

HHS' "No Strings Attached" Emergency Fund for Health Care Providers Comes with a lot of Strings

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On March 27, President Trump signed into the law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which included \$100 billion for the Public Health and Social Services Emergency Fund. The Fund reimburses eligible health care providers for expenses and lost revenue attributable to COVID-19.

On April 7, the Centers for Medicare & Medicaid Services (CMS) Administrator Seema Verma announced details regarding distribution of the first \$30 billion of the fund, which are being released to Medicare providers in the form of “no strings attached” grants. According to Administrator Verma, the funding—which was expected to start on April 10—will be in the form of grants based on Medicare revenue, and providers will be permitted to spend the funds “any way they see fit.” The funds will be allocated to Medicare providers proportionately based on how much a given provider billed Medicare fee-for-service in 2019.

Despite Administrator Verma’s description of the funds as “no strings attached,” there *are* actually many such attached strings. According to the Department of Health and Human Services (HHS), payment of the initial tranche of funds is conditioned on the health care providers acceptance of certain [Terms and Conditions](#), which acceptance “must occur within 30 days of receipt of payment. If a provider receives payment and does not wish to comply with these Terms and Conditions, the provider must do the following: contact HHS within 30 days of receipt of payment and then remit the full payment to HHS as instructed.”

Providers receiving a distribution under the Fund must agree to the following:

- The Recipient must certify that it billed Medicare in 2019; currently provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19; is not currently terminated from participation in Medicare; is not currently excluded from participation in Medicare, Medicaid, and other federal health care programs; and does not currently have Medicare billing privileges revoked.
- The Recipient must certify that the Payment will only be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the Recipient only for health care related expenses or lost revenues that are attributable to coronavirus.

- The Recipient must certify that it will not use the Payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
- The Recipient shall submit reports as the Secretary determines are needed to ensure compliance with conditions that are imposed on this Payment, and such reports shall be in such form, with such content, as specified by the Secretary in future program instructions directed to all Recipients.
- Entities receiving more than \$150,000 must submit a report to the Pandemic Response Accountability Committee (PRAC) no later than 10 days after the end of each calendar quarter. This report shall contain: the total amount of funds received from HHS; the amount of funds received that were expended or obligated for each project or activity; a detailed list of all projects or activities for which large 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 sub-contracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees.
- The Recipient must maintain appropriate records and cost documentation to substantiate the reimbursement of costs under the award. The Recipient must promptly submit copies of such records and cost documentation upon the request of the Secretary, and Recipient must agree to fully cooperate in all audits the Secretary, Inspector General, or PRAC conducts to ensure compliance with these Terms and Conditions.
- The Recipient must certify that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network Recipient.

Along with these conditions, Recipients are prohibited from using any of the appropriated funds for items such as excessive executive pay, gun control advocacy, lobbying, abortion services, embryo research, promotion of legalization of controlled substances, pornography, funding ACORN, needle exchanges, or propaganda purposes.

Despite its “no strings attached” description, as with the receipt of any federal funds, receipt of CARES Act funds carry with them various requirements, compliance with which is crucial to avoid future investigations or audits. These requirements are bound to lead to an increase in such enforcement activity moving forward, and recipients should take all necessary steps to ensure proactive compliance and proper documentation.

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