

Phase 3 General Distribution of Provider Relief Funding Authorizes Money for Newly Eligible Providers With November 6 Deadline

The U.S. Department of Health and Human Services (“HHS”) has announced the availability of \$20 billion of additional funding for health care providers under the Provider Relief Fund (“PRF”) adopted by the Coronavirus Aid Relief and Economic Security Act (“CARES Act”) and subsequent legislation. This “Phase 3” funding will permit providers who have already received PRF funds to receive an additional allocation, as well as allowing some providers to be eligible for the first time.

- Providers who have received earlier distributions from the PRF but less than 2 percent of annual patient care revenue will receive a payment that brings the total distribution to that level.
- Providers who previously rejected PRF funds can apply for this phase.
- Providers who began practicing January 1, 2020 through March 31, 2020 will be eligible for the first time. Prior phases required providers to have provided services in 2019.
- Many behavioral health providers who may not have been eligible for the first two phases will be eligible for Phase 3.

HHS will first assess whether an applicant has received PRF funding approximating 2 percent of annual patient care revenue. Eligible applicants will receive funding which, when combined with prior allocations, approximates the 2 percent level. Thus, those eligible providers who have not received prior funding due to ineligibility, failing to apply or declining the terms and conditions should receive the entire 2 percent funding level. Those who have received prior funds less than the 2 percent level should receive the difference that brings the provider up to that level.

If funds remain after all eligible providers have been brought to the level of 2 percent of annual patient care revenue, then HHS will allocate the remaining funds via “equitable add-on payments” that reflect the impact of the COVID-19 pandemic on (1) lost operating revenues from patient care; (2) increased expenses for patient care and (3) prior PRF distributions.

HHS is urging providers to apply early in the process (which runs from October 5 to November 6) in order to facilitate the above calculations.

Applications will only be considered through November 6, 2020.

The terms and conditions of the PRF funding (“Terms and Conditions”) are considerable, but a summary of the key provisions to which providers must concur in order to obtain PRF funds follows:

Uses of Funds. The recipient must agree to use the funds to reimburse expenses or losses that have not been reimbursed from other sources. Expenses that are being paid for by other programs like the PPP loan or the Economic Impact Disaster Loans cannot be reimbursed from the PRF funds.

Although providers are generally free to use the funds to support their operations, there are a number of specific restrictions on the use of funds, including, for example, a limitation on use for salaries of highly compensated employees and on uses such as lobbying.

Reporting. The Terms and Conditions also stipulate reporting requirements for a recipient. If a recipient receives more than \$150,000 total in funds under *any act* making appropriations for the coronavirus response and related activities, then they must submit to HHS and the Pandemic Response Accountability Committee a report no later than 10 days after the end of each calendar quarter.

When reporting to HHS, a report must include the total amount of funds received from HHS under one of the enumerated acts. The recipient shall include the amount of funds received that were expended or obligated for each “project” or “activity.” It is critical that recipients keep documents and track their expenses related to their practice.

Recipients should total all the money they’ve received from any federal stimulus act on a reporting form. If the total funds received exceeds \$150,000, then a recipient has a reporting requirement and will need to detail where all funds were spent.

Recordkeeping. The Terms and Conditions enumerate specific conditions recipients must follow in terms of maintaining records and the cost of such documentation. Recipients should also be prepared to answer to any audits from HHS, the Inspector General, or the Pandemic Response Accountability Committee.

Disclosure. The recipient also consents to HHS publicly disclosing the payment that the recipient may receive from the PRF. Thus, the recipient acknowledges that such disclosure could enable third parties to estimate the recipient’s gross receipts or sales, program services revenue or other equivalent information.

In-Network Rates. If a recipient has COVID-19 patients, the recipient must certify that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network recipient. A recipient cannot request reimbursement if a COVID-19 patient is uninsured. That is to say, the recipient cannot select a payment from that patient that’s any higher than standard in-network payment from a commercial provider.

Providers with questions about the PRF funding and requirements can seek assistance from Vandennack Weaver attorneys at 402-504-1300 or info@vwattys.com.