

HHS to Distribute First Tranche of \$100 Billion to Healthcare Providers for COVID-19 Losses

The [Coronavirus Aid, Relief, and Economic Security Act](#), known as the "CARES Act," which became law on March 27, 2020, appropriates \$100 billion to the Public Health and Social Services Emergency Fund to reimburse providers for unreimbursed expenses and lost revenue attributable to the novel coronavirus pandemic. The U.S. Department of Health and Human Services (HHS) has now released important [guidance](#) on how these funds will be distributed.

To be eligible to receive these funds a provider must "provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19." Providers who meet this test and are enrolled in Medicare or Medicaid are eligible to receive this funding.

HHS has now made two important announcements on how the \$100 billion will be distributed under a program called the CARES Act Provider Relief Fund (the relief fund).

The following are the key takeaways from these two announcements:

1. HHS will reimburse providers at Medicare rates for COVID-19 treatment delivered to uninsured patients. Providers should keep accurate and complete records of such patients.
2. Providers should be on the lookout for a potentially significant direct payment from the relief fund via Optum Bank (direct deposit) or paper check (if their MAC typically provides payment by check). See Announcement #2 below for additional information.
3. As soon as possible, providers should carefully review the Relief Fund Payment Terms and Conditions ([terms and conditions](#)) for retention of the payment and ensure that they can and will comply with these requirements.
4. Within 30 days of receiving the payment, providers should sign the attestation affirming compliance with the terms and conditions if they wish to retain the payment and are able and willing to comply with the terms and conditions. A link to the portal containing the attestation will be on this [webpage](#).
5. If providers will not comply with the terms and conditions, they should contact HHS or their local MAC about how to refund the payment. HHS has announced that information about the correct contact for these purposes will be released in the near future. Providers may not be able to retain payments if they fail to comply with the terms and conditions or fail to attest that they will do so. **Further, HHS's current guidance is that failure to return the payment will be deemed to be acceptance of the terms and conditions.**
6. Providers should create and maintain appropriate records and documentation related to the payment and the use of these funds.
7. Providers should be on the lookout for additional guidance from HHS about how it will distribute additional funds from the CARES Act \$100 billion appropriation.

Announcement #1: HHS Will Pay Medicare Rate for Treating Uninsured COVID-19 Patients

HHS Secretary Alex Azar [announced](#) that a portion of the relief fund will be used to reimburse providers for treating uninsured patients with COVID-19. Reimbursement will be at Medicare rates. As a condition of receiving this reimbursement, providers may not balance bill these patients.

Announcement #2: \$30 Billion Will Be Distributed Immediately to Medicare Fee-for-Service Providers

HHS is using \$30 billion of the relief fund to make an immediate monetary infusion into the healthcare system. Specifically, all facilities and providers that received Medicare fee-for-service reimbursement (as distinguished from reimbursement by Medicare Advantage plans) in 2019 will receive a payment (First Tranche Relief Payment) equal to its pro rata share of the \$30 billion fund. These distributions are payments, not loans. They are automatically made to Medicare-enrolled providers that received Medicare fee-for-service (FFS) reimbursements in 2019 based on the Taxpayer Identification Number (TIN) on file with Medicare for that provider. Providers must agree to terms and conditions, which are discussed below, to retain these funds.

How Is a Provider's First Tranche Relief Payment Calculated and Paid?

A provider's pro rata share of the \$30 billion tranche will be based on the percentage of the total 2019 Medicare FFS payments that the specific provider received in 2019. This figure does not include Medicare Advantage payments. HHS estimates the total 2019 Medicare FFS expenditure to be approximately \$484 billion. So, if a provider received .01% of the \$484 billion 2019 Medicare FFS expenditure, it would receive .01% of the initial \$30 billion distribution, or \$3 million.

A provider in this context is the organization that typically bills Medicare under a given TIN. Hospitals will be paid according to the TINs of the organizations that bill Medicare for their services. A medical practice and not the physician who is part of that practice will receive the payment if the practice entity bills Medicare for the physician's services. Solo practitioners will receive the payment if the individual bills Medicare with a unique TIN.

First Tranche Relief Payments will start on April 10, 2020. HHS has enlisted UnitedHealth Group (UHG) to make these payments. Payments will be made via automated clearing house account information on file with UHG or the Centers for Medicare and Medicaid Services (CMS).

- If a provider is typically paid by Medicare FFS via direct deposit, this payment will be made in the same manner via Optum Bank with "HHSPAYMENT" as the payment description.
- If a provider is typically paid by Medicare FFS via paper check, this payment will also be made by paper check.

Terms and Conditions for Retaining First Tranche Relief Payments

Within 30 days of receiving the First Tranche Relief Payment, providers must sign an attestation confirming receipt of the funds and agreeing to HHS's [Terms and Conditions](#). If a provider is unwilling to agree to the terms and conditions, it must notify HHS within 30 days of receipt of the payment and then remit the full amount back to HHS according to HHS's instructions. The portal for signing the attestation will be open the week of April 13, 2020, and a link to that portal can be found [here](#). **HHS's current guidance is that failure to return the payment will be deemed to be acceptance of the terms and conditions.**

The terms and conditions for receiving the first tranche of the relief fund are extensive. Each recipient of First Tranche Relief Funds (recipient) should review these terms and conditions carefully and fully understand what it means to comply with these requirements.

The following is a high-level summary of some of the more significant terms and conditions. It may be advisable to review these with counsel.

1. Recipients must make the following certifications:

- Recipient billed Medicare FFS in 2019
- Recipient provides or provided in 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19
- Recipient has not had current participation in Medicare terminated or billing privileges revoked and is not excluded from participation in Medicare, Medicaid, and other federal healthcare programs
- The First Tranche Relief 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
- Recipient will not use the First Tranche Relief Payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse
- Recipient will not seek to collect from the patient out-of-pocket expenses in an amount greater than the recipient would charge if the recipient were in-network for the insurer

2. Recipients must comply with the following reporting obligations:

- Recipient must submit reports as required by the secretary of HHS to ensure compliance with conditions on the First Tranche Relief Payment.
- Not later than 10 days after the end of each calendar quarter, each recipient that receives more than \$150,000 total in funds under the CARES Act (P.L. 116-136), the Coronavirus Preparedness and Response Supplemental Appropriations Act (P.L. 116-123), the Families First Coronavirus Response Act (P.L. 116-127), or any other similar act, must submit a report that details the use of this funding to HHS and the Pandemic Response Accountability Committee. See the terms and conditions for additional information about what these reports will involve.

3. Recipients must comply with the following record-keeping obligations:

- To substantiate the reimbursement of allowable costs under these awards, the recipient must maintain appropriate records and cost documentation under 45 CFR section 75.302 —Financial management, 45 CFR sections 75.361 through 75.365—Record Retention and Access, and any other rules announced in future program instructions.
- The recipient must promptly submit copies of such records and cost documentation upon request by HHS, and recipient agrees to fully cooperate in all audits conducted by HHS, Inspector General, or the Pandemic Response Accountability Committee.

4. Recipients must comply with several statutory provisions and obligations that HHS has tied to the payments. Among other limitations, the terms and conditions require that the recipient comply with statutory restrictions on the expenditure of federal funds on matters relating to lobbying, gun control, abortion, embryo research, needle exchanges, legalization of controlled substances, propaganda, chimpanzees, and trafficking. *See* the terms and conditions, pages 2-17, for a complete list of these restrictions.

In addition to paying for uninsured COVID-19 care and the immediate \$30 billion disbursement discussed above, HHS's update states that it is working on "targeted distributions" to "providers in areas particularly impacted by the COVID-19 outbreak" HHS goes on to list rural providers, providers with lower shares of Medicare reimbursement, and providers who predominantly serve the Medicaid population, along with the aforementioned reimbursement for the treatment of uninsured Americans, as the targets for these funds. If not all the \$70 billion appropriation will be used to reimburse COVID-19 treatment, which seems likely, HHS has not specified how these remaining funds will be distributed. The industry should expect additional HHS guidance on this subject in the near future.

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