



April 20, 2020

The Honorable Alex M. Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Sent Electronically

Dear Secretary Azar:

We commend you regarding the expediency with which your agency has distributed the first tranche of funds from the CARES Act Provider Relief Fund. We write to you today seeking some critical clarifications regarding these funds given that the clock is ticking on when providers must decide whether to accept the funds and attest to the Relief Fund Payment Terms and Conditions or possibly return the funds as they are unable to meet the terms and conditions.

The mission of LeadingAge is to be the trusted voice for aging. The members of LeadingAge- which include many hospice, home health and SNF providers who received funds from the first tranche of CARES Act Provider Relief Fund -- and our partners impact the lives of millions of individuals, families, employees and volunteers every day. Our over 6,000 members and partners include nonprofit organizations representing the entire field of aging services, 38 state associations, hundreds of businesses, consumer groups, foundations and research centers. LeadingAge is a 501 (c)(3) tax-exempt charitable organization focused on education, advocacy and applied research.

We understand that your team is working around the clock to respond to the many needs of providers and consumers during the COVID-19 national emergency. We are grateful for their responsiveness and dedication. We hope that by sharing our questions it helps your staff as they prepare additional guidance on the program by highlighting the issues providers need to understand in order to feel comfortable signing the required attestation of the terms and conditions and using these funds that they so need.

We also would encourage you as you develop further guidance to keep the Patients Over Paperwork initiative in mind and attempt to apply minimal reporting requirements. The current COVID-19 situation already presents a significant increase in the workload of our members who are on the front lines of caring for seniors who are the most at-risk. We hope receiving these much-needed funds will not add exponentially to this workload.

Providers who received the first distribution of funds must submit their attestation related to the terms and conditions by May 10. Therefore, we hope that HHS can issue further guidance to clarify some key questions prior to that date so providers know whether they can meet the expectations that are

required of receiving and using the funds. We are interested in learning more information and receiving more clarity on the following topics and details:

- **Definitions:**

- The Relief Funds Payment Terms and Conditions document states, "Payment will only be used to prevent, prepare for and respond to coronavirus and shall reimburse the Recipient only for health care related expenses or lost revenues that are attributable to coronavirus." Can you provide assurance that providers who accept funds but do not have a confirmed COVID-19 patient are still eligible to use these dollars for the efforts to prevent, prepare for and respond to coronavirus in their organizations?
- Can we rely on the information on the HHS CARES Act Provider Relief Fund website (at <https://www.hhs.gov/provider-relief/index.html>) about the CARES Act Relief Funds, that all persons we treat are considered a "possible case of COVID-19"? The website states that "HHS broadly views every patient as a possible case of COVID-19." However, this same statement is not included in the Relief Fund Payment Terms and Conditions document.
- Can we rely on the information on the HHS CARES Act Provider Relief Fund webpage that the care provided, "does not have to be specific to treating COVID-19"? Our uncertainty arises from the Relief Fund Payment Terms and Conditions document which states that an eligible provider is one who, "...provides or provided after January 31, 2020 diagnoses, testing or care for individuals with possible or actual cases of COVID-19..." but includes no further definition of what "care" means in this context nor what qualifies as, "possible case of COVID-19." Is exhibiting defined symptoms of COVID-19 sufficient to being a "possible case"? Would a provider organization that had a staff person who had COVID-19 also qualify them for the funds as they would need to protect those for whom they provide care? Clarity on these issues would be very helpful in confirming a provider's eligibility for the funds.
- **Eligible expenses and losses:** Providers are eager to understand how HHS will define which provider expenses and losses will qualify. In particular, specific examples of qualifying expenses and losses would be helpful. For example would all of the following apply: bonuses, hazard pay, use of agency staff, purchase of personal protective equipment, additional housekeeping and/or laundry costs, anything above the usual and customary expenses? In addition, what is the timeframe for eligible expenses and losses? In other words, when can providers begin counting losses and expenses (e.g., after January 31, 2020 (the date noted in the attestation for when care was provided) or March 13 when the emergency was declared)? When do these expenses and losses no longer count toward addressing the COVID-19 pandemic (e.g. 60 or 90 days after the national emergency is declared over, end of the calendar year after emergency is declared over)? What if PPE or other similar items were purchased prior to this date but used during the national emergency? Can HHS also clarify if the funds can be used across the organization or must be limited to the provision of Medicare services in the case of the first tranche? We have many providers who serve seniors under Medicare, Medicare Advantage, Medicaid and private pay. These same providers may offer an array of post-acute, long-term care services and supports and home and community based services under one organization and/or one tax identification number. So we

would appreciate any clarity around where within these organizations these dollars can be used.

- **Reporting and Documentation:** In this regard, we hope that HHS proposes a relatively simple process to minimize the staff time required to track or document, complete and submit the reports.
 - When can we anticipate more information from HHS explaining the type of reporting that will be expected to submit to demonstrate compliance with the Terms and Conditions?
 - Can HHS provide details of the documentation that will be required?
 - Is there a particular format that these reports should take?
 - How will information be reported to HHS? And with what frequency (e.g., quarterly or one-time)?
 - Do providers need to segregate their expenses and losses by Tax Identification Number and/or specific provider type (e.g. SNF vs. home health agency), if they have more than one, or can they aggregate the funds received as well as the offsetting expenses and losses?

- **Returning Funds:** We can envision two situations where providers might need to return some or all of the funds they have received through the Provider Relief Fund: 1) Providers who believe they can't comply with the terms and conditions and opt to not keep the distributed funds in total; and 2) Providers who need to return the unused portion of any Relief Funds received and accepted because their eligible expenses and losses don't equal or exceed the allotted funds. We are interested in understanding what the process will be for returning these funds. Will they be electronically transferred out if returned in whole and when would this occur? How will the process differ for the returning of unused funds? We assume this process might take the form of a reporting reconciliation between funds received to expenses/losses incurred?

- **Other expectations:** By accepting the funds, is the provider required to accept a COVID-19 patient either directly from the community or one discharged from a hospital? Some markets may have designated certain SNFs to receive all regional COVID-19 post-acute care (PAC) patients, while other providers care for the non-COVID patients. These SNFs still need to undertake the necessary precautions to prevent COVID-19 by monitoring and testing employees, residents and other health care providers/vendors who enter their building and so still incur related costs. They have also incurred financial losses resulting from the reduction in elective or other procedures for which they would typically provide the related PAC.

- **Second tranche of funds:** It has been our understanding that this second tranche of funding will be released soon and we are eager to assist you in ensuring it gets to those aging services providers who are paid primarily by Medicaid or for whom Medicare Advantage(MA) is a much more significant portion of their revenue. For example, many New York providers, who are at the epicenter of the COVID-19 pandemic are in areas, operate in counties where MA penetration exceeds 40-50% and therefore is a substantial portion of their revenue. While they may have received some dollars in the first tranche, it would not have been proportional to the number of Medicare beneficiaries they serve and likely insufficient to cover their additional expenses and losses related to COVID-19. For providers

around the country who rely on MA revenues to operate, we hope that providers in these areas can receive an additional fund allocation from the second tranche equal to their Medicare FFS payment in order to make sure their share is closer to proportional to those who predominantly receive Medicare FFS reimbursement.

For Medicaid providers, we think it is critical to distribute those dollars quickly. Perhaps Medicaid cost report data could be used to identify Medicaid patient days for the prior year and CMS could apply a standard per patient day formula to determine an organization's allocation proportional to the Medicaid beneficiaries served.

Let me express my appreciation for your prompt attention to these issues and your continued leadership in addressing the challenges aging services providers are facing as we care for some of the country's most vulnerable – our elders -- during this pandemic. Please contact Ruth Katz at rkatz@leadingage.org or 202 -508-9470 with any follow up or questions.

Sincerely,

A handwritten signature in black ink that reads "Katie Smith Sloan". The signature is written in a cursive, flowing style.

Katie Smith Sloan
President and CEO