



*The Chehardy Sherman Williams Healthcare Practice Group is constantly monitoring the way the COVID-19 Pandemic is affecting the industry.*



## ***CARES Act Provider Relief Fund Payment Terms and Conditions***

### ***What is the CARES Act Relief Fund?***

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act and the Paycheck Protection Program ("PPP") and Health Care Enhancement Act together provide a total of \$175 billion in relief funds to health care providers ("Relief Funds"). The Department of Health and Human Services ("HHS") is automatically distributing \$50 billion of the Relief Funds. On April 10, 2020, HHS began making direct deposits of the first \$30 billion. The amount each healthcare provider received was based on the provider's share of total Medicare fee-for-service reimbursement in 2019. On April 24, 2020, HHS began distributing by direct deposit an additional \$20 billion based on providers' 2018 net patient revenue.

### ***Will My Business Have to Repay the Money?***

The Relief Funds are a grant, not a loan. Recipients will not have to repay the Relief Funds as long as they agree to comply with the terms and conditions of the payment.

### ***Are There Strings Attached?***

Yes. Within 30 days of receiving the Relief Funds, providers must sign an attestation confirming receipt of the funds and agreeing to the terms and conditions. The portal for signing the attestation is available from the HHS website. If a provider does not wish to comply with the terms and conditions, the provider must contact HHS within 30 days and remit the full payment back to HHS. Not returning the payment within 30 days will be viewed as acceptance of the terms and conditions.

### ***Who is Eligible to Keep the Relief Funds?***

Healthcare providers who received Medicare fee-for-service payments in 2019 are eligible to keep the Relief Funds, as long as they are in good standing with the Center for Medicare and Medicaid Services ("CMS"). Additionally, recipients must be providing diagnoses, testing, or care for individuals with "possible or actual cases" of COVID-19. HHS has provided guidance that broadly interprets this requirement: "Providers that ceased operation as a result of COVID-19 are still eligible to receive funds so long as they provided diagnoses, testing, or care to individuals with possible or actual cases of COVID-19. Care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19."

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***How Can the Money be Spent?***

Recipients may use the Relief Funds only to prevent, prepare for, and respond to COVID-19, or for healthcare related expenses or lost revenues that are attributable to COVID-19. The CARES Act provides that allowable costs include building or construction of temporary structures, leasing properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity. There is no guidance from HHS on which other costs, if any, may be allocated to COVID-19. HHS has issued no guidance on “lost revenues” are considered “attributable to COVID-19.” Most providers have lost revenues due to canceled procedures and/or general shutdowns. However, it is not clear whether the Relief Funds can be used to reimburse recipients for those lost revenues, or whether the lost revenues must be tied to the prevention of, preparation for, or response to COVID-19. In addition, recipients may not use Relief Funds for expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse. Because several grant and loan forgiveness programs related to COVID-19 are available, recipients of Relief Funds who also receive assistance from other programs must be able to track and document how they use funds received from each program.

***What if I Accept the Funds and Do Not Have Sufficient Qualifying Expenses or Lost Revenues?***

If a recipient accepts Relief Funds but does not spend them on qualifying expenses or lost revenue, the funds may be recouped. However, there is no date by which the Relief Funds must be spent. There is also no provision for interest on recouped funds. Thus, it appears that Relief Funds may be accepted and returned (or recouped) at some future date without penalty to the Recipient, so long as the Recipient does not spend their Relief Funds on non-allowable expenses or lost revenues and complies with the other terms and conditions.

***What is the “Surprise Billing Ban”?***

Recipients must certify that they will not seek to collect from any out-of-network patient with an actual or presumptive case of COVID-19, any out-of-pocket expenses greater than what the patient would have paid if the care had been provided by an in-network provider. This requirement does not affect how healthcare providers bill patients for healthcare unrelated to COVID-19.

***Will My Business Need to Submit Reports to Medicare?***

Likely, yes. HHS has not yet issued guidance on the form or content of reports that may be required for most recipients, but recipients must agree to comply with any reporting requirements HHS imposes in the future. Recipients who receive more than \$150,000 in federal government assistance related to COVID-19 must submit quarterly reports to HHS and the Pandemic Response Accountability Committee containing the following:

- The total amount of funds received from HHS under various programs related to COVID-19;
- The amount of funds received that were spent or obligated for each project or activity; and
- A detailed list of all projects or activities for which covered funds were spent or obligated, including the name and description of the project or activity, where applicable; 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 subgrants awarded by the recipient to its subcontractors or subgrantees.

***Can My Business Be Audited?***

Yes. Recipients must maintain appropriate records and cost documentation. These records must trace the Relief Funds and how they were spent. As discussed above, recipients who receive funds from multiple government assistance programs related to COVID-19 must also be able to trace funds received from program and how those funds were spent to ensure that Relief Funds are not used for expenses reimbursed by other sources. Recipients must retain all financial records, supporting documents, statistical records, and all other records pertinent to the grant for 3 years. Recipients also must agree to follow other documentation requirements that HHS may impose in the future. Recipients may be audited and must agree to submit copies of records and documents related to the Relief Funds upon request by the Secretary or Inspector General for HHS, or the Comptroller General of the United States, and to fully cooperate in all audits by HHS or the Pandemic Response Accountability Committee.

***Are There Any Other Limitations on How Relief Funds are Spent?***

Yes. Relief Funds may not be used for any of the following:

- Pay the salary of an individual at a rate in excess of \$197,300;
- Promote gun control;
- Conduct lobbying activities;
- Perform abortions (with rape/incest/life-of-the-mother exceptions);
- Perform embryo research;
- Promote of legalization of controlled substances; or
- Purchase sterile needles or syringes for needle exchange programs.

If your business conducts any of these activities, segregating the Relief Funds is the best way to prove, if audited, that the Relief Funds were not used for these purposes.

***What Are the Penalties for Non-Compliance?***

Neither the CARES Act nor HHS has provided any specific penalty for non-compliance. However, if a Recipient does not comply with the terms and conditions (and does not return the money), that non-compliance could be the basis for a False Claims Act claim, civil monetary penalties, exclusion from Medicare, and/or prosecution for healthcare fraud, depending on the specific facts.

***What Are Some Best Practices for Handling the Relief Funds?***

1. Segregate the Relief Fund payments from general funds and from other government assistance payments. Use Relief Funds received for each specific Taxpayer Identification Number (TIN) only for the entity associated with that TIN.
2. Document all expenses attributable to COVID-19 and how they are connected to COVID-19 (increased PPE costs, specific training, etc.).
3. Document all lost revenues attributable to COVID-19, and how those lost revenues are connected to COVID-19 (e.g., canceled appointments, general shutdowns, related to prevention measures, etc.).
4. Track all payments received that reimburse your business for COVID-19 related costs and expenses. Document how those funds and the Relief Funds are used to ensure that Relief Funds are not used to reimburse for other expenses.
5. Stay alert for additional HHS guidance regarding the terms and conditions.

## ***CMS Reevaluates Accelerated Payment Program & Suspends Advance Payment Program***



On April 26, 2020, Centers for Medicare & Medicaid Services ("CMS") announced that it is "reevaluating the amounts that will be paid under its Accelerated Payment Program" and suspending its Advance Payment Program to Part B suppliers effective immediately. CMS had expanded these temporary loan programs to ensure providers and suppliers had the resources needed to combat the beginning stages of the 2019 Novel Coronavirus (COVID-19). Funding will continue to be available to hospitals and other healthcare providers on the front lines of the Coronavirus response primarily from the [Provider Relief Fund](#). The Accelerated and Advance Payment (AAP) Programs are typically used to give providers emergency funding and address cash flow issues for providers and suppliers when there is disruption in claims submission or claims processing, including during a public health emergency or Presidentially-declared disaster.

Should you have any specific questions or needs, please contact the  
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