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MEMORANDUM

August 13, 2020

TO: TRIBAL HEALTH CLIENTS
FROM: HOBBS, STRAUS, DEAN & WALKER, LLP
RE: *Provider Relief Fund Updates*

HHS Further Extends Eligibility for Re-Opened Provider Relief Fund Applications

On August 10, 2020, the Department of Health and Human Services (HHS) announced that it is further extending the provider eligibility categories to apply for payments from the Provider Relief Fund. The Fund was established under the CARES Act for the purpose of providing financial relief to healthcare providers whose patient revenues have been impacted by the COVID-19 pandemic. Under this week's announcement, HHS has extended relief payment eligibility to Medicaid, Medicare, CHIP, and dental providers that meet one of the following criteria:

- Did not receive a Phase 1 payment that was equal to approximately 2% of their annual patient revenue (as reported in a provider's most recent tax filing).
- Received a Phase 1 payment but missed the deadline to submit revenue information.
- Received a Phase 1 payment, but the provider rejected the funds and is interested reapplying.
- Were held ineligible for a Phase 1 payment due to an ownership change or lack of Medicare fee-for-service revenue in 2019.

HHS will provide eligible applicants with a total relief payment equivalent to up to 2% of their annual patient revenues. This means that if a provider received a Phase 1 payment that was less than 2% of their annual patient revenues, they may now apply to receive a payment that will cover the difference. *The application deadline for the new categories of eligibility is August 28, 2020. Please let us know if we can be of assistance to you in this process.*

HHS's announcement follows a separate extension of provider access to relief funds that we reported on last week.¹ That separate extension reopened the Phase 1 and Phase 2 General Distributions to providers who did not meet previous application deadlines. The extension

¹ Please see our Tribal Health Clients Memorandum of August 5, 2020, titled "*HHS Extends Provider Access to Medicare and Medicaid General Distribution Funds*" for the detailed report.

benefitted providers with low Medicare billing by reopening the door for Phase 1 Medicare relief; however, it did not do the same in regards to facilitating access to Phase 2 Medicaid relief. HHS's decision to further expand provider eligibility for relief payments seems designed, in part, to address this issue and respond to Tribal Leader concerns on accounting for the unmet needs of Medicaid providers in the Provider Relief Fund.

HRSA Holds Tribal Consultation Call on Provider Relief Fund

Yesterday, August 12, the Health Resources and Services Administration (HRSA) held a consultation call to provide background information on the Provider Relief Fund and discuss related questions and concerns raised by participating Tribal Leaders. Betsy Wieand, Health Insurance Specialist in the Office of Provider Support, led the call on behalf of HRSA with Devin Delrow, Associate Director for Tribal Affairs, serving as moderator.

Ms. Wieand framed her presentation with a discussion on the five pots of funding supported through the Provider Relief Fund: (1) the Phase 1 Medicare General Distribution; (2) targeted distributions to the Indian Health Service, rural providers, and certain others; (3) the Phase 2 Medicaid General Distribution; (4) the broadly available Phase 3 distribution; and (5) reimbursements for the testing and treatment of uninsured COVID-19 patients. She reported that over \$731.4 billion has been distributed through the Provider Relief Fund to date. A copy of HRSA's presentation identifying key milestones in payment distributions is attached.

Ms. Wieand stated that following the HHS's announcement of August 10, 2020 (reported on above) providers now have an extended opportunity to apply for additional Provider Relief Fund payments. She specifically cited the advocacy of the Centers for Medicare and Medicaid Services Tribal Technical Advisory Group (TTAG) as a central driving force behind this announcement. TTAG and other tribal health advocates have been stressing the need to amend Provider Relief Fund requirements to ensure that Medicaid providers have appropriate access to relief dollars.

In response to Tribal Leader questions, Ms. Wieand clarified that eligibility is not tied to a specific facility or program type (such as a stand-alone clinic or a Community Health Representative program), but on whether the provider bills Medicaid, CHIP, or Medicare for a patient service. She explained that providers meeting one of the criteria identified above have until August 28 to submit their tax identification number for validation through the provider portal, after which they may submit the full application. In other words, eligible providers may submit application information after August 28, provided that their tax filing information has been entered into the system.

Critically, Ms. Wieand reported that HRSA considers IHS eligible beneficiaries to be insured for the limited purpose of the qualifying for the uninsured care reimbursements program. In response to Tribal Leader questions, she reiterated that "IHS providers can potentially apply [for uninsured reimbursements], however, they cannot apply on behalf of patients covered by the IHS. Those patients are not considered uninsured for the purposes of this program." She clarified that service to non-IHS eligible beneficiaries may be claimed for reimbursements, provided that

such patient has no form of healthcare coverage.

We note that this is an issue that has been addressed critically by tribal advisory groups within HHS. Tribal advisory groups have discussed treating IHS eligible beneficiaries as uninsured (provided that a beneficiary does not have any form of applicable healthcare coverage) because HHS itself recognizes that the IHS is not health insurance and there is no enrollment like in private insurance. Rather, IHS eligibility is based upon an individual's tribal affiliation. It is significant that HRSA narrowly applied its interpretation of IHS eligible beneficiaries as being considered as insured to the limited purpose of the uninsured care reimbursement program. We will continue to work with Tribal Leaders and other tribal health advocates on this issue going forward.

Tribal Leaders from Alaska reported that several health providers are still awaiting payments from the IHS targeted distribution and that their efforts to obtain further information on this issue have gone unanswered by IHS and HHS officials. Ms. Wieand stated HRSA is aware of the issue and working with the IHS to resolve it as soon as possible. She stated that she will follow-up with HRSA's data team to see if data used to information payment calculations can be released, such as service population estimations.

Tribal Leaders recommended that HRSA engage in regular Indian Country updates to improve transparency related to the Provider Relief Fund. They cited broad confusion regarding eligibility, sources of funding, and reporting requirements as some of the many questions that persist in regards to the Fund. Ms. Wieand did not commit to regular updates at this time, however, she agreed to take the recommendation back to HHS leadership. She also agreed to convey the request for an additional tranche of IHS funding through a new targeted distribution.

In response to Tribal Leaders, Ms. Wieand clarified that IHS facilities may report total revenues using an audited financial statement rather than a tax return, which previous Provider Relief Fund applications required. She reported that HRSA is in the process of finalizing further instructions on reporting requirements that should be released shortly. We will inform you once this information is made available.

Conclusion

If you have any questions or would like additional information on any of issues raised in this report, please do not hesitate to contact Elliott Milhollin (emilhollin@hobbsstrauss.com or 202-822-8282); Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745); or Lisa Meissner (lmeissner@hobbsstrauss.com or 202-822-8282).