

# HHS Announces COVID Funds for Skilled Nursing Facilities

05.22.20

On Friday May 22, HHS announced its decision to award funding in the amount of \$50,000 per skilled nursing facility (SNF) with an additional \$2500 per licensed bed as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act stimulus package in response to the COVID 19 crisis. This funding is intended to address critical needs such as increased testing capacity, increased labor costs, acquisition costs related to personal protective equipment and other expenses linked directly to the COVID-19 pandemic. SNFs have forty-five (45) days from receipt of the funding to attest to the terms and conditions on the HHS portal. Failure to timely attest is considered automatic acceptance of the terms and conditions.

A threshold condition to accepting the funding is that the facility certifies that it provides or provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. In addition, the funding may only be used to prevent, prepare for, and respond to coronavirus.

Rest assured that this is not a “no-strings attached” windfall for the long term care industry. The facility must be able to document that the payments are only used for health care related expenses that are attributable to the coronavirus. Accordingly, SNFs accepting CARES Act funding will need to use stringent procedures to ensure the funds are accepted and used in conformance with HHS Terms and Conditions<sup>[1]</sup> and make a timely attestation acknowledging their intent to retain and use the funds accordingly. In addition, any entity receiving in excess of \$150,000 must submit a quarterly report to the HHS Secretary and Pandemic Response Accountability Committee. This report must provide detailed accountability for each project or activity supported by the CARES Act funds.

While it is unlikely that a provider would “knowingly” use the funds improperly, non-compliance with the HHS Terms and Conditions can result in a recoupment by the federal government and False Claims Act (FCA) Liability under the “reckless disregard” or “deliberate ignorance” knowledge standard. To protect the facility, records should be kept with the anticipation of future government audits. SNFs should follow some best practices to minimize the risk of FCA liability. Best practices include:

1. Depositing the funds in a segregated account for the limited purpose of COVID-19 response.
2. Documenting that each expenditure of these segregated funds complies with the Terms and Conditions of the attestation, including:

a. Proper use:

- i. The funds will be used only to prevent, prepare for, and respond to the coronavirus and
- ii. The funds will reimburse the recipient only for healthcare-related expenses or lost revenues that are attributable to coronavirus.

b. Improper use:

- i. The 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
- ii. The funds will not be used for purposes generally prohibited by federal law, including executive comp, lobbying, abortions, or unpaid federal tax liabilities.

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[1] Link to Terms and Conditions for SNF <https://www.hhs.gov/sites/default/files/terms-and-conditions-skilled-nursing-facility-relief-fund.pdf>