United States Senate

April 23, 2020

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

Dear Secretary Azar,

Massachusetts hospitals, health care facilities, and health care providers are experiencing serious financial challenges during the novel coronavirus outbreak and require significant assistance from the Department of Health and Human Services (HHS). The *Coronavirus Aid, Relief, and Economic Security (CARES) Act* created a $100 billion Provider Relief Fund from which HHS has already distributed $30 billion in initial funding to health care providers. But the manner in which HHS has disbursed these funds to health care providers in hard-hit states such as Massachusetts has not adequately addressed their needs. We call on HHS to recognize this shortcoming and make needed adjustments to future Provider Relief Fund disbursements. These adjustments are particularly important as Congress contemplates providing an additional $75 billion in provider relief funds through the *Paycheck Protection Program and Health Care Enhancement Act*, which is awaiting action in the House.[1]

The $841 million that HHS has distributed to Massachusetts health care providers in this first round of funding is a tremendous help and a necessary first step.[2] In particular, we appreciate that HHS based the funding allocation for this initial disbursement on rigorous data, specifically 2019 fee-for-service Medicare reimbursements.[3] This transparent funding allocation enabled HHS to disburse these funds quickly, allowed health care providers to plan based on an expected amount, and provided much-needed assurance that HHS would distribute the funds consistent with objective data and evidence. This transparent methodology stands in contrast to the way the Trump administration has administered much of the coronavirus pandemic response.[4]

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[1] *Read: Bill text of $480 billion congressional package to help small businesses, CNN,* (Apr. 21, 2020), https://www.cnn.com/2020/04/21/politics/read-congressional-bill-to-help-small-businesses/index.html.

[2] House Committee on Ways and Means, State-by-State Breakdown: Delivery of Initial $30 Billion of CARES Act, https://republicans-waysandmeansforms.house.gov/uploadedfiles/first_distribution_summary_by_state.pdf (last updated Apr. 14, 2020).

[3] Department of Health & Human Services, CARES Act Provider Relief Fund, https://www.hhs.gov/provider-relief/index.html (last updated Apr. 16, 2020).

[4] *See* Lydia DePillis et al., *Here's Why Florida Got All the Emergency Medical Supplies It Requested While Other States Did Not*, ProPublica (Mar. 20, 2020), https://www.propublica.org/article/heres-why-florida-got-all-the-

The methodology HHS used, however, does not adequately account for the burdens that many medical providers in Massachusetts and across the country face. In particular, hospitals and health care facilities that treat a large number of patients covered by Medicaid or Medicare Advantage, or provider types that see fewer Medicare beneficiaries, such as children's hospitals or obstetricians, receive a disproportionately small share of these funds. Facilities or providers newly enrolled in Medicare would receive no funds, and providers experiencing disruptions to services they provided in 2019 — for example, due to planned renovations or natural disasters — see reduced benefits under the current formula. HHS should take care to ensure disbursements from the Provider Relief Fund meet the needs of these providers.

Moreover, the initial formula did not account for the extreme impact in coronavirus hot spots. Although Massachusetts represents 4.7% of all U.S. COVID-19 cases and 3.6% of all U.S. deaths (as of April 17, 2020), Massachusetts received only 2.8% of the $30 billion initially distributed.[5] And although the funding Massachusetts received amounted to $44,000 per reported COVID-19 patient in the state, other states such as Minnesota, Nebraska, West Virginia, and North Dakota received more than $300,000 per reported COVID-19 case.[6] HHS has acknowledged this deficiency, and suggested that that coronavirus hot spots would be a priority for remaining funds.[7]

As HHS works to fully implement the Provider Relief Fund, we urge you to prioritize funds for health care facilities, providers, and other medical workers not adequately accounted for in the initial disbursement — in particular, in states such as Massachusetts that have the most COVID-19 cases per capita.[8] Health care providers facing large numbers of COVID-19 cases need

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emergency-medical-supplies-it-requested-while-other-states-did-not; Aaron Rupar, *Trump commits to helping blue states fight the coronavirus – if their governors are nice to him*, Vox (Mar. 25, 2020), https://www.vox.com/2020/3/25/21193803/trump-to-governors-coronavirus-help-ventilators-cuomo; Toluse Olorunnipa et al., *Governors plead for medical equipment from federal stockpile plagued by shortages and confusion*, Wash. Post (Mar. 31, 2020), https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html; Aaron Rupar, *How Trump turned ventilators into a form of patronage*, Vox (Apr. 10, 2020), https://www.vox.com/2020/4/10/21215578/trump-ventilators-coronavirus-cory-gardner-colorado-jared-polis-patronage.

[5] House Committee on Ways and Means, State-by-State Breakdown: Delivery of Initial $30 Billion of CARES Act, https://republicans-waysandmeansforms.house.gov/uploadedfiles/first_distribution_summary_by_state.pdf (last updated Apr. 14, 2020); Covid-19 Tracker, STAT, https://www.statnews.com/2020/03/26/covid-19-tracker/ (last accessed Apr. 17, 2020).

[6] Jay Hancock, Phil Garlwitz, and Elizabeth Lucas, *Furor Erupts: Billions Going to Hospitals Based on Medicare Billings, Not COVID-19*, Kaiser Health News (Apr. 10, 2020), https://khn.org/news/furor-erupts-billions-going-to-hospitals-based-on-medicare-billings-not-covid-19/.

[7] Department of Health & Human Services, CARES Act Provider Relief Fund, https://www.hhs.gov/provider-relief/index.html (last updated Apr. 16, 2020).

[8] Thomas C. Frohlich, *New York, New Jersey are among the states with the highest number of COVID-19*, USA Today (Apr. 17, 2020), https://www.usatoday.com/story/money/2020/04/17/states-with-the-highest-number-of-covid-19-cases/111552340/.

substantial assistance as they race to treat infections and keep their facilities financially afloat. We also call on HHS to account for providers with large Medicaid and Medicare advantage populations, provider types for whom Medicare is a smaller portion of their revenue, and providers and facilities for whom 2019 Medicare revenues do not represent normal patient volumes. These providers are likely to see many COVID-19 patients and experience financial repercussions from this pandemic, but they are not accounted for in the initial disbursement formula.

Finally, we call on HHS to continue to rely on clearly defined and objective criteria as it determines subsequent Provider Relief Fund payments. We are encouraged by HHS's transparency in the initial round of disbursements. However, we worry that as subsequent tranches focus on areas disproportionately impacted by coronavirus, HHS could return to its previous practice of directing resources based on political motivations. Moving away from objective criteria to distributing funds by political influence or electoral significance is unacceptable.

In light of all the preceding, we request answers to the following questions by April 30, 2020:

1. How does HHS plan to allocate future Provider Relief Fund disbursements to hospitals, health care facilities, and health care providers?
2. How does HHS plan to address the failure of the initial round of disbursements to adequately account for providers with large numbers of Medicaid or Medicare Advantage beneficiaries, provider types who provide services to few Medicare beneficiaries, or providers or facilities whose 2019 Medicare reimbursements do not accurately represent their normal patient volume?
3. HHS has indicated that it will consider fund distribution to "hot spots" facing the largest outbreaks in coronavirus pandemic. How does HHS intend to identify these "hot spots"? What formula, methodology, or data will HHS use to make these determinations?
4. In assessing whether a locality is a hot spot and targeting funding, how does HHS intend to account for disparities in:
    a. testing capacity and data collection,; and
    b. COVID-19 prevalence and outcomes based on race, ethnicity, gender, or income?
5. How does HHS intend to examine whether the Provider Relief Fund is meeting the needs of hospitals, health care facilities, health care providers, and other medical workers employed at those facilities?
6. What are HHS' plans for transparency in future Provider Relief Fund disbursements, including those envisioned by the *Paycheck Protection Program and Health Care Enhancement Act*? Does HHS plan to make public the methodology for its funding allocations, or to provide that information to state and local governments, hospitals, other health care facilities, and health care providers? If not, why not? If so, please describe the expected timeline for providing this information.

Thank you for your attention to this matter. Please contact Adam Axler with Senator Markey (adam_axler@markey.senate.gov) or Susannah Savage with Senator Warren (susannah_savage@warren.senate.gov) with any questions.

Sincerely,

Edward J, Markey
United States Senator

Elizabeth Warren
United States Senator