

Tools for Your Hospice Toolbox: How to Evaluate, Allocate and Track the Use of CARES Act Relief Payments (An Introduction)

Consistent with NHPCO's recent regulatory, you may have received an unexpected payment on or about Friday, April 10th via Optum Bank with "HHSPAYMENT" as the payment description. That payment was from the Public Health and Social Services Emergency Fund ("Relief Fund") which was set up pursuant to the CARES Act to provide \$100 billion of relief funding to healthcare providers. The payment received is from the first \$30 billion of the total \$100 billion Relief Fund. The payment is not a loan; it is a grant that the hospice can use for qualified expenses and losses that meet a series of Terms and Conditions.

The Terms and Conditions specifically require compliance with 45 CFR §§75.302, 361 and 365, all of which relate to record keeping under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Health and Human Services ("HHS") Awards. Thus the Terms and Conditions should likely be reviewed as the terms of an HHS award. And in any event, the HHS Office of Inspector General is tasked to enforce the Terms and Conditions.

Unfortunately, these Terms and Conditions ([link](#)) are vague and could give rise to opportunities for the Office of Inspector General, the Department of Justice, or whistleblowers to allege a violation of these Terms and Conditions.

Absent more useful guidance from (HHS regarding who may keep the Relief Fund payments and how they may be spent, there are a number of "best practices" hospices may want to consider related to evaluating, tracking and allocating expenses to the Relief Fund payments to mitigate potential risks. How providers spend the Relief Fund will be audited at some point in the future so any documentation must be auditable and supported.

- 1. Review Attestation.** Within 30 days of receiving the payment, and in order to retain the payment for potential use, the hospice must sign an attestation confirming receipt of the funds and agreeing to the Terms and Conditions of payment. This attestation will be available on HHS's website during the week of April 13, 2020. Hospices should carefully review the final attestation language and Terms and Conditions before signing. Based on current information, it appears that signing the attestation will allow the hospice to retain the payments while it evaluates whether and what amount of expenses can be paid with those funds and ensures that it can appropriately document the use of those funds, in the manner required by the Terms and Conditions. The hospice can ultimately return any unused funds to the government.
- 2. Establish Segregated Account.** Segregate the Relief Fund payments into a separate account so expenditures from that account may be tracked. Also, you probably received a separate payment for each Taxpayer Identification Number ("TIN") that you have. Until further guidance is received, the Relief Fund payment attributable to that TIN should be used only for authorized COVID-19 expenses related to that TIN.

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- 3. Evaluate Potential Expenses and Losses to Determine Whether They Meet Threshold Criteria.** Evaluate and document whether your hospice meets the following critical requirements for the retention and use of the payments. These requirements are vague, so a collaborative evaluation among various areas of expertise may be warranted, e.g., clinical, accounting, cost reporting, legal, and others.
- a. Does the hospice “care for individuals with possible or actual cases of COVID-19?”
 - b. Are the funds “used to prevent, prepare for and respond to coronavirus?”
 - c. Are the funds used “only for health care related expenses or lost revenues that are attributable to coronavirus?”
 - d. Can the hospice confirm 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?”

If you conclude that each of the requirements are met, document those conclusions. For example, create documentation stating “The hospice cares for individuals with possible or actual cases of COVID-19 as shown by the following [insert information demonstrating that the hospice cares for individuals with possible or actual cases of COVID-19].”

- 4. Ensure That Potentially Covered Expenses and Losses Can Be and Are Documented Consistent With The Terms and Conditions.** If you are comfortable that you can comply with the above threshold criteria, and have documented that conclusion,, then ensure that any potentially covered expenses and losses can be and are documented as required by the Terms and Conditions. For example:
- a. General expenses: Work with your accounting team to allocate general expenses based on the number of patients that are “possible or actual cases of COVID-19” and those who are not.
 - b. Specific costs: Specific costs should include any and all specific increases in cost or expenses that can be clearly tracked back to the COVID-19 emergency. This could include, for example, additional specific staffing needs, enhanced compensation to retain staff, administrative costs (including outside vendors like consultants or lawyers) relating to COVID-19 preparation, and physical plant changes.
 - c. Revenue Losses: Track your revenue losses as they relate to COVID-19 preparation and operations. Document and track as much as possible how much you lost and why you lost that revenue.
 - d. Written Procedures: In all cases procedures need to be implemented to ensure that these costs meet the principles of costs allocated under the rules established by HHS for awards. Specifically, the provider must demonstrate that it has effective control over, and accountability for these Relief Fund payments to ensure they are used solely for authorized purposes.

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- i. The provider must adopt written procedures to implement the requirements of 45 CFR § 75.302 “Financial management and standards for financial management systems.”
- ii. The provider must adopt written procedures for determining the allowability of costs allocated to these funds in accordance with Title 45, Chapter A, Part 75, Subpart E “Cost Principles” of the Code of Federal Regulations.

5. **Alternatively, Hold Funds Pending Further Guidance or Return Funds.** If you are not confident that the hospice can comply with the Terms and Conditions, including the threshold requirements and the documentation requirements, consider not using the Relief Fund payments until additional guidance is given on what those these terms mean. Alternatively, the hospice should return any unused funds to the government.

In conclusion, these funds come with significant strings. And if you don't have expenses that qualify they will need to be paid back. As this develops, there will be many practical questions regarding what expenses (and loss revenue) qualify as “valid” costs for these funds. We are monitoring HHS's communications related to this program and will provide updates as more guidance is available.

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