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Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Admin Info: 20-07-ALL
REVISED 6/19/2020

DATE: **April 30, 2020**

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Fiscal Year 2020 CARES Act Information

Memorandum Summary

- **CARES Act Funding:** Congress appropriated no less than $100 million in supplemental funds to be available for necessary costs associated with COVID-19-related survey and certification activities. This memorandum provides guidance to State Survey Agencies and Centers for Medicare & Medicaid Services (CMS) personnel on requesting, executing and reporting the supplemental funding.
- **Medicare Budget, Execution and Reporting:** Per DHHS guidance, COVID-19 funding and expenditures must be tracked, executed and reported separately. CMS intends to implement these functions in a manner similar to the existing MDS and Home Health Agency (HHA) reporting process. Cost sharing will continue according to existing State practice.
- **Medicaid Budget, Execution and Reporting:** COVID-19-related expenditures will be tracked and reported separately; however, funding will continue to be provided via traditional means in accordance with Medicaid rules. Cost sharing will continue according to existing State practice.

A. Overview – CARES Act Survey & Certification Requirements

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136) was signed into law by President Trump on March 27, 2020. The legislation provided supplemental Medicare funding of at least $100,000,000 to fund Survey and Certification activities related to COVID-19 response, prioritizing nursing homes in locations with coronavirus community spread. Of this amount, we expect to provide State Survey Agencies (SAs) approximately $81 million for such certification costs and services performed under section 1864 of the Social Security Act. This funding is available through September 30, 2023.

CMS will follow an annual budget and award process lasting each year through FY 2023 for supplemental funding. SA funding awards will be reconciled at the end of each year to ensure effective use of funds through its entire period of availability and will allow for fully justified, reasonable supplements, if needed.

For Medicare expenditures, CMS Headquarters (HQ) is implementing a reporting process similar to the existing MDS and HHA reporting processes to allow for appropriate tracking of CARES Act funds. The process to receive these funds is detailed in section B below. Cost sharing will continue according to existing State practice.

For Medicaid expenditures, COVID-19 expenditures will be tracked and reported separately; however, funding will continue to be provided via traditional means in accordance with Title XIX of the Social Security Act. Cost sharing will continue according to existing State practice.

On March 4, 2020, CMS called for States to focus surveys on infection control and on March 23, 2020 provided a streamlined tool to facilitate these efforts. There is currently wide variation in the number of Focused Infection Control surveys of nursing homes performed by States, between 11%-100% (with a national average of approximately 54.1%). Based on the COVID-19 nursing home data being reported to the CDC, CMS believes further direction is needed to prioritize completion of focused infection control surveys in nursing homes.

Therefore, States that have not completed 100% of their focused infection control nursing home surveys by July 31, 2020 will be required to submit a corrective action plan to their CMS location outlining the strategy for completion of these surveys within 30 days. If, after the 30-day period, States have still not achieved surveys in 100% of their nursing homes, their CARES Act FY2021 allocation may be reduced by up to 10%. Subsequent 30-day extensions could result in an additional reduction up to 5%. These funds would then be redistributed to those States that completed 100% of their focused infection control surveys by July 31. For additional information, please reference QSO-20-31-All released on 6/1/20.

Access to FY 2020 CARES Act allocations will be based on the following:

- All States may request FY 2020 CARES Act supplemental funding, up to their FY 2020 proportional allocation cap.
- States that have completed 100% of their nursing home focused infection control surveys will be able to request their entire FY 2020-FY2023 CARES ACT funding allocation (at their discretion) and can also apply for redistributed funding from States that failed to meet performance goals.

B. **Steps/Actions to obtain CARES Act funds for COVID-19 Survey Activities *(All States)***

1. ***Request COVID-19-only budget requirements from SAs.***
   SAs *who will need funding above their regular S&C funding for COVID-19 related activities must submit a documented budget request to their CMS Location budget contacts by July 10th, detailing the basis behind the request, including but not limited to the following information:*

   - The number of COVID-19 related surveys and onsite activities;
   - Cost per survey;
   - Personnel costs;
   - Equipment costs;
   - Fringe benefits and indirect costs;
   - Other COVID-19 related costs.

   These requests should be based upon a reasonable level of COVID-19 related work expected to be performed in each fiscal year, over and above standard S&C workload, beginning with the last two quarters of FY 2020. Additionally, the detail needs to clearly show the Medicare portion that is requested above what is not already funded out of the current S&C annual allocation.

   To ensure that adequate CARES Act supplemental funding is available for all States, CMS will utilize an allocation method based on the proportion of nursing homes in each State as compared to the national total. These guidelines are flexible with respect to both fiscal year and amount, so if it is determined that a different level of funding is needed within different years, then amounts

can be adjusted, as long as it does not exceed the total proportional allocation.

2. ***CMS Location budget review (Within approximately 1 week).***
Once these requests have been received by the CMS Location offices, CMS will perform an initial expedited review. We expect all CMS reviews to be completed within approximately one week, including CMS HQ approval (on or about July 17th). In the event of outlier requests or other difficulties, CMS HQ will work with individual CMS Locations on a case-by-case basis. Once the review by the CMS Location staff is complete, final recommendation and discussions will be held with HQ.

3. ***CMS HQ budget approval and award notification (Locations and SAs).***
After completion of the discussions with the CMS Location offices, COVID-19 budget awards will be processed via the SA Payment Management System (PMS) subaccount XXCARESAct ("XX" represents fiscal year abbreviation) and a corresponding Title 18 CMS 640t budget document will be distributed. The Medicaid portion of COVID-19 costs will be awarded as per the standard Medicaid award process and Medicaid funds will be deposited in the regular Medicaid Subaccount.

4. ***SAs input approved budget CMS-435 form into S&C/CLIA budget system.***
States should submit a mini CMS 435 – COVID-19 budget request into the S&C/CLIA budget system upon funding approval and 640t distribution. This submission needs to contain both the Medicare and Medicaid budgeted amounts for COVID-19 activities. The COVID-specific budget request form is needed to input the CMS 435 –COVID-19 Cumulative form at the end of the FY as part of the annual reconciliation process.

5. ***SA quarterly expenditure reporting, execution and CMS Location monitoring.***
A quarterly mini CMS-435 COVID-19 report will need to be submitted, using the normal state cost allocation methodologies, along with the other standard CMS-435 quarterly submissions. Please note that the Medicare portion of the COVID-19 costs should be included on the main CMS-435 form similar to the process for MDS and HHA reporting. The CARES Act funding will be utilized to supplement all COVID-19-related survey and certification costs incurred above the annual S&C program management appropriated funds.

   CMS Locations will monitor, track and approve the SA submission of the mini CMS-435 COVID-19 report, as part of the other CMS-435 quarterly reports analysis.

6. ***Supplemental COVID-19 funding and expenditures reconciled at end of fiscal year.***
While these CARES Act funds are available through the end of FY2023, the CARES Act funding amounts are awarded on an annual basis and thus must be closed out annually similar to the regular program management S&C funds. CARES Act funds will first be reconciled based on the amount of additional funding required above the annual appropriated S&C funding. If a SA exceeds their CARES Act funding after also expending all of the annual appropriated S&C funding, then additional CARES Act supplements may be available to cover the shortfall. However, if a SA has funds that were unexpended in the annual appropriated CARES Act funding amount, then the difference will be de-obligated and returned to the CARES Act COVID-19 account for redistribution in future years up to the end of FY2023. Regardless of the annual expenditure of CARES Act funding, SA's are guaranteed funding up to their overall approved allocation through FY 2023, unless the SA indicates that the full allocation is not needed.

   The Medicaid portion of the annual reconciliation of any COVID-19 work will be reconciled as part of the traditional Medicaid award process.

C. Final Notes

The CARES Act provided funding for Survey & Certification activities to supplement the SA's costs associated with increased survey workload due to the COVID-19 pandemic. The funds are to be used for COVID-19 survey and other related work, over and above the annual appropriated S&C funding, due to the need for increased oversight to ensure nursing homes and other providers/suppliers are able to meet their community health care needs during the pandemic. Examples of such work includes:

- Prioritization of immediate jeopardy and focused infection control surveys.
- Completion of the backlog of pending recertification surveys created during this public health emergency.
- Complaint surveys related to infection control violations and associated sanctions, which are expected to increase considerably as a result of the Coronavirus outbreak.
- Increased volume of revisit surveys to provide greater oversight outside of complaint activity.
- Augmenting SA staffing for oversight of infection control and prevention processes, prioritizing nursing home facilities in localities with community transmission of COVID-19.
- Performing reopening surveys, as part of the phased reopening process, of facilities with previous COVID-19 outbreaks to ensure they have the Infection Control systems in place to be more resilient if there is another phase.
- Completing the focused infection control survey process initiated in March 2020 for all nursing homes in their State by July 2020 (QSO-20-20-ALL).
- Initiating data-driven surveys of specific nursing homes based on their weekly CDC-reported trends of COVID-19 residents and staff.
- Annually targeting a broad sample of 20 percent of nursing homes for a Focused Infection Control survey based on State and Federal data that identifies facility and community risks.
- Initiating State-specific interventions (such as Strike Teams, enhanced surveillance, or monitoring of nursing homes).
  Implementing new priorities informed by recommendations from the Coronavirus Commission for Safety and Quality in Nursing Homes.

Please remember that all CARES Act funds need to be reported separately on the mini CMS 435 - COVID-19 form utilizing the standard cost allocation methodologies. However, these Medicare Act funding amounts should be included on the main CMS 435. If a State has any significant issues with its allocation, or has questions about the cost accounting, please communicate those promptly to your CMS Location Office.

Contact: For general questions, please contact Bary Slovikosky at Bary.Slovikosky@cms.hhs.gov

Effective Date: Immediately. This information should be communicated to all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

David R. Wright

CC: Survey and Operations Group Management

CARES ACT Funding Allocations
May 9, 2020

State	Nursing Homes		FY 2020	FY 2021	FY 2022	FY 2023	Total	
	Count	Percentage	Allocation	Allocation	Allocation	Allocation	Allocation	Percentage
Alabama	228	1.48%	$251,118	$413,605	$384,210	$147,716	$1,196,649	1.48%
Alaska	19	0.12%	$20,926	$34,467	$32,017	$12,310	$99,721	0.12%
Arizona	146	0.95%	$160,803	$264,853	$246,029	$94,590	$766,275	0.95%
Arkansas	226	1.46%	$248,915	$409,977	$380,840	$146,420	$1,186,152	1.46%
California	1,193	7.73%	$1,313,962	$2,164,172	$2,010,362	$772,919	$6,261,414	7.73%
Colorado	227	1.47%	$250,016	$411,791	$382,525	$147,068	$1,191,401	1.47%
Connecticut	215	1.39%	$236,799	$390,023	$362,303	$139,294	$1,128,419	1.39%
Delaware	46	0.30%	$50,664	$83,447	$77,516	$29,802	$241,429	0.30%
District of Columbia	18	0.12%	$19,825	$32,653	$30,332	$11,662	$94,472	0.12%
Florida	701	4.54%	$772,076	$1,271,655	$1,181,277	$454,163	$3,679,171	4.54%
Georgia	358	2.32%	$394,299	$649,433	$603,277	$231,940	$1,878,949	2.32%
Hawaii	44	0.29%	$48,461	$79,819	$74,146	$28,507	$230,932	0.29%
Idaho	82	0.53%	$90,314	$148,753	$138,181	$53,126	$430,374	0.53%
Illinois	722	4.68%	$795,206	$1,309,751	$1,216,665	$467,768	$3,789,389	4.68%
Indiana	534	3.46%	$588,144	$968,707	$899,860	$345,967	$2,802,678	3.46%
Iowa	434	2.81%	$478,005	$787,302	$731,347	$281,179	$2,277,832	2.81%
Kansas	331	2.14%	$364,561	$600,454	$557,778	$214,448	$1,737,241	2.14%
Kentucky	285	1.85%	$313,897	$517,007	$480,262	$184,645	$1,495,811	1.85%
Louisiana	278	1.80%	$306,187	$504,308	$468,466	$180,110	$1,459,072	1.80%
Maine	93	0.60%	$102,430	$168,707	$156,717	$60,253	$488,107	0.60%
Maryland	226	1.46%	$248,915	$409,977	$380,840	$146,420	$1,186,152	1.46%
Massachusetts	376	2.44%	$414,124	$682,086	$633,609	$243,602	$1,973,421	2.44%
Michigan	442	2.86%	$486,816	$801,814	$744,828	$286,362	$2,319,820	2.86%
Minnesota	368	2.38%	$405,313	$667,574	$620,128	$238,419	$1,931,434	2.38%
Mississippi	204	1.32%	$224,684	$370,068	$343,767	$132,167	$1,070,686	1.32%
Missouri	522	3.38%	$574,927	$946,939	$879,638	$338,192	$2,739,697	3.38%
Montana	71	0.46%	$78,199	$128,798	$119,644	$45,999	$372,641	0.46%
Nebraska	201	1.30%	$221,380	$364,626	$338,711	$130,224	$1,054,941	1.30%
Nevada	66	0.43%	$72,692	$119,728	$111,219	$42,760	$346,398	0.43%
New Hampshire	74	0.48%	$81,503	$134,240	$124,700	$47,943	$388,386	0.48%
New Jersey	363	2.35%	$399,806	$658,503	$611,703	$235,180	$1,905,191	2.35%
New Mexico	71	0.46%	$78,199	$128,798	$119,644	$45,999	$372,641	0.46%
New York	619	4.01%	$681,762	$1,122,902	$1,043,096	$401,037	$3,248,798	4.01%
North Carolina	428	2.77%	$471,396	$776,417	$721,236	$277,292	$2,246,341	2.77%
North Dakota	80	0.52%	$88,111	$145,125	$134,810	$51,830	$419,877	0.52%
Ohio	957	6.20%	$1,054,033	$1,736,054	$1,612,671	$620,019	$5,022,777	6.20%
Oklahoma	298	1.93%	$328,215	$540,590	$502,169	$193,068	$1,564,041	1.93%
Oregon	130	0.84%	$143,181	$235,828	$219,067	$84,224	$682,300	0.84%
Pennsylvania	695	4.50%	$765,468	$1,260,771	$1,171,166	$450,275	$3,647,681	4.50%
Puerto Rico	6	0.04%	$6,608	$10,884	$10,111	$3,887	$31,491	0.04%
Rhode Island	80	0.52%	$88,111	$145,125	$134,810	$51,830	$419,877	0.52%
South Carolina	191	1.24%	$210,366	$346,485	$321,860	$123,745	$1,002,456	1.24%
South Dakota	105	0.68%	$115,646	$190,476	$176,939	$68,027	$551,088	0.68%
Tennessee	316	2.05%	$348,040	$573,243	$532,501	$204,730	$1,658,514	2.05%
Texas	1,219	7.90%	$1,342,598	$2,211,338	$2,054,175	$789,764	$6,397,874	7.90%
Utah	99	0.64%	$109,038	$179,592	$166,828	$64,140	$519,598	0.64%
Vermont	36	0.23%	$39,650	$65,306	$60,665	$23,324	$188,945	0.23%
Virginia	287	1.86%	$316,100	$520,635	$483,633	$185,941	$1,506,308	1.86%
Washington	206	1.33%	$226,887	$373,696	$347,137	$133,463	$1,081,183	1.33%
West Virginia	123	0.80%	$135,471	$223,129	$207,271	$79,689	$645,561	0.80%
Wisconsin	359	2.33%	$395,400	$651,247	$604,962	$232,588	$1,884,198	2.33%
Wyoming	37	0.24%	$40,752	$67,120	$62,350	$23,971	$194,193	0.24%
Total	**15,435**	**100.00%**	**$17,000,000**	**$28,000,000**	**$26,010,000**	**$10,000,000**	**$81,010,000**	**100.00%**

Fiscal Year Allocation	$
FY 2020	$17,000,000
FY 2021	$28,000,000
FY 2022	$26,010,000
FY 2023	$10,000,000