



Podcast Transcript

CARES Act Provider Relief Fund

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Kattman: The COVID-19 pandemic has wreaked havoc on the American health care system. Recognizing the hardships faced by providers, the CARES Act Provider Relief Fund was created to assist providers of healthcare for healthcare-related expenses or lost revenue due to COVID-19. But there are serious considerations for providers to take into account before deciding to use these funds. I'm Amy Kattman, and you're listening to BakerHosts.

On today's episode we explore the CARES Act Provider Relief Fund and specific guidance for those who have received funds through this federal program. As this federal program is constantly evolving with new information being released by the government on an ongoing basis, providers can feel like they are chasing a moving target. Today's podcast discusses the most current guidance available as of April 5.

It's important for providers to understand the requirements for general distribution funds, the relevant terms and conditions, the reporting requirements, and what to expect in terms of auditing. Today we welcome Jessica Captain Novick, a Partner in BakerHostetler's Orlando office. Welcome to the show, Jessica.

Novick: Hi Amy. Thanks so much for having me.

Kattman: Jessica to begin, could you tell us what is the Provider Relief Fund and how it has impacted providers?

Novick: The Provider Relief Fund is funds that were distributed through the CARES Act that the federal government has allocated to healthcare providers to help with healthcare-related expenses or lost revenue due to COVID-19. So far, the Provider Relief Fund has been allocated in three different phases. In the first phase providers actually just received money in their bank accounts and were like, where is this money coming from? And then, subsequently though the providers did have to apply for the funds.

In Phase 1 and Phase 2 the payment was limited to a cap at two percent of the total patient care revenue but at Phase 3, providers could still receive funds even if they have received the two percent annual revenue from patient care. Lastly, the Provider Relief Fund created a targeted distribution funding to providers who were particularly impacted by COVID-19, but for purposes of this podcast we're going to be really focused on the general distribution fund.

Kattman: So, what are the requirements to receive general distribution funds from the Provider Relief Fund?

Novick: So, the requirements vary by phases and only that to mean that originally, the first phase was pretty limited to Medicare providers who billed Medicare in 2019. But as the phases opened up we also saw that the provider types opened up, so in Phase 2 there was more providers who were able to receive funds. And then in Phase 3 it became even broader to allow healthcare providers who may have not been eligible in the earlier phases to become eligible in the later phases.

Another requirement that we see as part of the, receiving the general distribution fund, is that providers had to after January 31, 2020, provide diagnosing, testing or care for individuals with possible or actual cases of COVID-19. This is in the terms and conditions which we'll talk about a little bit later, but what's interesting about this is the HHS in its guidance specifically said that it broadly views every patient as a possible cause of COVID-19.

The other requirement is that recipients who receive the funds, they have a time period in which they can accept them or reject them. But if they decide to accept them, then the recipient must agree to terms and conditions of the payment, which is what I just referenced earlier.

Kattman: Could you tell us, what are the relevant current terms and conditions recipients of these funds should know about?

Novick: Sure, great question. So, the, as I mentioned one of the relevant terms and conditions is that the recipient has to certify after January 31, 2020, that they provided the diagnosis, testing or care for individuals with possible or actual cases of COVID-19, and this is an interesting term and condition because the HHS guidance tells us that every patient could be a possible patient of COVID-19. It's interesting that in the terms and conditions, it doesn't contain this

language. And HHS had the opportunity to include this language as they continued to update the terms and conditions. There's a new terms and conditions for each phase, and while they vary slightly, HHS could have added language about every patient being a possible COVID-19 patient but chose not to.

Another key term and condition that we really should be focused on, especially if you're deciding whether or not it's appropriate to retain these funds, is the term and conditions that says that the payment has to be used to prevent, prepare for, and respond to coronavirus, and the payment shall reimburse the recipient only for healthcare-related expenses or lost revenues that are attributable to the coronavirus. And when we look at using these funds, this is really the key as to whether or not you can use these funds as to whether or not as a healthcare provider you prevented, prepared for, and responded to the coronavirus, and as well as whether the payment was used to reimburse you for healthcare-related expenses or lost revenues, and the key is that are attributable to the coronavirus. So when we're looking at analysis as to whether or not the provider should keep these funds, this is really a key component as to whether or not we should keep the funds and whether it's appropriate to do so.

Another terms and condition that's relevant is that you're not allowed to use sources of payment that you received somewhere else to reimburse a loss with respect to the Provider Relief funds. So if the healthcare provider received PPP funds, they're not able to use those PPP funds and the HHS Provider Relief funds to both reimburse the same loss that they've had. So if the PPP funds are being used, they can't then use the healthcare Provider Relief funds to cover that same expense.

Another really key term and condition that's important, which really shows that the government is taking this seriously, is that if for some reason there is a, and the key is deliberate. But if there's a deliberate omission, misrepresentation or falsification, any of the information presented, there are some very serious consequences including but not limited to, revoking Medicare billing privileges and imprisonment.

Kattman: These are some good things to know. What are the reporting requirements for those who have received or accepted these funds?

Novick: So what's really interesting is, the reporting deadline was originally February 15, 2021. HHS has pulled that deadline but has yet, at the time of this recording, not put out a new deadline for when reporting is actually going to be. Right now we see that their registration is open, but you can't actually report. The reporting requirements are for recipients who received Provider Relief funds in excess of \$10,000. Funds have to be used by June 30, 2021, for the reporting guidelines. So even though there's not the reporting deadline yet, the guidance is still saying though that the funds have to be used by June 30.

In the reporting guidelines that we have right now, they have changed as the guidance has changed. So the most recent one was in January 15. That is the

one that we're looking at right now. And the reporting guidelines say, that they break it out into, as we talked about, that term and conditions language, we have the healthcare-related expenses, and then we also have patient care loss revenues.

So the first category we'll look at when we look at reporting is with respect to healthcare reporting expenses. The guidance tells that we have to look to see first, do we have a healthcare-related expense? Assuming we have a healthcare-related expense, then, if there is money left over after we look at the healthcare-related expenses, we can then apply that money toward lost patient care revenues. And with respect to reporting a healthcare-related expense, it's broken up into two different buckets. So if you are a provider who received between \$10,001 and \$499,999, you're gonna have a more limited reporting requirement with respect to healthcare-related expenses. You're gonna have to report general and administrative expenses, as well as other healthcare-related expenses, but you're not gonna have to go into the same detail if you receive \$500,000 or more. If you receive \$500,000 or more, the reporting requirements are a lot more in depth, and within those two categories of general administrative expenses and the healthcare-related expenses, it has to be a lot more detailed and each one of those categories is broken up into subcategories. And they're gonna want those subcategories explained as to what the expenses are with respect to those, and again, the key with that is they have to be expenses that were necessary and reasonable to support patient care efforts to prepare for, prevent or respond to the coronavirus, and they have to be expenses that were attributable to the coronavirus.

So after you're done looking at the healthcare-related expenses, you then move on to look at the patient care loss revenues. The reporting guidance says that we could use the lost patient care revenues and look at it in three different ways to see whether there is lost revenue. The first way is we can compare the difference between the 2019 and 2020 actual patient care revenue. The next way is we could look at the difference between the budgeted patient revenue from 2020 to the actual revenue that was there, and the last way, HHS has said, you can come up with your own reasonable method for estimating revenue to determine whether you're had lost patient care revenue.

There also will be some additional data that will need to be reported as well, related to facility staffing and patient care. And as I mentioned before, HHS is really concerned about other funds that the provider may have received. So they're gonna ask about that, and you're gonna have to report whether you received additional funds from other sources.

Kattman: These are good tips. Jessica, what do you expect in terms of auditing those who have received the Provider Relief funds?

Novick: So, we know already that if you received \$750,000 or more in federal funds, you are gonna be subject to a single audit requirements. This is something that a lot of healthcare providers are probably not used to doing and not aware of because they haven't received such large amounts in federal funding before. So it is

something to note that you are gonna have to be doing a single audit if you received \$750,000 or more in federal funds. In addition to the automatic audit, which is the single audit requirement, your healthcare provider is also gonna be subject to fraud monitoring of the funds. We know that HHS has said that they are going to significantly monitor these funds to make sure that these federal dollars are used appropriately.

Kattman: So as we close out today's conversation, we're starting to see a light at the end of the tunnel in the pandemic, and these federal relief programs will have auditing and other implications for years to come. But Jessica, what will you be watching for the months and years to come?

Novick: So in the short term I'm definitely gonna be watching the guidance. We're still really waiting for some more clarification with respect to what healthcare-related expenses and lost patient care revenues attributable to the coronavirus mean. The guidance has been walked back and we've seen it change. If you looked at the guidance ten months ago, and then you looked at five months ago, and then you looked at it now, it is different, and it continues to evolve and change.

And so someone who may have had a comfort level accepting the funds earlier on, may not feel as comfortable now accepting the funds because of the change in guidance. So I encourage providers to take a look at the guidance that is out there and make sure that they feel that they are still eligible to use these funds because of the change in guidance. We're hopeful that we're gonna see some more, especially as the reporting requirements deadline actually occurs that there'll be some more guidance with respect to reporting and hopefully some more examples as to healthcare-related expenses and lost patient care revenues.

Specifically right now the, it seems to focus on patient care revenue, but one of the topics that is interesting that isn't really addressed is, what happens if your patient care revenue is down, but overall you've had an increased gross revenue. So meaning, for that year, 2020, if you're looking at 2019 and 2020, you saw a loss with respect to patient care revenue, but overall, your business did better in 2020 than it did in 2019. Maybe 2019 was an off year, maybe you had less expenses in 2020. The guidance doesn't really focus on that, so we're curious to see would that be something that the government would look into.

The next thing that I'm really looking forward to watching long-term is enforcement. As I mentioned, we know that HHS is going to do significant monitoring with respect to these funds. They have already established forces, task forces, internal tools to make sure that they have monitoring going on to see whether it was appropriate or not to use these funds. This is gonna be a primary enforcement tool that the government is gonna use to make sure that these funds were really used how they were supposed to be used.

So the advice I'd like to give to healthcare providers, what I want to tell you to note, is that it is really important to document, document, document, document everything to help substantiate how you used this money, why you used this

money, how this was attributable to the coronavirus, what the expense is. Have a receipt of the expense, have a whole binder documenting why you were eligible to use this money and how you used this money. Another thing is, please listen to your advisors. They're there, you're paying them, your attorneys, your accountants, they're giving you advice on how to make sure you can use this money appropriately. Because we do know that there is the monitoring going on and the penalties are severe.

Kattman: Thank you, Jessica.

Novick: Thank you so much Amy. It was so wonderful getting to chat with you.

Kattman: If you have any questions for Jessica, her contact information is in the show notes. As always, thanks for listening to BakerHosts.

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