



# **CARES Act Provider Relief Fund Compliance Concerns**

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# CARES Act Provider Relief Fund



\$100 billion

- CARES Act (March 2020)

\$75 billion

- Paycheck Protection Program and Health Care Enhancement Act (April 2020)

\$3 billion

- Consolidated Appropriations Act (December 2020)

\$8.5 billion

- American Rescue Plan (rural providers only) (January 2021)

\$186.5 billion

- 414K providers have attested to receipt of \$119B; 42K have received \$10.6B in uninsured payments

# Distributions



1. **General Distribution, Phase I (Rounds I and II) - \$50 billion**
2. **General Distribution, Phase II - \$18 billion**
3. **General Distribution, Phase III - \$20 billion**
4. **General Distribution, Phase IV - \$17 billion** (application available September 29)
5. **Targeted Distributions**
  - a. **Rural Providers - \$11.3 billion**
  - b. **COVID-19 High Impact Hospitals - \$22 billion**
  - c. **Skilled Nursing Facilities - \$4.9 billion**
  - d. **Safety Net Hospitals - \$14.7 billion**
  - e. **Nursing Homes - \$2.5 billion**
  - f. **Indian Health Services - \$500 million**
6. **Other Allocations**
  - a. **Rural Health Clinic Testing Program - \$225 million**
  - b. **Nursing Home Infection Control Incentive Payments - \$2.5 billion**
7. **COVID Testing, Treatment, and Vaccine for Uninsured - \$10.6 billion to 42.2K providers thru 09/09/21**
8. **American Rescue Plan Rural Distribution - \$8.5 million** (application available September 29)

**As of 09/09/21, 414K providers have attested to receipt of \$119 billion**

# Provider Relief Fund – Law & Guidance

Statutory Language

Terms & Conditions

FAQs (currently 60 pages; updated 08/30/21)

Post-Payment Notice of Reporting Requirements (5<sup>th</sup> ed., 06/11/21)

HRSA Webinars (July 8, 14, 20; September 10 & 15)

# Statutory Language – CARES Act

“to reimburse ... eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus”

“these funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse”

“payments ...shall be made in consideration of the most efficient payment systems practicable to provide emergency payment”

“to be eligible for a payment...an eligible health care provider shall submit... an application that includes a statement justifying the need ... for the payment”

## Terms & Conditions – Use of Funds

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Funds “will only be used to prevent, prepare for, and respond to coronavirus, and that the Payment shall reimburse the Recipient only **for *health care related expenses or lost revenues that are attributable to coronavirus.***”

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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.”

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# Terms & Conditions - Reporting



“[S]ubmit reports as the Secretary determines are needed to ensure compliance with conditions ... in such form, with such content, as specified by the Secretary in future program instructions directed to all.”



“[M]aintain appropriate records and cost documentation [as] required by future program instructions to substantiate the reimbursement of costs under this award.”



“[P]romptly submit copies of such records and cost documentation upon the request of the Secretary.”



“[F]ully cooperate in all audits the Secretary, Inspector General, or Pandemic Response Accountability Committee conducts to ensure compliance with these Terms and Conditions.”

# Post-Payment Notice of Reporting Requirements

- Released June 11, 2021 – 5<sup>th</sup> version since initial release in July 2020

	<b>Payment Received Period (Payments Exceeding \$10,000 in Aggregate Received)</b>	<b>Deadline to Use Funds</b>	<b>Reporting Time Period</b>
Period 1	April 10, 2020 to June 30, 2020	June 30, 2021	July 1, 2021 to September 30, 2021
Period 2	July 1, 2020 to December 31, 2020	December 31, 2021	January 1, 2022 to March 31, 2022
Period 3	January 1, 2021 to June 30, 2021	June 30, 2022	July 1, 2022 to September 30, 2022
Period 4	July 1, 2021 to December 31, 2021	December 31, 2022	January 1, 2023 to March 31, 2023



# Use of Funds Calculation

- A. Report on Other Assistance received for Q1 2020 thru Q2 2021
- B. Calculate unreimbursed expenses attributable to coronavirus for Q1 2020 thru Q2 2021 not to exceed total PRF distributions
- C. If B is  $>$  total PRF distributions, report additional unreimbursed expenses
- D. If B is  $<$  total PRF distributions, calculate lost revenue for Q1 2020 thru Q2 2021
  1. Difference between Q1 thru Q4 2019 actual net patient care revenue and Q1 2020 thru Q2 2021 and Q2 2021 actual net patient care revenue
  2. Same, except use budget approved by 03/27/20 as basis for comparison
  3. Any reasonable means of calculating list revenue
- E. If  $B + D <$  total PRF distributions, return remaining amount to HHS

# Reports Due September 30, 2021\*



- Report on use of funds received through June 30, 2020, and used by June 30, 2021
  - No carryover, no exceptions
    - “For purchases of tangible items made using PRF payments, the purchase does not need to be in the provider’s possession (i.e., back ordered PPE, ambulance, etc.) to be considered an eligible expense but the costs must be incurred by” June 30, 2021
    - For ... capital projects, construction projects, or alteration and renovation projects, the project costs cannot be reimbursed ... unless the was fully completed by” June 30, 2021
- 60-day Grace Period announced 09/10/21
  - “While you will be out of compliance if you do not submit your report by September 30, 2021, recoupment or other enforcement actions will not be initiated during the 60-day grace period.”
  - “This grace period only pertains to the Reporting Period 1 report submission deadline. There is no change to the Period of Availability for use of PRF payments.”
- Unused funds must be returned by December 30, 2021
- Failure to timely report or return unused funds = basis for recoupment

# Resources

## HRSA Website – Provider Relief Fund Reporting Requirements and Auditing

<https://www.hrsa.gov/provider-relief/reporting-auditing>

- June 11 Post-Payment Notice of Reporting Requirements
- Portal User Guide – Submitting Reporting Information
- Data Worksheets
- Reporting Tutorial Video
- July 8, 14, and 20 webinar slides and recordings
- Lost Revenue Guide, Personnel Recruitment & Retention Fact Sheet

## Provider Support Line - (866) 569-3522

- 8 a.m. to 10 p.m. CT, Monday thru Friday

# Recoupment

- “Providers receiving payments from the Provider Relief Fund must comply with the Terms and Conditions and applicable legal requirements.
- Failure by a provider that received a payment to comply with any term or condition can result in action by HHS to recoup some or all of the payment.
- Per the Terms and Conditions, all recipients will be required to submit documents to substantiate that these funds were used for health care-related expenses or lost revenue attributable to coronavirus, and that those expenses or losses were not reimbursed from other sources and other sources were not obligated to reimburse them.
- HHS monitors the funds distributed, and oversees payments to ensure that Federal dollars are used in accordance with applicable legal and program requirements.
- In addition, the HHS Office of the Inspector General fights fraud, waste and abuse in HHS programs, and may review these payments.”

# Managing PRF Compliance

- Guidance, not regulations
- Organizational decision-making process
  - Risk tolerance
- Documentation
  - Not just spreadsheets – but justification for including specific numbers on those spreadsheets
  - Reasonable interpretation of guidance to specific facts and circumstances
  - Assume no one involved in the process will be with the organization at time of audit

# Subsidiary With Targeted Distribution

- Scenario 1
  - Subsidiary receives General Distribution only, and Parent incorporates that distribution into its report
  - Subsidiary does not separately report; Parent incorporates Subsidiary's revenue and expenses into parent's report
- Scenario 2
  - Subsidiary receives General and Targeted distribution and does not transfer any funds to Parent
  - Subsidiary reports separately; Parent identifies Subsidiary on its report but does not incorporate Subsidiary's revenue and expenses into Parent's report
- Scenario 3
  - Subsidiary receives General and Targeted Distribution and transfers some/all to Parent
  - Subsidiary must separately report on Targeted Distribution – **but what information is reported where??**

# Responsibility for Reporting – The Parent Trap

- Parent may report on subsidiaries' General Distribution payments **but not** Targeted Distribution payments - even if transferred by subsidiary to parent
  - Portal does not include transferred Targeted Distribution in total payments received by parent; instead, recorded under recipient subsidiary
  - Include subsidiary's coronavirus-related expenses and lost revenue under parent? Also list when reporting on subsidiary's targeted distribution?
  - Subsidiary required to return funds even if parent's expenses/lost revenue exceed general distributions?
- How does one allocate system-level expenses to subsidiaries?

# Other Assistance Received

- List for each calendar quarter (Q1 2020 to Q2 2021) Other Assistance Received (including subsidiaries) in these categories:
  - RHC COVID-19 Testing Funds Received (pre-populated)
  - Department of Treasury and/or SBA Assistance (e.g., Paycheck Protection Program)
  - FEMA Programs
  - HHS CARES Act Testing
  - Local, State, and Tribal Government Assistance
  - Business Insurance
  - Other (**DO NOT** include patient care revenues)
- Information reported in this section WILL NOT be used to calculate expenses or lost revenue
- “Reporting Entities are expected to make a determination of their expenses applied to PRF payments after considering Other Assistance Received and taking into account that PRF payment may not be used for expenses or lost revenues that other sources have reimbursed or that other sources are obligated to reimburse.”



# Other Assistance Received

1. Must one report the expenses or lost revenue covered by “other assistance”?
2. Must one include enhanced reimbursement (e.g., waiver of sequestration) as “other assistance”?
3. If one has applied for but not received FEMA dollars, how should one report “other assistance?”

# Expenses for PRF Payments Received

- Separately report for Nursing Home Infection Control Payments and Other Payments
  - Nursing Home Infection Control Payments limited to infection control expenses
- Report by calendar quarter expenses reimbursed by PRF payments
  - Must be attributable to coronavirus
  - Cannot be reimbursed by another source; no other source obligated to reimburse
- If Payments Summary shows Total Reportable PRF Payments between \$10,001 and \$499,999, report two categories: General and Administrative Expenses and Healthcare Related Expenses
- If \$500,000+, report by specified sub-categories under G&A Expenses and Healthcare Related Expenses

# Expenses

1. Must one report expenses if lost revenue exceeds amount received in PRF?
2. Are self-funded employee health plan expenses eligible if an employee received treatment for COVID-19?
3. Are income taxes paid on PRF distributions a legitimate expense?
4. If one does not include an expense incurred before July 1, 2021, will one be precluded from reporting that expense later?
5. Can PRF funds be used to pay staff bonuses? OK to include bonuses paid after June 30 but before September 30?
6. Since June 30, we have incurred significant expense for traveling nurses. Can we retain PRF payments to cover this expense?

# Patient Care Revenue

- Net of adjustments for all third-party payers, charity care adjustments, bad debt, and any other discounts or adjustments
- Do not include insurance, retail, or real estate revenues; prescription sales revenues (except if derived from 340B program); grants or tuition; contractual adjustments from all third-party payers; charity care adjustments; bad debt; gains/losses on investments
- Do not include payments received from or made to third parties relating to care not provided in 2019, 2020, or 2021 (e.g., A/R write-off)

# Lost Revenue - *2019 Actual Revenue*

- Report actual patient care revenue by calendar quarter for 2019, 2020, and 2021 (Q1 and Q2) by payer (traditional Medicare, Medicare Advantage, Medicaid/CHIP, commercial, self-pay)
- Each quarter stands on its own; quarterly losses are NOT offset by quarterly gains

Quarter	Q1	Q2	Q3	Q4	Q1	Q2
2019	\$100	\$150	\$200	\$200	\$100	\$150
2020/2021	\$50	\$75	\$100	\$150	\$175	\$200
Difference	-\$50	-\$75	-\$100	-\$50	+\$75	+\$50
Lost Revenue (cumulative)	\$50	\$125	\$225	\$275	\$275	\$275

# Lost Revenue - *Budgeted Revenue*

- Report budgeted and actual patient care revenue for Q1 2020 through Q2 2021 by payer
- Submit copy of budget approved before March 27, 2020, and attestation that budget submitted was approved by that date
  - If no approved budget – cannot use this option

# Lost Revenue – *Alternate Reasonable Methodology*

- Provide lost revenue values for Q1 2020 thru Q2 2021, along with a narrative explanation (with supporting documentation) of the methodology used to make calculations
- If HHS determines the method is not reasonable (“including if it does not demonstrate with a reasonable certainty that claimed lost revenues were caused by coronavirus”), it will notify the Reporting Entity, which will have 30 days to resubmit using the 2019 actual revenue or budgeted revenue methodology.
  - “All recipients seeking to use an alternate methodology face an increased likelihood of an audit....”

# Review and Submit

## Are you sure you want to Submit?

By clicking 'Submit' you certify that, you are a bonafide legal representative of the entities represented herein and that all of the information you are submitting to a Federal Government System, under penalty and perjury of law, is true, correct, and accurate.

After clicking 'Submit', you acknowledge and accept that you will no longer be able to edit, update, or modify the data you are submitting. Once submitted, all submittals are final and cannot be edited and will be used by the United States Federal Government, Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) to validate and verify your compliance with the Terms and Conditions.

I Agree - Submit

Save & Resume Later