

Recent COVID-19 Stimulus Legislation and Guidance: Opportunities and Considerations for States

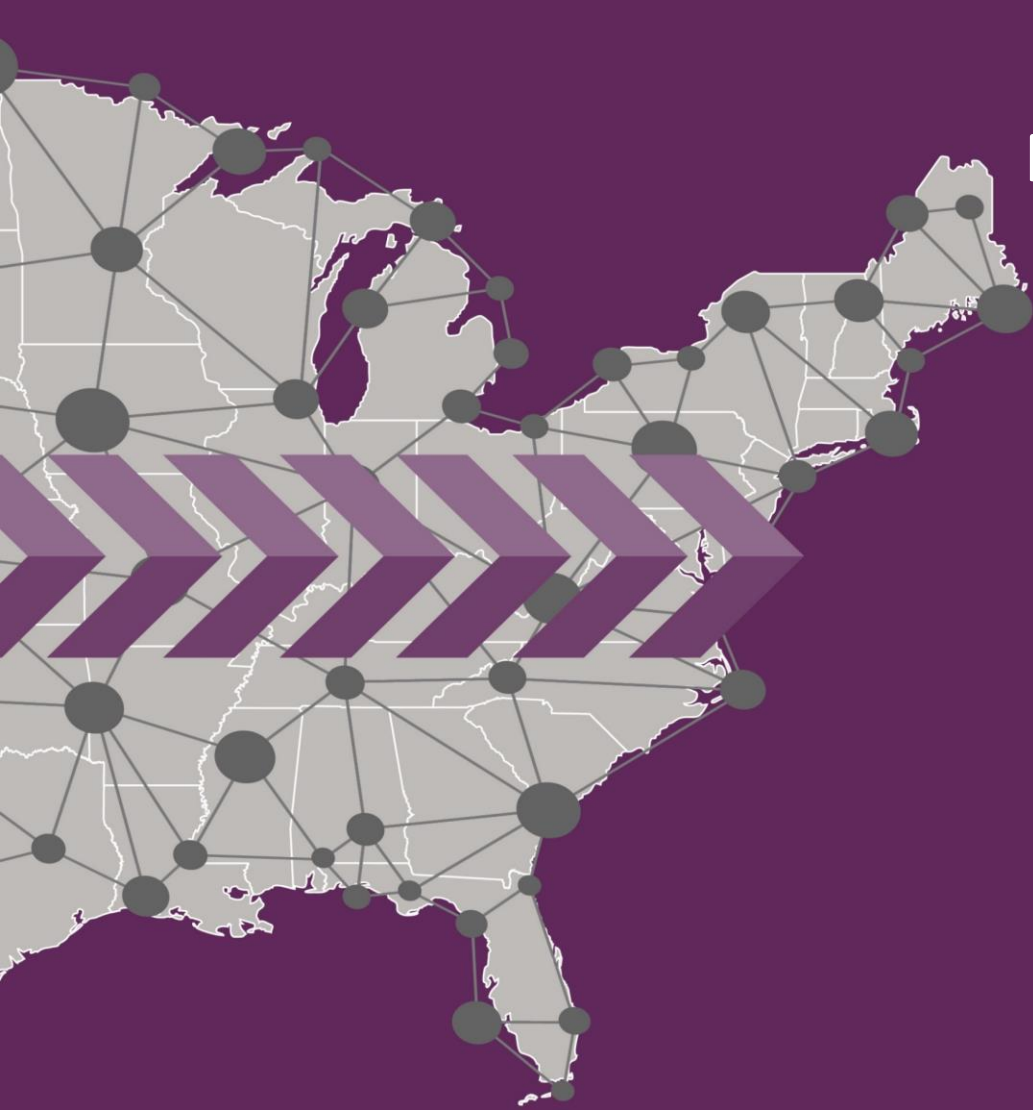
Friday, May 1, 2020

2:00-3:00 pm ET

Please stand by, this webinar will begin shortly

STATE
Health & Value
STRATEGIES
COVID-19

A grantee of the Robert Wood Johnson Foundation



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State Health and Value Strategies (SHVS) assists states in their efforts to transform health and health care by providing targeted technical assistance to state officials and agencies. The program is a grantee of the Robert Wood Johnson Foundation, led by staff at Princeton University's Woodrow Wilson School of Public and International Affairs. The program connects states with experts and peers to undertake health care transformation initiatives. By engaging state officials, the program provides lessons learned, highlights successful strategies, and brings together states with experts in the field. Learn more at www.shvs.org.

Questions? Email Heather Howard at heatherh@Princeton.edu.

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Housekeeping Details

All participant lines are muted. If at any time you would like to submit a question, please use the Q&A box at the bottom right of your screen.

After the webinar, the slides and a recording will be available at **www.shvs.org**.

COVID-19 Resources for States

State Health and Value Strategies has created an accessible one-stop source of COVID-19 information for states at www.shvs.org/covid19/. The webpage is designed to support states seeking to make coverage and essential services available to all of their residents, especially high-risk and vulnerable people, during the COVID-19 pandemic.

About Manatt Health

Manatt Health, a division of Manatt, Phelps & Phillips, LLP, is an integrated legal and consulting practice with over 90 professionals in nine locations across the country. Manatt Health supports states, providers, and insurers with understanding and navigating the complex and rapidly evolving health care policy and regulatory landscape. Manatt Health brings deep subject matter expertise to its clients, helping them expand coverage, increase access, and create new ways of organizing, paying for, and delivering care. For more information, visit www.manatt.com/ManattHealth.aspx

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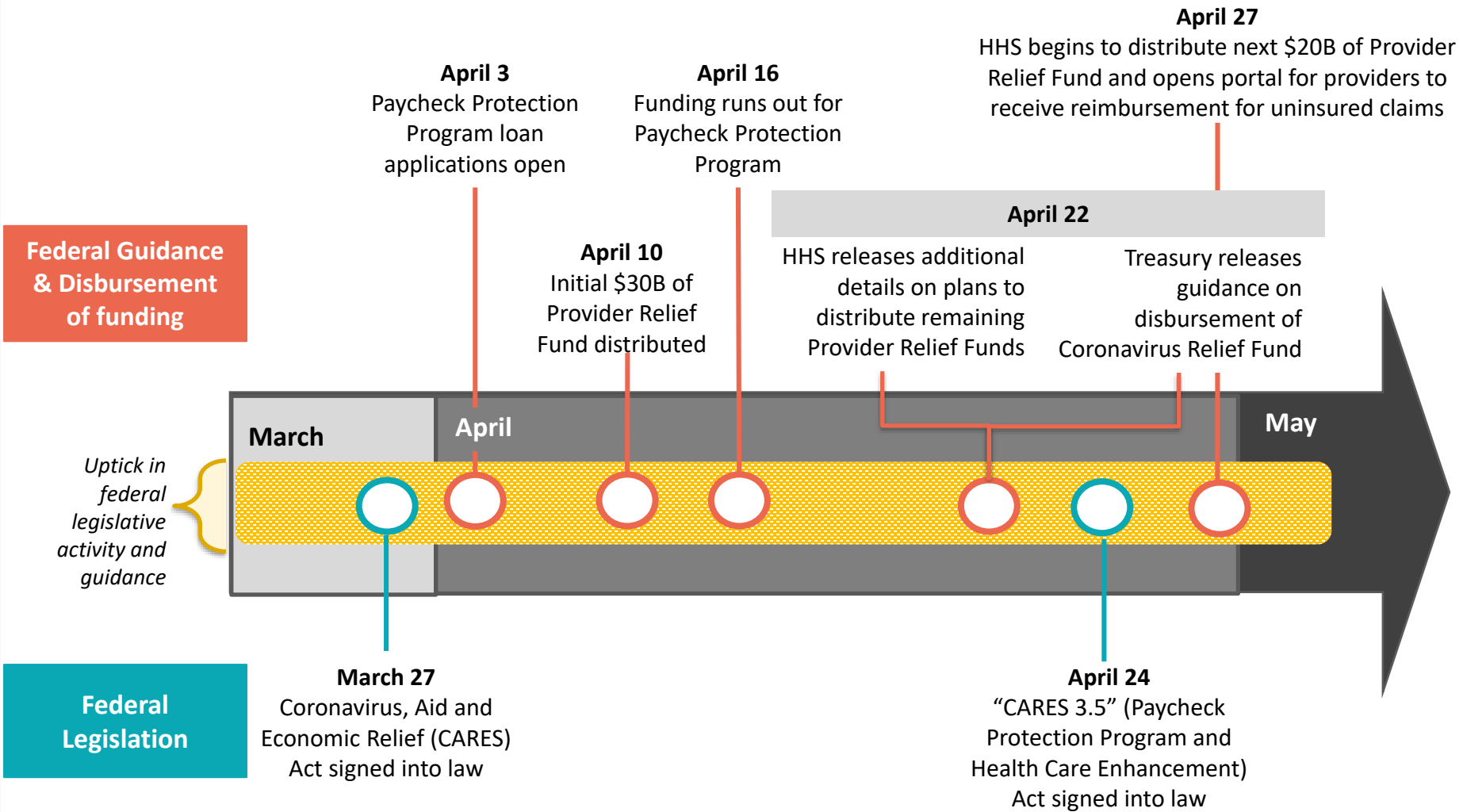
Agenda

- **Timeline of the Recent Federal Response to the COVID-19 Public Health Emergency**
- **Summary of Recent Federal Stimulus Legislation and Guidance**
 - Treasury Guidance on Coronavirus Relief Fund
 - *“CARES Act 3.5”*
 - Provider Relief Fund
 - HHS Disbursement Approach
 - Balance Billing Conditions
- **Update on Options for Increasing Medicaid Payments to Providers During COVID-19 Crisis**
- **Questions**



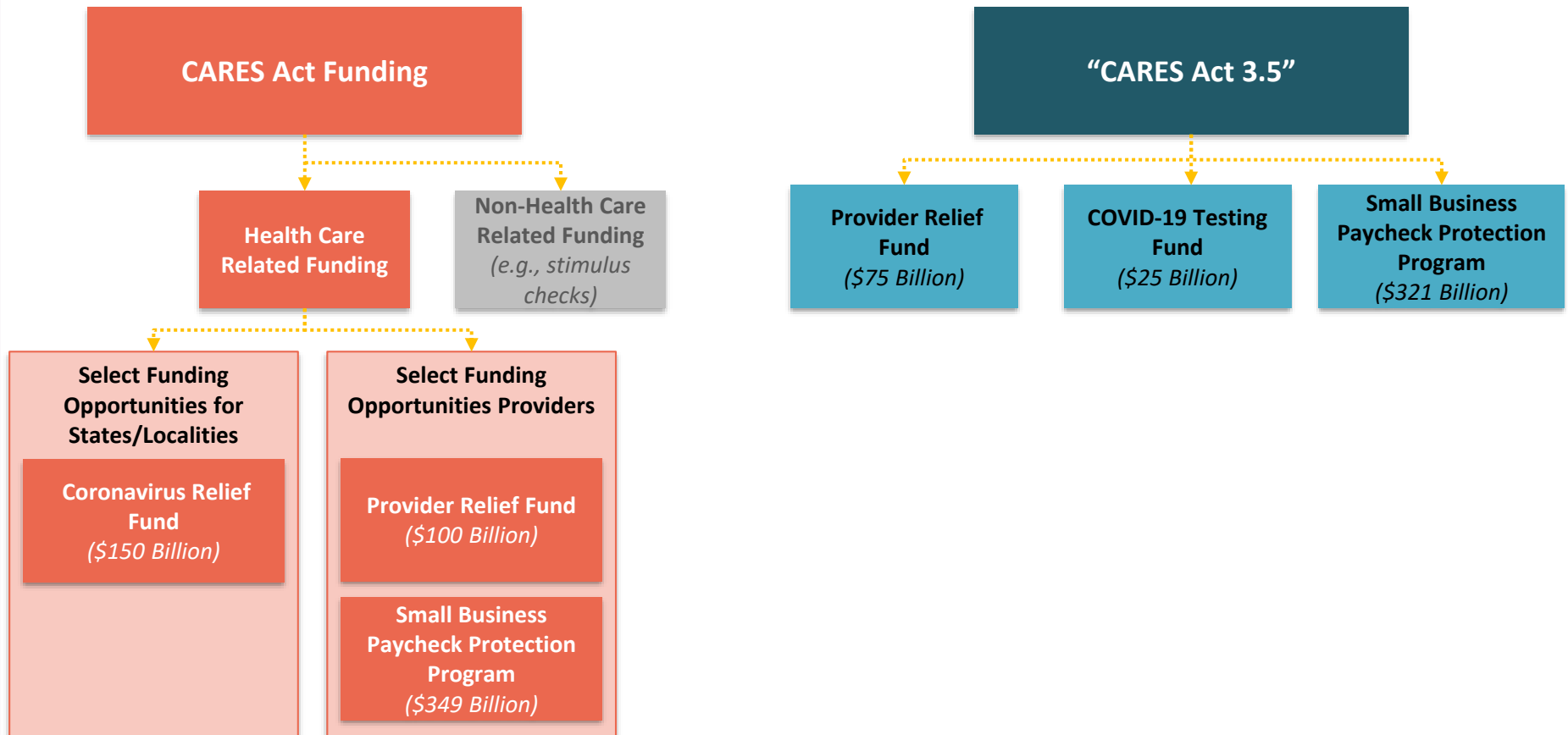
Timeline of the Federal Response to the COVID-19 Public Health Emergency

Timeline of Recent Federal Response to COVID-19 Crisis



Funding Made Available by COVID-19 Stimulus Packages

Legislation in March and April 2020 created new funding opportunities for states and providers to respond to the COVID-19 crisis. Below is a high-level summary of key funding sources, **but is not a comprehensive summary of the funding in each.**





Treasury Guidance on Permissible Uses of Coronavirus Relief Fund

Overview: The Coronavirus Relief Fund

- **The CARES Act established the \$150B fund Coronavirus Relief Fund (CRF)** for states, tribal governments and local governments with populations of 500,000 or more. Key features include:
 - \$8B reserved for tribal governments, \$3B reserved for DC and the territories
 - Funding is distributed by the Treasury in proportion to state population, with a floor of \$1.25B per state; local governments may receive up to 45% of state allocation
- This funding may only be used to cover costs that:
 - Are necessary expenditures incurred due to the COVID-19 public health emergency;
 - Were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or local governments; and,
 - Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Treasury Guidance on Distribution of the CRF

On April 22, the Department of the Treasury released additional details on permissible and impermissible uses of the Coronavirus Relief Fund in the form of guidance and FAQs.

Category of Spending	Examples
Sample Permissible Uses	
Medical Expenses	<ul style="list-style-type: none"> ✓ Establishing temporary public medical facilities, including construction costs
Public Health Expenses	<ul style="list-style-type: none"> ✓ Expenses to facilitate compliance with public health measures, such as: <ul style="list-style-type: none"> ✓ Food delivery to residents, including vulnerable populations ✓ Technology improvements for distance learning ✓ Payroll expenses for public safety, public health, health care, human services, and “similar” employees whose services are substantially dedicated to mitigating or responding to public health emergency
Economic Support	<ul style="list-style-type: none"> ✓ Grants to small businesses to reimburse the costs of business interruption caused by required closures
Other	<ul style="list-style-type: none"> ✓ State costs that are substantially different from expected based on budgets approved as of March 27 ✓ COVID-19 related appropriations enacted prior to March 27
Sample Impermissible Uses	
<ul style="list-style-type: none"> ✗ Medicaid state share ✗ Expenses reimbursable under any federal program, such as state contributions to unemployment funds (the reimbursement for which is provided by the CARES Act) ✗ Legal settlements 	

CRF Distribution Guidance: Key Questions for States

- What level of scrutiny will be applied to a state's CRF spending decisions? How will the Treasury validate the "necessary" expenditure standard?
- To what extent can the Coronavirus Relief Fund be used indirectly to replace lost revenues?
- How should states and local governments analyze the availability and level of other reimbursement for expenditures (e.g., FEMA funding)?
- How should states collect data and relevant information from providers on their use of other non-Coronavirus Relief Fund funding (e.g., direct funding from the Provider Relief Fund) to avoid duplication of funds?
- What information and data will states be required to report on?



**“CARES Act 3.5”
Paycheck Protection Program and Health
Care Enhancement Act**

Enactment of the “CARES Act 3.5” Stimulus Package

On April 24, the **Paycheck Protection Program and Health Care Enhancement Act**, was signed into law (P.L. 116-139)

This \$484 billion legislation has become known as “CARES Act 3.5” because it generally replenishes funding that was first established in the CARES Act (P.L. 116-136), enacted on March 27

The legislation provides additional funding for COVID-19 testing, additional Provider Relief Funds and new funds for the Paycheck Protection Program for small businesses

Deep Dive: Additional Funds Added to Provider Relief Fund

Summary of Key Provisions

- **Adds \$75 billion** to the Provider Relief Fund established by the CARES to directly reimburse providers for expenses/lost revenues attributable to COVID-19 and not otherwise reimbursable. Other than increasing the amount of the fund to a new total of **\$175 billion**, no other changes were made to the legislative language
 - ✓ **Potential Recipients:** Medicare or Medicaid enrolled providers, and for-profit and not-for-profit entities within the United States that provide diagnosis, treatment, and care for possible or actual cases of COVID-19
 - ✓ **Potential Uses:** Building or construction of temporary structures, leasing of properties, medical supplies and equipment, increased workforce and trainings, emergency operation centers, retrofitting facilities, surge capacity, reimbursement for COVID-19 testing and treatment of the uninsured and lost revenues due to the COVID-19 crisis



Key Insights for States

To date, distributions from the Provider Relief Fund have focused on quickly getting money to Medicare providers and generally distributed dollars based on each such provider's historic net revenue. HHS has not yet reserved a specific \$ amount for providers who predominantly serve Medicaid/uninsured or taken any steps to target resources at providers with greatest COVID-driven fiscal challenges.

States will need to engage to ensure that a share of the new \$75B for the Provider Relief Fund by CARES 3.5 is targeted to Medicaid providers.

Deep Dive: Funding for COVID-19 Testing

Summary of Key Provisions

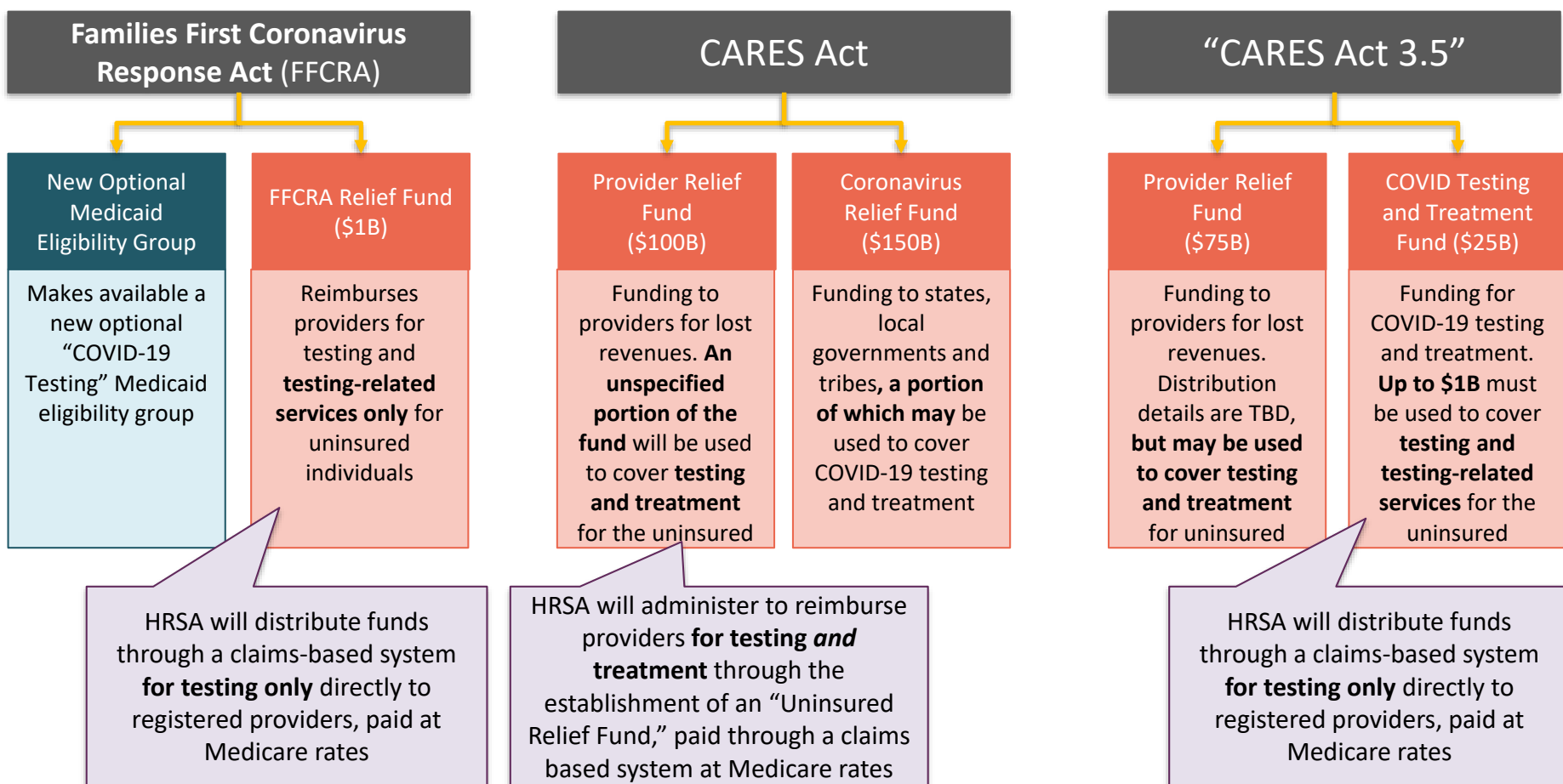
- CARES Act 3.5 establishes **\$25 billion** to research, develop, validate, manufacture, purchase, administer, and expand capacity for both active infection and prior exposure COVID-19 tests. The Act specifies that funding may be used for grants for a range of testing supports including:
 - **Testing infrastructure and supplies** (e.g., rent or equipping facilities to improve preparedness and response capacity for COVID-19 testing)
 - **Testing production** (e.g., equipping facilities for production of COVID-19 testing supplies)
 - **Personal protective equipment (PPE) and testing supplies** (e.g., purchase of medical supplies and equipment)
 - **Workforce** (e.g., new workforce or training for providers)

Key Components of \$25 Billion COVID-19 Testing Fund	
Recipient	Amount
States, Localities and Tribal Organizations	\$11B
Health Centers & Rural Health Clinics	\$825M
Testing for Uninsured	\$1B
Department/ Agency Appropriations	\$3.822B

HHS must submit to congress a report to congress of individuals tested for or diagnosed with COVID-19 that includes demographic data—race, ethnicity, age, sex and geographic region

Deep Dive: Testing and Treatment for the Uninsured

Recent COVID-19 related legislation has established options for COVID-19 testing and treatment of the uninsured. HRSA is likely to administer the majority of these funds, and be responsible for identifying which funding stream to draw from, based on the type of claim received (*e.g., claims for COVID-19 testing vs COVID-19 treatment*).



Deep Dive: Small Business Programs

Summary of Key Provisions

- CARES Act 3.5 appropriates **an additional \$381 billion** for small business loans and related expenses which could support some small health care providers
 - The funds provided for these loan and grant programs in the CARES Act were insufficient to meet the large need, and many small businesses were shut out with applications still pending

Key Funding Streams

Paycheck Protection Program (\$321B)

Replenishes CARES Act loan funding for small businesses and requires that \$60 billion of loans be made by small, community-based financial institutions. Brings total funding to \$670B

Economic Injury Disaster (EIDL) Grants Program (\$10B)

Replenishes EIDL Program established under CARES Act

Disaster Loans Program Account (\$50B)

Replenishes Disaster Loans Program Account established under CARES Act

Applications for loan funding re-opened on 4/27



CARES Act Provider Relief Fund

The Provider Relief Fund: Timeline of Actions to Date

“CARES 3.5” maintains the same requirements with respect to HHS distribution of the funding; distribution of the \$75 billion among providers is at HHS discretion

April 23:

Congress passes “CARES Act 3.5,” including an additional \$75 billion for the Provider Relief Fund



March 23:
CARES Act passes, establishing \$100 Provider Relief Fund



April 10:
HHS announces and begins distributing the first \$30 billion (based on providers’ share of Medicare fee-for-service payments in 2019)



April 22:
HHS announces plan for distributing the majority of the remaining \$70 billion in the enacted Provider Relief Fund



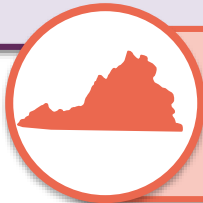
Week of 4/27
HHS begins to distribute portion of remaining funds

What We Know: Distribution of the \$175B Provider Relief Fund

\$50 Billion General Fund	\$30 billion to Medicare providers based on their share of total 2019 Medicare fee-for-service expenditures (<i>Distributed April 10 and April 17</i>)
	<i>HHS has stated it intends to distribute the remaining \$20 billion in a similar manner, based on 2018 net patient revenue but mechanics to balance overall funding remain unclear.</i>
	\$20 billion based on 2018 net patient revenue from all payers (<i>Began distributing on April 27, on a weekly, rolling basis</i>)
\$10 Billion for Hotspots	\$10 billion “targeted to hospitals in areas that have been particularly impacted by COVID-19.” HHS also will “take into consideration” hospitals’ Medicare DSH adjustment <i>Hospitals “applied” for the funds by providing, through the provider portal, their TIN, NPI, total number of ICU beds as of 4/10, and total number of admissions with a positive diagnosis for COVID-19 from 1/1-4/10</i>
\$10 Billion for Rural Providers	\$10 billion for rural health clinics and hospitals, distributed based on operating expenses
\$400 million for Indian Health Service (IHS)	\$400 million for Indian Health Services facilities, distributed based on operating expenses
COVID-19 Uninsured Claims	Unspecified amount based on claims submitted to HHS by providers for testing or treating uninsured COVID-19 patients on or after 2/4 (reimbursed at Medicare rates) <i>Providers can register for the program beginning April 27 and reimbursement expected to begin mid-May</i>
TBD	“Additional allocations” for skilled nursing facilities, dentists, and providers that solely take Medicaid
\$75 Billion from CARES Act 3.5	<i>No additional guidance has been given by HHS to date on how these funds will be distributed</i>

Provider Relief Fund Distribution: Key Questions for States

- To what extent does the current methodology for the Provider Relief Fund leave out Medicaid providers that otherwise will turn to states for support?
 - Share of Medicare providers also enrolled in Medicaid, across various provider types
 - Size of payment rate gap between Medicaid and other payers included in “net revenues”
- What are the implications of the current distribution methodology for the short and long-term viability of Medicaid provider networks? For low-income Medicaid beneficiaries?
- What are priorities for the new \$75 billion in the Provider Relief Fund? What factors should HHS consider when distributing these dollars?
 - Funding specifically for providers serving a significant share of Medicaid and uninsured?
 - What should be the eligibility criteria for any such set aside? How should any such set aside be distributed?
 - What role should states play in the distribution of Provider Relief Fund dollars?
- What role should or could states play in advising HHS on the distribution of the new \$75 billion?



State Insight: Rachel Pryor
Deputy Director for Administration
Virginia Department of Medical Assistance Services

Provider Relief Fund Balance Billing Conditions



- ✓ Provider Relief Funds are conditioned on provider agreement not to collect from patients anything more than would have been collected if service was in network
- ✓ Applies to “presumptive or actual COVID-19 patients”

Provider Fund Balance Billing Conditions: Provider and State Issues and Considerations

Key Questions for States

- **Questions on Breadth of Protection**
 - Are all patients covered? (Evaluation visit, diagnostic test, treatment?)
 - Which providers are banned from balance billing?
 - Can consumers be required to pay upfront?
 - What will out-of-network providers be paid?
 - How can the balance billing ban be enforced?

Provider Fund Balance Billing Conditions: Provider and State Issues and Considerations (Cont'd)



Intersection with State Laws


- State surprise billing laws in place in 29 states
 - 15 with comprehensive protections
- COVID-related measures in several states
 - Bulletins reminding providers and insurers of existing laws or urging them not to balance bill
 - New actions to add emergency protections
- Interactions
 - Does federal requirement for paying labs preempt state payment standards or dispute resolutions process?
 - Does state standard apply with regard to ban on provider balance billing?



Update on Options for Increasing Medicaid Payments to Providers During COVID-19 Crisis

Reminder: Strategies to Increase Medicaid Payments to Providers

- 1 Increase payments to providers with declining utilization 
- 2 Make directed payments to providers 
- 3 Make pass-through payments to essential at-risk providers
- 4 Make advanced, interim payments to providers with reconciliation
- 5 Set base rates to match last year's costs
- 6 Adjust UPL calculation to preserve aggregate payment levels

 = For discussion today

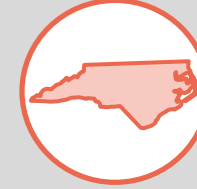
Status Update: New Hampshire and North Carolina's Strategies to Sustain Providers



New Hampshire: Directed Payments

- **Establish a pool for directed payments**, set at approximately 1.5 percent of capitated payments and distributed to essential providers
- **Adopt new risk corridors for current plan year**
- **Remove managed care withholds**, acknowledging MCO efforts to stabilize provider networks
- **Requires CMS approval of directed payment SPA and approval of updated actuarial certification**

Status Update: Henry Lipman, New Hampshire Medicaid Director



North Carolina: Payments to Providers

- **Doubling PMPMs** to primary care practices serving as a medical home for Medicaid recipients during the COVID-19 public health emergency
- Making **retainer payments to HCBS providers** who are unable to provide services as a result of the pandemic
- Providing **advanced payments** to providers
- Making **enhanced payments to SNFs** with COVID-19 patients to reflect higher current costs

Status Update: Julia Lerche, Chief Strategy Officer and Chief Actuary, North Carolina Medicaid

Questions?

The slides and a recording of the webinar will be available at
www.shvs.org after the webinar

Thank You

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Appendix

Reference Legislation Guidance and Citations

Enacted Legislation

- **H.R. 748 / P.L. 116-136:** Coronavirus Aid, Relief and Economic Security (CARES) Act. **Available:** <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>
- **H.R. 266/ P.L. 116-139:** Paycheck Protection Program and Health Care Enhancement Act. **Available:** <https://www.congress.gov/116/bills/hr266/BILLS-116hr266enr.pdf>

Federal Guidance

- **Coronavirus Relief Fund: Guidance for State, Territorial, Local and Tribal Governments.** Department of the Treasury. Available: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>
- **Cares Act Provider Relief Fund.** HHS. Available: <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>
- **COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured.** HRSA. Available: <https://www.hrsa.gov/coviduninsuredclaim>

Other Relevant Citations

- **States Can Prevent Surprise Bills for Patients Seeking Coronavirus Care.** Commonwealth Fund Blog, April 29 2020. Available <https://www.commonwealthfund.org/blog/2020/states-can-prevent-surprise-bills-coronavirus-care>
- **The Provider Relief Fund: How Well Does it Protect Patients from Surprise Medical Bills for COVID-19 Related Services?** Georgetown Center on Health Insurance Reforms April 30, 2020. Available: <http://chirblog.org/the-provider-relief-fund-how-well-will-it-protect-patients/>
- **HHS Outlines Plans for \$100 Billion Provider Relief Fund.** Manatt Health. April 24, 2020. Available: [https://www.manatt.com/insights/newsletters/covid-19-update/hhs-outlines-plans-for-\\$100-billion-provider-relie](https://www.manatt.com/insights/newsletters/covid-19-update/hhs-outlines-plans-for-$100-billion-provider-relie)