

NEWS & INSIGHTS

CARES Act relief for physicians: understanding the deadlines and conditions of the Public Health and Social Service Emergency Fund

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

Starting on April 10, medical providers that serve Medicare patients started receiving deposits in their accounts from Optum Bank labeled “HHSPAYMENT.” While much focus has been on the Paycheck Protection Program (PPP), \$30 billion in relief for physicians, hospitals and medical practices was quietly distributed. Two weeks later, funds from an additional \$20 billion pool began being distributed. But what are these funds for, how can providers access the funds and what conditions are attached to them?

Buried on page 283 of the [Coronavirus Aid, Relief and Economic Security \(CARES\) Act](#) was the appropriation of \$100 billion to the Public Health and Social Services Emergency Fund to reimburse providers for unreimbursed expenses and losses “attributable to coronavirus.” The CARES Act grants the Secretary of Health and Human Services (HHS) broad discretion in the disbursement of funds and permits the funds to be awarded on a pre-payment, prospective or retrospective manner.

Provider Relief Fund

HHS has used \$50 billion of the CARES Act allocation to create what it is calling the “Provider Relief Fund.” The first \$30 billion of the Provider Relief Fund was [distributed to Medicare providers starting on April 10](#) and was completed by April 17. Using the CARES Act’s broad authority, HHS has made clear that these funds “are payments, not loans, to healthcare providers, and will not need to be repaid.” The formula for distributing the \$30 billion is surprisingly simple — a provider’s total of 2019 Medicare fee-for-service (FFS) payments is divided by the total Medicare FFS payments made in 2019 (approximately \$484 billion), then the resulting ratio is multiplied by \$30 billion. For example, if a provider received \$5 million in Medicare FFS payments in 2019, it would receive almost \$310,000, using the following equation:

$$\text{\$5,000,000} / \text{\$484,000,000,000} \times \text{\$30,000,000,000} = \text{\$309,917.36}$$

Beginning on April 24, HHS began distributing additional funds to providers from a \$20 billion pool. These payments are intended to supplement the initial \$30 billion distribution to ensure providers receive at least two percent of their 2018 net patient revenue. For providers who already hit that threshold with the initial \$30 billion payment, or for whom HHS does not have enough data, no additional payment was made. Any provider receiving Provider Relief Funds is required to submit financial information via the [General Distribution Portal](#); a provider that did not receive funds may still submit information through this portal and may be eligible to receive funds.

Like all good government programs, however, there are strings attached to the Provider Relief Fund. Further, due to the need to get these funds out quickly, there are still several questions remaining to be answered. It is important that providers understand these issues before accepting and using the funds.

Terms and conditions

The Provider Relief Fund requires that providers receiving the automatic allocation agree, within 45 days of electronic receipt of the payment (60 days for funds delivered by check), to accept HHS’s [terms and conditions](#). This acceptance can be completed through the [attestation portal](#) set up by HHS. Being 10 pages in length, the terms and conditions are quite extensive. They require that fund recipients certify that “the Payment will only be used to

prevent, prepare for, and respond to coronavirus, and shall reimburse the Recipient only for healthcare-related expenses or lost revenues that are attributable to coronavirus.” Furthermore, by accepting the funds, the provider agrees to comply with certain reporting and recordkeeping requirements, including quarterly reports if the recipient receives over \$150,000 in aid under the CARES Act in its entirety (this, presumably, includes a loan under the PPP). Significantly, the terms and conditions also require that Recipients agree not to “balance bill” any patient “for all care for a presumptive or actual case of COVID-19.” Finally, providers should be aware that all providers receiving funds, and the amounts received, are [published online](#).

Providers need to be aware that the quick rollout of the CARES Act and the Provider Relief Fund has required HHS to frequently update its guidance on the program. As a result, HHS issued a “[CARES Act Provider Relief Fund Frequently Asked Questions](#)” document in May that is regularly updated. This document provides valuable guidance on interpreting the prohibition on balance billing, as well as payment eligibility, appeals and other important terms. Anyone receiving Provider Relief Funds should check the FAQ document on a regular basis.

Important deadlines looming

As noted above, HHS requires that providers receiving payments affirmatively accept the terms and conditions within 45 days of receipt (60 days if funds were received by check). **If a provider does not want to accept the funds, it must reject the terms and conditions within that time period.** A provider is presumed to have accepted the terms and conditions if they are not rejected by the deadline.

Furthermore, [HHS announced on May 20](#) that anyone who received funds prior to April 24 must provide HHS with an accounting of their annual revenues by submitting tax forms or financial statements through the [Provider Relief Fund Portal](#) by June 3, 2020. If the records are not submitted by June 3, the provider will not be eligible for additional provider relief funds. Therefore, it is strongly encouraged that all providers that received funds, or believe that they should have received funds, submit this information as soon as possible.

Seek legal counsel

Medical providers should thoroughly evaluate how these funds will interface with their practice and how best to utilize them. While further guidance from HHS is expected, in the interim medical providers can undertake certain processes to ensure compliance with the requirements. Providers also need to focus on getting their financial information submitted to HHS as soon as possible.

[Saxton & Stump](#) attorney Erik Hume is available to further discuss Provider Relief Fund payments and assist you in reviewing the terms and conditions. Our team can also help you understand the recordkeeping and reporting requirements to ensure compliance. Erik can be reached at 717.216.5518 or eh@saxtonstump.com.

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