

HHS Announces Additional Distributions From the Public Health and Social Services Emergency Fund

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On June 9, 2020, the Department of Health and Human Services (HHS) announced it will distribute an additional \$25 billion from the Public Health and Social Services Emergency Fund (PHSSEF). Unlike the initial \$50 billion allocated from the PHSSEF, which was distributed generally to Medicare providers, these funds will be targeted to reach Medicaid and Children's Health Insurance Program (CHIP) providers as well as safety net hospitals.

There will be two separate distributions from the \$25 million allocated by HHS which are referred to as: (1) the Medicaid and CHIP Distribution; and (2) the Safety-Net Distribution.

Medicaid and CHIP Distribution

The Medicaid and CHIP Distribution will provide \$15 billion to eligible providers participating in their state's Medicaid and CHIP programs.

To be eligible to receive a distribution a provider must meet each of the following qualifications:

- Must not have received payment from the \$50 billion General Distribution;
- Must have directly billed Medicaid or CHIP for healthcare-related services during the period of January 1, 2018, to December 31, 2019, or (ii) own (on the application date) an included subsidiary that has billed Medicaid or CHIP for healthcare-related services during the period of January 1, 2018, to December 31, 2019;
- Must have either: (i) filed a federal income tax return for fiscal years 2017, 2018 or 2019 or (ii) be an entity exempt from the requirement to file a federal income tax return and have no beneficial owner that is required to file a federal income tax return. (e.g. a state-owned

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hospital or healthcare clinic);

- Must have provided patient care after January 31, 2020;
- Must not have permanently ceased providing patient care directly, or indirectly through included subsidiaries; and
- If the applicant is an individual, have gross receipts or sales from providing patient care reported on Form 1040, Schedule C, Line 1, excluding income reported on a W-2 as a (statutory) employee.

HHS indicates that payments to eligible providers will be at least 2% of gross revenue. However, the final payment will be determined based on information submitted by the provider through the Enhanced Provider Relief Fund Payment Portal. Prior to submitting the necessary information through the Payment Portal, providers should read the Medicaid Provider Distribution Instructions and download the Medicaid Provider Distribution Application Form. **The deadline to apply to receive funds from the Medicaid and CHIP Distribution is July 20, 2020.**

Safety Net Distribution

The Safety-Net Distribution will direct another \$10 billion to hospitals which treat a disproportionate share of Medicaid patients and provide a large volume of uncompensated care.

To qualify for the Safety-Net Distribution a hospital must have:

- A Medicare Disproportionate Payment Percentage (DPP) of 20.2% or greater;
- Average Uncompensated Care per bed of \$25,000 or more; and
- Profitability of 3% or less, as reported to CMS in its most recently filed Cost Report.

HHS has indicated that Safety-Net Distributions to eligible hospitals will have a minimum value of \$5 million and a maximum value of \$50 million. Distributions will be calculated based on information contained in the hospitals' 2018 cost reports. While hospitals will not be required to submit an application to receive a payment from Safety-Net Distribution, they will be required to attest to certain terms and conditions similar to those required for providers receiving funds through the General Distributions.

Additional funds to be distributed from the PHSSEF remain, and we will continue to monitor the guidance being issued by HHS on an ongoing basis. Please contact the author of this Alert, **Paul L. Croce** pcroce@greenbaumlaw.com | 973.577.1806 with questions or to discuss your specific circumstances. Mr. Croce is Counsel to the firm's **Healthcare Department**.