

CORONAVIRUS INFORMATION & UPDATES

April 10, 2020

HHS Initiates Initial \$30 Billion Distribution of the \$100 Billion Public Health and Social Services Emergency Fund

On April 10, 2020, the Department of Health & Human Services (HHS) [announced](#) it would immediately begin to distribute the first \$30 billion of the \$100 billion appropriated in the CARES Act for providers responding to the COVID-19 pandemic. To retain these payments, however, providers must certify to their adherence with certain terms and conditions. Below is an overview of how the funds will be distributed, the conditions of funding, and expectations for the distribution of the remaining \$70 billion.

Distribution of the Initial \$30 Billion

HHS will distribute payments proportional to each provider's share of 2019 Medicare fee-for-service (FFS) payments as a grant with no expectation of repayment. Each provider can estimate the payment it will receive by dividing its 2019 Medicare FFS payments, not including Medicare Advantage, by \$484 billion, and multiplying that ratio by \$30 billion. These payments will be made under a provider's tax identification number (TIN), which will lead to different payment mechanisms based on provider structure.

HHS has partnered with UnitedHealth Group (UHG) to distribute this round of funding beginning April 10, 2020. Providers will be paid with Automated Clearing House (ACH) account information on file with UHG or the Centers for Medicare & Medicaid Services (CMS). For providers that are normally paid by check, HHS will pay by check, but the payment will take longer and be distributed "within the next few weeks."¹

Terms and Conditions of the Funding

Providers are required to sign an attestation confirming receipt of the funds and agreeing to the [Terms and Conditions](#) published by HHS. The attestation will be posted to the [CARES Act Provider Relief Fund Website](#) on April 13, 2020. **Providers who do not agree with the Terms and Conditions must contact HHS within 30 days of receipt of the payment and [return the payment](#) as instructed by HHS. HHS stated that it will release contact information for this process soon.**

By accepting the payment, the recipient certifies that it:

1. Billed Medicare in 2019;
2. Currently provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19;
3. Is not currently terminated from participation in Medicare;
4. Is not currently excluded from participation in Medicare, Medicaid, and other Federal health care programs;

¹ Press Release, Department of Health and Human Services, HHS to Begin Immediate Delivery of Initial \$30 Billion of CARES Act Provider Relief Funding (Apr. 10, 2020), <https://www.hhs.gov/about/news/2020/04/10/hhs-to-begin-immediate-delivery-of-initial-30-billion-of-cares-act-provider-relief-funding.html>.

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5. Does not currently have Medicare billing privileges revoked;
6. Will use payments only to prevent, prepare for, and respond to Coronavirus and for expenses or losses that are attributable to Coronavirus;
7. Will not use the payments to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse; and
8. Will not collect cost-sharing from patients in an amount greater than what the patient's cost-sharing obligation would have been had care been provided by an in-network provider.

Quarterly Reporting Obligations

The Terms and Conditions also obligate recipients to adhere to various reporting and record retention requirements. Generally, all recipients will be required to submit reports to demonstrate compliance with the Terms and Conditions. The Secretary of HHS will provide additional guidance on reporting obligations in future communications. In the interim, recipients should maintain records and cost documentation to substantiate the reimbursement of costs under this award.² Such records and documentation must be submitted to HHS promptly upon request.

The Terms and Conditions impose additional reporting obligations on recipients of more than \$150,000 total under the CARES Act, the Coronavirus Preparedness and Response Supplemental Appropriations Act, and the Families First Coronavirus Response Act, or any other Act making appropriations for the coronavirus response and related activities. These recipients must provide reports no later than 10 days after the end of each calendar quarter. Such reports should contain:

- Total amount of funds received from HHS under the Acts specified above;
- Amount of funds received that were expended or obligated for each project or activity;
- Detailed list of all projects/activities for which large covered funds were expended or obligated, including (1) the name and description of the project/activity and (2) the estimated number of jobs created or retained by the project/activity (as applicable);
- Detailed information on sub-contracts or subgrants awarded by the covered recipient or its subcontractors/subgrantees with data elements that comply with the Federal Funding Accountability and Transparency Act of 2006, which allows aggregate reporting on awards below \$50,000 or to individuals.

As an initial step to assure a strong documentation record, organizations may consider systems to track the uses of the funding accurately.

² HHS has indicated that recipients will be required to maintain record and cost documentation according to the specifications in 45 C.F.R. § 75.302 and 45 C.F.R. § 75.361 through 75.365, as applicable. HHS has signaled that it may issue additional program instructions pertaining to reporting and documentation requirements in the future.

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Compliance with Statutory Prohibitions on Use of Funds

Recipients must also agree to abide by various other statutory provisions that are enumerated in the Terms and Conditions. Some key requirements are as follows:

- Whistleblower protections enumerated in 48 CFR § 3.908 apply to these grants and that the HHS Inspector General will be accepting tips “from all sources of potential fraud, waste, abuse and mismanagement.”
- Funds may not be used for a contract, grant, or cooperative agreement that requires its employees or contractors to sign internal confidentiality agreements restricting those employees or contractors from lawfully reporting potential waste, fraud, or abuse.
- Funds may not be used to pay the salary of an individual at a rate in excess of Executive Level II, or \$197,300.
- Funds may not be used for lobbying materials or to pay the salary or expenses of lobbyists acting for the recipient.
- Funds may not be used to implement or enforce nondisclosure agreements unless the agreement includes specific provisions outlined by HHS.
- Funds may not be used to enter into an agreement with or to make a grant/loan/guarantee to any corporation with unpaid Federal tax liability.

Other laws referenced include restrictions on lobbying, abortion funding, embryo research, needle exchanges, and nondisclosure agreements, among others.

Plans for the Remaining \$70 Billion

The Trump Administration and HHS have not yet issued detailed information regarding the distribution of the remaining funds; however, HHS has identified “priorities” for the remaining funds, including:

- 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.

It is unclear whether these funds will be distributed automatically, similar to the initial \$30 billion, or if there will be a more formal application process. Please visit the Ropes & Gray [Coronavirus Resource Center](#) for more information and updates regarding COVID-19 provider funding relief.