

Chapman Client Alert

April 24, 2020

Current Issues Relevant to Our Clients

\$484 Billion Stimulus Bill Replenishes Paycheck Protection Program and Provides Additional Funding for Health Care Providers and Coronavirus Testing

HHS Unveils Provider Relief Fund Distribution Plan

The Paycheck Protection Program and Health Care Enhancement Act (“Act”), the latest coronavirus relief bill, was passed by Congress on April 23, 2020 and signed into law on April 24, 2020.¹ This \$484 billion relief package is the follow-up to the \$2 trillion Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) stimulus which passed almost a month prior. While the Act is the fourth piece of legislation to address the COVID-19 crisis, it is largely considered an “interim” or “Phase 3.5” stimulus package, with a larger, Phase 4 legislative stimulus yet to come.²

The Act amends the CARES Act to authorize (i) additional funding for the Paycheck Protection Program (“PPP”) in accordance with Section 7(a) of the Small Business Act and emergency economic injury disaster loans and grants, (ii) additional funding for hospitals and other health care providers through the CARES Act Provider Relief Fund, and (iii) additional funding for coronavirus testing efforts.

The following Alert summarizes (i) key portions of the Act and (ii) recently released information from the Department of Health and Human Services (“HHS”) explaining its plans to allocate and distribute the Provider Relief Fund money.

Increased Funding for PPP and Emergency Loans

The Act authorizes additional funding for the CARES Act loan programs, as follows:

- \$310 billion for the PPP. The initial \$349 billion initially authorized under the CARES Act was depleted in mid-April.
- \$10 billion for Emergency Economic Injury Disaster Loans Grants. The initial \$10 billion authorized under the CARES Act was depleted in mid-April.
- \$50 billion for the Disaster Loan Program.

In an attempt to extend the reach of the PPP to underserved small businesses that were unable to secure PPP loans in the first round, \$60 billion of the new round of PPP funding has been specifically set aside for loans made by smaller lending facilities, including community financial institutions and small and mid-sized insured depository institutions and credit unions (with consolidated assets of less than \$50 billion and \$10 billion, respectively).

Additional \$75 Billion for Provider Relief Fund; HHS Releases Details Regarding Fund Allocation

Additional \$75B to Provider Relief Fund. The CARES Act allocated \$100 billion to the “Public Health and Social Services Emergency Fund” to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus (the “Provider Relief Fund”). The Act adds another \$75 billion to the Provider Relief Fund. As with the CARES Act, the Act provides little guidance regarding distribution, leaving HHS with broad discretion on fund administration.

Provider Relief Fund Allocation. As of the publishing of this Alert, only \$30 billion of the first tranche of the Provider Relief Fund has been distributed by HHS. Such payments were made to Medicare fee-for-service (“FFS”) providers by direct deposit on April 10, 2020 or by check on April 17, 2020. Payments were allocated using a formula roughly equal to 6.2% of the eligible recipient’s 2019 FFS Medicare revenue. Providers without Medicare FFS revenues were left out of this initial \$30 billion funding distribution.

HHS is still determining how the remaining Provider Relief Fund monies will be distributed, but recently announced some specific distribution targets for the remaining \$70B of the initial tranche on its [Provider Relief Fund website](#).³

- [Additional \\$20B General Allocation to Medicare Facilities and Providers Impacted by COVID-19](#). HHS has announced that \$50 billion of the Provider Relief Fund is allocated for “general distribution” to Medicare facilities and providers impacted by COVID-19, based on eligible providers’ 2018 net patient service revenue. As discussed above, \$30 billion was distributed on April 10, 2020, and the remaining \$20 billion is being distributed on April 24, 2020. HHS clarified that in order to expedite the initial \$30 billion fund distribution, it pegged payments to providers’ 2019 Medicare FFS revenue. The remaining \$20 billion of the general distribution will augment providers’ allocation so that the entire \$50 billion of the general distribution is allocated proportionally to providers’ share of 2018 net patient services revenue. Any providers who receive funds from the general allocation are required to sign an [attestation](#) confirming receipt of the funds and agreeing to 10 pages of [Terms and Conditions](#). Failure to abide by the Terms and Conditions could result in False Claims Act liability for health care providers that do not properly use the funds. Accordingly, recipients should carefully consider their ability to comply with the Terms and Conditions and should ensure that proper controls are in place for proper use of the funds.
- [Hospitals in COVID-19 High Impact Areas](#). HHS has announced that it will target \$10 billion in distributions for hospitals in areas that have been particularly hard hit by COVID-19. On April 22, 2020, HHS contacted hospitals by email and instructed them to apply for a portion of such funds by accessing a portal before midnight on April 23, 2020 to provide the following information: (1) tax identification number, (2) national provider identifier, (3) total number of intensive care beds as of April 10, 2020, and (4) total number of admissions with a positive diagnosis for COVID-19 from January 1, 2020 to April 10, 2020. Supplying the information does not guarantee receipt of funds from this distribution. The deadline has since been extended to 3pm EST on April 25th. HHS has indicated that this distribution will take into consideration the challenges faced by facilities serving a significantly disproportionate number of low-income patients, as reflected by Medicare Disproportionate Share Hospital adjustment payments.
- [Providers Serving Uninsured COVID-19 patients](#). HHS has indicated that a portion of the Provider Relief Fund will be used to reimburse health care providers, at Medicare rates, for COVID-19-related treatment of the uninsured. Every health care provider who has provided treatment for uninsured COVID-19 patients on or after February 4, 2020, can request claims reimbursement and will be reimbursed at Medicare rates, subject to available funding. Steps will involve: (1) enrolling as a provider participant, (2) checking patient eligibility and benefits, (3) submitting patient information, (4) submitting claims, and (5) receiving payment via direct deposit. Providers can register for the program on April 27, 2020 and begin submitting claims in early May 2020. HHS has not yet committed a specific dollar amount of the Provider Relief Fund to this program. For more information, providers should visit coviduninsuredclaim.hrsa.gov.
- [Rural Providers](#). HHS has indicated that \$10 billion will be allocated for rural health clinics and hospitals and distributed on the basis of operating expenses. These funds may be distributed as early as the week of April 27, 2020.
- [The Indian Health Service](#). HHS has indicated that \$400 million will be allocated for Indian Health Service facilities and distributed on the basis of operating expenses. These funds may be distributed as early as the week of April 27, 2020.
- [Skilled Nursing Facilities, Dentists and Medicaid Providers](#). HHS has indicated that other providers that will receive funding include skilled nursing facilities, dentists, and providers that solely serve Medicaid patients. At the time of publishing this Alert no further information has been provided with respect to this distribution effort.

Providers should visit HHS’s [Provider Relief Fund website](#) site for evolving information.

[\\$25 Billion in Funding for COVID-19 Testing](#)

The Act also appropriates \$25 billion to support COVID-19 testing efforts, including research, development, procurement, administration and contract tracing and other related activities. The funding specifically earmarks \$11 billion for states, localities, territories and tribes to develop, purchase, administer, process and analyze COVID-19 tests, scale-up

laboratory capacity, trace contacts and support employer testing. It also provides \$1.8 billion to the National Institutes of Health and \$1 billion to the Centers for Disease Control and Prevention for additional testing efforts.

For More Information

If you would like further information concerning the matters discussed in this alert, please contact the Chapman attorney with whom you regularly work.

For additional Chapman Insights addressing legal and regulatory developments related to the COVID-19 crisis, please visit our [COVID-19 Legal and Regulatory Developments](#) webpage.

- 1 The H.R. 266.
- 2 The first, second and third phases of coronavirus relief legislation, respectively, are: (1) the Coronavirus Preparedness and Response Supplemental Appropriations Act (P. L. 116-123) which was signed into law on March 6, 2020, (2) the Families First Coronavirus Response Act (P.L. 116-127), which was signed into law on March 18, 2020, the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, which was signed into law on March 27, 2020 (P.L. 116-136).
- 3 <https://www.hhs.gov/provider-relief/index.html>

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