

HHS Provider Relief Fund Payments: New Guidance on Coronavirus-Related Expenses and Lost Revenues

Client Alert

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When the U.S. Department of Health and Human Services (HHS) released portions of the \$100 billion Public Health and Social Services Emergency Fund that is part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) they came with certain terms and conditions for acceptance and retention.

One of these conditions had been that the funds be used only to prevent, prepare for, and respond to healthcare-related expenses or lost revenues that are attributable to coronavirus. However, no clarity on what those categories specifically meant was provided until very recently.

HHS has now clarified that the term **"healthcare related expenses attributable to coronavirus"** is a broad term that may cover a range of items and services purchased to prevent, prepare for, and respond to coronavirus, including:

- Supplies used to provide healthcare services for possible or actual COVID-19 patients;
- Equipment used to provide healthcare services for possible or actual COVID-19 patients;
- Workforce training;
- Developing and staffing emergency operation centers;
- Reporting COVID-19 test results to federal, state, or local governments;
- Building or constructing temporary structures to expand capacity for COVID-19 patient care or to provide healthcare services to non-COVID-19 patients in a separate area from where COVID-19 patients are being treated; and
- Acquiring additional resources, including facilities, equipment, supplies, healthcare practices, staffing, and technology to expand or preserve care delivery.

HHS has stated that providers can use their Provider Relief Fund payment for such expenses incurred on any date, so long as those expenses were attributable to coronavirus and were used to prevent, prepare for, and respond to coronavirus.

As to lost revenues, HHS has clarified that the term "**lost revenues that are attributable to coronavirus**" means any revenue that a healthcare provider lost due to coronavirus. This may include revenue losses associated with fewer outpatient visits, canceled elective procedures or services, or increased uncompensated care. Providers can use Provider Relief Fund payments to cover any cost that the lost revenue otherwise would have covered, so long as that cost prevents, prepares for, or responds to coronavirus. Thus, these costs do not need to be specific to providing care for possible or actual coronavirus patients, but the lost revenue that the Provider Relief Fund payment covers must have been lost due to coronavirus. This can include, for example:

- Employee or contractor payroll;
- Employee health insurance;
- Rent or mortgage payments;
- Equipment lease payments; and
- Electronic health record licensing fees.

What remains somewhat vague is how a provider can estimate lost revenue. HHS still maintains that a provider may use any reasonable method of estimating the revenue during March and April 2020 compared to the same period had COVID-19 not appeared. HHS states, for example, if a provider had a budget prepared without taking into account the impact of COVID-19, the estimated lost revenue could be the difference between the budgeted revenue and actual revenue. HHS has also stated that it would also be reasonable to compare the revenues to the same period last year.

HHS continues to update guidance on the payments it made to providers as part of the Provider Relief Fund. We will monitor all developments and keep you apprised accordingly.