

# CORONAVIRUS INFORMATION & UPDATES

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## CARES Act – Financial Relief Sections Applicable to Health Care Providers

A bipartisan agreement for the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), commonly referred to as Phase 3 of the federal government's response to the coronavirus outbreak, was passed by the Senate on March 25, 2020. Key among its provisions are opportunities for health care providers to apply for financial relief. This chart summarizes the key financial relief sections that are applicable to health care providers, including (1) a \$100 billion fund to reimburse certain providers for health care-related expenses or lost revenues; (2) an SBA 7(a) Paycheck Protection Program to provide no-fee loans to small businesses and 501(c)(3) non-profit organizations; (3) an expanded accelerated Medicare payment program (as further supplemented by CMS on March 28) to cover a broader group of providers and suppliers; and (4) a Federal Reserve lending program to provide direct loans to mid-sized businesses and non-profit organizations.

**Attorneys**  
[Adrienne Ortega](#)  
[Timothy M. McCrystal](#)  
[Eliza Pan](#)

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*The CARES Act includes, among other provisions, opportunities for health care providers to apply for financial relief. The following chart summarizes the key financial relief sections that are applicable to health care providers. Federal guidance is evolving rapidly, and this chart will be periodically updated. The content of this chart is for illustrative purposes only and is not intended as provision of legal advice.*

Section	Description	Eligibility	Process
Div. B— Emergency Appropriations for Coronavirus Health Response and Agency Operations.	<p><b>\$100 billion fund</b> to reimburse eligible health care providers for health care-related expenses or lost revenues attributable to COVID-19, as part of a broader \$130 billion Public Health and Social Services Emergency Fund, including:</p> <ul style="list-style-type: none"> <li>• Building or construction of temporary structures;</li> <li>• Leasing of properties;</li> <li>• Medical supplies and equipment (including personal protective equipment and testing supplies);</li> <li>• Increased workforce and trainings;</li> <li>• Emergency operations centers;</li> <li>• Retrofitting of facilities; and</li> <li>• Surge capacity.</li> </ul>	<p><b>Eligible recipients</b> include providers of diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 of payments from the fund that are:</p> <ul style="list-style-type: none"> <li>• Providers and suppliers enrolled in Medicare or Medicaid; and</li> <li>• Other for-profit and non-profit entities within the U.S. (including territories) permitted by the HHS Secretary.</li> </ul> <p>The expenses and lost revenues covered by the fund must be <u>non-reimbursable</u> from other sources.</p>	<p><b>Application:</b> Eligible providers may submit applications to the HHS Secretary to receive payments from the fund.</p> <ul style="list-style-type: none"> <li>• Applications must include a statement justifying the need of the provider for the payment.</li> <li>• Applications are reviewed on a <b>rolling basis</b>.</li> </ul> <p><b>Payment:</b> The government has flexibility in when/how it provides payment under the fund. Such payments could be on a pre-payment, prospective payment, or retrospective payment basis, at the discretion of the HHS Secretary. Payments will be made “in consideration of the <b>most efficient</b> payment systems practicable <b>to provide emergency payment</b>” (emphasis added).</p> <p><b>Reconciliation:</b> Congressional FAQs suggest that the HHS Secretary will establish a reconciliation process pursuant to which a provider may apply for funding from other sources and repay the fund if the provider receives funding for the same expenses from other sources.</p> <p><b>Timing:</b> The fund will remain available until expended.</p>

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Div. A, tit. I, § 1102—Paycheck Protection Program.	<p><b><u>SBA 7(a) Paycheck Protection Program</u></b> to provide no-fee loans to small businesses and 501(c)(3) non-profit organizations that have suffered disruption as a result of COVID-19.</p> <ul style="list-style-type: none"> <li>The CARES Act authorizes \$349 billion for commitments for 7(a) general business loans, including loans made under this program.</li> </ul> <p>Loans made under the program may only be used for:</p> <ul style="list-style-type: none"> <li>Payroll costs;</li> <li>Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;</li> <li>Employee salaries, commissions, or similar compensations;</li> <li>Mortgages;</li> <li>Rent;</li> <li>Utilities; and</li> <li>Debt obligations incurred prior to February 15, 2020.</li> </ul>	<p><b><u>Eligible borrowers</u></b> include small businesses and 501(c)(3) non-profits, including hospitals, health systems, and other health care providers, that have 500 or fewer employees (taking into account SBA affiliation rules that may require inclusion of employees at affiliated businesses), and that have suffered disruption as a result of COVID-19 between February 15, 2020 and June 30, 2020.</p> <p><b><u>Employee Headcount:</u></b> “Employees” include individuals employed full-time, part-time, or on another basis. These include employees of entities “affiliated” with the borrower.</p> <ul style="list-style-type: none"> <li>13 C.F.R. § 121.103 sets forth the SBA’s principles for determining whether entities are affiliated with each other. <ul style="list-style-type: none"> <li>Generally, entities are affiliates “when one controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).</li> <li>The SBA considers the “totality of circumstances.” <i>Id.</i> § 121.103(a)(5).</li> </ul> </li> </ul>	<p><b><u>Application:</u></b> Eligible borrowers may apply to an SBA-approved lender for a loan. The application and additional guidance and structure are forthcoming.</p> <p><b><u>Timing:</u></b> The program is retroactive to February 15, 2020, and will be available through June 30, 2020.</p>

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Div. A, tit. III, subtit. D, § 3719—Expansion of the Medicare Hospital Accelerated Payment Program During the COVID-19 Public Health Emergency.	<b><u>Expansion of the Medicare accelerated payment program</u></b> (as further supplemented by CMS on March 28) to cover a broader group of Medicare providers and suppliers with significant cash flow problems during the COVID-19 public health emergency.	<p><b><u>Eligible recipients</u></b> include all Medicare Part A and Part B providers and suppliers throughout the U.S. during the COVID-19 public health emergency, including:</p> <ul style="list-style-type: none"> <li>• Hospitals;</li> <li>• Clinics;</li> <li>• Physician groups;</li> <li>• DMEPOS suppliers;</li> <li>• Clinical diagnostic laboratories;</li> <li>• Home health agencies;</li> <li>• Rehabilitation and therapy providers; and</li> <li>• Any other providers/companies enrolled in Medicare Part A or Part B.</li> </ul> <p>To be eligible, a provider/supplier must also:</p> <ul style="list-style-type: none"> <li>• Have billed Medicare for claims within 180 days immediately prior to the date of signature on the provider/supplier's request form,</li> <li>• Not be in bankruptcy,</li> <li>• Not be under active medical review or program integrity investigation, and</li> <li>• Not have any outstanding delinquent Medicare overpayments.</li> </ul>	<p><b><u>Application:</u></b> Individual MACs provide request forms on their websites for eligible providers/suppliers to submit. CMS recommends electronic submission to expedite processing.</p> <p><b><u>Payment:</u></b> Upon approval, payments will be issued by MACs within seven (7) calendar days of requests. Providers/suppliers may request up to 100% of their Medicare payment amount as accelerated payment for a three (3)-month period, but certain hospitals (<i>i.e.</i>, inpatient acute care hospitals, children's hospitals, and certain cancer hospitals) are able to request amounts for a six (6)-month period. Critical access hospitals may request up to 125% of their payment for a six (6)-month period.</p> <p><b><u>Repayment and Recoupment:</u></b> Accelerated payments are to be repaid beginning 120 calendar days after issuance of the payment, upon which the recoupment process starts, and the claims submitted by the provider/supplier after the 120-day period are offset to repay the accelerated payment.</p> <ul style="list-style-type: none"> <li>• Most hospitals, including inpatient acute care hospitals, children's hospitals, certain cancer hospitals, and critical access hospitals, will have <b>1 year</b> to repay in full.</li> <li>• Other Part A providers and Part B suppliers will have <b>210 days</b> to repay in full.</li> </ul> <p>For a small subset of Part A providers who receive Period Interim Payment, the accelerated payment will be included in the reconciliation and settlement of the final cost report 180 days after the fiscal year-end.</p> <p><b><u>Timing:</u></b> Medicare will start accepting and processing requests immediately. The program will be in place for the duration of the COVID-19 public health emergency.</p>



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Div. A, tit. IV, subtit. A, § 4003—Emergency Relief and Taxpayer Protections.	<p><b><u>Federal Reserve lending program</u></b> to provide direct loans to mid-sized businesses and non-profit organizations as part of a broader authorization of \$500 billion in emergency relief funds to provide liquidity to businesses, states, and municipalities related to losses incurred as a result of COVID-19.</p> <p>The CARES Act requires the Treasury Secretary to “endeavor” to implement this program.</p>	<p><b><u>Unclear at this point, though CARES Act</u></b> provides that at least a portion of this program is intended to include businesses (and, to the extent practicable, non-profit organizations) with between 500 and 10,000 employees.</p>	<p><b><u>Application:</u></b> As soon as practicable, and no later than ten (10) days after the enactment of the CARES Act, the Treasury Secretary will publish the application procedure and minimum requirements, which may be supplemented at the Secretary’s discretion.</p> <p><b><u>Oversight:</u></b> A Special Inspector General (§ 4018) and a Congressional Oversight Commission (§ 4020) will help to oversee loans made under this and other programs established by the Treasury Secretary.</p>