

Congress of the United States

House of Representatives

Washington, D.C. 20515

May 7, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Secretary Azar and Administrator Verma:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce and the Committee on Ways and Means are examining the ongoing efforts of the Department of Health and Human Services (HHS or Department) to address the coronavirus (COVID-19) pandemic. We write to raise serious concerns about the Provider Relief Fund and the Accelerated and Advance Payment Programs. With respect to each, we are concerned about the lack of transparency with Congress and the American people about how funds are being spent or loans are being made. We also have grave concerns regarding the methodology being used to distribute \$175 billion Congress appropriated for the Provider Relief Fund, through the Public Health and Social Services Emergency Fund.

Our nation's healthcare providers are struggling to care for COVID-19 patients while simultaneously facing deep declines in revenues due to decreased patient volumes and deferred care. Additionally, particularly in areas that have been hit hard by the COVID-19 outbreak, hospitals and other providers have faced significant costs attributable to COVID-19, such as costs related to purchasing personal protective equipment (PPE) and testing supplies, building temporary structures, retrofitting existing structures for isolation and surge management, and paying personnel.

Congress has moved rapidly to provide unprecedented levels of funding in order to ensure the short-term and long-term stability of our nation's health care system throughout and beyond the COVID-19 crisis. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) appropriated \$100 billion in relief for providers and the recent Paycheck Protection Program and Health Care Enhancement Act (P.L. 116-139) appropriated an additional \$75 billion for the CARES Act Provider Relief Fund.

The CARES Act also expanded Medicare's Accelerated Payment Program for certain hospitals during the COVID-19 emergency, and the Centers for Medicare & Medicaid Services

(CMS) built on this expansion by extending the Accelerated Payment Program and Advance Payment Program to additional Part A and Part B providers and suppliers.¹ As of April 26, 2020, CMS indicated that approximately 21,000 applications totaling \$59.6 billion in payments to Part A providers and 24,000 applications totaling \$40.4 billion in payments to Part B providers were approved.² On April 26, 2020, CMS also announced that it would immediately suspend the Advance Payment Program for Part B providers and reevaluate pending and new applications for the Accelerated Payment Program.³ However, CMS provided no additional information regarding the future of the Advance and Accelerated Payment Programs.

When we passed the CARES Act, Congress was clear that the funding provided to the Department for the Provider Relief Fund was for the express purpose “to prevent, prepare for, and respond to coronavirus...for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus.”⁴ We furthermore made clear that the Secretary of HHS is required to “review applications and make payments under this paragraph in this Act.”

The Administration’s efforts to establish the Provider Relief Fund to date has been at best, a series of missteps, and at worst, a disregard of Congress’ intent for the program. On April 10, 2020, 14 days after the passage of the CARES Act, HHS announced an initial \$30 billion distribution from the Provider Relief Fund.⁵ This tranche of funding was allocated based on providers’ share of 2019 Medicare fee-for-service (FFS) reimbursements. According to HHS, the Medicare FFS mechanism was chosen in order to facilitate the fastest, most broad-based distribution possible.⁶ However, this approach had clear shortcomings that the Administration acknowledged, leaving large swathes of providers behind, such as pediatric providers and those

¹ Centers for Medicare and Medicaid Services, *FACT SHEET: EXPANSION OF THE ACCELERATED AND ADVANCE PAYMENTS PROGRAM FOR PROVIDERS AND SUPPLIERS DURING COVID-19 EMERGENCY* (www.cms.gov/files/document/accelerated-and-advanced-payments-fact-sheet.pdf).

² Centers for Medicare and Medicaid Services, *CMS Reevaluates Accelerated Payment Program and Suspends Advance Payment Program* (Apr. 26, 2020) (www.cms.gov/newsroom/press-releases/cms-reevaluates-accelerated-payment-program-and-suspends-advance-payment-program) (press release).

³ *Id.*

⁴ Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, Pub. L. No. 116-136 (2020).

⁵ U.S. Department of Health and Human Services, *HHS to Begin Immediate Delivery of Initial \$30 Billion of CARES Act Provider Relief Funding* (Apr. 10, 2020) (www.hhs.gov/about/news/2020/04/10/hhs-to-begin-immediate-delivery-of-initial-30-billion-of-cares-act-provider-relief-funding.html) (press release).

⁶ *Id.*

that rely on Medicare Advantage. Additionally, the approach adopted clearly fails to target funding based on the statutory framework relating to COVID-19 driven costs, and in fact the level of funding appears to be completely disconnected from need.⁷ Although the Department is requiring recipients to “certify” that the payment will reimburse the recipient only for health care related expenses or lost revenues that are attributable to COVID-19,⁸ it is unclear how the Department will enforce this requirement, whether the Department will require additional documentation from providers to substantiate these claims, or whether the Department has seen providers return this funding due to these certifications.

Despite acknowledgements by the Department that this mechanism for initial funding tranche failed to address all providers’ needs and would need to be modified or supplemented, \$20 billion in a second tranche of funding is currently being sent to providers under a similar distribution mechanism, except through a formula based on 2018 net patient revenue from all payors rather than 2019 Medicare FFS claims.⁹ Eligibility for the second distribution of funding was also inexplicably limited to providers who received funding in the first distribution, despite the Department’s stated intent to improve upon the first distribution and ensure broader relief in subsequent allocations. As such, providers either received two distributions of funding, or none at all, leaving a number of providers nationwide without any relief, such as certain behavioral health providers and pediatric providers who do not have any Medicare revenue. Moreover, as the second formula-based distribution also did nothing to factor in actual funding needs or COVID-19 related revenue shortfalls, funding for providers directly impacted by COVID-19 and who are fighting on the frontlines to treat and contain this crisis has remained wholly inadequate. As demonstrated by the Administration’s inability to capture all provider types and to target funding to those who are most in need of assistance, formula-based distribution mechanisms are insufficient to address the crisis in our healthcare system. Moreover, such a distribution mechanism runs counter to Congressional intent and to the program language signed into law, which requires funds to be distributed through an application-based process to reimburse for specific COVID-related expenses and lost revenue.

⁷ *Hospital relief money slow to reach places that need it most, lawmakers and industry groups say*, Washington Post (Apr. 16, 2020) (www.washingtonpost.com/us-policy/2020/04/16/bailout-money-hospitals-slow-get-out-missing-some-places-that-need-it-most-lawmakers-industry-groups-say/).

⁸ U.S. Department of Health and Human Services, *Terms and Conditions for Provider Relief Fund Distributions* (Apr. 2020) (www.hhs.gov/sites/default/files/terms-and-conditions-provider-relief-30-b.pdf). U.S. Department of Health and Human Services, *HHS Announces Additional Allocations of CARES Act Provider Relief Fund* (Apr. 22, 2020) (www.hhs.gov/about/news/2020/04/22/hhs-announces-additional-allocations-of-cares-act-provider-relief-fund.html) (press release).

⁹ U.S. Department of Health and Human Services, *HHS Announces Additional Allocations of CARES Act Provider Relief Fund* (Apr. 22, 2020) (www.hhs.gov/about/news/2020/04/22/hhs-announces-additional-allocations-of-cares-act-provider-relief-fund.html) (press release).

Additionally, the Department's lack of transparency about who has received funds through these programs is troubling. We appreciate that the Department yesterday took its first step towards publicly releasing some data with regard to recipients of funds from the Provider Relief Fund.¹⁰ But we continue to request that the Department provide to Congress all of the data on all distributions from the Provider Relief Fund without further delay, as this information is critically important to inform our legislative efforts. The Department has also failed to make available any provider-specific data with regard to the Medicare Accelerated and Advance Payment Programs, despite repeated requests by Congress for this basic level of transparency and the Department's ability to do so for other CARES Act funding awards.¹¹ The Committees continue to have questions about the specific methodology for the \$12 billion "high impact areas" distribution for areas highly affected by COVID-19 and the \$10 billion "rural" distribution, as well as future planned distributions.¹² Additionally, questions the Committee has submitted to the Department about how the Provider Relief Fund will be administered, including

¹⁰ Centers for Disease Control and Prevention, HRSA Provider Relief Fund – General Allocation (data.cdc.gov/Administrative/HRSA-Provider-Relief-Fund-General-Allocation/kh8y-3es6) (accessed May 7, 2020).

¹¹ E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services and Staff, Centers for Medicare and Medicaid Services (Apr. 20, 2020); Telephone call, Majority Staffs from House Committee on Ways and Means and House Committee on Energy and Commerce with Staff, U.S. Department of Health and Human Services (Apr. 20, 2020); E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services and Staff, Centers for Medicare and Medicaid Services (Apr. 24, 2020); E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services and Staff, Centers for Medicare and Medicaid Services (Apr. 28, 2020); E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services and Staff, Centers for Medicare and Medicaid Services (Apr. 29, 2020); E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services (Apr. 24, 2020); E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services (Apr. 27, 2020); E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services (Apr. 28, 2020); E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services (Apr. 29, 2020); E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services (Apr. 30, 2020).

¹² E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services (Apr. 24, 2020); E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services (Apr. 28, 2020); Email from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services (May 4, 2020).

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the terms and conditions for receipt of the funds and how they will be enforced,¹³ the process for selecting UnitedHealth Group to administer the fund and whether this contract was awarded outside of regular federal procurement channels,¹⁴ and what portion of the fund will be spent on treatment of the uninsured through the Health Resources and Services Administration,¹⁵ also remain unanswered.

While we have been patient with the Department given the gravity of the challenges we are all facing in responding to the COVID-19 crisis, the Department's lack of transparency makes it impossible for Congress to assess the ongoing needs of our healthcare system as the COVID-19 crisis unfolds, as we lack critical information on the adequacy and the comprehensiveness of the current efforts. As such, we request an immediate response from the Department regarding the documents and information requested in the enclosed appendix. If the Department is unable to immediately provide the information, please provide a timeline for providing the requested information to the Committees.

This crisis demands that we work swiftly and based on the best data available. Currently, despite repeated requests, this Administration has prevented Congress from obtaining the data that the Department has available on funding for our health care system, data that is necessary to inform near future legislation. We look forward to receiving this information so that we can conduct the business the American people expect of us. We look forward to having you join us at the earliest possible date in each of our Committees to discuss these and other COVID-related issues.

Sincerely,



Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce



Richard E. Neal
Chairman
Committee on Ways and Means

Enclosure

¹³ E-mail from Majority Staff, House Committee on Energy and Commerce, to Staff, U.S. Department of Health and Human Services (Apr. 24, 2020).

¹⁴ *Trump team's use of big insurer to dispense recovery funds comes under scrutiny*, Politico (Apr. 18, 2020) (www.politico.com/news/2020/04/18/unitedhealth-trump-coronavirus-recovery-funds-193716).

¹⁵ Health Resources and Services Administration, COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured (www.hrsa.gov/CovidUninsuredClaim) (accessed May 7, 2020).

Appendix

Provider Relief Fund

1. Please provide the following information with respect to the Provider Relief Fund:
 - a. A detailed description of how the CARES Act Provider Relief Fund is being overseen within the Department, including what agencies are involved in the administration of the fund, the development of funding methodologies, and review of provider documentation and applications, as well as who within the Department or agencies is primarily responsible for daily oversight of this fund.
 - b. A list of all providers who received funding under the Provider Relief Fund. Such a list should include for each provider:
 - i. When and by what delivery method the provider received a payment;
 - ii. The amount of the grant to each provider;
 - iii. The type of provider receiving the grant;
 - iv. A description of the documentation submitted by the provider that demonstrated the funds were used for healthcare-related expenses or lost revenue attributable to coronavirus;
 - v. Whether the provider also received funds through the Accelerated and Advance Payment Programs, and if so, in what amount(s);
 - vi. Whether the provider has accepted the terms and conditions and/or returned the payment; and
 - vii. Whether HHS has or plans to recoup payments distributed based on formula differences between the various disbursements.
 - c. A detailed description of the specific methodology that is being utilized to allocate funds for COVID-19 high impact areas, including whether any of the funds will be allocated according to a provider's Medicare DSH status, Medicaid deemed DSH status, or a combination of both.
 - i. A list of all providers who received funds based on this allocation;
 - ii. The amount of the grant to each provider;
 - iii. The type of provider receiving the grant; and
 - iv. Whether the provider also received funds through any other COVID-related provider relief method.
 - d. A detailed description of the specific methodology that is being utilized to allocate funds for rural providers.
 - i. A list of all providers who received funds based on this allocation;
 - ii. The amount of the grant to each provider, and the percentage of overall operating expenses compensated by the grant;
 - iii. The type of provider receiving the grant; and
 - iv. Whether the provider also received funds through any other COVID-related provider relief method, and if so, the amount.
 - e. The total amount of funding distributed by May 6, 2020 and the amount left in such fund.

- iv. Whether the provider or supplier is eligible to receive additional loans through either program.
- b. The total number of loans distributed through either program including a breakdown by state and by provider type.
- c. The rationale for suspending the Advance Payment Program and if/when payments will be resumed.
- d. The criteria CMS will use to reevaluate pending and future Accelerated Payment applications.
- e. Information on any future changes CMS intends to make to the eligibility or process for approving and recouping payments made through the Accelerated and Advance Payment Programs.