

Congress and HHS Make Additional \$170 Billion Available to Healthcare Providers to Address COVID-19 Testing, Treatment, and Losses

In recent days, the federal government has taken two significant steps to increase healthcare funding to assist providers in responding to the medical and economic consequences of the novel coronavirus pandemic.

\$100 Billion Funding Under Paycheck Protection Program and Health Care Enhancement Act

First, on Friday, April 24, 2020, the president signed into law the Paycheck Protection Program and Health Care Enhancement Act (PPHCEA). The PPHCEA appropriates an additional \$75 billion to the Public Health and Social Services Emergency Fund, expanding upon the \$100 billion appropriated under the landmark Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and distributed by the U.S. Department of Health and Human Services (HHS) under the auspices of the CARES Act Provider Relief Fund (the Relief Fund). The Relief Fund reimburses healthcare providers for unreimbursed expenses and lost revenue attributable to the novel coronavirus pandemic. To obtain this funding, the provider must, among other things, provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.

In addition, the PPHCEA appropriates \$25 billion to develop and expand COVID-19 testing, including \$11 billion for states, localities, territories, and tribes. The PPHCEA also requires these non-federal governmental authorities to submit plans to HHS for COVID-19 testing that include testing needs, laboratory and testing capacity, and how resources will be used for testing and easing community mitigation policies.

HHS Guidance on Remaining \$70 Billion of Initial \$100 Billion Appropriated to CARES Act Provider Relief Fund

Second, HHS has announced additional guidance on how the remainder of the original \$100 billion appropriated to the CARES Act Provider Relief Fund under the CARES Act will be distributed. As detailed in our prior [update](#), earlier this month HHS announced that the first \$30 billion tranche of this appropriation was distributed directly to providers on the basis of their relative 2019 Medicare fee-for-service (FFS) payments and was dependent on compliance with specified [terms and conditions](#). Now, HHS has released information about how it will be allocating the remaining \$70 billion, including \$20 billion in general allocations to healthcare providers above the original \$30 billion first tranche, an unspecified amount for COVID-19 treatment of the uninsured, and \$20.4 billion in targeted allocations.

General Distribution (First Tranche \$30 Billion, \$50 Billion Total): On April 24, HHS began allocating the additional \$20 billion of this general allocation. HHS will distribute this \$20 billion such that the entire \$50 billion of general distribution funding will be allocated pro rata on the basis of eligible providers' 2018 net patient revenue—not just their 2019 Medicare FFS revenue. Some providers who initially received less of the \$30 billion first tranche because they served fewer Medicare FFS patients might receive a larger portion of the additional \$20 billion allocation. This \$50 billion allocation is intended to defray or replace the gross receipts,

sales, or lost revenue providers have suffered as a result of COVID-19.

To receive funds from the \$20 billion tranche, providers must: (1) have received by April 24, 2020, at 5:00 p.m. EST a payment from the first \$30 billion tranche; and (2) attest to having received the first tranche payment and agree to the applicable [terms and conditions](#) via the [Provider Attestation Portal](#). Using net patient revenue data from 2018 cost reports filed with CMS, HHS automatically made "advance" payments starting April 24 to certain providers from the \$20 billion remaining of the general distribution. Other providers who satisfy these two criteria but do not have adequate cost report data on file with the Centers for Medicare & Medicaid Services (CMS) may still apply for a portion of the \$20 billion and will need to report their 2018 net patient revenue via a [General Distribution Portal](#) set up by HHS.

Providers who received an advance payment or can apply for additional funds from the \$20 billion must submit revenue and other information through the General Distribution Portal. Providers must also agree to comply with a separate set of [terms and conditions](#) for this additional distribution. Among other things, providers must have billed traditional, FFS Medicare in 2019 and, after January 31, 2020, diagnosed, tested, or cared for individuals with possible or actual cases of COVID-19. (These same conditions apply to the \$30 billion first tranche.) HHS guidance suggests that it will broadly construe possible or actual COVID-19 patients.

In general, these terms and conditions are similar to those for the \$30 billion first tranche, but include two additional conditions: (1) the recipient must submit general revenue data for calendar year 2018 to HHS when applying to receive a payment, or within 30 days of having received a payment; and (2) the recipient consents to HHS publicly disclosing the payment from the Relief Fund.

Targeted Distributions:

- **Unspecified Allocation for the Treatment of Uninsured Patients:** As we mentioned in our earlier update, HHS will use an unspecified portion of the Relief Fund to reimburse providers at Medicare rates for COVID-19-related testing and treatment of the uninsured delivered on or after February 4, 2020. Providers will need to engage in an eligibility, enrollment, and claims process, and the portal is now up for providers to [register](#) for this program. Providers will also need to comply with separate [terms and conditions](#) for receipt of this reimbursement, including, but not limited to, abstaining from "balance billing" any patient for COVID-19-related care.
- **\$10 Billion for Hospitals Significantly Affected by COVID-19:** HHS intends to distribute these targeted funds to hospitals in areas hit hardest by the pandemic. Hospitals have already been contacted to provide the required information. In its announcement, HHS used hospitals serving COVID-19 patients in New York as an example and stated that hospitals in that jurisdiction are "expected to receive a large share" of the \$10 billion.
- **\$10 Billion for Rural Providers:** HHS will begin distributing \$10 billion to rural health clinics and hospitals as early as the week of April 27 on a proportional basis tied to each provider's operating expenses.
- **\$400 Million to Indian Health Service:** HHS will distribute funds to Indian Health Service facilities based on operating expenses. The money will be distributed as soon as the week of April 27.
- **Additional Allocations:** Further, separate funding is envisioned for certain other providers, including skilled nursing facilities (SNFs), dentists, and providers "that solely take Medicaid."

Key Takeaways

Healthcare providers should appreciate the following practical implications of the PPPHCEA and HHS' recent announcements about the CARES Act Provider Relief Fund.

Compliance With Applicable Terms and Conditions: HHS has released four separate terms and conditions:

1. [Terms and conditions](#) for the \$30 billion first tranche of the initial \$100 billion appropriated to the Relief Fund
2. [Terms and conditions](#) for the remaining \$20 billion of HHS' \$50 billion general distribution of the initial \$100 billion Relief Fund
3. [Terms and conditions](#) for reimbursement for COVID-19 testing and related items and services provided to "FFCRA Uninsured Individuals," where such reimbursement is funded by an appropriation under the Families First Coronavirus Response Act (Public Law 116-127) to the Public Health and Social Services Emergency Fund
4. [Terms and conditions](#) for the reimbursement for COVID-19 care and treatment provided to uninsured persons, where such reimbursement is funded by the \$100 billion Relief Fund

Providers should understand which terms and conditions apply to a given source of reimbursement or funding, ensure they are willing to comply if they wish to obtain or retain these moneys, and ensure that they have accurately completed required attestations and claims procedures.

Remaining \$20 Billion of General Distribution Funds: Providers who received payments under the \$30 billion general distribution first tranche as of April 24, 2020, but who have not received payments under the \$20 billion second tranche may still apply for funding at the [General Distribution Portal](#). Providers who automatically receive payments will still need to complete their reporting through this portal. For reference and issues associated with these funds, HHS has released [FAQs](#).

Reimbursement for Uninsured Testing and Treatment: Providers who have conducted COVID-19 testing or treatment for uninsured individuals on or after February 4, 2020, may begin filing claims for Medicare level reimbursement. Providers can access the registration portal for this program at linkhealth.com. [Frequently Asked Questions](#) are also available.

Additional Funding and Guidance Expected: Expect HHS to release additional guidance and requirements concerning the allocation of the \$75 billion for the Relief Fund authorized by the PPPHCEA, the \$20.4 billion in targeted distributions for hard-hit hospitals, rural providers, and the Indian Health Service, and the additional allocations for certain providers, such as SNFs and dentists.

Proper Record-Keeping and Documentation Is Important: Providers should create and maintain appropriate records and documentation related to the payment and the use of CARES Act and PPPHCEA funds in order to justify retaining any forthcoming payments.

Process for Accepting or Rejecting Payments From the \$50 Billion General Distribution Funds: Providers who wish to retain these funds must attest to compliance with the applicable terms and conditions via the [CARES Act Provider Relief Fund Payment Attestation Portal](#). HHS has put providers on notice that, for the \$30 billion first tranche, failure to return the payment within 30 days of receipt will be viewed as acceptance of these terms and conditions. The same construction is likely to apply for payments from the remaining \$20 billion. If the provider does not wish to retain these payments, the provider must contact HHS within 30 days of receipt and then remit the full payment to HHS as instructed. The [Attestation Portal](#) will guide providers through the process to reject the funds as well as to accept them.

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