

Strings Attached: What Doctors Need to Know About the CARES Act Provider Relief Fund Payments

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Questions Doctors are Asking

1. What is this money that showed up in my Medicare EFT account a few weeks ago?
2. If I use this money are there "strings" attached?
3. What if I got a PPP loan or other Federal relief money?
4. What do I need to do to protect myself?

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Federal Relief Monies Applicable to Doctors under the CARES Act

- Paycheck Protection Program (“PPP”)
- Advanced/Accelerated Payment Program
- Provider Relief Fund (“Relief Fund”)

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A. Paycheck Protection Program (PPP)

- Applies to businesses with less than 500 employees
- Is a “loan” but some or all of the debt may be forgiven if the borrower meets certain conditions

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Conditions of Forgiveness

1. Funds may only be used for:
 - Payroll
 - Rent (or mortgage interest)
 - Utilities
 - Employee benefits (health care expenses, retirement contributions, state taxes on employees)
2. At least 75% of funds must be used for payroll and benefits
3. Funds must be used within 8 weeks

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Conditions of Forgiveness

4. During the 8 week usage period for loan funds –
 - Full time employee headcount must stay the same (if not, the loan forgiveness is proportionally reduced)
 - Salaries and wages of employees earning less than \$100,000 may not be reduced.
1. Reductions in salaries or headcount between 2/15/20 and 4/26/20 must be restored by 6/30/20

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B. Advanced/Accelerated Payment Program

- Medicare accelerated and/or advanced Medicare payments to providers based on prior Medicare billing history
- 24,000 applications by Part B providers and \$40.4 billion in payments
- Money is a loan and must be paid back within one year
- Program suspended as of 4/26/20

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C. Provider Relief Fund

- The CARES Act provides for \$100 billion to hospitals and healthcare providers
- \$30 billion was sent to providers by direct deposit starting on April 10, 2020 ("1st Tranche"); funds were depleted as of 4/24/20
- \$20 billion made available by application beginning April 24, 2020 ("2nd Tranche")

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1st Tranche Provider Relief Funds (\$30 billion)

- Payment process to providers
- Eligibility criteria
- Use of funds
- Reporting and record keeping requirements
- Attestation to terms and conditions

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1st Tranche Provider Relief Funds (\$30 billion)

1. Payment process to providers:

- Payment made by ACH deposit to Medicare TIN on file with CMS
- Payment amount = roughly 6.2% of providers' 2019 Medicare billings
- Payment processed via OptumBank with "HHSPAYMENT" in the re: line
- This is a grant, not a loan

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1st Tranche Provider Relief Funds (\$30 billion)

2. Provider Eligibility criteria:

- Must have billed Medicare in 2019
- Is not terminated from Medicare participation
- Is not excluded from Medicare, Medicaid or other Federal healthcare program
- Rendered health care services subsequent to 1/21/20
- No unpaid Federal tax liability

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1st Tranche Provider Relief Funds (\$30 billion)

2. Provider Eligibility criteria (cont.):

- The provider “after January 31, 2020, [performs] diagnosis, testing, or care for individuals with possible or actual cases of COVID-19”
- “HHS broadly views every patient as a possible case of COVID-19”

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1st Tranche Provider Relief Funds (\$30 billion)

3. Use of Funds:

Will use to:

- “prevent, prepare for, and respond to the coronavirus”
– and –
- “reimburse the provider only for health care related expenses or lost revenues that are attributable to the coronavirus”

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1st Tranche Provider Relief Funds (\$30 billion)

3. Use of Funds (cont.):

Will not use to:

- “reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse”
- pay the salary of any individual at a rate in excess of \$197,300

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1st Tranche Provider Relief Funds (\$30 billion)

4. Reporting and Recordkeeping Requirements:

- Recipients must maintain records regarding use of funds
- Recipients who receive more than \$150,000 in total funds from the CARES Act (all programs) must file a quarterly report with both HHS and the Pandemic Response Accountability Committee

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1st Tranche Provider Relief Funds (\$30 billion)

5. Attestation to Terms and Conditions

- Must occur within 30 days of receipt of funds
- If no attestation occurs within the 30 days, the provider is deemed to have accepted the funds as if he/she had attested.

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1st Tranche Provider Relief Funds (\$30 billion)

5. Attestation to Terms and Conditions

- The terms and conditions have been updated twice since direct deposit 3 weeks ago
- Providers must attest that they are eligible to receive funds and will keep records and provide reports.

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2nd Tranche Relief Funds (\$20 billion)

1. Eligibility: healthcare providers who received 1st Tranche monies from HHS by 4/24/20 and have attested on the attestation portal
2. Grant or loan? **Grant**
3. Application deadline – **none as of this date**

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2nd Tranche Relief Funds (\$20 billion)

4. Information needed to apply:
 - Most recent Federal tax return
 - "Gross receipts or sales" from Federal tax return for 2018 (all patients, not just Medicare patients)
 - Estimated revenue loss for March and April 2020
5. Grant amount: no formula, but will be based, in part, on lost revenues in March/April 2020 in comparison to 2018 revenues

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2nd Tranche Relief Funds (\$20 billion)

6. Application process:
 - Application must be completed online
 - HHS will confirm that application is complete
 - Upon approval of application, funds will be disbursed within 10 days
 - Approvals will occur on a rolling basis

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2nd Tranche Relief Funds (\$20 billion)

7. Terms and conditions:

- Generally the same as for 1st Tranche
- But note: attestation must be made before disbursement of funds (with 1st Tranche it is done within 30 days after disbursement)

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3rd Tranche Relief Funds (\$50 billion)

- For providers specifically treating COVID-19 patients
- For nursing homes, dentists and providers solely treating Medicaid patients
- Details yet to be announced as of this date

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“Building the Airplane in Midflight”

1. We have no regulatory guidance or interpretive regulations
2. Terms and conditions are evolving
3. What is happening with PPP is a cautionary tale
 - Interpretive guidance moved the goal posts
 - Public shaming of certain recipients

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Provider Pitfalls

- Failure to correctly assess eligibility
- Inadequately tracking the use of funds and keeping records of such
- Double-dipping, i.e., use of funds to reimburse the same thing
- Using funds for unauthorized purposes

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Ten Common Questions & Answers

1. Can a provider still accept the payment if they do not directly treat patients with COVID-19?

Answer: Yes. 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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Ten Common Questions & Answers

2. What if a provider doesn't see many uninsured patients?

Answer: There is no requirement that a recipient use the funds to provide care for uninsured patients.

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Ten Common Questions & Answers

3. Can a recipient accept a *portion* of the payment, and return what they do not need?

Answer: *Unclear – at this point it appears the answer is “no” and that acceptance of the money is an “all or nothing” proposition*

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Ten Common Questions & Answers

4. If a recipient already received other government emergency funds related to the coronavirus, can it accept and keep the payment received from the Provider Relief Fund?

Answer: *It depends. The Terms and Conditions prohibit a recipient from using the payment to reimburse an expense already reimbursed from another source or under obligation from another source. A careful analysis needs to be done for each expense to ensure compliance*

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Ten Common Questions & Answers

5. If a recipient has received a loan under the Paycheck Protection Program (“PPP”) can it accept and keep the payment received from the Provider Relief Fund?

Answer: *Yes. Providers that receive a PPP loan can still accept monies from the Provider Relief Fund. The two are not mutually exclusive. If a provider’s PPP loan did not cover all of its payroll costs for laid off employees or current employees to allow it to continue to provide care, it appears the relief payments can be used for that purpose.*

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Ten Common Questions & Answers

6. Can a provider use the monies to pay salaries that have taken a hit due to decreased production from mandatory cancellation of nonessential and elective procedures?

Answer: Yes, but the practice should be *mindful of the limit regarding individual compensation*, which is \$197,300. The practice should also be mindful of the restrictions on use of Provider Relief Funds to cover the same salaries as PPP loans. See Q&A No. 5.

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Ten Common Questions & Answers

7. Is receipt of these funds subject to the False Claims Act?

Answer: Yes, As noted above, the Terms and Conditions specify that *whistleblower protection applies*.

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Ten Common Questions & Answers

8. Will HHS conduct audits of providers?

Answer: Likely yes. Providers should keep records with this in mind. HHS has allocated \$6 million to the OIG to oversee use of funds.

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Ten Common Questions & Answers

9. What if the 30 days has passed and I determine that I am not eligible or that I cannot meet the terms and conditions?

Answer: *The funds should be returned to the federal government.*

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Ten Common Questions & Answers

10. If I received business interruption insurance or other insurance proceeds for COVID-19 related losses, can I still receive Relief Fund Money?

Answer: *Unclear, but caution should be exercised here. Some legal scholars believe the Relief Fund monies cannot be used to cover losses for which there is insurance coverage*

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NOTE: Continue to monitor federal guidance regarding Relief Fund monies: the Terms and Conditions require compliance with existing and future regulations.

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Who is Potentially Liable for Misuse of Relief Funds?

- Entities that receive funds (per Tax ID #)
- Practice owners and executives

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Questions



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