

HHS Announces Process for Additional \$20B in Stimulus Payments to Eligible Providers

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The U.S. Department of Health and Human Services (HHS) has announced a process for the release of an additional \$20 billion (Additional Distribution) of the \$100 billion Public Health and Social Services Emergency Fund that is part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Some providers have already received these funds, but many have not as the process for receiving these payments is different than the initial \$30 billion that was distributed (Initial Distribution).

On April 24, 2020, some providers were automatically sent an advance payment based off the revenue data they submit in Centers for Medicare and Medicaid Services (CMS) cost reports. Providers without adequate cost report data on file or who do not submit cost reports (for example, physicians) will need to submit their revenue information to **this portal** to obtain these funds.

This information will include tax documents and financial loss estimates, as HHS is looking for the following:

- (1) a provider's "Gross Receipts or Sales" or "Program Service Revenue" as submitted on its federal income tax return;
- (2) the provider's estimated revenue losses in March 2020 and April 2020 due to COVID-19 (lost revenue can be estimated by comparing year-over-year revenue, or by comparing budgeted revenue to actual revenue);
- (3) a copy of the provider's most recently filed federal income tax return; and
- (4) a listing of the federal Tax Identification Numbers of any of the provider's subsidiary organizations that have received relief funds, but that do not file separate tax returns.

Even if a provider received payments automatically, that provider will still need to submit their revenue information as outlined above so that it can be verified. Payments will go out weekly, on a rolling basis, as information is validated.

All recipients will be required to submit documents sufficient to ensure that these funds were used for healthcare-related expenses or lost revenue attributable to COVID-19.

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Like the Initial Distribution, as a condition to receiving the Additional Distribution, providers must agree not to seek collection of out-of-pocket payments from a presumptive or actual COVID-19 patient that are greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider.

Similar to the Initial Distribution, providers who receive funds from the Additional Distribution have to **sign an attestation** confirming receipt of funds, agree to the terms and conditions of payment and confirm the CMS cost report. If a provider receives a payment from the Additional Distribution and retains that payment for at least 30 days without contacting HHS regarding remittance of those funds, the provider is deemed to have accepted the terms and conditions. Some of the noteworthy terms and conditions are as follows:

- The provider billed Medicare in 2019; provides or provided after January 31, 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19; is not currently terminated from participation in Medicare or precluded from receiving payment through Medicare Advantage or Part D; is not currently excluded from participation in Medicare, Medicaid, and other federal health care programs; and does not currently have Medicare billing privileges revoked. As before, HHS broadly views every patient as a possible case of COVID-19.
- The provider certifies that the Additional Distribution will only be used to prevent, prepare for, and respond to COVID-19, and that the Additional Distribution shall reimburse the provider only for health care related expenses or lost revenues that are attributable to COVID-19.
- The provider certifies that it will not use the Additional Distribution to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
- The provider shall also submit general revenue data for calendar year 2018 to the Secretary of HHS when applying to receive an Additional Distribution or within 30 days of having received an Additional Distribution.
- The provider consents to HHS publicly disclosing the Additional Distribution that the provider received, which may allow some third parties to estimate the recipient's gross receipts or sales, program service revenue, or other equivalent information.
- Not later than 10 days after the end of each calendar quarter, any provider that is an entity receiving more than \$150,000 total in funds under the CARES Act, the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act (P.L. 116-127), or any other Act (collectively, the Acts) primarily making appropriations for COVID-19 and related activities, shall submit to the Secretary of HHS and the Pandemic Response Accountability Committee a report, which must contain: the total amount of funds received from HHS under one of the Acts; the amount of funds received that were expended or obligated for each project or activity; a detailed list of all projects or activities for which large covered funds were expended or obligated, including: the name and description of the project or activity, and the estimated number of jobs created or retained by the project or activity, where applicable; and detailed information on any level of sub-contracts or

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subgrants awarded by the covered recipient or its subcontractors or subgrantees, to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

- The provider must maintain appropriate records and cost documentation including, as applicable, documentation described in 45 CFR § 75.302 – Financial management and 45 CFR § 75.361 through 75.365 – Record Retention and Access, and other information required by future program instructions to substantiate the reimbursement of costs under this award. The provider must promptly submit copies of such records and cost documentation upon the request of the Secretary of HHS, and the provider agrees to fully cooperate in all audits conducted to ensure compliance with the terms and conditions.
- None of the funds appropriated in the Additional Distribution may be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II.

Once a provider has attested and submitted tax forms and loss estimates, the provider should receive an Additional Distribution or other response within 10 business days.

As has been the case thus far, this is an evolving situation, and HHS may issue additional guidance over time. Please contact the author of this Alert, **Glenn P. Prives** gprives@greenbaumlaw.com | 973.577.1776 with any questions. Mr. Prives is a partner in the firm's **Healthcare Department**.