

Memorandum

CARES Act: Payments Available Under the Public Health and Social Services Emergency Fund

April 7, 2020

In the \$2 trillion Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Congress appropriated over \$127 billion to the Public Health and Social Services Emergency Fund (“PHSSEF”) for the coronavirus disease 2019 (“COVID-19”) response. Over \$27 billion will be available for the development and purchase of vaccines, therapeutics, diagnostics and medical supplies, and other preparedness and response activities. Another \$100 billion will be made available through the U.S. Department of Health and Human Services (“HHS”) to reimburse eligible health care providers for certain health care related expenses or lost revenues that are attributable to COVID-19. The CARES Act does not specify how the HHS Secretary must prioritize allocations of the \$100 billion, other than that funds be provided to eligible health care provider applicants on a rolling basis. It is unclear if applications for and allocations of the \$100 billion in PHSSEF funds will take into account the healthcare providers’ number of confirmed COVID-19 cases or the percentages of lost revenues attributable to COVID-19.

The CARES Act defines “eligible health care providers” as public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit entities and not-for-profit entities not otherwise described, as specified by the HHS Secretary, within the United States that provide diagnoses, testing or care for individuals with possible or actual cases of COVID-19.

HHS is expected to make applications for PHSSEF funds available shortly. Members of Congress have called upon HHS to quickly provide guidance on how health care providers may apply for PHSSEF funds as the CARES Act only states that a provider must submit an application with a statement justifying the need for a payment from the PHSSEF fund and the provider’s tax identification number but does not provide further information. Once applications are available, HHS will review them and make payments on a rolling basis. The CARES Act provides that payments may include pre-payments, prospective payments and retrospective payments, if the HHS Secretary determines that such payments types are appropriate.

The CARES Act limits the purposes for which PHSSEF funds are available to the following: building or construction of temporary structures; leasing of properties; medical supplies and equipment including personal protective equipment and testing supplies; increased workforce and trainings; emergency operations centers; retrofitting facilities; and surge capacity. PHSSEF funds may not be used to reimburse expenses or losses that have been reimbursed from other sources (such as Medicare) or that other sources are obligated to reimburse.

Eligible health care providers who receive payments of PHSSEF funds must submit reports and documentation to ensure compliance with the CARES Act limitations. The HHS Office of Inspector General also has audit authority with respect to payments of PHSSEF funds.

Congress previously appropriated funds to the PHSSEF to prevent, prepare for, and respond to COVID-19 through the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (“Supplemental Appropriations Act”) and the Families First Coronavirus Response Act. In the Supplemental Appropriations Act, Congress appropriated \$3.1 billion to the PHSSEF to develop medical countermeasures and vaccines, prioritize platform-based technologies with U.S.-based manufacturing capabilities, purchase vaccines, therapeutics, diagnostics, necessary medical supplies, medical surge capacity and for related administrative activities. In the Supplemental Appropriations Act, Congress also appropriated an additional \$300 million for the purchase of COVID-19 vaccines, therapeutics and diagnostics. In the Families First Coronavirus Response Act, Congress appropriated \$1 billion to the PHSSEF to reimburse providers for COVID-19 testing and health services for uninsured individuals. Congress may appropriate additional sums to the PHSSEF in the future to support other COVID-19 response activities.

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