

Keep Your Provider Relief Money, New HHS Forgiveness Rules Key

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HHS Provider Relief Funds Reporting Guidelines

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This outline is prepared for general informational purposes only. It is not intended and should not be used for specific legal advice in a specific factual situation. Questions about the legal issues discussed in these materials should be presented to knowledgeable legal counsel with respect to any given factual situation before deciding on a specific course of action.

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Overview of Provider Relief Funds

- March 27, 2020 CARES Act - \$100 billion
 - Healthcare providers with expenses or lost revenue attributable to COVID
- Phase 1, Round 1 - \$30 billion
 - Based on Medicare fee-for-service in 2019
- Phase 1, Round 2 - \$20 billion
 - Based on all 2019 receipts (up to 2%)

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Overview of Provider Relief Funds

- Phase 2
 - Medicaid, CHIP, dental and other providers
- Phase 3
 - Application-based for any provider
- Possible discussion of Phase 4 distribution

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Terms and Conditions

- Prevent, prepare for, and respond to COVID-19, healthcare-related expenses or lost revenues attributable to COVID-19
- Cannot use the funds to reimburse expenses or losses that have been or should be reimbursed by another source
- Provider must be prepared to submit reports to HHS
 - Originally was required to submit quarterly reports
- Provider must maintain appropriate records and cost documentation (required by 45 CFR 75.302 (financial management) and 45 CFR 75.361-75.365 (record retention and access))

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Terms and Conditions

- Vendors and contractors should sign attestation not convicted of healthcare crime
- All Confidentiality Agreements and NDAs must be reviewed to ensure no prohibiting provisions that are contrary to HHS Terms and Conditions
- Whistleblower protections are in place (all Settlement and Severance Agreements should be reviewed)

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Recommendation:

- HHS has a 3-year lookback period to audit compliance with these terms and conditions:
 - Attest to the Terms and Conditions
 - Have a written policy acknowledging Terms and Conditions and appoint a compliance officer
 - Policy should be extension of Compliance Program (financial management and record retention must have compliance oversight)

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Recommendations:

- Separate bank account
 - Can earn interest
- Keep monthly bank statements
- Detailed list of all expenses and invoices
- Proof of payment
- Maintain documentation of all other income (PPP, EIDL, advance payments)
 - Compliance with recording expenses for these programs

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Balance Billing Prohibition

- Providers cannot “balance bill” patients for any COVID-related treatment if patient is out of network
- All providers must bill patients for these services as if they are an in network provider
- FFCRA and CARES Act requires insurance plans to waive patient co-sharing payment requirements
- Actual COVID-related treatment or possible COVID-related patient (documentation that you are ruling out COVID diagnosis)

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Recommendation:

- Include balance-billing prohibition in your written policy
- Ensure financial responsibility forms are updated to recognize the balance billing prohibition
 - This may be important if you are experiencing difficulty with payor reimbursement
- If your practice will not treat COVID patients, you can include a blanket policy in your financial responsibility forms

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Common Questions:

- Can I keep the money even if I do not see COVID patients?
 - All patients are *presumed* COVID patients. (Contrast that with treatment of actual or possible COVID patients for the balance billing requirement)

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Common Questions:

- Does it matter when expenses are incurred as compared to when I received the monies?
 - All expenses must be incurred between January 1, 2020 and December 31, 2020 or January 1, 2021 and June 30, 2021.

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Common Questions:

- What if I did not attest?
 - If you do not return the funds within the attestation period and do not affirmatively attest to the funds, you are presumed to accept the Terms and Conditions (and still must be fully compliant).

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Common Questions:

- Are these taxable?
 - Yes. The HHS Provider Relief Funds are includible in gross income.

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Common Questions:

- Should I apply for more funds?
 - Currently, there are no more phases available for providers. However, this is a business decision that each provider will need to make based upon the use of other funds, eligibility, etc.

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Common Questions:

- I do not want to keep the funds, can I return them?
 - HHS will provide directions in the future on how to return unused funds.

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Provider Relief Funds – Reporting Requirements

General Distributions Only

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HHS Provider Relief Funds

- General Reporting Guidelines
- Healthcare Related Expenses
- General and Administrative Expenses
- Lost Revenue Calculation
- Questions

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Timeline for Reporting

- January 15, 2021
 - January 1, 2020 – December 31, 2020 (compared to 2019)
 - This has been delayed!
- July 15, 2021
 - January 1, 2021 – June 30, 2021 (compared to 2019)
- Portal is only open for registration at this time.

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Tiers of Reporting

- < \$10,000
- \$10,000 - \$499,999
- > \$500,000


All Provider Relief Funds (Phases 1, 2, and 3) are aggregated.

Data is reported based on calendar year (not fiscal year).

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Newly Added FAQ:

- Providers will receive a Form 1099 if you received and retained PRF within the calendar year 2020.
- 1099s will be mailed by January 31, 2021 (unless you elected to receive electronic copies of documents from UnitedHealth Group)

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Single Audit Requirement

- Healthcare providers that received more than \$750,000 will be subject to a single audit or a program specific audit
- All non-profits, for-profits, and governmental healthcare providers
- Due within 9 months of end of reporting period (September 2021)
- Should be done in conjunction with financial audit.
 - Provider Relief Fund policy will be especially important for auditor to determine funds were used appropriately.

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Use of HHS Funds

- COVID-related expenses
- Lost revenues (attributed to COVID)

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COVID-Related Expenses

- Healthcare-related Expenses
- General and Administrative Expenses

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Healthcare-Related Expenses

- Must be COVID-related
 - If you purchased PPE in 2019, you can only record the incremental increase in expense in 2020 due to COVID.
- Cannot be reimbursed by another source:
 - PPP funds for personnel costs, utilities, rent
 - Reimbursement for COVID tests (billed to payors)

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Healthcare-Related Expenses

- Supplies, PPE, cleaning supplies
 - Incremental increase from 2019
- Workforce training and education
 - Donning and doffing PPE
 - Patient flow; new policies related to COVID
 - This presentation!
- Technology
 - Increased bandwidth, telehealth infrastructure, teleworking expenses
- Office renovations and construction
- Signage, plexiglass, counter guards

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Healthcare-Related Expenses

- Equipment (> 12 months)
 - Ventilators, HVAC updates, etc.
 - Can only report depreciation amount
- Equipment (< 12 months)
- Staffing emergency centers
- COVID-19 testing kits
 - Cannot include if provider billed for the test
- Vaccine distribution costs
 - Refrigerators, increased personnel, training, transportation
- Professional fees related to COVID compliance

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Healthcare-Related Expenses

- Increased workforce or surge capacity
 - Maintain workforce capacity (in excess of census)
 - Must exclude PPP
- Increased personnel costs
 - Hiring and retention bonuses, childcare reimbursement, transportation reimbursement, etc.
- Reporting test results to governmental agencies
- Building, constructing, leasing additional space or temporary space
- Outsourced services
 - Laundry, cleaning/disinfection, facilities management

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Healthcare-Related Expenses

- Taxes paid on HHS Funds
 - Consideration: These are includible in gross income
 - New FAQ allows inclusion of tax obligation as an expense
- Time spent by staff and director-level personnel on COVID-related items
 - Salaries cannot be reimbursed by another source
 - Costs must be tangible (and not lost opportunity costs)
 - Must have supporting documentation

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General and Administrative Expenses

Definition:


- Expenses incurred in treating confirmed or suspected cases of COVID-19
- Preparing for possible or actual COVID-19 cases
- Cannot have been reimbursed by any other sources

Providers have some flexibility in calculating the incremental increase .

- *MUST follow current accounting methodologies.*
- *MUST maintain appropriate records and documentation.*
- *FAQs provide 2 options.*

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General and Administrative Expenses


OPTION #1:

- Incremental increase in providing service (incremental overhead)
 - Pre-pandemic average expense/cost to provide office visit
 - Post-pandemic average expense/cost to provide office visit

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General and Administrative Expenses


OPTION #2:

- Incremental G&A expenses attributable to COVID
- Must exclude other sources of assistance or reimbursement
- *Providers may include these in healthcare-related expenses. Follow your normal accounting procedures.*

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General and Administrative Expenses

- Increased personnel
 - Security personnel
 - Patient flow/temperature check
 - Emergency management director
- Workforce surge capacity
- Hazard pay
- Mortgage and rent
 - Temporary facilities
- Insurance
 - Additional policies
- Equipment/software lease payments
- Utilities and expenses at temporary facilities

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Lost Revenue Calculation


Previous definition (from November 2, 2020 guidance)

- Lost revenues *attributable to COVID-19*
- Year over year net change from 2019-2020 in patient revenues
- Adjusted for “other assistance” received in 2020

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Federal Appropriations Act


- Signed into law December 27, 2020
- Required changes to calculation of lost revenue – providers are able to use a “reasonable accounting methodology”

HHS issued additional guidance on January 15, 2021

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Lost Revenue Calculation

1. The difference between 2019 and 2020 actual patient care revenues.
2. The difference between 2020 budgeted patient care revenues and 2020 actual patient care revenues:
 - a. Budget must be established prior to March 27, 2020.
 - b. Budget must be approved by administrative officer prior to March 27, 2020 (with supporting documentation/attestation).
3. Any reasonable method of estimating lost revenue:
 - a. Provider must submit a description of the methodology and why it is reasonable.
 - b. Provider must establish how lost revenue was calculated using the methodology.
 - c. Provider must establish how the loss was, in fact, related to COVID.
 - d. HHS has the right to audit the methodology.

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Income From Patient Revenues

2019 Revenue Calculation by Payer Mix
Medicare Part A+B
Medicare Part C
Medicaid (including CHIP and MCOs)
Commercial Insurance
Self-Pay (no insurance)
Other (copays, deductibles, coinsurance)

- Includes Medicare Accelerated Payments – these are advanced payments for services

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Income From Patient Revenues

- Must report quarterly
- No adjustments for materiality *unless revenues are unrelated to DOS in 2019 or 2020*

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Other Assistance

2020 Other Assistance Received
Coronavirus Relief from Treasury, IRS, SBA, CARES/PPP
FEMA CARES Act
CARES Act Testing
Local, State, Tribal Government Assistance
Business Insurance
Fundraising revenues, grants and donations to be used for patient care
Interest earned*
Other Assistance

- Must include interest in “other assistance”
- *Interest must be included in reportable use of HHS Funds*

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Non-Financial Data

- Personnel Data
- Patient Metric Data
 - In person visits
 - Telehealth visits

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Questions?

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