PROVIDER RELIEF FUND PHASE 3: 43 NEW FAQS & INSTRUCTIONS POSTED

Last week, HHS announced a Phase 3 round of general distributions from The Public Health and Social Services Emergency Fund ("Relief Fund"). That announcement was further discussed in our client alert and describes an additional $20 billion to be distributed, with applications opening this past Monday, October 5. On Monday, October 5, HHS updated its Frequently Asked Questions with 43 New FAQs dated October 5 and issued the application form and instructions for the Phase 3 portal which will remain open until November 6.

Although the prior announcement stated that eligible providers should apply early, this new guidance states that the distributions will not be made until after the Phase 3 deadline of November 6, after HHS has an opportunity to evaluate the applications filed and information provided. Providers are well-advised to carefully evaluate their opportunity to provide additional information in this process.

HIGHLIGHTS AND KEY TAKEAWAYS

- The $20 billion General Allocation will include two components:
  - Distributions to "true up" to 2% of patient revenue based on most recent tax returns or financial statements, and
  - A yet to be determined percentage of provider changes in operating revenue from patient care minus their patient care operating expenses.
- The New FAQs and Instructions contain definitions of "patient care" that should be carefully evaluated in determining how to report for these purposes.
- The Instructions include examples of how Providers should report quarterly revenue and expenses to account for business changes such as acquisitions or sales between years, as well as for new providers in 2020.
- This guidance is for Relief Fund distributions, but not necessarily for the "Post-Payment Notice of Reporting Requirements" (Final Reporting Requirements) issued September 19, 2020. That document remains unchanged.

PHASE 3 OF THE GENERAL ALLOCATION

In the new guidance, HHS confirms that Phase 3 of the General Allocation will be made available to (1) providers that previously qualified for General Allocation amounts based on 2% of patient revenue; (2) behavioral health providers (including new providers); and (3) new providers that began practicing between January 1 through March 31, 2020. The new set of Terms and Conditions related to the Phase 3 General Allocation can be found and is effectively the same as prior Terms and Conditions.

In our October 1 client alert, we stated that that Phase 3 may be a trial run for the Final Reporting Requirements. The new guidance seems consistent with that prediction in that it asks for operating revenue and expenses on a quarterly basis. Interestingly, it appears to ask for that information separately (revenue vs. expenses) rather than just the net change in operating margin. This may be an effort to gather data that may be useful in assessing the impact of switching from lost revenue concepts in prior guidance to operating margin in the Final Reporting Requirements. The New FAQs also include once reference to basing lost revenues estimates on budget-to-actual or year-over-year, suggesting that the option to use either may not be gone. HHS has announced a webcast on October 15 that will hopefully offer more examples and clarifications.

Providers are reminded that the Final Reporting Requirements remain as originally issued and are separate from the reporting process for these distributions. The first report is still due by February 15, 2021. There has been some pushback on the new requirements, given the change from lost revenue to operating margin and the requirement to use a 2019 to 2020 comparison, without the option to use budgeted or projected variances. Providers should stay tuned for additional guidance and clarification by HHS on both the distribution process and the Final Reporting Requirements.

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

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