

HHS Announces Additional Allocations of CARES Act Provider Relief Fund

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by Claire H. Topp and Carson Lamb

On April 22, 2020, the Department of Health and Human Services (“HHS”) issued a press release outlining the allocation of an additional \$70 billion dollars in appropriations allocated by the CARES Act to the Public Health and Social Services Emergency Fund. The initial \$30B tranche of the total \$100 billion provided for under the CARES Act was distributed earlier this month to providers based on a methodology taking into account those providers’ Medicare receipts from the prior year. This is the “second round” of the initial funding provided for under the CARES Act and includes both a “General Allocation” of \$50 billion and smaller “Targeted Allocations.”

In allocating the funds, HHS stated they are “working to address both the economic harm across the entire healthcare system due to the stoppage of elective procedures, and addressing the economic impact on providers incurring additional expenses caring for COVID-19 patients, and to do so as quickly and transparently as possible.”

On April 21, 2020, the U.S. Senate passed a bill, colloquially referred to as “Stimulus Phase 3.5,” which provides for an additional \$75 billion to replenish the Public Health and Social Services Emergency Fund. These latest allocations are not related to the potential Stimulus 3.5 funds. We are continuing to monitor Stimulus 3.5 funds and will update our website once that next round of stimulus funding is approved by the President.

The guidance provided by HHS with respect to the latest allocation of the additional \$70 billion in appropriations for providers is below.

I. GENERAL ALLOCATION

- \$50 billion of the Provider Relief Fund is allocated for general distribution to Medicare facilities and providers impacted by COVID-19, based on eligible providers' 2018 net patient revenue.
 - To expedite providers getting money as quickly as possible, \$30 billion was distributed immediately, proportionate to providers' share of Medicare fee-for-

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service reimbursements in 2019. On Friday, April 10, \$26 billion was delivered to bank accounts. The remaining \$4 billion of the expedited \$30 billion distribution was sent on April 17.

- HHS said they used this formula to get the money out the door as quickly as possible.
- HHS stated that, beginning this week, they will begin distribution of the remaining \$20 billion of the general distribution to these providers to augment their allocation so that the whole \$50 billion general distribution is allocated proportional to providers' share of 2018 net patient revenue.
- On April 24, a portion of providers will automatically be sent an advance payment based off the revenue data they submit in CMS cost reports. Providers without adequate cost report data on file will need to submit their revenue information to a portal opening this week at <https://www.hhs.gov/providerrelief> for additional general distribution funds.
 - Providers who receive their money automatically will still need to submit their revenue information so that it can be verified.
- Payments will go out weekly, on a rolling basis, as information is validated, with the first wave being delivered at the end of this week (April 24, 2020).
- Providers who receive funds from the general distribution have to sign an attestation confirming receipt of funds and agree to the terms and conditions of payment and confirm the CMS cost report.
- The terms and conditions also include other measures to help prevent fraud and misuse of the funds. 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 coronavirus. HHS warned that there will be significant anti-fraud and auditing work done by HHS, including the work of the Office of the Inspector General.
- In the latest allocation, HHS reinforced President Trump's directive that as a condition to receiving these funds, 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.

II. TARGETED ALLOCATIONS

A. ALLOCATION FOR COVID-19 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. As an example, HHS said that hospitals serving COVID-19 patients in New York, which has a high percentage of total confirmed COVID-19 cases, are expected to receive a large share of the funds.
 - Hospitals should apply for a portion of the funds by providing four simple pieces of information via an authentication portal before midnight PT, Thursday April 23. This portal is live, and hospitals have already been contacted directly to provide this information.



- Hospitals will need to provide:
 - Tax Identification Number
 - National Provider Identifier
 - Total number of Intensive Care Unit beds as of April 10, 2020
 - Total number of admissions with a positive diagnosis for COVID-19 from January 1, 2020 to April 10, 2020
- HHS stated that the authentication and data-sharing process should take less than five minutes via a system that should be familiar to most hospitals.
- HHS indicated this information is necessary for the government to determine what facilities will qualify for a targeted distribution. They added that supplying this information does not guarantee receipt of funds from this distribution.
- HHS will use the data it receives to distribute the targeted funds to where the impact from COVID-19 is greatest. The distribution will take into consideration the challenges faced by facilities serving a significantly disproportionate number of low-income patients, as reflected by their Medicare Disproportionate Share Hospital (DSH) Adjustment.

B. ALLOCATION FOR TREATMENT OF THE UNINSURED

- As announced in early April, a portion of the \$100 billion Provider Relief Fund will be used to reimburse healthcare providers, at Medicare rates, for COVID-related treatment of the uninsured.
- Every health care provider who has provided treatment for uninsured COVID-19 patients on or after February 4, 2020, can request claims reimbursement through the program and will be reimbursed at Medicare rates, subject to available funding.
- Steps will involve: enrolling as a provider participant, checking patient eligibility and benefits, submitting patient information, submitting claims, and receiving payment via direct deposit.
- Providers can register for the program on April 27, 2020, and begin submitting claims in early May 2020. For more information, visit coviduninsuredclaim.hrsa.gov.

C. ALLOCATION FOR RURAL PROVIDERS

- \$10 billion will be allocated for rural health clinics and hospitals.
 - This money will be distributed as early as next week (April 27, 2020) on the basis of operating expenses, using a methodology that distributes payments proportionately to each facility and clinic.
 - This method recognizes the precarious financial position of many rural hospitals, a significant number of which are unprofitable.
 - Rural hospitals are more financially exposed to significant declines in revenue or increases in expenses related to COVID-19 than their urban counterparts.

D. ALLOCATION FOR INDIAN HEALTH SERVICE

- Included in the allocation is \$400 million which will be allocated for Indian Health Service (“IHS”) facilities, distributed on the basis of operating expenses. Indian Country is also being impacted by COVID-19.
 - This money will be distributed as early as next week (April 27, 2020) on the basis of operating expenses for facilities.

- HHS indicated that this serves as a complement for “other funding provided to IHS and work we’ve done to expand IHS capacity for telehealth.”

E. ADDITIONAL ALLOCATIONS

- HHS indicated that there are some providers who will receive further, separate funding, including skilled nursing facilities, dentists, and providers that solely take Medicaid.



F. HELPING ENSURE ALL AMERICANS HAVE ACCESS TO CARE

- The *Families First Coronavirus Response Act*, as amended by the *CARES Act*, requires private insurers to waive an insurance plan member's cost-sharing payments for COVID-19 testing. The President also secured funding to cover COVID-19 testing for uninsured Americans.
- The Trump Administration has also touted secured commitments from private insurers, including Humana, Cigna, UnitedHealth Group, and the Blue Cross Blue Shield system, to waive cost-sharing payments for treatment related to COVID-19 for plan members.
- As a condition to receiving general funds, 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.

We are keeping a close eye on the rapid developments surrounding COVID-19. If you have any questions about this latest guidance issued by HHS, the CARES Act, or any questions related to COVID-19, please contact the authors of this blog or contact your Dorsey and Whitney LLP attorney. You can access Dorsey's coronavirus resource center, which contains a wide variety of legal resources related to the coronavirus outbreak, available [here](#). You can also access Dorsey's health law blog related to health law updates, including those applicable to tax exempt entities in the health care space, available [here](#).