

COVID-19: Assessing CARES Act Provider Relief Fund Potential "Overpayments"

Thoughtware Alert

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Related Industries: Healthcare, Hospitals & Health Systems, Long-Term Care & Senior Living, Home Care & Hospice, Community Health Centers, Physician Services

Topics: COVID-19



The *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) established \$100 billion in relief funds to healthcare providers to support healthcare-related expenses or lost revenue attributable to the SARS-CoV-2 virus and the incidence of COVID-19 and to help uninsured Americans get testing and treatment for COVID-19. Of these funds, \$50 billion is allocated for general distribution to Medicare providers.

The initial \$30 billion of these funds were distributed automatically between April 10 and April 17, 2020, proportionate to each provider's share of 2019 Medicare fee-for-service (FFS) payments using the following formula:

Distribution of the remaining \$20 billion of these funds began on April 24, 2020, such that the whole \$50 billion general distribution is allocated proportional to each provider's share of 2018 net patient revenues reported on Medicare cost reports and other documentation using the following formula:

$$(\text{Provider's 2018 revenues} \div \$2.5 \text{ trillion}) \times \$50 \text{ billion} = \text{Expected combined general distribution}$$

In addition to changing from 2019 Medicare FFS revenues to 2018 net patient revenues, which includes revenues from all payors, this new formula combined the two distributions, creating concerns over whether providers would need to give money back if the amount of the first distribution exceeded the amount calculated according to the formula for the second distribution. These concerns have been particularly notable for providers with high Medicare volume, such as critical access hospitals, home health agencies and hospices, since the formula for the first distribution resulted in a disproportionately high share of the full \$50 billion, suggesting the possibility of an "overpayment" that would potentially need to be repaid.

For example, a provider with \$10 million in 2019 Medicare payments would have received an initial distribution of \$620,000. If that same provider had a total of \$20 million in 2018 net patient revenues, the formula for the second distribution results in a combined general distribution amount of only \$400,000. This means the provider wouldn't receive a second distribution and creates the question of whether it would need to repay the difference of \$220,000.

Various trade associations, including the Healthcare Financial Management Association, the National Association for Home Care & Hospice and others, have reported that U.S. Department of Health and Human Services (HHS) spokespersons have stated that HHS doesn't intend to recoup funds as long as a provider's lost revenues and increased expenses attributable to COVID-19 exceed the amount of relief funding a provider has received. HHS confirmed this position in its updated **FAQ on the general distribution portal** dated May 6, 2020.

In the example above, the full \$620,000 received from the first distribution would be available to the provider. As long as the provider can demonstrate the funds were fully used to offset COVID-19-related lost revenues and increased expenses in accordance with the applicable terms and conditions of fund acceptance, then HHS wouldn't recoup any of the funds.

HHS has further indicated the "overpayment" reference in the fund attestation portal is meant to address situations where the provider knows that the distribution calculation is in error, such as incorrectly applied 2019 Medicare FFS payments or 2018 net patient revenues. HHS provided clarification on how to resolve a potential overpayment in its updated **FAQ on the general distribution portal** dated May 6, 2020.

In addition, HHS **announced May 7, 2020**, that it has extended the time allowed for providers to submit an attestation accepting the terms and conditions applicable to the relief funds from 30 to 45 days.

There remain numerous additional questions related to the calculation of the distributions, and more clarification is expected. Meanwhile, if you have specific questions, please contact your **BKD Trusted Advisor™** or submit the **Contact Us** form below.