

Coronavirus

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For more information,
contact:

Carolyn Zander Alford
+1 404 572 3551
calford@kslaw.com

Shane Dornburg
+1 404 572 2718
sdornburg@kslaw.com

Mark Polston
+1 202 626 5540
mpolston@kslaw.com

Christopher P. Kenny
+1 202 626 9253
ckenny@kslaw.com

Thomas H. Hawk, III
+1 404 572 4704
thawk@kslaw.com

King & Spalding

Washington, D.C.
1700 Pennsylvania Avenue,
NW
Washington, D.C. 20006-
4707
Tel: +1 202 737 0500

Atlanta
1180 Peachtree Street, NE
Atlanta, Georgia 30309-3521
Tel: +1 404 572 4600

CARES Act: Public Health and Social Services Emergency Fund

King & Spalding's Healthcare Finance practice is working to keep clients informed of issues that may be of concern to lenders in the healthcare space. The CARES Act includes a number of provisions to offer financial relief to healthcare providers in response to the COVID-19 public health emergency. Although demand may have increased for certain acute and intensive care services needed to treat COVID-19 patients, providers are nevertheless facing financial difficulties due to spikes in supply and staffing costs combined with lost revenues from elective, non-emergent services. One of the largest sources of funding that has become available to healthcare providers is the Public Health and Social Services Emergency Fund (the "PHSSE Fund") administered by the US Department of Health and Human Services (HHS), which received \$100 billion under the CARES Act. The CARES Act provides for HHS to distribute these funds through grants or other mechanisms to eligible providers for "healthcare related expenses or lost revenues that are attributable to coronavirus." HHS has already begun distributing the first \$30 billion to all providers that billed Medicare in 2019, which means many borrowers in the healthcare industry will soon be receiving, if they have not already, large cash injections from this program. HHS is distributing these funds as grants, not as loans, and is doing so automatically without requiring an up-front application. However, borrowers that are unable or unwilling to accept the required terms and conditions will be required to return the funds to HHS within 30 days. Set forth below is a high-level summary of the initial \$30 billion distribution and a discussion of plans for distributing the remaining \$70 billion.

INITIAL \$30 BILLION DISTRIBUTION FROM PHSSE FUND

- **Eligibility:** All providers that received Medicare fee-for-service (FFS) reimbursements in 2019 will receive payments, but basic eligibility requirements under the terms and conditions require that the recipient (1) billed Medicare during 2019 and has current billing privileges and (2) currently provides, or has provided since January 31, diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. Providers unable or unwilling to accept the terms and conditions must return the funds.
- **Amount of Grant:** A provider's share of the \$30 billion is calculated based on the provider's proportionate share of the \$484 billion in total Medicare FFS reimbursements paid to all providers during 2019. For example, a provider that received a total of \$100 million in Medicare FFS revenue during 2019 would receive approximately \$6.2 million. Note that revenue from Medicare Advantage plans is not included for purposes of this calculation.



- **Distribution Mechanics:** Payments will be made automatically via direct deposit to all eligible providers using ACH information on file. A paper check will be mailed to providers that ordinarily receive paper checks. Within 30 days after receiving the payment, the provider must either sign an attestation through an online portal accepting the applicable terms and conditions or return the funds to HHS.
- **Terms and Conditions:**
 - Recipient must certify that:
 - funds will only be used to prevent, prepare for, and respond to coronavirus, and shall only reimburse for healthcare-related expenses or lost revenues attributable to coronavirus;
 - funds will not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse; and
 - for all care for a possible or actual case of COVID-19, the recipient will not seek to collect from any 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.
 - Recipient must submit such reports as HHS may determine are necessary to ensure compliance with required conditions.
 - Other terms and conditions are included in the full document, available at [here](#).

DISTRIBUTION OF REMAINING \$70 BILLION FROM PHSSSE FUND

- The manner in which HHS will distribute the remaining \$70 billion has not yet been determined.
- The CARES Act broadly permits HHS to distribute the funds to providers and suppliers that are not enrolled in Medicare or Medicaid as long as they provide diagnoses, testing, or care to individuals with possible or actual cases of COVID-19.
- The CARES Act also requires that any future distributions will be subject to the same conditions that funds can only be used to reimburse for healthcare-related expenses or lost revenues attributable to coronavirus and may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse. The CARES Act does not require HHS to impose the condition prohibiting billing patients for out-of-pocket expenses exceeding what the patients would have paid in-network. It remains to be seen whether that condition will apply to future distributions.
- HHS has stated that it is working on “targeted distributions” for the remaining funds, which will focus on providers in areas particularly impacted by COVID-19, rural providers, providers with lower shares of Medicare reimbursement or who predominantly serve Medicaid patients, and providers serving the uninsured.



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