account or by paper check. Many providers report that they have already received relief fund payments. These payments are not loans and do not need to be repaid. However, there are still a number of eligibility requirements and relief fund "Terms and Conditions" that providers must consent to prior to accepting the payments. Providers have 45 days to either 1) review and consent to the Terms and Conditions and accept the payment, or 2) notify HHS that they do not accept the Terms and Conditions and return the payment. Failure to do so will be deemed an acceptance of the payment and accompanying Terms and Conditions. HHS now opened an Attestation Portal for providers to access and accept the Terms and Conditions. Additionally, if a provider chooses to return the funds, it must follow the steps set forth in the Attestation Portal.

To be eligible to receive CARES Act provider relief fund payments, providers must certify that: 1) they billed Medicare in 2019; 2) they provide or provided diagnoses, testing, or care for patients with possible or actual cases of COVID-19 after January 31, 2020; 3) they are not currently terminated from Medicare; 4) their Medicare billing privileges are not currently revoked, and; 5) they are not currently excluded from participation in Medicare, Medicaid, and other federal health care programs. Even if a provider ceased operation as a result of the COVID-19 pandemic, if the provider is otherwise eligible, they may still receive

funds so long as they provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. While HHS has notably taken an expansive view in guidance provided on its website that "care does not have to be specific to treating COVID-19" and that it considers every patient as a possible case of COVID-19," such interpretation is not specifically stated in the Terms and Conditions and guidance on this topic remains limited. Thus, if a provider is unsure whether they have or will be diagnosing, treating, or caring for patients with possible or actual cases of COVID-19 or have been financially impacted by COVID-19, the most prudent approach may be to hold off on using the funds, if possible, until further guidance is available.

In addition to certifying their eligibility to receive relief funds, providers must consent to several Terms and Conditions. The Terms and Conditions, in part, require the provider to agree: 1) to use the funds for health-care related expenses or lost revenues attributable to COVID-19; 2) to not use the funds to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse; 3) to not balance bill any out-of-network patient for COVID-19 related treatment; and 4) to maintain and to submit upon request appropriate records and cost documentation, as well as other information required by future program instructions. Providers should closely track how the funds are spent to ensure proper compliance in order to avoid potential False Claims Act liability. To the extent that funds are shared with contracting providers who bill Medicare under the receiving provider's NPI, caution should be taken to ensure that those providers also abide by the Terms and Conditions. Any provider receiving more than $150,000 total in funds appropriated by any law relating to the COVID-19 public health crisis and related activities will have enhanced reporting requirements.

The national response to the COVID-19 public health crisis is a rapidly evolving situation and more guidance regarding CARES Act provider relief fund is anticipated. Providers with additional questions about this program should consult with their compliance officer or health care attorney.

For the most up-to-date legal and legislative information related to the coronavirus pandemic, please visit our Shumaker COVID-19 Client Resource & Return-to-Work Guide at shumaker.com. To receive the latest news and updates regarding COVID-19 straight to your inbox, sign up here.

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