

## HHS Announces Next Distribution and Priorities for CARES Act Provider Relief Fund Payments

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The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), the massive stimulus legislation passed on March 27, appropriated \$100 billion for the Public Health and Social Services Emergency Fund (the Relief Fund) of the Department of Health and Human Services (HHS), to be used “for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus,” other than expenses or losses that have been reimbursed from other sources (or that other sources were obligated to reimburse). As described in our earlier Client Alert [CMS Gives Emergency Dollars to Medicare Providers . . . but With Strings Attached](#), HHS began the initial distribution of Relief Fund payments on April 10, with \$30 billion divided among all providers that received Medicare payments during 2019 in proportion to their relative Medicare reimbursements during that year.

According to updates on the [HHS CARES Act Provider Relief Fund webpage](#), HHS will distribute another \$20 billion in Relief Fund payments beginning on Friday, April 24. It appears that these funds will be distributed to providers for whom Medicare fee-for-service reimbursement constitutes a relatively small share of their revenues. For providers such as hospitals that file Medicare cost reports, an automatic “advance” distribution will be based on such providers’ 2018 net patient revenue as reported on those providers’ Medicare cost reports. “Providers without adequate cost report data on file,” presumably including physicians, will have to submit revenue data through a portal at [www.hhs.gov/providerrelief](http://www.hhs.gov/providerrelief) to receive distributions. Providers that receive the automatic distribution will likewise have to submit revenue information through the portal for verification. HHS has characterized the \$50 billion included in the distributions beginning April 10 and April 24 as being “allocated for general distribution to Medicare facilities and providers impacted by COVID-19,” although that is not specified in the statutory appropriation and apparently simply reflects an administrative determination by HHS.

Recipients in either phase of the distributions must attest to compliance with the [Terms and Conditions](#) published by HHS on April 10, using the [online attestation portal](#) set up by HHS. As discussed in our prior Client Alert, despite the initial indication from the Centers for Medicare & Medicaid Services that distributions would be made to providers with “no strings attached,” the Terms and Conditions include a number of detailed and specific requirements concerning the uses of Relief Fund distributions and provider reporting obligations. Providers receiving funds must also agree that they will not seek collection of out-of-pocket amounts from “presumptive or actual

COVID-19 patient[s]” that exceed what the patient would have paid to an in-network provider. In its announcement, HHS warned providers, “There will be significant anti-fraud and auditing work done by HHS, including the work of the Office of the Inspector General.” (Indeed, we have heard anecdotal reports of providers that received funds from the initial \$30 billion distribution that are considering returning those funds in order to reduce the risk of inadvertent noncompliance with the Terms and Conditions.)

HHS also announced a number of “targeted allocations” of remaining funds from the Relief Fund:

- An unspecified portion of the Relief Fund will be used to reimburse providers, at Medicare rates, for treatment of uninsured COVID-19 patients on or after February 4. Providers may register for this program beginning April 27 and begin submitting claims in early May. Details about this program are at <https://www.hrsa.gov/coviduninsuredclaim>.
- \$10 billion will be allocated for distribution to hospitals in areas with high COVID-19 impacts. Eligible hospitals have already been contacted about participation in this program.
- \$10 billion will be allocated for rural health clinics and hospitals. HHS indicates that funds may be distributed as early as the week of April 27, “on the basis of operating expenses, using a methodology that distributes payments proportionately to each facility and clinic.”
- \$400 million will be allocated on a similar basis to Indian Health Service facilities, also beginning as early as next week.
- HHS indicates that “[t]here are some providers who will receive further, separate funding, including skilled nursing facilities, dentists, and providers that solely take Medicaid.” Details about that program have not been made public.

Even before the digital ink was dry on HHS’s latest announcement, Congress approved the Paycheck Protection Program and Health Care Enhancement Act, appropriating an additional \$75 billion for the Relief Fund. It remains to be seen how HHS will direct those funds, although some of them may make up part of the “further, separate funding” for providers that have thus far been largely left out of the distributions. Obviously, this continues to be a fast-changing field of play, and providers must in some cases act quickly to ensure that they do not miss out. At the same time, such providers must be careful to understand the obligations that accompany this emergency funding. We will continue to provide updates as circumstances develop.

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