

CARES Act Establishes a Public Health Fund for Eligible Health Care Providers

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On Friday, March 27, 2020, the President signed into law the Coronavirus Aid, Relief and Economic Security Act (CARES Act). Among the many provisions of the CARES Act, Title VIII designates one hundred billion dollars of the Public Health and Social Services Emergency Fund for grants or other mechanisms to eligible health care providers to reimburse them for otherwise unreimbursed losses and expenses related to the coronavirus. This program is administered by the Secretary of Health and Human Services.

Title VIII defines eligible health care providers as public entities, Medicare or Medicaid enrolled suppliers and providers. The Secretary is also empowered to include other United States for-profit entities and not-for-profit entities that provide diagnoses, testing or care for individuals with possible or actual cases of COVID-19 as funding recipients.

The law specifies that reimbursement shall be for health care related expenses or lost revenues that are attributable to coronavirus, but only to the extent such expenses are not reimbursed or reimbursable from other sources. Reimbursable expenses can include lost revenue, the cost of construction, real estate leases, leases, medical supplies, medical training, and retrofitting to prepare for and meet the challenges of COVID-19 cases.

Payments can be made either retrospectively or prospectively as the Secretary determines. Thus, the law contemplates funding not only losses as of this date but future expenses as well.

So far, there has been no guidance on whether the funds are to be allocated among regions, practice areas or types of institutions. Similarly, although the Secretary is to consider applications and make payments on a “rolling basis,” we do not have guidance on whether consideration will be given on the basis of time of submission or some other standard.

At a minimum, an application for payment must include a statement of the provider’s need and its taxpayer identification number. The Secretary has yet to promulgate regulations, application forms, the standards for calculating losses and other required documentation. These will no doubt provide many details which are unspecified in the CARES Act as written. In the meantime, health care providers would be advised to gather data on the expenses and losses they have incurred due to the coronavirus and the expenses they wish to incur to meet the challenge of doing business during the pandemic so they can be submitted as soon as guidance is received from the Secretary.

If you need assistance navigating the CARES Act Title VIII, please contact [Douglas Watson Lubic](#), [Peter Greenbaum](#) or [Grace Mack](#).

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