

HHS Distributes \$30 Billion in CARES Act Relief Payments to Providers

Insights

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The Department of Health and Human Services (HHS) has begun the process of distributing the \$100 Billion appropriated for providers impacted by novel coronavirus (COVID-19) under the CARES Act. On Friday, April 10th, HHS began distributing \$30 billion dollars in funds as payments to providers based on each provider's fiscal year 2019 Medicare Part A and B (fee-for-service) payments. Under the CARES Act, these funds are only to be used to reimburse "eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus," and recipients will need to use the funds to "prevent, prepare for, and respond to coronavirus." Although initial reports had indicated that there would be "no strings attached" to these funds, providers will in fact be required to sign an attestation agreeing to various [terms and conditions](#) of payment within 30 days of receipt. Although some of these terms and conditions are routine for payments from the Public Health and Social Services Emergency Fund (PHSSEF), others are notable and will potentially require policy changes and create administrative burdens.

- **Eligible Provider Types.** All Medicare-participating providers and suppliers—including hospitals, skilled nursing facilities, and medical groups—that received Medicare fee-for-service reimbursements in 2019 are eligible to receive these funds. In order to retain the funds, however, the provider must attest that it accepts specified [terms and conditions](#) and certify that it currently provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19, is not terminated or excluded from participation in any federal health care program and does not currently have Medicare billing privileges revoked.
- **Amount of Distribution.** Each provider's share will be based on its proportionate share of total Medicare fee-for-service payments in 2019. This amount can be estimated by dividing 2019 fee-for-service Medicare payments by \$484 billion and then multiplying the percentage by \$30 billion. (This calculation excludes Medicare Advantage payments, meaning that providers with high MA penetration will receive relatively small payments from this initial \$30 billion distribution. For these providers, future payments from the remaining \$70 billion will be even more critical.)
- **Distribution Process.** UnitedHealth Group will be processing the initial distribution starting on Friday, April 10, 2020, and providers will receive electronic payments with "HHSPAYMENT" as the payment description or will receive paper checks. The payments will be made to the tax identification number (TIN) that bills Medicare. Thus, providers billing

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under one or more consolidated billing systems, such as “home office” billing systems will see the payment in those accounts.

- **Surprise Billing.** The Terms and Conditions for these payments include a surprise billing certification, under which the recipient agrees to restrict patient collections for out-of-network care to the patient’s in-network cost-sharing obligation (“what the patient would have otherwise been required to pay if the care had been provided by an in-network” provider). This requirement is premised on HHS’s determination that capacity constraints have resulted in patients being unable to choose to receive care only from in-network providers.
- **Executive Pay.** Funds received under this program may not be used to pay the salary of any individual, under any “mechanism” that exceeds the federal Executive Level II pay scale, currently \$197,300.
- **Uses of the Funds.** Recipients must use these funds to offset revenue losses attributable to COVID-19 or for health care expenditures attributable to COVID-19. Providers receiving the funds, however, must certify that they will not use the funds to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse. Notably, the funds paid to providers are payments rather than loans.
- **Records and Reporting.** Providers receiving these funds will be required to maintain appropriate records and cost documentation and submit reports as HHS determines necessary. In addition, within 10 days after the end of each calendar quarter, providers that received more than \$150,000 in total funds under the CARES Act and other COVID-19 appropriations legislation will be required to submit a report to HHS that details, among other things, the total amount received under the CARES Act and other COVID-19 legislation and the amount of such funds that were expended or obligated for each project or activity, along with details on such projects or activities. HHS states that it will spell out these reporting requirements in future instructions to fund recipients.
- **Declining Payment.** Providers that cannot or choose not to accept the terms and conditions for this payment are instructed to contact HHS within 30 days of receipt of payment and to then remit the full payment to HHS as instructed. Contact information for this process is not yet available.

At this time, HHS has not indicated how it will spend the remaining \$70 billion dollars appropriated for COVID-19 impacted providers in the CARES Act. HHS, however, has indicated that it will be focusing on providers in areas particularly impacted by the COVID-19 pandemic and rural providers. In addition, HHS has indicated it will focus future payments on providers who predominantly serve the Medicaid population and may have lower shares of Medicare reimbursement as well as those requesting reimbursement for the treatment of uninsured individuals.

Upcoming Webinar: COVID-19 Financial Relief for Providers: Supplemental Payments, Loans, and Beyond. The COVID-19 pandemic has had significant financial impacts for many health care providers: Elective procedures have been cancelled or delayed and providers are investing in preparedness necessities, from personal protective equipment and ventilators to temporary sites of care. On Thursday, April 16, 2020, HLB’s COVID-19 Task Force will present a webinar exploring key sources of financial relief available to providers, including:

- Supplemental payments (e.g., \$100 billion CARES Act appropriation, Medicare add-on payments)
- Loans and accelerated payments (e.g., Accelerated/Advanced Medicare Payments, Paycheck Protection Program (PPP), Economic Injury Disaster Loan (EIDL))
- FEMA Public Assistance Program
- Renegotiating rent and other payment obligations; bankruptcy
- Business interruption insurance claims
- Coverage expansion and relief for care to uninsured
- Reducing or delaying liability for overpayments with governmental and private payers

An audio recording of the webinar and printed materials will be made available to registrants after the program.

For further information, please contact [Mark Reagan](#), [Katrina Pagonis](#) or [Stephanie Gross](#) in San Francisco, [Lloyd Bookman](#) or [Nina Marsden](#) in Los Angeles, Andrew Struve in San Diego, [Amy Joseph](#) in Boston, [Martin Corry](#) in Washington D.C., or your regular Hooper, Lundy & Bookman contact.

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