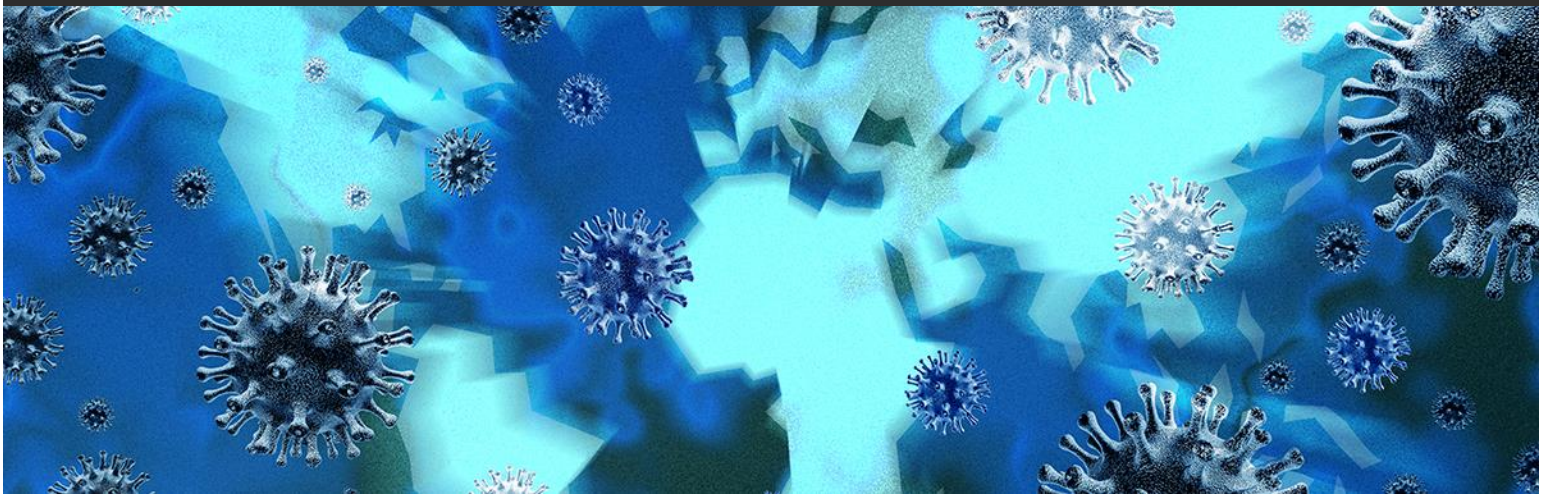


## **Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019/COVID-19 Economic Stimulus**



**April 17, 2020**

### **CARES Act Relief Fund Payments to Healthcare Providers Commence**

As of April 10, 2020, eligible healthcare providers began receiving payments pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as part of the emergency appropriations for Coronavirus (COVID-19) health response and agency operations. The CARES Act appropriated \$100 billion to healthcare providers for healthcare related expenses or lost revenue attributable to COVID-19, of which \$30 billion began to be distributed on April 10th.

#### **Eligible Providers**

According to the CARES Act and **guidance** from the U.S. Department of Health and Human Services (HHS), all facilities and providers that received Medicare fee-for-service reimbursements (FFS) in 2019 are eligible for the initial distributions. Healthcare facilities that ceased operation due to the pandemic are also eligible to receive funds, where those facilities provide diagnoses, testing, or care for individuals with possible or reported cases of COVID-19. Notably, for purposes of the payments, HHS broadly considers every patient to be a possible case of COVID-19.

#### **Payment**

Eligible providers will receive payment based on their pro rata share of the total FFS reimbursements in 2019. Providers can calculate their estimated payment by dividing their 2019 FFS payments (not including Medicare Advantage) by the total 2019 FFS reimbursement (\$484 billion) and multiplying the

ratio by the \$30 billion appropriated for these payments. Payments will be provided through the Automated Clearing House information on file with UnitedHealthGroup or the Centers for Medicare & Medicaid Services, via Optum Bank, with “HHSPAYMENT” as the description, although providers who usually receive a paper check for reimbursement from CMS will receive a paper check within the upcoming weeks. Additionally, the payments will be made to the applicable provider’s billing organization according to the tax identification number.

## Terms and Limitations

### *Acceptance*

Within 30 days of receiving the payment, providers must sign an attestation confirming receipt of the funds and accepting the terms and conditions of payment. Additionally, a provider who has received and does not return such funds within 30 days of receipt is considered to have accepted the terms and conditions. The HHS.gov portal for signing the attestation is expected to be accessible the week of April 13, 2020. Providers that receive payment but do not comply with the terms and conditions must contact HHS within 30 days of receipt and will be required to remit the payment as instructed. Appropriate contact information will be forthcoming from HHS.

### *Terms and Conditions*

The **terms and conditions** applicable to these payments are available on the HHS website. The below provides a summary of the terms and conditions. However, providers may want to review the terms and conditions in their entirety to determine whether receipt of the funds is appropriate, and understand how to utilize the funds in accordance with the CARES Act and other applicable appropriations regulations:

- The recipient certifies that (i) it billed Medicare in 2019, (ii) it currently provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19, (iii) it is not terminated from participation in Medicare, or excluded from participation in Medicare, Medicaid, or other federal health care programs, and (iv) its Medicare billing privileges are not revoked.
- The recipient certifies the funds will only be used to prevent, prepare for, and respond to COVID-19 and to reimburse the recipient for healthcare related expenses or lost revenues attributable to COVID-19.
- The recipient certifies it 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.
- The recipient will submit reports to ensure compliance with payment conditions, as specified in future instructions from the Secretary of HHS (Secretary).
- Any recipient that receives more than \$150,000 total in funds under the CARES Act, the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act or any other Act primarily making appropriations for COVID-19 response and related activities, must submit a report to the Secretary and the Pandemic Response Accountability Committee no later than 10 days after the end of each calendar quarter, containing certain prescribed information further detailed in the terms and conditions.
- The recipient must maintain appropriate records and cost documentation including, as applicable, documentation required by 45 CFR § 75.302 (financial management and standards for financial management systems) and 45 CFR §75.361 – 75.365 (record retention and access), and any additional information required by further instructions, copies of which must be submitted upon the Secretary’s

request. The recipient also agrees to cooperate in all audits the Secretary, Inspector General, or Pandemic Response Accountability Committee conducts.

- The recipient certifies that for all care for possible or actual COVID-19 cases, it will not seek to collect out-of-pocket expenses from a patient in an amount greater than the patient would have otherwise been required to pay if the care had been provided by an in-network provider.

### *Additional Applicable Terms and Conditions*

In addition to the specific terms and conditions above, statutory appropriations provisions apply, including the below limitations:

- The funds cannot be used to pay the salary of an individual at a rate in excess of Executive Level II (\$197,300);
- Prohibitions or limitations (with certain exceptions) on the use of funds for abortions, embryo research, and certain lobbying and advocacy activities.

Furthermore, whistleblower protections, human subject protections, fraud, waste and abuse oversight, and certain government-wide provisions not specifically applicable to healthcare providers, also apply, which are further detailed in the full terms and conditions.

### **Next Steps: Expenses and Lost Revenue**

As the CARES Act, HHS guidance, and terms and conditions note, the payments must be used for healthcare related expenses and lost revenue attributable to COVID-19. As recipients await further guidance regarding appropriate uses of the payments, permitted uses include expenses related to treating, diagnosing, and preparing for potential and actual COVID-19 cases (such as additional personal protective equipment and other supplies, additional staffing, and provision of COVID-19-related care to the insured and uninsured), as well as lost revenue as a result of cancelled elective surgeries (to the extent such expenses are not reimbursed from other sources).

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) or [GT's COVID-19 Economic Stimulus Team](#).

## **Authors**

This GT Alert was prepared by:

- [Nancy E. Taylor](#) | +1 202.331.3133 | [taylorne@gtlaw.com](mailto:taylorne@gtlaw.com)
- [Brittany E. Allison](#) | +1 954.768.8228 | [allisonb@gtlaw.com](mailto:allisonb@gtlaw.com)

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. <sup>†</sup> Houston. Las Vegas. London. <sup>\*</sup> Los Angeles. Mexico City. <sup>+</sup> Miami. Milan. <sup>•</sup> Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul. <sup>∞</sup> Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. <sup>^</sup> Tokyo. <sup>•</sup> Warsaw. <sup>-</sup> Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. <sup>↔</sup>Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg*

*Traurig, P.A. and Greenberg Traurig, LLP. \*Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¤Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*