

# NHIA CARES Act Provider Relief Fund FAQ

## (updated as of April 21, 2020)

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On April 10, 2020, the federal government distributed the first \$30 billion from its Public Health and Social Services Emergency (Relief) Fund to health care providers participating in Medicare. These payments appeared in provider accounts with the description “HHSPAYMENT” via Optum Bank and were distributed as part of the \$100 billion relief package allocated to healthcare providers under the CARES Act.

In this FAQ, Husch Blackwell breaks down the frequently asked questions and provides the most up-to-date answers. The U. S. Department of Health and Human Services (HHS) has yet to issue additional guidance related to these funds. Accordingly, some of the answers contained herein may change upon release of such guidance.

*This information is intended only to provide general information in summary form in response to the questions submitted to the National Home Infusion Association (NHIA) related to the Provider Relief Fund. The contents herein do not constitute legal advice and should not be relied on as such. Specific legal advice should be sought in particular matters.*

### A. Background questions related to the Provider Relief fund.

#### 1. Do I need to apply for these funds?

No. The Provider Relief funds will be paid via Automated Clearing House account information that is on file with UnitedHealth Group or the Centers for Medicare & Medicaid Services (CMS).

#### 2. How was the amount I received determined?

Payments were determined based on each provider’s share of the 2019 Medicare fee-for-service (FFS) payments. A provider can estimate or check the payment by dividing the amount of Medicare FFS (not including Medicare Advantage) payments he or she received in 2019 by \$484,000,000,000. Then, multiply this ratio (or decimal) by \$30,000,000,000. As an example: A community hospital billed Medicare FFS \$121 million in 2019. The following equation would be used to determine how much it should receive:  $\$121,000,000 / \$484,000,000 \times \$30,000,000,000 = \$7,500,000$ . Providers can obtain their 2019 Medicare FFS billings from their organization’s revenue management system.

#### 3. Is this a loan?

No. The Provider Relief Fund deposits are essentially grants, not loans, to healthcare providers and will not need to be repaid.

#### 4. Do I need to sign the attestation?

All providers will be required to sign an attestation confirming receipt of the funds and agreeing to the Terms and Conditions of payment. On April 16, 2020, HHS opened the [Attestation Portal](#) and began accepting attestations.

#### 5. What happens if I do not sign the attestation?

HHS clarified on its Provider Relief page that not returning the funds within 30 days will be viewed as acceptance of the [Terms and Conditions](#).

#### 6. How do I return funds?

If a provider chooses to return the funds, it must follow the steps within the [Attestation Portal](#).

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**7. If I keep all the funds now, can I return a portion later?**

Possibly. HHS has not provided guidance regarding return of the funds following the 30-day attestation period.

**8. What is the risk of keeping funds, who can audit me, and what are the penalties?**

The Terms and Conditions require compliance with the uniform administrative requirements, cost principles and audit requirements for HHS awards. The Terms and Conditions also refer to providers as “recipients,” which includes entities that receive a federal award directly from a federal awarding agency to carry out an activity under a federal program. The fact that the payment is likely a federal award means non-compliance with the Terms and Conditions could result in a variety of consequences, discussed [here](#).

**9. What if I have not received funds, what should I do?**

Contact HHS at [HOSPITALCOVID19@hhs.gov](mailto:HOSPITALCOVID19@hhs.gov). Email HHS with your company name, CMS Certification Number (CCN) and Tax Identification Number (TIN). HHS has indicated that providers missed in round one will receive their allocations in round two.

**B. How to Use the Provider Relief Fund**

**10. Do we need to be providing COVID testing to keep funds?**

No. Providers are eligible to receive funds so long as they provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. HHS interprets this broadly and “views every patient as a possible case of COVID-19.”

**11. Should I set up a separate account for these funds for record keeping and tracking?**

Yes. Segregating the Relief Fund payments into a separate account will allow expenditures from that account to be tracked in the event of an audit.

**12. How and when should I pull from this account to pay expenses?**

Providers may pull from their relief fund account when the cost is (i) to reimburse lost revenue, (ii) for expenses related to COVID-19, and/or (iii) for expenses related to treating, diagnosing, and caring for COVID-19 patients, so long as these expenses have not been otherwise reimbursed. HHS has stated that, to be eligible for the funds, care does not have to be specific to treating COVID-19. Furthermore, HHS broadly “views every patient as a possible case of COVID-19.”

HHS requires providers that received funds to implement procedures that comply with the cost allocation rules it established for awards. Specifically, the provider must demonstrate that it has effective control over and accountability for these Relief Fund payments such that the provider can ensure the payments are used solely for authorized purposes. This requires the provider to adopt written procedures and keep records to track what the funds were used for and why, in accordance with 45 CFR §§ 75.302 and 75.400—.477. Further, providers with multiple TINs should ensure that Relief Fund payments made to a specific TIN are used only for authorized COVID-19 expenses related to that TIN.

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13. **If I do pull from these funds prior to specifically identifying the related expenses, can I replenish the funds to my COVID specific account?**

Possibly. However, in order to ensure that these funds are used appropriately, we recommend that providers refrain from using these funds prior to the identification of appropriate expenses.

14. **The Terms and Conditions state that if I received greater than \$150K, I must submit quarterly reports detailing how the funds were used. Is there a template for reporting?**

Currently there is no template, but this may change based on future guidance.

### C. Allowable Uses of Provider Relief Funds

15. **What expenses would be considered allowable uses of the Relief Fund (e.g. hardware, software, servers, IT equipment expenses to allow for a portion of my workforce to work remotely)?**

Specific expenses should include any and all specific increases in cost or expenses that can be clearly tracked back to the COVID-19 emergency. This may include, for example, the cost of additional personal protective equipment, specific staffing needs, enhanced compensation to retain staff, and certain administrative costs to pay outside vendors (e.g., lawyers assisting you with your COVID-19 preparation or accountants setting up the proper Relief Fund account controls).

16. **To protect the workforce and patients from COVID-19, we had to purchase and use more PPE than we normally would. Can I consider the added cost of PPE a COVID expense?**

Yes. As stated above, additional PPE necessary to protect workers would be considered a specific cost attributable to COVID-19.

17. **May providers consider the time and resources used to develop COVID-19 related policies, procedures, and education as a COVID-19 related cost (e.g. Clinical education, Work from Home procedures, HR policies)?**

Yes. This would be considered a specific administrative cost attributable to COVID-19.

18. **May I use the funds for time and resources expended on keeping up with legislative and regulatory actions related to COVID-19 (including time used to determine how such actions affect my business)?**

Yes. This should be considered a COVID-19 specific expense, which includes any and all specific increases in cost or expenses that can be clearly tracked back to the COVID-19 emergency.

19. **May providers use the funds for legal fees associated with COVID-19?**

Yes. These funds may be used to obtain external legal and accounting services for advice related to COVID-19.

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**20. What payroll expenses can I consider COVID-19 related? How about overtime?**

Payroll expenses for which the funding may be used include those used to support healthcare-related needs. This would allow the funding to be used for staffing needs due to COVID-19 and enhanced compensation needed to retain staff. Further, if staff is required to work overtime due to a staffing shortage created by COVID-19, then the funds may be used to pay overtime if applicable. However, there are limitations to using the funds for staffing expenses—even if the expense is related to COVID-19. First, providers who received Paycheck Protection Program (PPP) funds to retain their workforce should take special care to ensure they are not allocating both Provider Relief funds and PPP funds to the same expense of paying their staff. Further, no Provider Relief funds received may be used to pay the salary of any individual at a rate in excess of Level II Executive pay, which is currently set at \$197,300.00.

**21. If I have a reduction in certain lines of business because of COVID-19 can I use these funds to offset?**

Yes. The Terms and Conditions allow providers to use the funds for lost revenue due to COVID-19.

**22. Would it be acceptable to offset losses for all patients, or just the Medicare patients?**

It would be acceptable to offset losses for all patients.

**23. Can I use these funds to pay myself for services that are not covered by insurance in order to facilitate caring for patients in the home?**

Providers must certify that they will not use the funds to reimburse expenses or losses that have been reimbursed from other sources, or that other sources are obligated to reimburse. Providers should consider all possible means of reimbursement before using Provider Relief Funds.

**D. Future Concerns of the Provider Relief Fund**

**24. When can I expect more details regarding all of the above?**

We anticipate further guidance regarding the CARES Act Provider Relief Fund as HHS receives questions concerning the 30-day acceptance timeline, Terms and Conditions, and Attestation Portal.

**25. Can I expect to receive more provider relief funding in the future? When? How much?**

Potentially, yes. HHS has additional funds to use as it deems fit in preventing, preparing, and responding to the coronavirus. HHS stated, when announcing the Provider Relief Funds, that future distributions will focus on providers in areas particularly impacted by the COVID-19 outbreak, rural providers, providers of services with lower shares of Medicare reimbursement or who predominantly serve the Medicaid population, and providers requesting reimbursement for the treatment of uninsured Americans. Currently, however, there is no specific guidance regarding how much each provider will receive or when exactly these additional payments will be distributed.