

## Goodwin Alerts

# April 16, 2020

### Update: U.S. Health and Human Services Clarifies Broad Eligibility of Providers for Payments Under \$30 Billion CARES Act Healthcare Provider Relief Fund

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As discussed in Goodwin's prior [Client Alert](#), on April 10, 2020, the U.S. Department of Health and Human Services (HHS) began disbursing \$30 billion to Medicare providers and suppliers under the Public Health and Social Services Emergency Fund (PHSS Emergency Fund). HHS is requiring providers to agree to certain terms and conditions or return the payments. A number of the terms and conditions created some confusion as to whether providers who have not provided services directly related to COVID-19 may keep the payments. HHS has now clarified that providers may keep payments distributed under the PHSS Emergency Fund regardless of whether they have or will provide services directly related to COVID-19.

The [Terms and Conditions](#) issued by HHS include requirements for a provider to certify that it "provides or provided after January 31, 2020 diagnoses, testing or care for individuals with possible or actual cases of COVID-19" and 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 revenue that are attributable to coronavirus." HHS has now clarified that it "broadly views every patient as a possible case of COVID-19." HHS further noted that even "[i]f you ceased operation 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[.]" and the care "does not have to be specific to treating COVID-19." In light of these clarifications, it appears that providers who meet the other applicable terms and conditions issued by HHS may keep the PHSS Emergency Fund payment regardless of whether they have provided or will provide direct care to patients diagnosed with or suspected of having COVID-19 and the use of the funds need not be limited to supporting the provision of care to such patients.

We note that HHS's clarification points to a broad application of the prohibition in the terms and conditions on seeking out-of-pocket expenses such as co-payments from out-of-network patients in an amount greater than the patient would have incurred from an in-network provider. HHS states that the prohibition applies to "all care for a possible or actual case of COVID-19." In light of HHS's position that every patient is a possible case of COVID-19, it seems the limitation on billing for out-of-pocket expenses applies to all services regardless of the nature of the service.

In addition, while providers must still complete an attestation that they will comply with the Terms and Conditions, the HHS website now states that not returning payment of the Provider Relief Fund to HHS within 30 days of receipt will be viewed as acceptance of the Terms and Conditions. The U.S. CARES Act Provider Relief Fund Payment Attestation Portal, which will guide providers through the attestation process to accept or reject the funds, opened on April 16, 2020. Providers may access the portal [here](#).

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Please visit Goodwin's [Coronavirus Knowledge Center](#), where firm lawyers from across the globe are issuing new guidance and insights to help clients fully understand and assess the ramifications of COVID-19 and navigate the potential effects of the outbreak on their businesses.

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