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New Health Care Provider Opportunities in Fourth COVID-19 Bill and HHS Plans to Distribute Additional Funds

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On April 23, 2020, the House of Representatives passed the Paycheck Protection Program and Health Care Enhancement Act, which previously passed the Senate on April 21, 2020, and is expected to be signed into law by the President. The legislation is the fourth emergency stimulus legislation enacted by Congress to address COVID-19 and is being referred to as "stimulus 3.5," as it provides additional funding to programs enacted under the third stimulus bill, the CARES Act. (See Baker Donelson's summary of the health care provisions in the CARES Act [here](#).)

The latest measure provides approximately \$484 billion in additional funds, of which approximately \$380 billion is for the Paycheck Protection Program and the Small Business Administration, \$75 billion is for additional funding for health care providers, and \$25 billion is for COVID-19 testing.

Meanwhile, the Department of Health and Human Services (HHS) continues to distribute funding to health care providers using funds appropriated under the CARES Act. On April 22, 2020, HHS issued additional guidance on its CARES Act Provider Relief Fund [webpage](#) outlining the agency's plans to distribute additional funding to providers.

New Funding for Health Care Providers and Testing

The new legislation provides an additional \$75 billion to HHS to be distributed to health care providers to reimburse health care-related expenses and lost revenues attributable to COVID-19, as well as an additional \$25 billion to facilitate and expand COVID-19 testing.

The new funding for providers is in addition to \$100 billion appropriated under the CARES Act. The new legislation is identical to the provision in the CARES Act that created the initial funding and provides HHS with the same broad authority to issue the funds. HHS began distributing the first \$30 billion of the \$100 billion fund on April 10, 2020. (See Baker Donelson summary of the first round of payments [here](#).)

The legislation also provides an additional \$25 billion for necessary expenses to research, develop, validate, manufacture, purchase, administer and expand capacity for COVID-19 tests. Of these funds \$11 billion will go to states, localities, territories, and tribes to scale up laboratory capacity, trace contacts, and support employer testing, among other uses.

The bill also provides additional funds to the Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH), Biomedical Advanced Research and Development Authority (BARDA), and Food and Drug Administration (FDA). Funds will also go to community health centers and rural health clinics, and up to \$1 billion is provided to cover the costs of testing of uninsured patients.

Upcoming HHS Relief Fund Distributions

On April 22, 2020, HHS announced four new funding allocations that the agency will use in the coming days and weeks to distribute additional payments to health care providers from the COVID-19 Relief Fund. The new allocations will distribute funds from the \$70 billion remaining of the \$100 billion fund created under the CARES

Act. *These allocations do not apply to the \$75 billion Congress added to the Relief Fund today through new stimulus legislation.*

\$20 Billion General Allocation – Starting April 24, 2020

HHS will distribute an additional \$20 billion in new funds to providers based on 2018 net patient revenues across all payers. HHS views this distribution as an addition to the \$30 billion in payments distributed on April 10, 2020, for a total of \$50 billion in general allocations. The first payments under the new allocation will start on April 24, 2020, with additional payments to follow on a rolling basis.

Providers must submit revenue information to HHS through an online portal, beginning this week. The portal will be available through the HHS Relief Fund [webpage](#). Some providers will begin receiving payments automatically based on revenue data already available to HHS from provider costs reports. All providers must submit revenue information through the online portal for validation by HHS, even those who receive automatic payments. Providers must also submit a certification to accept the payments and agree to terms and conditions. It is not clear whether HHS will require a new certification, separate from the certification providers must submit within 30 days of receiving the first round of payments distributed on April 10, 2020.

HHS indicates that the second round of payments will "augment [a provider's] allocation so that the whole \$50 billion general distribution is allocated proportional to providers' share of 2018 net patient revenue." It appears that HHS intends for the second round of payments to address what some providers viewed as inequities under the first round of payments, which was based on 2019 Medicare fee-for-service (FFS) revenues. Providers with lower Medicare FFS volumes, such as those treating high volumes of Medicaid patients or Medicare beneficiaries enrolled in Medicare Advantage (MA) plans, have urged HHS to issue payments taking these populations into account.

HHS acknowledges that the agency used the Medicare FFS methodology to be able to distribute the funds under the first round quickly and indicates on the Relief Fund webpage that HHS had previously communicated the agency would be distributing additional funds to "providers with a relatively small share of their revenue coming from Medicare fee-for-service, such as children's hospitals."

\$10 Billion Targeted Allocation – Timing Unclear

HHS will distribute an additional \$10 billion for health care providers disproportionately impacted by COVID-19. In a phone call with stakeholders on April 22, 2020, HHS indicated that the funding will be available to all health care providers, not just hospitals. The Relief Fund webpage specifies that hospitals should apply for these funds by submitting information through an online portal before midnight PT on April 23, 2020. HHS previously contacted hospitals with instructions on submitting data, including the total number of intensive care unit beds as of April 10, 2020, and the total number of admissions for patients with a positive diagnosis for COVID-19 from January 1, 2020, to April 10, 2020. HHS indicates that providing the information is necessary for hospitals to receive a share of the targeted allocation, although submitting the information does not guarantee that a provider will receive funds from the distribution.

HHS also specifies that, under this allocation, it will account for high volumes of low-income patient populations, as reflected by hospitals' Medicare disproportionate share hospital (DSH) adjustments.

\$10 Billion Rural Allocation – Next Week

HHS will distribute an additional \$10 billion "as early as next week" for rural hospitals and rural health clinics (RHCs). These funds will be distributed to roughly 2,000 rural hospitals, their affiliated RHCs, and free-standing

RHCs. HHS will base the allocation on operating expenses and will distribute payments proportionately to each facility.

\$400 Million Tribal Allocation – Next Week

HHS will distribute \$400 million to the Indian Health Service (IHS) based on operating expenses of facilities "as early as next week."

Payments for Treating the Uninsured

HHS has provided additional information on the agency's plans to use an unspecified portion of the funds from the \$100 billion Relief Fund to pay providers for treating uninsured COVID-19 patients. HHS unveiled a new [website](#) outlining a program under which providers must enroll and submit claims to request payment for treating uninsured patients.

The sign-up period for the program will begin April 27, 2020, allowing providers who have conducted COVID-19 testing or treated uninsured COVID-19 patients on or after February 4, 2020, to enroll in the program and request payment. Reimbursement will be "generally" at Medicare rates and will be "subject to available funding." To be eligible for payment, providers must verify that an individual is uninsured; agree to not balance bill patients; and agree to program terms and conditions. HHS may also subject providers to post-reimbursement audit review.

Providers will begin submitting claims electronically on May 6, 2020, and will begin receiving payments in mid-May. More information on what will be covered under the program as well as reimbursement rates for covered services is available on the HHS [website](#).

Additional Allocations to Other Providers

HHS indicates there will be separate distributions to certain types of providers, including skilled nursing facilities, dentists, and providers that solely take Medicaid. It is possible that HHS intends to target these provider types for additional allocations because, as a result of their payer mix, they did not receive significant payments under the earlier allocation methodologies used by HHS.

Enforcement of Terms and Conditions

New language on the Relief Fund webpage provides additional detail regarding enforcement of the terms and conditions that providers must agree to as a condition of accepting payments. HHS indicates that the terms and conditions include measures to "help prevent fraud and misuse of the funds." HHS will require funding recipients to "submit documents sufficient to ensure that these funds were used for healthcare-related expenses or lost revenue attributable to coronavirus." HHS also indicates, "There will be significant anti-fraud and auditing work done by HHS, including the work of the Office of the Inspector General."

HHS has also added new language in the terms and conditions requiring recipients to certify to the accuracy of information submitted to HHS and that "any deliberate omission, misrepresentation, or falsification of any information contained in this Payment application or future reports may be punishable by criminal, civil, or administrative penalties, including but not limited to revocation of Medicare billing privileges, exclusion from federal health care programs, and/or the imposition of fines, civil damages, and/or imprisonment."

Baker Donelson continues to monitor coronavirus developments and we will provide information on any further efforts to provide funding to health care providers. For any questions, please contact [Sheila P. Burke](#). You may also visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.