

COVID-19 RELIEF PACKAGE 3.5 ADDS \$75 BILLION TO PROVIDER RELIEF FUND

Hodgson Russ Healthcare Alert
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On April 24, 2020, President Trump signed into law the Paycheck Protection Program and Health Care Enhancement Act, the so-called COVID-19 Relief Package 3.5, which increases the resources available to healthcare providers and others under the previously enacted Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This alert summarizes key changes affecting healthcare providers and highlights steps providers should take to comply with the applicable conditions and recordkeeping requirements.

The Provider Relief Fund

The Act increases the Public Health and Social Services Emergency Fund (Provider Relief Fund) from \$100 billion to \$175 billion, in addition to providing an additional \$320 billion to replenish the Paycheck Protection Program and \$25 billion to support testing and related activities. The Provider Relief Fund purposes include assisting healthcare providers, such as hospitals on the front lines, with healthcare-related expenditures or lost revenues attributable to the COVID-19 pandemic and ensuring access to testing and treatment for uninsured persons. The most recent enactment increases the funding available for these purposes.

Previously, on April 10, 2020, the Administration began distributing the first \$30 billion of the now \$175 billion in current total funding. The initial distributions were in the form of grants, not loans, allocated to providers based on their proportional share of overall Medicare fee-for-service reimbursements in 2019. For example, if a provider received \$484,000 in fee-for-service reimbursement in 2019, its payment from the \$30 billion was proportionate to its share of the approximate \$484 billion in overall Medicare fee-for-service reimbursements, or about \$30,000 (0.000001% of \$30 billion).

Providers received their share of the initial \$30 billion through automatic payments directly to their bank accounts, if that was their usual form of Medicare reimbursement. Providers were eligible to receive these funds even if they had ceased operation as a result of the pandemic. Nevertheless, as discussed below, recipients of these and other Provider Relief Fund grants must comply with certain terms and conditions, including reporting and record keeping requirements.

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Allocation of Remaining Initial Monies from the Provider Relief Fund

In related action, on April 22, 2020, the U.S. Department of Health and Human Services (HHS) announced the allocation of the remaining \$70 billion from the initial \$100 billion Provider Relief Fund set aside under the CARES Act, as follows:

- **General Allocation.** \$50 billion will go to eligible Medicare facilities and providers impacted by COVID-19 based on provider 2018 net patient revenue. Payment of these funds is set to go out on a rolling basis beginning April 24, 2020.
- **High Impact Areas.** 10 billion will be allocated for a targeted distribution to hospitals in areas that have been particularly impacted by the COVID-19 outbreak. Hospitals serving COVID-19 patients in New York are expected to receive a large share of the funds. *HHS has extended the deadline for hospitals to apply for this funding to 3:00 PM Eastern Time, Saturday, April 25, 2020.*
- **Treatment of the Uninsured.** An unspecified portion of the fund will go toward COVID-19 related treatment of the uninsured. Providers who provided treatment for uninsured COVID-19 patients on or after February 4, 2020 will be able to register for the program on April 27, 2020, and begin submitting claims in early May 2020 for reimbursement at Medicare rates, subject to available funding.
- **Rural Providers.** \$10 billion will be distributed to rural health clinics and hospitals on the basis of operating expenses, using a methodology that distributes payments proportionately to each facility and clinic.
- **Indian Health Service.** An additional \$400 million will be allocated to Indian Health Service facilities and distributed on the basis of operating expenses.
- **Additional Allocations.** Some providers will receive further, separate funding, including skilled nursing facilities, dentists, and providers that solely take Medicaid.

Terms and Conditions Associated with Provider Relief Fund Grants

The receipt of grants from the Provider Relief Fund is subject to terms and conditions. For the initial \$30 billion in grants, the Terms and Conditions included, among others, certification that the provider:

- billed Medicare in 2019 and provided, after January 31, 2020, diagnoses, testing, or care for individuals with possible or actual cases of COVID-19;
- will use the payment only to prevent, prepare for, and respond to coronavirus, and will reimburse the provider only for health care related expenses or lost revenues attributable to coronavirus;
- will not seek to collect from the patient out-of-pocket payments greater than what the patient would have been required to pay if the care was provided by an in-network provider;
- is not currently terminated from participation in Medicare, excluded from Medicare or other federal health care programs, or currently have Medicare billing privileges revoked;
- will not use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.

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Providers receiving subsequent Provider Relief Grant funds in the general distribution will have to sign an attestation confirming receipt of funds and agreeing to the terms and conditions of payment. Providers rejecting the funds must complete the attestation indicating the rejection.

Reporting and Record Keeping Requirements

The Provider Relief Fund Terms and Conditions also impose reporting and record-keeping requirements. These include:

- the submission of such reports as the HHS Secretary deems necessary to ensure compliance with the conditions imposed upon the payment;
- for providers receiving more than \$150,000 funds under the CARES Act or other legislation “primarily making appropriations for the coronavirus response and related activities,” the submission of quarterly reports with specified information about the receipt and expenditure of the funds;
- the maintenance of records and cost documentation substantiating the reimbursement of costs under the award, the prompt submission of the the documentation upon request, and full cooperation in any audits.

Providers are well counseled to develop detailed plans specifying any activities engaged in to mitigate the impact of COVID 19 and to track and compile all associated financial data so that they can comply readily with quarterly and other reporting requirements governing the use of funds from the Provider Relief Fund.

CONTACT US

If you have any questions about the Provider Relief Fund or other funding available to providers impacted by the COVID-19 pandemic, please contact Joshua Feinstein (716.848.1318) or Jane Bello Burke (518.433.2404).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to these rapidly evolving topics.

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