



## Be careful of HHS' terms and conditions behind your provider relief payment

by: Roy Edroso

Effective Apr 22, 2020

Published Apr 27, 2020  
Last Reviewed Apr 23, 2020

You may be excited about the money you're expecting — or have already received — from the feds from the Provider Relief Fund program. But be aware that you're required to attest to certain terms and conditions, and not all of them are obvious.

The CARES Act, signed into law March 27, contains a number of business bailout mechanisms for businesses affected by the COVID-19 public health emergency, including Small Business Administration (SBA) loans and the Accelerated and Advanced Payment Program (APP), which is specific to medical practices ([PBN 4/9/20](#)).

Possibly the most anticipated piece of the law for many providers is the Provider Relief Fund, which has already begun disbursing electronic payments to Medicare providers in amounts equivalent to 6.2% of their fee-for-service reimbursements in 2019 ([PBN 4/20/20](#)). The Fund represents \$30 billion of a \$100 billion earmark for health care providers; the remaining \$70 billion will be distributed to non-Medicare providers, rural health outlets and medical entities deemed especially impacted by COVID-19.

These payments are grants, not loans, and don't have to be paid back — unless CMS or another federal agency decides you aren't entitled to the money or have spent it inappropriately. Also, CMS is requiring that you attest that you are eligible and will use the funds the way they're meant to be spent. So it's a good idea to make sure you understand the terms.

You are required to attest to terms and conditions within 30 days of receipt of your payment at the CARES Provider Relief Fund portal (see [resources](#), [below](#)). Before you sign, be aware that there are two criteria for your payment: your eligibility to receive it and the terms on which you may use it.

### Who's getting it?

At the portal, you'll be asked to submit your tax identification number (TIN), which is the basis of attribution for the payment. That means that many employed providers will not get a payment, as they are contracted with an entity holding the TIN.

This can be especially thorny if your practice is owned by an organization that decides it is entitled to all the payments regardless of their expenses, says Robert H. Iseman, a partner in the health services practice group at Rivkin Radler in Albany, N.Y.

According to the HHS fact sheet on the Fund, the recipient entity certifies that it:

- Billed Medicare in 2019.
- Provides or provided after Jan. 31, 2020, diagnoses, testing or care for individuals with possible or actual cases of COVID-19.
- Is not currently terminated from participation in Medicare.
- Is not currently excluded from participation in Medicare, Medicaid and other federal health care programs.
- Does not currently have Medicare billing privileges revoked.

Don't worry about tracking down your patients to see if any tested positive. HHS is interpreting "possible or actual cases of COVID-19" to mean pretty much anyone who came into your office after January 31 for treatment, "even if they came in for acne," Iseman says.

### How can they spend it?

The Fund specifies that payments are to be "used to prevent, prepare for and respond to coronavirus." But it also covers "health care-related expenses or lost revenues that are attributable to coronavirus," HHS says.

HI ROY

★ My bookmarks



Current Issue

Click here to read latest issue.

### QUICK LINKS



click icon to expand

Iseman explains how this could play out in the real world: Conceivably, a cardiologist could find “patients didn’t want to sit in my waiting room due to COVID-19, so I have lost [a certain amount of] revenue; therefore I am entitled to use [these funds] to pay for staff and expense [since Jan. 31], as those are things I would have otherwise have had revenue to pay for.”

As to spending the grants, providers may be encouraged by remarks by CMS Administrator Seema Verma, who told reporters in an April 7 White House briefing that “health care providers can spend that any way they see fit.”

But Alex Lee, an associate with the Einhorn Barbarito law firm in Philadelphia, warns against taking too liberal a stance. “It is clear that Ms. Verma’s statement that the funds can be used as providers ‘see fit,’ while intended to signal a broad interpretation, cannot be taken literally, and is not in fact completely in line with the terms and conditions which show that there are actually a number of specifically prohibited uses of the funds,” Lee says.

Be aware also that your payment could be audited down the road — and, if it amounts to more than \$150,000, you are required by the terms and conditions to file a detailed quarterly report to HHS of where the money’s going. In fact, HHS reserves the right to require a spending report of any recipient at any time, regardless of amount.

To help avoid trouble, follow these rules:

- **No appearance of double-dipping.** For one thing, “Providers should make sure other sources of reimbursement that are used to cover expenses or losses don’t cover the same things,” Lee says.

For example, a provider might be receiving funds from the Paycheck Protection Program (PPP), a low-interest SBA loan that’s supposed to be spent on designated categories such as payroll costs, rent, mortgage interest or utilities, Lee explains. “To the extent those PPP funds fully reimburse those categories of expenses, the funds received from provider relief fund should not be used for those expenses, but for other purposes — even if mixing and matching of different sources of funds to different expenses would result in essentially the same outcome,” he says.

This may seem over-cautious and even futile; Iseman points out that “money is fungible” and devoting financial resources to one area frees up resources in another. But the federal government is notoriously a stickler for such bookkeeping niceties, so play along.

- **Be reasonable in your interpretation of what’s COVID-19-related,** instructs Jenny G. Givens, a partner with the Gary Reed firm in Dallas. “If a physician left a practice just prior to January 31, 2020, for reasons unrelated to COVID-19, and the group closed its offices on February 6 due to COVID-19, it does not seem reasonable to utilize the grant received by the group to reimburse its lost revenues from this physician’s departure,” Givens says. “If he were staying and his billings evaporated, then sure, that could be lost revenue due to COVID-19, which the group could reimburse using grant funds.”

Overall, “use very conservative estimates and steer the funds, if appropriate, toward health care expenses related to COVID-19,” Givens advises.

- **Keep a separate account.** Givens suggests you keep the Provider Fund payments in a separate bank account to eliminate confusion — and auditor suspicion. “Track [expenses] bit by bit, make note of every payment and demonstrate the need to use the funds for what you spent them on,” she adds.

#### Watch salaries, coinsurance

Be aware that another condition of payment is that you “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 recipient,” according to HHS guidance.

Patient responsibility sums can be very high out of network, and add up to significant revenue in large organizations, Givens says. To be forced to accept an in-contract level of coinsurance for out-of-network patients could be a huge loss for your practice.

Also, if you’re thinking of giving one of your executives a raise, make sure their salary doesn’t exceed \$197,300. While you can certainly use Fund payment for payroll, including executive salaries, the Further Consolidated Appropriations Act of 2020 restricts salaries paid out of federal grants to that amount. Note that there are many other statutory exclusions to the use of the funds, such as “Promotion of Legalization of Controlled Substances” and “Pornography,” in the final pages of the fact sheet.

#### Resources

- CARES Provider Relief Fund portal: <https://covid19.linkhealth.com/#/step/1>
- HHS Relief Fund fact sheet: [www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions-04132020.pdf](http://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions-04132020.pdf)



BACK TO TOP

# Part B News

COLLECT EVERY DOLLAR  
YOUR PRACTICE DESERVES

## Part B News

- PBN Current Issue
- PBN User Tools
- PBN Benchmarks
- Ask a PBN Expert
- NPP Report Archive
- Part B News Archive

## Coding References

- E&M Guidelines
- HCPCS
- CCI Policy Manual
- Fee Schedules
- Medicare Transmittals

## Policy References

- Medicare Manual
  - 100-01
  - 100-02
  - 100-03
  - 100-04

[Subscribe](#) | [Log In](#) | [FAQ](#) | [CEUs](#)

[Part B Answers](#)

[Select Coder](#)

## Join our community!



[Like us on Facebook](#)



[Follow us on Twitter](#)



[Join us on LinkedIn](#)



[Read and comment on the PBN Editors' Blog](#)



[Participate in PBN Discussion Forum](#)



[Contact the Part B News Editors](#)



[Our Story](#) | [Terms of Use & Privacy Policy](#) | © 2020 H3.Group