

## Publications CARES Act Provider Relief Fund – Part 2

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As an update to our [April 24 alert](#), the United States Health and Human Services Department (“HHS”) has continued to provide a string of updates over the past month regarding the funds allocated to provide financial relief for eligible health care providers by the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act.

### General Distributions

On May 20, 2020, HHS reminded providers that they had until June 3, 2020 to accept the Terms and Conditions and submit additional revenue information to be eligible to receive additional payments from the remaining \$20 billion in the General Distribution allocation of the Provider Relief Fund. Additionally, all providers that automatically received Provider Relief Funds prior to 5 p.m. on April 24 must provide HHS with an accounting of their annual revenues, including tax forms or financial statements. Submission of this financial data will also be considered an application for additional funding from the General Distribution.

The second \$20 billion tranche of the General Distribution allocation has been rolling out to providers since April 24 based on the timing of when HHS receives the additional financial data it requires. To receive additional funds under the General Distribution allocation, providers must also accept a separate Terms and Conditions sheet. While the Terms and Conditions under the initial \$30 billion tranche and this subsequent document are very similar, there is one notable exception. Under the Terms and Conditions of this second wave of funding, providers must agree to allow HHS to publicly disclose the payment amount the provider received from HHS under the Provider Relief Fund, not just the General Distribution. Aside from the general headaches this can cause for providers from a community relations, employee engagement, or media perspective, public disclosure will allow third parties to reliably estimate the provider’s 2018 net patient revenue and other information, since payments from the fund are designed to be proportional to the provider’s 2018 net patient revenue or the sum of losses incurred for March and April. And note, that this allows HHS to disclose the payments a provider receives from any portion of the Provider Relief Fund, which may allow third parties even greater insight into the provider’s financials. Despite this difference, HHS’ Provider Relief Fund FAQ states that any payment recipient will be disclosed on the Center for Disease Control’s (“CDC”) [website](#).

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On May 22, 2020, HHS announced that the deadline for providers who received funds under the Provider Relief Fund to accept the Terms and Conditions of the payments would be extended from 45 days to 90 days from the date the provider received the payment. Additionally, if providers do not accept the Terms and Conditions prior to the deadline and do not return the payments, they are deemed to have accepted the Terms and Conditions.

## Targeted Distributions

Similar to the General Distributions, HHS allocated \$50 billion to the Targeted Distributions. However, the Targeted Distributions were designed to be split among hospitals disproportionately impacted by COVID-19, to reimburse providers for treating uninsured patients, rural providers, the Indian Health Service, and other providers such as skilled nursing facilities, dentists, and other Medicaid providers. To date, HHS has allocated portions of the Targeted Distribution funds to disproportionately impacted hospitals, rural providers, skilled nursing facilities, and the Indian Health Service.

On May 1, 2020, HHS began distributing \$10 billion to rural providers, including rural acute care general hospitals, critical access hospitals, rural health clinics, and community health centers (“Rural Distribution”), and \$14 billion to disproportionately impacted hospitals (“COVID-19 High-Impact Distribution”). Under the Rural Distribution, each hospital received or should receive a minimum graduated base payment plus approximately 2 percent of their total operating expenses. The base payment varied between \$1 million and \$3 million depending on the hospital’s operating expenses. Rural Distributions by state can be found [here](#). Recipient providers will also be required to accept HHS’ Terms and Conditions applicable to the Rural Distribution.

The COVID-19 High-Impact Distribution provided \$12 billion to hospitals and other facilities that admitted a large number (100) of COVID-19 inpatients prior to April 10, 2020. Recognizing that inpatient costs are a primary driver in expenses related to COVID-19, HHS distributed \$10 billion to 395 hospitals. Those hospitals accounted for 71 percent of COVID-19-related inpatient admissions. Each hospital received a fixed amount per COVID-19 admission. The remaining \$2 billion was distributed to take into account each hospital’s portion of Medicare Disproportionate Share Hospital payments and Medicare Uncompensated Care Payments. The Covid-19 High-Impact Distribution by state can be found [here](#). Hospitals must comply with the High-Impact Relief Fund Payment Terms and Conditions to be eligible. Providers should continue to update their high-impact data, as HHS intends to make additional COVID-19 High-Impact Distributions in the future.

On May 22, 2020, Secretary Alex Azar announced that HHS would distribute nearly \$4.9 billion to skilled nursing facilities (“SNF”) impacted by COVID-19. Each SNF with six or more certified beds would be eligible to receive a fixed distribution of \$50,000 plus an additional \$2,500 per bed. Each SNF recipient must comply with the Skilled Nursing Facility Relief Fund Payment Terms and Conditions and agree to comply with future government audit and reporting requirements.

On the same day, HHS also announced that it would allocate \$500 million to American Indian and Alaskan Native tribal hospitals, clinics, and urban health centers. Each Indian Health Service (“IHS”) and tribal hospital received a \$2.81 million base payment plus 3 percent of their operating expenses. Each clinic and program received a \$187,000 base payment plus 5 percent of their estimated service population multiplied by the average cost per user. IHS urban programs received a \$181,000 base payment plus 6 percent of their estimated service population multiplied by the average cost per user. Providers must accept the Indian Health Service Relief Fund Payment Terms and Conditions and agree to comply with future government audit and reporting requirements.

## Terms and Conditions

Since our last alert, HHS has also continually updated its FAQs on the Provider Relief Fund. HHS updated the FAQs three times in the last week alone. The updates address the different types of distributions, the Terms and Conditions, and compliance with the program, among other issues. One aspect worth mentioning is that HHS has provided some clarification on the eligible expenses and losses that the Provider Relief Fund can be used to cover. Under the [Terms and Conditions](#), each recipient can only use the funds 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.” HHS states that the term “health care-related expenses attributable to coronavirus” is a broad term that may cover a range of items and services, including supplies, equipment, workforce training, emergency operation center expenses, reporting requirements, construction of temporary structures, or acquiring additional services or equipment to expand or preserve care delivery. “Lost revenues that are attributable to coronavirus” includes any revenue losses associated with [lower outpatient visits, canceled elective procedures, or increased uncompensated care](#).

HHS has stated that there will be significant oversight of the Provider Relief Funds and that its Office of Inspector General will be responsible for monitoring compliance with the Terms and Conditions. Violations of the Terms and Conditions may result in the distributions being recouped, suspension of Medicare billing rights, exclusion, or civil/criminal liability under the False Claims Act. If you have received a distribution under the Provider Relief Fund, including either the General or Targeted Distributions, it is important to understand the representations and certifications your organization is making by virtue of the Terms and Conditions applicable to that payment.

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