NEW/UPDATED TERMS AND CONDITIONS AND HALL RENDER BRIEFING DOCUMENT

HHS published a new Terms and Conditions document that is specific to payments that started being distributed on Friday, April 24 from the CARES Act Public Health and Social Services Emergency Fund's ("Relief Fund") second $20 billion tranche.

HIGHLIGHTS

- **New Terms and Conditions**: A second Terms and Conditions document specific to the $20 billion Second Tranche was released.
- **To Sign or Not to Sign**: In addition, several statements from HHS appear to limit the options for Providers to retain Relief Fund payments without affirmatively signing and submitting attestations agreeing to comply with the Terms and Conditions.
- **Hall Render Legal Briefing Available**: Hall Render has developed an in-depth Legal Briefing about the Terms and Conditions documents and options for analyzing and complying with the requirements included in the documents. Information about how to purchase these Legal Briefings is available below.

NEW TERMS AND CONDITIONS

There are now separate Terms and Conditions documents for the funds paid from the General Allocation Fund (the term HHS uses to describe the initial $30 billion Tranche and Second $20 billion Tranche of relief payments). There are Terms and Conditions for the First Tranche (available here) and a separate Terms and Conditions document for payments from the Second Tranche (available here). HHS also changed the language included in both Terms and Conditions documents relative to the out-of-network requirement.

The two documents are nearly identical, with the only substantive difference being the addition of the following two provisions in the Terms and Conditions for payments from the Second Tranche:

- "The Recipient shall also submit general revenue data for calendar year 2018 to the Secretary when applying to receive a Payment, or within 30 days of having received a Payment."
- "The Recipient consents to the Department of Health and Human Services publicly disclosing the Payment that Recipient may receive from the Relief Fund. The Recipient acknowledges that such disclosure may allow some third parties to estimate the Recipient's gross receipts or sales, program service revenue, or other equivalent information."

Presumably, eligible health care providers ("Providers") will be required to sign an attestation for each Terms and Conditions document. The decision to create a new Terms and Conditions document for the Second Tranche also suggests that HHS will create additional Terms and Conditions specific to future payments from the Relief Fund, including payments from future targeted payments and payments through the new program to reimburse Providers for services provided to uninsured COVID-19 patients._

TO SIGN OR NOT TO SIGN

The Terms and Conditions are ten pages long and include many items (over eight out of ten pages) that are NOT part of the requirements and obligations described in the statutory language authorizing the Relief Fund. Some of the items added were requirements that were part of the negotiations surrounding the CARES Act but did not survive to the final version of the bill. So, it is questionable whether HHS has the legal authority to condition the Relief Fund payments on these requirements.

The Terms and Conditions also include language suggesting that Providers are not technically required to sign an attestation agreeing to comply with the applicable Terms and Conditions. As an alternative, Providers that retain the payments for at least 30 days without contacting HHS to refund the payments would be deemed to have accepted the Terms and Conditions. So there were essentially four options in responding to the Terms and Conditions:

1. Retain the funds and attest to the Terms and Conditions.
2. Keep the funds and attempt to return a modified attestation that agrees to those Terms and Conditions found to be authorized by the CARES Act (although it is not clear whether this can be accomplished through the attestation portal).

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3. Return the funds to HHS. In that case, the Provider would not be subject to the Terms and Conditions.
4. Keep the funds but do not attest to the Terms and Conditions. This is an option described in the Terms and Conditions documents (as those documents were written as of the date this article was published).

HALL RENDER TERMS AND CONDITIONS LEGAL BRIEFING DOCUMENT

Hall Render has prepared a Legal Briefing document that analyzes the Terms and Conditions in greater detail, including: identifying the provisions of the Terms and Conditions that are directly associated with the CARES Act statutory language versus those that are not; providing explanations, observations and recommendations as to how Providers can address various obligations and requirements included in the Terms and Conditions; and analyzing which of the options for dealing with the Terms and Conditions listed above are best suited for each Provider based on the Provider's unique situation.

All providers should consult with their legal counsel and financial advisors on how to comply with the HHS application and reporting obligations. The Terms and Conditions Legal Briefing is being made available for purchase for a flat fee of $750. If you are interested in purchasing your copy of the Hall Render Terms and Conditions Legal Briefing Document, click here and complete the simple information request. A Hall Render representative will follow up with you shortly.

Previous articles on the CARES Act Fund are available here:

- Latest Stimulus Bill Includes Over $100 Billion in Health Care Industry Relief;
- Updates on $100 Billion Health Care Relief Fund and Medicare APP;
- First Tranche of Payments from the $100B CARES Funding Relief Being Delivered; and
- CARES Act Relief Funding: Additional Tranches Announced.

If you have questions or would like additional information about this topic, please contact:

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Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources at our COVID-19 Resource page, through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

Hall Render blog posts and articles are intended for informational purposes only. For ethical reasons, Hall Render attorneys cannot—outside of an attorney-client relationship—answer specific questions that would be legal advice.

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