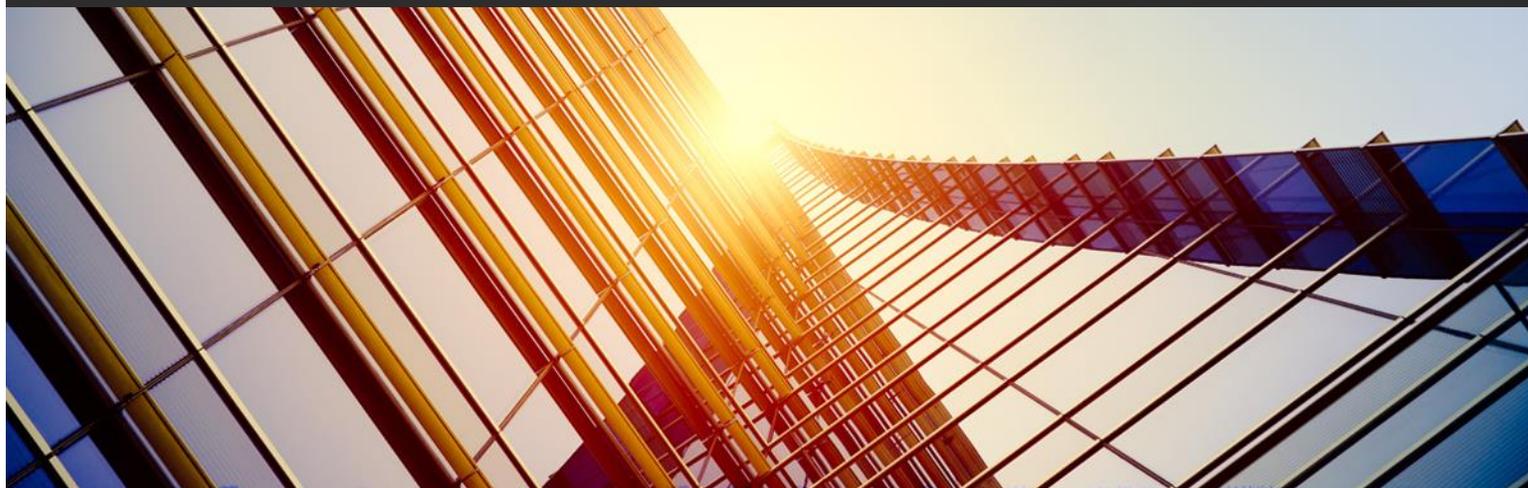


**Alert | Health Emergency Preparedness Task Force:
COVID-19 Economic Stimulus**



May 14, 2020

Documentation, Reporting, and Other Requirements under CARES Act Provider Relief General Distribution Fund

Many providers have received large payments from the U.S. Department of Health & Human Services (HHS) in April 2020 under the federal government's effort to provide relief during the Coronavirus Disease 2019 (COVID-19) public health emergency. Many terms and conditions accompany the acceptance of such payments and all recipients must submit documents sufficient to demonstrate that funds are used for healthcare-related expenses or lost revenue attributable to COVID-19. While HHS has not issued full guidance on the specific documentation requirements (though such guidance may be issued shortly), HHS has promised significant antifraud and comprehensive audits over the use of the general distribution funds. Providers retaining the funds should plan to document their use of funds and comply with the reporting requirements.¹

The CARES Act Provider Relief General Distribution Fund

Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (PL 116-136), HHS is distributing \$50 billion to qualifying providers on the frontline of the COVID-19 outbreak (the General Distribution Fund). The General Distribution Fund constitutes grants that do not need to be repaid if certain terms

¹ This Alert does not cover all terms and conditions associated with the CARES Act Provider Relief General Distribution Fund. General Distribution Fund recipients must "comply with any other relevant statutes and regulations, as applicable." Further, the information contained herein is current as of May 8, 2020, and HHS is continuing to offer new or amended guidelines.

and conditions are met. Although providers who billed Medicare may have automatically received money from the General Distribution Fund,² some recipients may choose not to keep the distribution. Providers who keep the General Distribution Fund must sign an attestation confirming receipt of funds, agreeing to the terms and conditions of payment, and confirming the CMS calculation of payment.³ Providers who retain the distribution for at least 45 days without signing the required attestation or otherwise contacting HHS regarding remittance of those funds are deemed to have accepted the terms and conditions.

The \$50 billion General Distribution Fund was released in two tranches. The first tranche was \$30 billion, based on each eligible provider's 2019 Medicare fee-for-service payments. The second tranche was \$20 billion, allocated proportional to recipients' share of 2018 net patient revenue across all payer sources.

Under the CARES Act, HHS' Office of Inspector General (OIG) is obligated to perform both interim and final audits of the disbursed funds over the next three years. Providers retaining these funds should be prepared to respond to OIG audits, likely focusing on whether the funds were utilized for an approved purpose and whether the provider sought improper balance billing from patients. Further, providers that retain the General Distribution Fund, but fail to comply with the outlined terms and conditions and/or attestation requirements, may be subject to recoupment. Anyone who knowingly avoids or conceals an obligation to return money to the government could be subject to sanctions and financial penalties.

Permitted Uses

Providers must certify that the General Distribution Fund monies will only be used to prevent, prepare for, and respond to the COVID-19 public health emergency, and only to reimburse for healthcare related expenses or lost revenues that are attributable to COVID-19. Further, General Distribution Fund monies cannot be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.

Determining whether expenses fall under the permitted uses of General Distribution Fund monies is a fact-specific exercise that requires coordination between a provider's legal and finance teams. Examples of permitted uses may include loss of revenue from cancelled elective procedures or reduced volumes of patient encounters; acquisition cost of personal protective equipment; reconfiguration of space and/or equipment in response to COVID-19.

While details on what constitutes permitted uses are forthcoming, HHS offered guidance on how to estimate loss of revenue in the context of providing necessary information on the Provider Relief Fund Application Portal for allocating remaining General Distribution Fund. When asked "how do I estimate lost revenue in March or April?" HHS responded, "[y]ou may use a reasonable method of estimating the revenue during March and April compared to the same period had COVID-19 not appeared. For example, if you have a budget prepared without taking into account the impact of COVID-19, the estimated lost revenue could be the difference between your budgeted revenue and actual revenue. It would also be reasonable to compare the revenues to the same period last year."

² Providers can estimate their expected general revenue distribution with the following formula: (Individual Provider 2018 Revenue/\$2.5 Trillion) X \$50 Billion = Expected General Distribution.

³ On May 7, 2020, HHS announced that the attestation window and related acceptance of terms and conditions has been extended to 45 days, formerly 30 days, from the date a provider received a payment to attest to and accept the Terms and Conditions or return the funds.

Documentation Requirements

Providers accepting General Distribution Fund monies must create and maintain records to demonstrate the following:

- Compliance with federal law and the terms and conditions of the General Distribution Fund;
- Total amount of General Distribution Fund monies received;
- Amounts of General Distribution Fund monies expended or obligated to projects and activities, including the name of those projects and activities and an estimate of the number of jobs kept or created by those projects and activities (if applicable); and
- Information about subcontracts or sub-grants awarded by the provider (if applicable).

In addition, the provider must maintain “appropriate records and cost documentation” of expenditures made with General Distribution Fund monies sufficient to establish that the monies were used for allowable costs. These records should include source documentation, must be maintained for at least three years, and must be promptly submitted to HHS upon HHS request.

Reporting Requirements

Depending on amounts received from the federal government, providers accepting General Distribution Fund monies may be subject to two reporting requirements. First, all providers accepting General Distribution Fund monies must submit reports to HHS so that HHS can ensure compliance with the General Distribution Fund terms and conditions. These reports must be submitted at a time specified by HHS and in the format, and with the content, as specified by HHS. HHS has not yet issued the report form, content, or deadlines, and may do so in future program instructions directed to General Distribution Fund recipients.

Second, providers accepting more than \$150,000 total in funds under the CARES Act (this includes loans such as the Paycheck Protection Program (PPP)), the Families First Coronavirus Response Act (PL 116-127) (FFCRA), or any other federal Act primarily making appropriations for the COVID-19 response and related activities, must submit quarterly reports. This second report must be submitted to HHS and the Pandemic Response Accountability Committee no later than 10 days after the end of each calendar quarter, beginning with the calendar quarter ending June 30, and it must contain:

- The total amount of funds received from HHS pursuant to the CARES Act, FFCRA, and other federal Act primarily making appropriations for the COVID-19 response and related activities;
- The amount of such funds received that were expended or obligated for each project or activity;
- A detailed list of all projects or activities for which such covered funds were expended or obligated, including the name and description of the project or activity, and the estimated number of jobs created or retained by the project or activity (where applicable); and
- Detailed information on any level of subcontracts or subgrants awarded by the provider or its subcontractors or subgrantees, including the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 allowing aggregate reporting on awards below \$50,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

Practical Considerations

- According to the guidance, providers should calendar 45 days from the date of receipt of any General Distribution Fund as the deadline for signing the attestation and decide whether to retain these funds.⁴
- Providers should document General Distribution Fund received and segregate such funds if possible. According to the guidance, General Distribution Fund are identified through an “HHSPAYMENT” description.
- If payments were swept as a part of practice management sweep structure, the management company may track receipt of the funds by tax identification number; however, the recipient must have access to the records.
- What about a Change of Ownership (CHOW)? If the buyer of a healthcare facility recently assumed the seller’s Medicare Provider Agreement but has not received the Medicare tie-in notice, the seller likely received the General Distribution Fund through its tax identification number. However, the seller may not be entitled to sign the attestation because the buyer is the party that will “prevent, prepare for, and respond to coronavirus.”
- Providers may want to implement written policies to ensure that General Distribution Fund monies will only be used for medical expenses or lost revenues attributable to COVID-19. Providers should also consider establishing cost centers for tracking COVID-19 related expenses and lost revenues.
- Providers should calculate the total amount of federal assistance received to determine applicable reporting requirements. Providers receiving more than \$150,000 should calendar 10 days after the end of each calendar quarter. That is when the quarterly reports must be submitted to HHS and the Pandemic Response Accountability Committee. Although it may be necessary to continue with quarterly reports for multiple quarters, HHS has not issued any guidance on that issue.
- Providers should familiarize themselves with the required data elements for subcontractors or subgrants if they are, or are considering, awarding General Distribution Fund monies to subcontractors or subgrantees.

Key Resources

- [General Information](#) from HHS on the General Distribution Fund, including eligibility requirements, attestations, and links to data submission portals
- [HHS FAQs](#)
- [Terms and Conditions](#) – first \$30 billion tranche
- [Terms and Conditions](#) – second \$20 billion tranche
- [Portal](#) for Verification and Attestation
- [User Guide](#) for the Portal

⁴ Determining whether a provider is entitled to retain the General Distribution Fund is a fact-specific analysis, requiring input from the provider’s legal, finance, and compliance teams. To start, a provider must have billed Medicare in 2019 and provides or provided after Jan. 31, 2020, diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. HHS broadly views every patient as a possible case of COVID-19.

Items Needed

- TINs for entities that received payments
- TINs of subsidiary organizations that received payments, but that do not file separate tax forms
- Amount of payments received
- Payment transaction ACH/EFT numbers/check numbers
- Copy of most recently filed tax forms for all applicable entities

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](#).

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