

Part 6
COVID-19 Crisis:
CARES Act Provider Relief Fund Grants and
the Medicare Accelerated and Advance
Payments Program – Rules of the Road

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Introduction

CARES Act

- A. Paycheck Protection Program (PPP)
 - Loans for small business, possibly forgivable
- B. Public Health and Social Services Emergency Fund (PHSSEF) - \$100 billion funding
 - First \$30 billion for Provider Relief Fund
- C. CMS Accelerated and Advance Payments Program

The Provider Relief Grant

- First \$30 billion distribution of \$100 billion funded to PHSSEF
- Grant, not a loan
- No application required
 - Amount calculated by HHS
 - Automatic payments to eligible providers
 - Began April 10th by direct deposit
 - If you do not normally bill electronically, will receive paper check
 - Administered by UnitedHealth Group
 - UHG Provider Relief Fund hotline: (866) 569-3522
- Payments are made to billing TIN
 - Individual members of groups will not receive the payment

Grant Eligibility

- Received Medicare FFS reimbursements in 2019
- Per recent HHS guidance: Providers who:
 - Treated patients for COVID-19, and/or
 - Are struggling financially due to healthy patients delaying care and cancelled elective services
- **Not required to have treated specifically for COVID-19**
- Still eligible if already shut down due to the pandemic

Calculation of Grant Payment

- 2019 Medicare FFS payments (excluding Medicare Advantage) divided by \$484 billion, then multiplied by \$30 billion

- Example:

$$\frac{\$1 \text{ million Medicare FFS 2019}}{\$484 \text{ billion}} \times \$30 \text{ billion}$$

$$= \$61,983.47 \text{ payment}$$

- Amounts to approximately 6.2% x Medicare FFS 2019

Grant Terms and Conditions

- To keep the funds, must attest to Terms and Conditions within 30 days of receipt of payment
- However, not returning payment within 30 days of receipt will be viewed as acceptance of Terms and Conditions
- Attestation is done via HHS online portal <https://covid19.linkhealth.com>
- If cannot comply with Terms and Conditions, must return the funds to HHS within 30 days of receipt

Grant Terms and Conditions *(continued)*

Must certify:

- Billed Medicare in 2019
- Not currently terminated from participation in Medicare
- Not excluded from participation in Medicare, Medicaid, and other Federal health care programs
- Medicare billing privileges not currently revoked

Grant Terms and Conditions *(continued)*

- “Provide or provided after January 31, 2020 diagnoses, testing, or care for individuals with possible or actual cases of COVID-19”
 - **What this means:** You provided care to any patient for any purpose after January 31, 2020
 - Recent HHS guidance: HHS broadly views every patient as a possible case of COVID-19

Grant Terms and Conditions *(continued)*

- Funds will only be used to “prevent, prepare for, and respond to coronavirus,” and to reimburse only for “health care related expenses or lost revenues that are attributable to coronavirus.”
 - **What this means:** HHS guidance is still evolving, but in line with HHS stated intent to help struggling health care providers, it would appear the funds could be used to cover expenses of the practice or facility and lost revenues as a result of COVID-19 pandemic, with important exceptions...

Grant Terms and Conditions *(continued)*

- The recipient “will not use the Payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.”
 - **What this means:** You may not use Grant funds to reimburse expenses or losses
 - 1) That were already reimbursed by other sources of payment, such as SBA Paycheck Protection Program (PPP) or insurance policy
 - 2) If another stimulus program is “obligated” to reimburse certain expenses or losses
 - Further HHS guidance is needed, but PPP loan may be interpreted as “obligated” to reimburse certain expenses

Grant Terms and Conditions *(continued)*

- Non-compliance with any Term or Condition is grounds for HHS to recoup some or all of the Grant payment

Use of PPP Funds vs. Grant Funds

Refresher on PPP Loan

- PPP created under CARES Act to provide loans, with possible loan forgiveness, to small businesses guaranteed by the U.S. SBA
- PPP Eligibility:
 - Business with 500 or fewer employees, in operation on Feb. 15, 2020
 - Sole proprietorship, independent contractor or self-employed individual, and in operation on Feb. 15, 2020
 - Tax-exempt nonprofit organization
- Loan amount = 2.5x average monthly payroll costs

Use of PPP Funds vs. Grant Funds *(continued)*

Refresher on PPP Loan

- All or part of loan will be forgiven if used for forgivable purposes and if employee and compensation levels are maintained.
- Must understand PPP loan usage requirements first to understand how you may use the Grant funds

Use of PPP Funds – Payroll Costs

- Payroll costs (with principal place of residence in U.S.) include:
 - Salary, wages, and tips up to \$100,000 of annualized pay per employee
 - Covered benefits for employees (benefits for owners receiving W-2 income appear to be included; benefits for other owners appear to be excluded, but further guidance is needed concerning benefits for partners, members of an LLC, sole proprietors and independent contractors)

Use of PPP Funds – Payroll Costs (*continued*)

Covered benefits include:

- Group health care coverage, including premiums
- Retirement plan contributions
- State and local taxes imposed on employee payroll paid by the employer, i.e., unemployment insurance tax
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for separation or dismissal

Use of PPP Funds – Payroll Costs *(continued)*

- For an independent contractor or sole proprietor, payroll costs include wages, commissions, income, or net earnings from self-employment, or similar compensation up to \$100,000 annualized (benefits appear to be excluded but further guidance is needed)
- New SBA Guidance: Partners in a partnership, or members of LLC taxed as a partnership, may not submit own PPP loan application as self-employed individual.
 - PPP loan application must be submitted by the entity; each individual partner or member cannot apply individually
 - Self-employment income of general active partners may be reported as payroll cost up to \$100,000 annualized on partnership's PPP loan application

Use of PPP Funds – Other Costs

- Mortgage interest payments (but not mortgage prepayments or principal payments) on business mortgage obligation on real or personal property
- Business rent payments
- Business utility payments
- Must have claimed or be entitled to claim a deduction for such expenses on 2019 Form 1040 Schedule C
- Interest payments on any other debt obligations that were incurred before February 15, 2020
- Refinancing an Economic Injury Disaster Loan (EIDL); loan made between January 31, 2020 and April 3, 2020
 - If EIDL loan was used for payroll costs, PPP loan must be used to refinance EIDL loan

Use of PPP Funds

- New SBA guidance: At least 75% of PPP loan proceeds must be used for payroll costs
 - Unclear if 75%/25% ratio is not met then funds are unauthorized/misused and must be returned, or if this ratio only applies to loan forgiveness
 - Further SBA guidance is needed
- If *knowingly* use PPP funds for unauthorized purposes, may be subject to fraud charges
- Safest way to proceed: Ensure that 75% of PPP loan proceeds are used for payroll costs

PPP Exclusions

- PPP funds may not be used for:
 - Compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary
 - Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA and withheld income taxes
 - Qualified sick and family leave wages for which a tax credit is allowed under CARES Act
 - Compensation of employees with primary residency outside of U.S.

Use of Provider Relief Grant Funds

- If applied for PPP loan, likely that Provider Relief Grant Funds may not be used for expenses covered by PPP loan
- Grant funds may be used for business-related expenses excluded from the PPP loan, such as:
 - Employee salary amounts in excess of \$100,000, but not in excess of \$197,300
 - Federal employment taxes
 - Mortgage principal payments
 - Other expenses of the provider's business
- Only 25% of PPP loan can be used for permissible non-payroll costs:
 - Use Grant funds to cover remaining balance of these non-payroll costs

Additional Grant Terms and Conditions

If you keep and use the Grant funds:

- Maintain appropriate records and cost documentation to substantiate the reimbursement of costs
- Submit reports to HHS if requested to show compliance with Terms and Conditions
- If receive more than \$150,000 total in funds under CARES Act or other federal appropriations for COVID-19, must submit a report of use of funds to HHS and Pandemic Response Accountability Committee no later than ten days after the end of each calendar quarter
- If out-of-network, cannot collect payments from COVID-19 patients greater than patient's in-network responsibility

Additional Grant Terms and Conditions

- Unauthorized Uses

Grant funds may not be used for:

- Salary in excess of Executive Level II - \$197,300
- Gun control advocacy
- Lobbying
- Abortions
- Embryo research
- Promotion of legalization of controlled substances
- Pornography
- Funding ACORN
- Needle exchange for illegal drugs

Additional Grant Terms and Conditions

- Unauthorized Uses *(continued)*

- Human trafficking
- Propaganda
- In contravention of the Privacy Act
- Confidentiality agreements that prohibit employees from reporting fraud and abuse cases
- Enforcement of certain nondisclosure agreements
- Contracts with an entity that have unpaid federal tax liability
- Contracts with a corporation convicted of a felony
- Procurement of wild chimpanzees for research

Attestation Portal - <https://covid19.linkhealth.com>

← → ↻ covid19.linkhealth.com/#/attestation



Payment Terms Attestation

Please attest to and accept the [Terms & Conditions](#) below for each TIN you have entered. The current TIN is shown in the box to the right. Once you complete the first TIN you will be asked to attest to each TIN in the list.

- I acknowledge receipt of \$ [REDACTED] from the Public Health and Social Services Emergency Fund ("Relief Fund"), and accept the [Terms & Conditions](#). If you received a payment from funds appropriated in the Relief Fund under Division B of Public Law 116-127 and retain that payment for at least 30 days without contacting HHS regarding remittance of those funds, you are deemed to have accepted the following [Terms & Conditions](#). This is not an exhaustive list and you must comply with any other relevant statutes and regulations, as applicable. Your commitment to full compliance with all Terms and Conditions is material to the Secretary's decision to disburse these funds to you. Non-compliance with any Term or Condition is grounds for the Secretary to recoup some or all of the payment made from the Relief Fund. These Terms and Conditions apply directly to the recipient of payment from the Relief Fund. In general, the requirements that apply to the recipient, also apply to sub-recipients and contractors under grants, unless an exception is specified.
- By receiving and accepting Relief Fund payment, you attest that in accordance with the "Coronavirus Aid, Relief, and Economic Security Act" or the "CARES Act", you are eligible for this payment. You acknowledge that you may be asked to submit to the review process established by the U.S Department of Health and Human Services, including its contractor (collectively, "HHS"), to determine your eligibility for this payment. Additionally, upon request by HHS, you will provide any and all information related to the disposition or use of the funds received under the Relief Fund for auditing and/or reporting purposes. I attest that I have the legal authority to act on behalf of the provider group that has received payment under the Relief Fund. For Electronic Funds Transfer / ACH Payments, HHS or its contractor may make adjustments to the payment whenever a correction or change is required. For example, if there is an error, you agree that HHS may correct the error immediately and without notice. Such errors may include, but are not limited to, reversing an improper credit, and correcting calculation and input errors. The right to make adjustments are not subject to any limitations or time constraints, except as required by law.

Current Request

Billing TIN

[REDACTED]

Last Six Digits of Account Number

[REDACTED]

Relief Fund Payment

[REDACTED]



CMS Accelerated and Advance Payments Program

- Separate from the \$100 billion CARES Act funding of PHSSEF
- Purpose is to provide cash flow when there is a disruption in CMS claims submission and/or claims processing
- Limited to duration of health care emergency
- Loan based on provider's historical claims

Eligibility and Process

- Eligibility:
 - Part A Providers and Part B Suppliers billed Medicare for claims within 180 days immediately prior to the date of signature on request form
 - Not in bankruptcy
 - Not under active medical review or program integrity investigation
 - No outstanding delinquent Medicare overpayments

Eligibility and Process *(continued)*

Amount of payment:

- Providers/Suppliers can request up to 100% of the Medicare payment amount for a three-month period
- Hospitals and children's hospitals – up to 100% of the payment amount for a six-month period
- Critical access hospitals – up to 125% of the payment amount for a six-month period
- Unclear which three-month or six-month period can be used as basis for request
- Processing time: Goal to pay within seven calendar days of request, often four to six days

Repayment

- Repayment begins 120 days after payment is made
 - Hospitals, children’s hospitals, certain cancer hospitals, and critical access hospitals – up to one year from disbursement date to complete repayment
 - Other Part A Providers and Part B Suppliers– 210 days from disbursement date to complete repayment

Recoupment and Reconciliation

- At end of 120-day period, recoupment will begin as an offset from new claims submitted
- CMS has not provided guidance as to how the recoupment will be done, for example, whether a set percentage of each new claim will be offset
- Forms can be found on the MAC's website:
NJ and PA: Novitas Solutions
<https://www.novitas-solutions.com/>
NY: National Government Services, Inc.
<https://www.ngsmedicare.com/>

What to Include in the Request Form

A. Provider Identification Information

1. Legal business name
2. Correspondence address
3. NPI
4. Other information requested by MAC

What to Include in the Request Form

(continued)

B. Amount Requested

1. Request up to 100% of the Medicare payment for a three-month period

C. Reason for Request

1. Check box number 2; and
2. State that the request is for an accelerated/advance payment due to the COVID-19 pandemic

Who Must Sign the Form?

- An authorized representative of the provider

How to Submit the Request Form

- A. Electronic submission
- B. Fax, e-mail, or mail
- C. Contact the MAC provider helpline for more information

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