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# CARES Act Provider Relief Fund

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**August 7, 2020**

Disclaimer: To the best of our knowledge, this information was correct at the time of publication. Given the fluid situation, and with rapidly changing new guidance issued daily, be aware that this content may no longer apply. Please visit our COVID-19 hub frequently for the latest information, as we are working diligently to put forth the most relevant helpful guidance as it becomes available.

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## **\$175 Billion - HHS Allocation To Date**

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1. General Distribution, Phase I - **\$50 billion**
  - a. Round I - **\$30 billion**
  - b. Round II - **\$20 billion**
2. General Distribution, Phase II (Medicaid, CHIP, & Dental Providers) - **\$15 billion**
3. Targeted Distributions
  - a. COVID-19 High Impact Hospitals - **\$22 billion**
  - b. Rural Providers - **\$11.3 billion**
  - c. Skilled Nursing Facilities - **\$4.9 billion**
  - d. Safety Net Hospitals - **\$13.3 billion**
  - e. Tribal Hospitals, Clinics, & Health Centers - **\$500 million**
4. COVID Testing and Treatment for Uninsured (\$??)

## The Price You Pay - Attestation

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- Within **90 days** of receiving *each* payment, recipient must (1) sign attestation confirming receipt of funds and agreeing to Terms and Conditions or (2) reject funds and remit full payment to HHS as instructed
  - Accomplished via online Payment Attestation Portal
  - Failure to complete within 90 days = deemed acceptance

## Terms & Conditions – Use of Funds

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- Certify that recipient provides “diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.”
  - HHS: “Care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19.”
- Funds “will only be used to prevent, prepare for, and respond to coronavirus, and that the Payment shall reimburse the Recipient only for health care related expenses or lost revenues that are attributable to coronavirus.”
- Funds will not be used “to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.”

## Expenses Attributable to Coronavirus

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“[A] broad term that may cover a range of items and services purchased to prevent, prepare for, and respond to coronavirus, including:

- supplies used to provide healthcare services for possible or actual COVID-19 patients;
- equipment used to provide healthcare services for possible or actual COVID-19 patients;
- workforce training;
- developing and staffing emergency operation centers;
- reporting COVID-19 test results to federal, state, or local governments;
- building or constructing temporary structures to expand capacity for COVID-19 patient care or to provide healthcare services to non-COVID-19 patients in a separate area from where COVID-19 patients are being treated; and
- acquiring additional resources, including facilities, equipment, supplies, healthcare practices, staffing, and technology to expand or preserve care delivery.”

## Lost Revenue Attributable to Coronavirus

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- “[M]ay include revenue losses associated with fewer outpatient visits, canceled elective procedures or services, or increased uncompensated care.”
- May use funds to cover any cost which lost revenue otherwise would have covered, so long as that cost prevents, prepares for, or responds to coronavirus.
  - Costs do not need to be specific to providing care for possible or actual coronavirus patients
  - “HHS encourages the use of funds to cover lost revenue so that providers can respond to the coronavirus public health emergency by maintaining healthcare delivery capacity”

## Terms & Conditions – Use of Funds

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- Recipient will not use funds for any purpose for which CARES Act funds cannot be used.
  - To pay individual salary in excess of \$197,300 (Executive Level II)
    - May pay up to that amount, but not more
    - If allocation 0.5 FTE, limited to \$98,650
  - To fund lobbying, abortion, embryonic research, needle exchange, etc.
  - To do business with any entity that requires employees to sign confidentiality agreement prohibiting reporting of fraud, waste, or abuse to federal officials.
  - To do business with a corporation that has unpaid federal tax liability or has been convicted of a felony federal criminal violation in preceding 24 months.



## Terms & Conditions – Balance Billing

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- “For all care for a *presumptive or actual case* of COVID-19, Recipient certifies that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in network [provider].”
  - 5/6/2020 FAQs: “A presumptive case of COVID-19 is a case where a patient’s medical record documentation supports a diagnosis of COVID-19, even if the patient does not have a positive in vitro diagnostic test result in his or her medical record.”
  - Treat balance as COVID-19 expense or lost revenue?
- T&C “do not impose any limitation on the ability of a provider to submit a claim for payment to the patient’s insurance company.”
  - Most payers have committed to pay out-of-network providers at in-network rates
  - If not, can charge patient in-network co-payment amount
- T&Cs do not address diagnosis and treatment for uninsured.

## Terms & Conditions - Reporting

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- Submit reports as HHS determines necessary to monitor T&C compliance.
  - HHS promises “detailed instructions” regarding reports will be released by August 17, 2020.
    - Key dates:
      - October 1, 2020 - Reporting system available
      - February 15, 2021 – Deadline for reporting expenditures through December 31, 2020
      - July 31, 2021 – Deadline for expending funds and filing final report; any remaining funds must be returned
- Co-operate with any government review/investigation
  - “HHS will have significant anti-fraud monitoring of the funds distributed, and the [OIG] will provide oversight as required in the CARES Act to ensure that Federal dollars are used appropriately.”

## Audit Requirements

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- Non-federal entity (state, local government, not-for-profit) that expends  $\geq$  \$750,000 in federal funds - *including PRF payments* - in a fiscal year must submit audit in compliance with 45 CFR Part 75, Subpart F (“Single Audit”)
  - Submit through Federal Audit Clearinghouse
  - Refer to OMB website regarding deadlines
- For-profit entity must submit financial audit conducted in accordance with Generally Accepted Government Auditing Standards (45 CFR 75.216) or Single Audit
  - Submit through HHS Audit Resolution Division
  - Contact HRSA Division of Financial Integrity regarding deadlines

## Federal False Claims Act Considerations

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- **Present or “causes to be presented”** a false or fraudulent claim, record or statement in order to get a payment from the government
- **Use a false record or statement** to:
  - get a false or fraudulent claim paid or approved by the Government
  - avoid repaying the government
- **Penalties:** \$12,000-\$24,000 per claim plus treble damages
- **“Whistleblower” cases:**
  - Civil False Claims case brought by a private individual (“relator”) on behalf of the government.
  - Huge financial incentives – Up to 25% of the amount recovered plus Atty fees
  - ***You won’t know until it’s too late!***
    - Filed under seal
    - Could be years before the provider is notified of the case
    - Government can intervene but doesn’t have to

## Federal False Claims Act Considerations

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- Provider Relief Fund Risk Areas:
  - Knowing or reckless failure to comply with Program requirements
  - Knowingly or recklessly misrepresenting compliance with Program requirements
  - Knowingly or recklessly failing to keep adequate records reflecting use of Program Funds
  - Intermingling of Program funds with general funds
  - Knowingly or recklessly using Program funds for prohibited expenses.

## PYA and Holland & Knight Resources

### COVID-19 HUB

Because we are living through an unprecedented healthcare phenomenon, PYA is committed to sharing timely and relevant information that we hope will benefit our clients and colleagues. The COVID-19 HUB will centralize PYA's thought leadership, guidance, and resources related to the COVID-19 pandemic.

- Prior webinar recordings, slides, transcripts, follow-up Q&As
- Thought leadership
- Links to important resources

[www.pyapc.com/covid-19-hub/](http://www.pyapc.com/covid-19-hub/)

<https://www.hklaw.com/en/case-studies/covid19-response-team>