

PUBLICATION

HHS Pays \$30 Billion in CARES Act Emergency Relief Payments to Health Care Providers

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Health care providers are beginning to receive payments from the Department of Health and Human Services (HHS) to address expenses and revenue losses related to coronavirus (COVID-19). On April 10, 2020, HHS announced the distribution of \$30 billion from the \$100 billion emergency fund created under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the third COVID-19 stimulus bill enacted by Congress. (See Baker Donelson's summary of health care related provisions in the CARES Act [here](#).) Details about the payments are available on the [HHS CARES Act Provider Relief Fund webpage](#).

The CARES Act specified that providers would need to submit applications to HHS justifying the need for funding to receive payments that would be distributed on a rolling basis. However, HHS has chosen to automatically distribute a first round of payments – \$30 billion of the \$100 billion fund – to all facilities and providers that received Medicare fee-for-service (FFS) reimbursements in 2019 without the need for an application. It is not yet clear how HHS will distribute future payments from the emergency fund.

HHS emphasizes on the Provider Relief Fund webpage that the payments are not loans and will not need to be repaid. However, acceptance of the funds is contingent upon accepting terms and conditions, which limit uses and impose reporting and other requirements.

Eligibility

HHS indicates that the payments are available to "all facilities and providers" that received Medicare FFS reimbursements in 2019. This would appear to include Medicare Part A providers and Medicare Part B suppliers.

HHS will require providers accepting payment to certify that the recipient:

- Billed Medicare in 2019;
- Currently provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19;
- Is not currently terminated from participation in Medicare;
- Is not currently excluded from participation in Medicare, Medicaid, and other federal health care programs; and
- Does not currently have Medicare billing privileges revoked.

HHS did not provide more detail as to what it means to diagnose, test, or care for individuals with possible or actual cases of COVID-19.

Payment Amount

HHS is distributing payments based on providers' share of total Medicare FFS reimbursements in 2019, which totaled \$484 billion. Therefore, the distribution mechanism will favor providers with higher Medicare volumes. In a press briefing earlier this week, the Centers for Medicare & Medicaid Services (CMS) acknowledged that

this will disadvantage providers with lower Medicare volumes, such as children's hospitals and some nursing homes. The Provider Relief Fund [webpage](#) sets forth details on how providers can calculate the payment amount they will receive.

Payment Distribution

HHS is distributing the funds immediately. Providers who have set up electronic payments with Medicare will receive a direct deposit beginning April 10, 2020. The payments will come via Optum Bank and will say "HHSPAYMENT" in the payment description.

Those providers who are normally paid by Medicare through a paper check will receive a paper check in the mail with the emergency funding within the next few weeks.

If a practice is part of a larger medical group, HHS will send the payment to the group's central billing office. HHS is making payments to billing organizations according to their Taxpayer Identification Number (TIN).

Signed Attestation Requirement

HHS is requiring providers to sign and submit to HHS an attestation within 30 days confirming receipt of the payment and agreeing to terms and conditions. HHS will provide a portal for signing the attestation the week of April 13, 2020, and will provide a link to the portal on the Provider Relief Fund webpage. The terms and conditions are available [here](#).

HHS indicates that providers who do not wish to comply with the terms and conditions should contact HHS within 30 days of payment receipt and remit the full amount of the payment to HHS. Details on the process for returning the funds to HHS are reportedly forthcoming.

Limitations on Use of Funds and Surprise Billing Ban

CMS indicated in a prior press briefing that HHS would be distributing the funds with "no strings attached." However, the terms and conditions place limitations on the use of the funds that are consistent with the provision in the CARES Act that created the emergency fund. Recipients must agree that:

- The payment will only be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the recipient only for health care related expenses or lost revenues that are attributable to coronavirus; and
- The recipient will not use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.

Although not included in the provision of the CARES Act creating the emergency fund, HHS has chosen to impose an additional requirement on funding recipients, requiring them to agree not to send surprise bills to out-of-network COVID-19 patients, including those with a possible case of COVID-19.

HHS is also imposing other requirements on funding recipients that are imposed on federal appropriations and other federal awards, including a prohibition against using the funds for abortions and a limitation on use of the funds to pay for a salary above the Executive Level II salary cap. This could have implications to the extent that providers use the COVID-19 funds to address workforce issues.

Reporting and Recordkeeping Requirements

HHS is imposing quarterly reporting requirement on recipients that receive more than \$150,000 total in funds under all three emergency stimulus bills Congress has enacted to address COVID-19 "or any other Act primarily making appropriations for the coronavirus response and related activities."

Such recipients will need to submit a report to HHS and the Pandemic Response Accountability Committee no later than 10 days after the end of each calendar quarter that contains:

- 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 reach [sic] project or activity;
- A detailed list of all projects or activities for which large covered funds were expended or obligated, including: the name and description of the project or activity, and the estimated number of jobs created or retained by the project or activity, where applicable; and
- 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 on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

In addition, HHS is requiring recipients to meet financial management standards and record retention and access requirements under federal regulations for HHS awards. These rules are intended to ensure accountability and appropriate management and safeguarding of the funds. Providers who elect to keep the emergency funds should take due care to address these detailed requirements, which include, among other obligations, the need to have written procedures for determining the allowability of costs in accordance with the terms and conditions of the federal award.

HHS also indicates that there may be future program instructions directing recipients to submit reports to HHS to ensure compliance with the conditions HHS imposes on the payment. This is consistent with language in the CARES Act.

Compliance Considerations and Future Payments

Providers who received payments should pay careful attention to the limitations on use of the funds and other requirements included in the terms and conditions. In particular, providers who are receiving funding from other sources to address COVID-19, including Federal Emergency Management Agency (FEMA) and other federal programs, **should keep in mind the prohibition on using HHS funding for expenses or losses reimbursed through other sources.** Providers will need to carefully track their expenses and revenue losses and be prepared to comply with the reporting and recordkeeping requirements.

The limitations on funding use also suggest that, if a provider uses funds for an unallowable use or is not able to use the funds for an allowed use, there may be a need to repay the funds.

So far, HHS has only distributed \$30 billion of the total \$100 billion fund created for health care providers. Although it is not yet clear how HHS will distribute the remaining funds, the agency has signaled that its focus will be "on providers in areas particularly impacted by the COVID-19 outbreak, rural providers, providers of services with lower shares of Medicare reimbursement or who predominantly serve the Medicaid population, and providers requesting reimbursement for the treatment of uninsured Americans."

HHS also indicates that "a portion" of the \$100 billion fund will be used to reimburse health care providers for COVID-related treatment for uninsured patients. Reimbursements will be at Medicare rates. It is not clear what portion of the fund will cover these payments. To obtain payments covering uninsured care, HHS will require providers to "abstain from 'balance billing' any patient for COVID-related treatment."

HHS' plans to issue future payments continue to evolve, with the agency expected to release additional information. Members of Congress have also indicated interest in providing additional funding to health care providers in upcoming stimulus legislation. Given the uncertainty surrounding how HHS will distribute future funds and the possibility of new funding, providers should consider contacting HHS and members of Congress

to explain their need for additional financial assistance. This may be especially relevant for providers with lower Medicare revenues and higher Medicaid/uninsured populations who may not have received significant payment amounts in this first round. Baker Donelson is working with provider clients to coordinate this type of outreach to HHS and Congress to ensure they are aware of the providers' requests for funds and the supporting details justifying those requests.

Baker Donelson continues to monitor coronavirus developments and we will provide information on any further efforts to provide funding to health care providers. For any questions, please contact [Sheila P. Burke](#). You may also visit the [Coronavirus \(COVID-19\): What You Need to Know Information Page](#) on our website.