

?Expanded Eligibility for Provider Relief Funds and Updated Reporting Requirements



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On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") into law, allocating \$100 billion in funding for the CARES Act Provider Relief Fund (the "Fund"). As outlined in previous alerts, the U.S. Department of Health and Human Services ("HHS") automatically distributed \$50 billion of the Fund to eligible healthcare providers in two waves throughout the month of April 2020 ("Phase One"), an additional \$15 billion distribution in June 2020 ("Phase Two"), and a third distribution of \$20 billion in October 2020 ("Phase Three").

Late last week, HHS announced expanded eligibility for payments from the Fund and updated reporting requirements related to payments from the Fund. This announcement has implications for those providers who received relief in Phase One, Phase Two, and Phase Three, as well as for those who were ineligible for the previous rounds of Fund relief.

Please note that the Fund and the related HHS guidance are nuanced and may raise specific questions not addressed herein. The summary below is not an exhaustive list of all information on this issue, and there may be additional provisions that are relevant to your facility or practice. The entirety of HHS guidance on the Fund may be found here.

Expanded Eligibility for Payments

On October 22, 2020, HHS announced that the latest Fund application period has been expanded to include additional provider applicants, regardless of whether such providers accept Medicaid or Medicare. Eligible providers that may now apply for Phase 3 funding include:

- Behavioral Health Providers
- Allopathic & Osteopathic Physicians
- Dental Providers
- Assisted Living Facilities
- Chiropractors
- Nursing Service and Related Providers
- Hospice Providers
- Respiratory, Developmental, Rehabilitative and Restorative Service Providers
- Emergency Medical Service Providers
- Hospital Units

- Residential Treatment Facilities
- Laboratories
- Ambulatory Health Care Facilities
- Eye and Vision Services Providers
- Physician Assistants & Advanced Practice Nursing Providers
- Nursing & Custodial Care Facilities
- Podiatric Medicine & Surgery Service Providers

The full HHS guidance on provider eligibility with regard to these expanded Phase Three payments may be found [here](#).

Eligible providers who apply to Phase Three may receive up to a total of two percent of revenue reported from patient care. Providers that have not yet received Fund payments of two percent of patient revenue will receive a payment that, when combined with prior Fund payments (if any), equals two percent of patient care revenue. Providers that have already received payments of up to a total of two percent of revenue may submit more information to become eligible for an additional payment. This additional payment will be calculated on an equitable basis based on the following:

- A provider's change in operating revenues from patient care;
- A provider's change in operating expenses from patient care, including expenses incurred related to coronavirus; and
- Payments already received through prior Provider Relief Fund distributions.

These payments will be distributed on a rolling basis, so applying early may boost a provider's chance of receiving funding. The deadline to submit an application is November 6, 2020.

As with all other healthcare provider relief distributed from the Fund, the providers who do receive payment must attest to the terms and conditions of payment within 90 days. The terms and conditions for Phase Three payments track with the previous terms and conditions required with previous phase payments (outlined in detail [here](#)).

If you believe you may be eligible for Phase Three funding, you may submit an application on the HHS portal [here](#).

Updated Reporting Requirements

The announcement also outlines updated reporting instructions that broaden the use of payments received from the Fund. Initially, guidance from HHS required providers limit use of distributions from the Fund to lost revenues attributable to COVID-19, and that in order to meet this requirement, providers must submit information showing a negative change in year-over-year net patient care operating income. HHS has now revised this guidance based on concerns from the healthcare community. Now, after reimbursing healthcare related expenses attributable to coronavirus that were not reimbursed by other sources, providers may use remaining funds to cover any lost revenue, measured as a negative change in year-over-year actual revenue from patient care related sources.

The full HHS guidance related to this updated reporting requirement is available [here](#).

This article is general in nature and does not constitute legal advice. Readers with legal questions should consult the authors, Mark Opara (mopara@sb-kc.com), Bailie Schnackenberg (bailies@sb-kc.com) or any shareholders in Seigfreid Bingham's Health Law Group, including Mark Thompson, Lori Beam, Joseph Hiersteiner, Mark Gilgus, John Neyens, Heath Hoobing, and John Fuchs, or your regular contact at Seigfreid Bingham at 816-421-4460. For more information and updates, visit [our COVID-19](#)

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