



# Avoiding the Pandemic of FALSE CLAIMS for COVID-19 Payments/Awards

Presented by:

Cris Miller, CMPE, CHC, CCS-P  
Steve Schulz, CPA, CMPE  
Christopher Melton, JD

# COVID-19 Distributions

CARES Act signed into law March 27, 2020, provided \$100B for healthcare providers to address healthcare expenses and lost revenue related to the coronavirus.

Amount originally available \$100B

1st distribution - \$50B

1<sup>st</sup> Tranche - \$30B disbursed based on Medicare payments

2<sup>nd</sup> Tranche - \$20B based on combination of cost reports if filed or based on reported gross receipts and other data through portal

# COVID-19 Distributions

## Targeted Allocations

- + Undefined dollar amount for treatment of uninsured COVID-19 patients
- + 10B for COVID-19 high impact areas (had to provide info through portal on # of COVID patients and ICU beds)
- + 10B for Rural providers
- + \$400M for Indian Health Services
- + Undefined amounts to SNF, dentists, and MCD only providers, not defined allocation



# COVID-19 Distributions

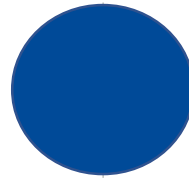
The portal for the 2<sup>nd</sup> Distribution opened on April 24<sup>th</sup>.

- + If you did not sign the attestation for any initial distribution, you cannot apply for an additional allocation until you attest to the initial distribution.
- + If you didn't sign the attestation and you didn't return the money, it is assumed that you meant to sign the attestation.
- + Payments for the 2nd Distribution will go out on a rolling weekly basis as CMS validates the data supplied by providers and is reportedly paid within 10 days or reporting.

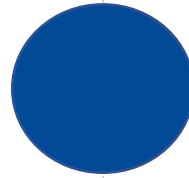
# Terms & Conditions

When a Provider Attests to the Terms & Conditions, They are Attesting to the Following:

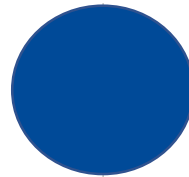
- Funds are from the "Relief Fund"
- The provider billed Medicare at some point in 2019, and provide or provided after January 31, 2020



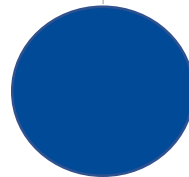
Diagnoses,



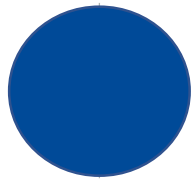
Testing; and/or



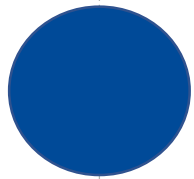
Care for individuals with possible or actual cases of COVID-19



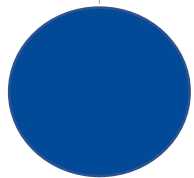
Is not currently excluded from receiving payments Medicare, Medicare Advantage or part D



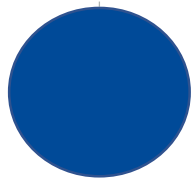
Is not currently excluded from participation in Medicare, Medicaid or other Federal health care programs



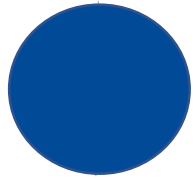
Does not currently have Medicare billing privileges revoked.



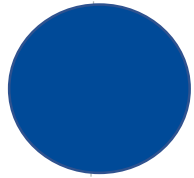
The recipient certifies that the Payment will only be used to prevent, prepare for and respond to corona virus and that the Payment shall reimburse the Recipient only for healthcare related expenses or lost revenues that are attributable to coronavirus.



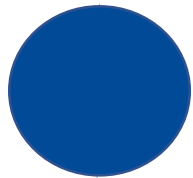
The Recipient certifies that it will not use the Payment to reimburse expenses or losses that have been reimburses from other sources or that other sources are obligated to reimburse.



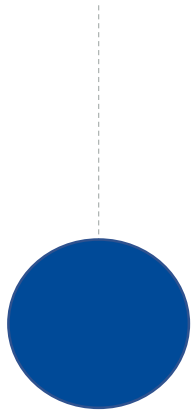
The Recipient shall submit reports as the Secretary determines are needed to ensure compliance with conditions that are imposed on this Payment, and such reports shall be in such form, with such content, as specified by the Secretary in future program instructions directed to all recipients.



The Recipient shall also submit general revenue data for calendar year 2018 to the Secretary when applying to receive a Payment, or within 30 days of having received a payment.

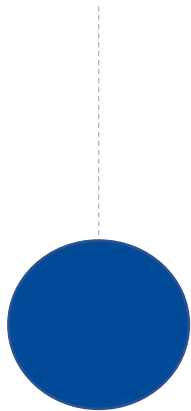


The Recipient consents to the Department of Health and Human Services publicly disclosing the Payment that Recipient may receive from the Relief Fund. The Recipient acknowledges that such disclosure may allow some third parties to estimate the Recipient's gross receipts or sales, program services revenue or other equivalent information.



The Recipient certifies that all information it provides as part of its application for the Payment, as well as all information and reports relating to the Payment that it provides in the future at the request of the Secretary of Inspector General, are true, accurate and complete, to the best of its knowledge. The Recipient acknowledges that any deliberate omission, misrepresentation, or falsification of any information contained in this payment application or future reports may be punishable by criminal, civil, or administrative penalties, including but not limited to revocation of Medicare billing privileges, exclusion from federal health programs, and/or the imposition of fines, civil damages, and/or imprisonment.





Not later than 10 days after the end of each calendar quarter, any Recipient that is an entity receiving more than \$150,000 total in funds under the Coronavirus Aid, Relief and Economics Security Act (P.L. 116-136), The Coronavirus Preparedness and Response Supplemental Appropriations Act (P.L. 116-123), the Families First Coronavirus Response Act (P.L. 116-127, or any other Act primarily making appropriations for the coronavirus response and related activities, shall submit to the Secretary and the Pandemic Response Accountability Committee a report.

# Terms & Conditions

This report shall contain:

- + The total amount of funds received from HHS under one of the foregoing enumerated Acts:
  - + the amount of funds received that were expended or obligated for each project or activity;
  - + a detailed list of all projects or activities for which large covered funds were expended or obligated, including:



# Terms & Conditions

- + The name and description of the project or activity,
- + the estimated number of jobs created or retained by the project or activity, where applicable,
- + detailed information on any level of sub-contracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 allowing aggregate reporting of awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.



# Terms & Conditions

- + The Recipient shall maintain appropriate records and cost documentation including, as applicable, documentation described in 45CFR 75.302 – Financial management and 45 CFR 75.361 through 75.365-Record Retention and Access, and other information required by future program instructions to substantiate the reimbursement of costs under this award.



# Terms & Conditions

- + The Recipient shall promptly submit copies of such records and cost documentation upon the request of the Secretary, and fully cooperate in all audits the Secretary, Inspector General, or Pandemic Response Accountability Committee conducts to ensure compliance with these Terms and Conditions
- + The Secretary has concluded that the COVID-19 public health emergency has caused many healthcare providers to have capacity constraints. As a result, patients that would ordinarily be able to choose to receive all care from in-network providers may no longer be able to receive such care in-network.
- + Accordingly, for care of COVID-19 patients, Recipient certifies that it will not seek to collect from the patient – out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network Recipient.
- + Executive Pay – None of the funds appropriated in this title shall be used to pay the salary of an individual at a rate higher than \$197,300 (Executive Level II).

# Terms & Conditions

Additional statutory provisions apply:

- + Cannot be used for Gun Control Advocacy
- + Cannot Be used for Lobbying
- + Cannot be used to Fund Abortions unless
  - + The abortion is as a result of rape
  - + Threatens the mothers life
  - + Is provided using state, locality, entity or private funds
  - + Cannot be used for embryo research
  - + Cannot be used to promote legalization of controlled substances

# Terms & Conditions

- + Cannot be used to maintain or establish a computer unless pornography is blocked.
- + Prohibits funding ACORN
- + Prohibits Funding Needle Exchange except under very specific guidelines.



# Reporting Form

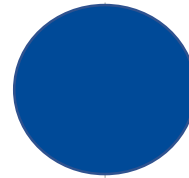
		Secretary of HHS			
		Pandemic Response Accountability Committee			
		HHS Relief Fund Reporting			
Date	Due 10 days following EOQ		____ Quarter		
Funds Received From:					
CARES Act (P.L. 116-136)	\$	_____	Project/Activity List: _____		
CPRSAA (P.L. 116-123)	\$	_____	Name: _____		
FFCA (P.L. 116-127)	\$	_____	Description: _____		
			Jobs Created/Retained: _____		
Funds Expended From:					
CARES Act (P.L. 116-136)	\$	_____			
CPRSAA (P.L. 116-123)	\$	_____			
FFCA (P.L. 116-127)	\$	_____			
Records Attached					



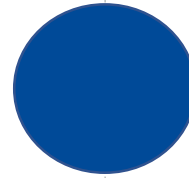


## The Different Acts

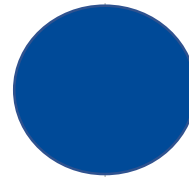
The CARES Act is Phase 3 of Congress's coronavirus response.



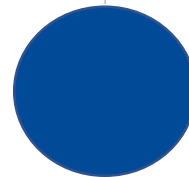
\$130B to medical and hospital industries



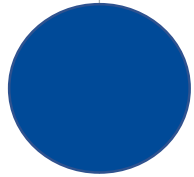
Funding to public health programs



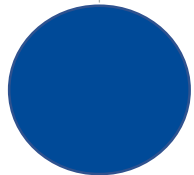
Authorizes FDA to approve rule changes to OTC drugs without full advanced notice and public comments



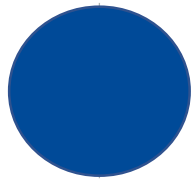
Requires an examination, report and recommendations regarding the security of the US supply chain of medical products



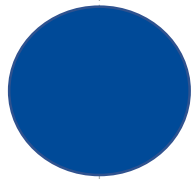
Adds PPC, medical devices, diagnostic test, and med supplies that administer drugs, vaccines and other biologic products to the Strategic National Stockpile



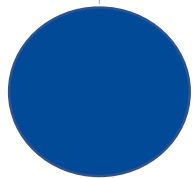
Gives legal immunity to manufacturers, distributors and administrators of respiratory protective devices under federal and state law with respect to all claims for loss caused by the devices.



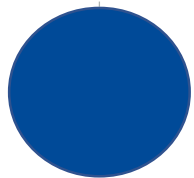
Requires the DHHS to prioritize the review of drug applications when there is an emergency drug shortage



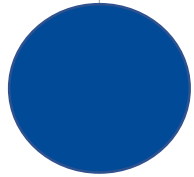
Requires group health plans, health insurance carriers and Medicare to cover COVID-19 testing and vaccination



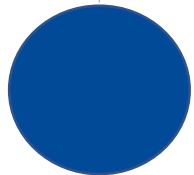
Provides \$145 million in grants over a five-year period for promoting telehealth



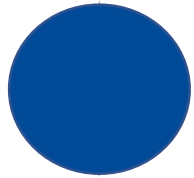
Established a Ready Reserve Corps of medical professionals in event of a public health emergency or national emergency.



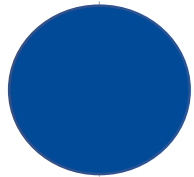
Expedites the development and approval process of new veterinary drugs for diseases that have the potential for serious health consequences for humans



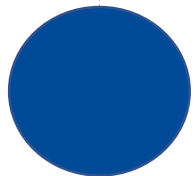
Increases Medicare payments to medical providers between May 1, 2020 and December 31, 2020



Allows the disclosure of de-identified patient medical records related to substance abuse disorder



Allows funding for elder nutrition support to be used for an individual who is unable to obtain food due to social distancing. Waives the usual dietary guidelines requirements during the COVID-19 health emergency



Requires the DHHS to carry out a national public awareness campaign about the importance, safety and need for blood donation

# The Different Acts

## The CPRSA Act

- + The first act to be based to assist with the Coronavirus pandemic.
  - + \$500M Emergency Telehealth waiver
  - + Funding for the FDA - \$61 M
  - + Funding for the CDC - \$2.2B
  - + Funding for the National Institute of Environmental Sciences - \$10M
  - + Funding for Vaccines, Therapeutics and Diagnostics - \$3B
  - + Health Preparedness, Pharmaceuticals and Medical Supplies and CHC less than \$1B

# The Different Acts

## The CPRSA Act (Cont'd)

- + \$136M to HHS programs to program benefits that were transferred to assist emergency preparedness and response activities at the CDC
- + \$2M to OIG to conduct oversight of activities on coronavirus preparedness and response
- + General Provision (no money) for state and/or local costs incurred for emergency response



# The Different Acts

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## The CPRSA Act (Cont'd)

- +1B in loan subsidies to help small business
- +Additional ability to add flexibility to governments ability to respond quickly to respond to unknown needs created by the coronavirus.





# The Different Acts

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## + FFCRA

### + Employer Paid Leave Requirements

- + Two weeks (up to 80 hours) of **paid sick leave** at employees regular rate of pay because employee is quarantined or experiencing symptoms and seeking a medical diagnosis; or
- + Two weeks (up to 80 hours) of **paid sick leave** at *up to two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine or child care needs.
- + More information is available through our HR consulting department.



## Relief to Businesses/Orgs

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- Loans
- Tax credits, tax deferrals and tax deductions

## Relief to Individuals

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- Tax rebates,
- Tax credits
- Tax deductions
- Unemployment Benefits
- Student grants
- Student loans, work-study programs
- Retirement plans and retirement accounts
- OTC medicines and personal care products
- Medicare – telehealth
- Credit reporting

## Defense Contractors

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- Defense contractors may use their federal contractors to pay employees while the worker is unable to work.

# MGMA Questions to HHS

- + MGMA has requested further clarification on the following issues:
  - + The entity qualifies to keep funds if they provide or have provided care to *any* patient and such care does not need to be specific to treating COVID-19.
  - + Clarify situations where Provider Relief grants overlap with funds received or obligated from other sources such as the Payroll Protection Program



# MGMA Questions to HHS

- + Give guidance of what type of records required to support appropriate use of grants.
- + Clarify the scope of the balance billing prohibition including the time period.
- + The feds say this money is not taxable, but many states are stating that they will consider these funds taxable – stay tuned.



# HHS FAQ's

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- + Once you apply for the 2nd round of funds, it should take approximately 10 business days for your to receive funding or some other type of communication.
- + If your fund request is denied, there is no appeal process.
- + It is reasonable to estimate losses by comparing this years March and April revenue to last years revenue.



# HHS FAQ's

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- + In applying for additional funds, you are required to input information from tax returns and to upload tax forms. If you have not filed 2019 returns, use 2018.



# Time Frame for Spending Funds

## Checked with MGMA on Time Frames

- + There is no time frame for spending funds
- + There are quarterly reporting requirements that might indicate that the time frame could go beyond June 30, 2020.





# WHAT'S AT STAKE?



# CARES ACT



- “This week, we will be putting out \$30 billion in grants...**no strings attached.**”

-Seema Verma, CMS Administrator

April 9, 2020

# WHAT'S AT STAKE?



- FALSE CLAIMS ACT 31 USC 3729
- Involves the presentation of a claim for payment to the federal government that is “known” to be false or fraudulent.
- “Known” means actual knowledge or deliberate indifference to the truth or falsity of the information
- Prohibits
  - presenting (or causing to be presented) a false claim for payment,
  - using or causing to be used a false record or statement for payment,, and
  - using/making a false record/statement to conceal, **avoid or lower an obligation to pay money to the government**

# REVERSE FALSE CLAIMS



- Common Theories of False Claims Act liability
  - False Certification
    - ✓ Express or Implied
  - Reverse False Claims
  
- To prevail on a False Claims Act claim, the government must prove the defendant
  - Made a false statement
  - With either actual knowledge, deliberate ignorance or reckless disregard;
  - That was material;
  - Causing the Government to make a payment

# FCA LIABILITY



- Penalties resulting in **3 times the amount of the overpayment**, and
- Civil Monetary Penalties in the amount of: \$11,181 to \$22,363 per claim

# CARES ACT AND THE FCA



- “health care providers that are receiving these dollars can essentially spend that in any way that they see fit.”
  - Seema Verma, CMS Administrator
- This does not seem to be the case at all, however, as there are conditions for eligibility and conditions on how the funds can be used
- These conditions would be considered conditions of payment under the FCA

# CARES ACT AND THE FCA



- Under implied or express certification under the FCA, if there exists a condition that must be met for payment to be received, that condition of payment could serve as the basis of a FCA violation if the condition is not met
- Therefore any acceptance of the funds, accompanied with an attestation that would indicate eligibility would be an express false certification and therefore an FCA violation

# CARES ACT AND THE FCA



- Even if an attestation is not made, FCA liability would still not be escaped if conditions are not met
- The acceptance of the relief funds would most likely be considered an implied certification of eligibility and thus still have FCA liability if the conditions are not met
- Additionally, if, after acceptance of the funds, a provider discovers non-compliance, the provider would have an obligation to reimburse the government for the funds
- Failure to fulfill the obligation would create FCA liability under a reverse false claims theory

# CARES ACT



- Requirements for qualification for original April 10<sup>th</sup> distribution:
  - ✓ Must have received Medicare fee for service reimbursements in 2019;
  - ✓ Provide or provided diagnoses, testing or care for individuals with possible or actual cases of COVID-19 after January 31, 2020 (even if no patients were actually treated);
  - ✓ Have not been terminated from Medicare;
  - ✓ Have not been excluded from Federal Healthcare Programs; and
  - ✓ Currently have Medicare billing privileges



# CARES ACT



- Restrictions on use of April 10<sup>th</sup> distribution:
  - ✓ Funds must be used “ to prevent, prepare for, and respond to coronavirus” and for “healthcare related expenses or lost revenues that are attributable to coronavirus
- Brings up challenge: how do you demonstrate this use?

# CARES ACT



- Restrictions on use of April 10<sup>th</sup> distribution:
  - ✓ Funds must be used “ to prevent, prepare for, and respond to coronavirus” and for “healthcare related expenses or lost revenues that are attributable to coronavirus
  - ✓ Not for use for expenses or losses that were already reimbursed by another source or for which another source has an obligation to reimburse.
  - ✓ Provider cannot seek payment from a COVID-19 patient for out of pocket expenses greater than what patient would have to pay in-network provider
    - This also presents a challenge as what constitutes a “COVID-19 patient”

# CARES ACT



- Restrictions on use of April 10<sup>th</sup> distribution: Funds cannot be used for:
  - ✓ “excessive executive compensation”
  - ✓ Promotion of gun control
  - ✓ Abortions
  - ✓ Embryo research
  - ✓ Needle exchange programs
  - ✓ Promotion of legalization of controlled substances

# AGAIN, WHAT'S AT STAKE? GOVERNMENT SCRUTINY



- CARES Act created Pandemic Recovery Accountability Committee
- PRAC includes Inspector Generals from 9 separate Federal Agencies
- PRAC stated purpose is to "promote transparency and conduct and support oversight of covered funds and the Coronavirus response to (1) prevent and detect fraud, waste, abuse, and mismanagement; and (2) mitigate major risks that cut across program and agency boundaries."

# PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE



- PRAC is a subcommittee that falls under the umbrella of the Committee of the Council of Inspectors General on Integrity and Efficiency (CIGIE), an executive branch committee that is comprised of all 75 statutorily-created Inspectors General across all Federal executive agencies
- CIGIE has been around since 1975 and exists “with a mission to address integrity, economy, and effectiveness issues that transcend individual government agencies.

# PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE



- PRAC heads up the accountability efforts on behalf of CIGIE related to all COVID-19 relief payments, including the CARES Act, the Paycheck Protection Program and Health Care Enhancement Act, the Coronavirus Preparedness and Response Supplemental Appropriations Act and the Families First Coronavirus Response Act.
- PRAC is comprised of Inspectors General from 9 different agencies (Department of Defense, Department of Education, HHS, Homeland Security, IRS, Treasury, DOJ, Department of Labor, Small Business Administration), But Chairman of CIGIE can appoint additional Inspectors Generals from other agencies to the PRAC in order to increase accountability efforts.
- At time that PRAC is up and running there will be 21 Inspectors Generals appointed.

# PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE



- By statutory mandate, the PRAC “shall conduct audits and reviews of programs, operations, and expenditures relating to covered funds and the Coronavirus response”
- PRAC is authorized to “conduct its own independent investigations, audits, and reviews relating to covered funds or the Coronavirus response”
- PRAC is also authorized to “issue subpoenas to compel the testimony of persons who are not Federal officers or employees”

# PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE



- Important to note that because DOJ is a part of the PRAC, there is a greater level of communication in cases of suspected fraud, and DOJ has the power to issue Civil Investigative Demands in the course of fraud investigations
- Because of the wide breadth of agencies involved, there are numerous avenues of recovery ranging from FCA actions to administrative recoupment and utilization review activities



# TAKEAWAY



*A Milton Friedman favorite political aphorism:*

"There's no  
such thing  
as a free lunch."



# TAKEAWAY



- The Government will scrutinize these payments
- Providers need to be very careful to ensure that they meet eligibility prior to signing attestations
- Compliance departments need to closely monitor and document the use of the funds to ensure and to demonstrate that funds are used for eligible expenditures



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