



Recoupment? Why Health Care Providers Should Be Wary of Spending Their Provider Relief Funding

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Newly released guidance has brought to light a troubling reality for the health care industry: certain health care providers will likely have to pay back some of the coronavirus relief funding they have received.

Separately from the much-discussed PPP and other allocations under the CARES Act, Congress appropriated \$100 billion in Provider Relief Funding specifically for health care providers as grants with no repayment obligation. Of this, \$50 billion was earmarked for immediate distribution to health care providers in two tranches: first \$30 billion, and later \$20 billion[1]

The Department of Health and Human Services (HHS) funneled the first \$30 billion to health care providers using a standard under which it calculated each provider's pro rata share of all Medicare fee-for-service (FFS) revenue in 2019. Later in April, HHS began disbursing the remaining \$20 billion to providers using a different standard to determine the funding for each provider. Under this new standard, a provider's funding is calculated using its pro rata share of all net patient revenue in 2018.

Importantly, HHS has announced that the 2018 "net patient revenue" standard will be made applicable to its entire \$50 billion distribution, even though it already gave out initial funding under the old 2019 Medicare FFS revenue standard. According to its website, "HHS has begun distributing the remaining \$20 billion of the \$50 billion general distribution to Medicare providers to augment providers' allocations so that the whole \$50 billion general distribution is allocated proportional to providers' share of net patient revenue." Thus, HHS now believes the entire \$50 billion is appropriately distributed among providers according to each provider's pro rata share of net patient revenue from all payor sources in 2018. HHS intends to subtract the amount providers received in the first tranche of funding to determine the total amount they should receive.

For health care providers with higher percentages of Medicare revenue ? such as hospices, home health agencies, dialysis providers and some hospitals ? this is problematic. Such providers may well have already received more funding in the first tranche than they are entitled to overall, and HHS will likely require return of any overpayment.

By way of example, a provider with \$5 million of Medicare FFS revenue in 2019 and \$7 million of total net revenue in 2018 could face a recoupment. That provider would have received roughly \$310,000 in the first tranche of Provider Relief Funding based on its pro rata share of 2019 Medicare FFS revenue:



However, based on its pro rata share of 2018 total net revenue, HHS now takes the position that the provider is entitled to receive a collective total of only \$140,000 from the two tranches of Provider Relief Funding:



After subtracting the provider's initial relief payment (based on Medicare FFS revenue in 2019) of approximately \$310,000, **the provider has received an overpayment of roughly \$170,000 ? a sum the provider likely will be expected to return.**

One industry observer indicated there is a ?distinct possibility? overpayments will be recouped by HHS. Indeed, the CARES Act Provider Relief Fund Payment Attestation Portal indicates providers should ?not attest if the payments . . . received already exceed [their] estimated total allocation [and should] contact the CARES Provider Relief hotline . . . if [they] believe [they] have received an overpayment.? And, a call to the Provider Relief Hotline will put providers in touch with a representative who indicates overpayments should be mailed to the following address:

Cares Act Provider Relief Fund
P.O. 31376
Salt Lake City, UT 84131-0376

Returning much-needed relief funding ? a good portion of which may already have been spent ? is a sobering prospect for providers, particularly those relying on funding to remain viable during the public health emergency. This is especially so given that the initial tranche of funding was issued in the form of grants with no obligation to repay. As of the date of this alert, HHS has not indicated how (or whether) it will

recoup overpayments. Until clear guidance is issued on the treatment of overpayments, providers should be wary of spending funding dollars if they have not spent them already.

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[1] HHS has not yet indicated how the remainder of the \$100 billion in funding will be disbursed.

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