HHS Issues CARES Act Provider Relief Fund Reporting Requirements

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On September 19, 2020, the federal Department of Health and Human Services (HHS) issued a notice (the ?Notice?) detailing the specific reporting requirements applicable to all health care providers who received CARES Act Provider Relief Fund (PRF) payments exceeding $10,000 in the aggregate. The Notice serves as the latest formulation of what constitutes a permissible application of PRF payments to health care-related expenses and lost revenues attributable to coronavirus.

As described in our firm?s **April 17, 2020 alert**, by accepting PRF funds, recipients agreed to Terms and Conditions (T&Cs) including reporting requirements intended to ensure that PRF funds were expended only for permissible purposes. The Notice?replete with definitions and technical requirements?specifies for the first time what information Reporting Entities must submit to meet the applicable reporting requirements. In defining the reporting requirements, the Notice sheds new light on what constitutes a permissible use of PRF dollars.

Generally, each recipient of a General or Targeted Distribution is a ?Reporting Entity?[1] required to report its PRF expenditures through December 31, 2020 within 45 days of calendar year-end 2020:

General Distributions:

- Initial Medicare Distribution
- Additional Medicare Distribution
- Medicaid, Dental & CHIP Distribution

Various data elements in the PRF Reporting System (including TIN, NPI, and Federal Tax Classification data) will allow the Health Resources and Services Administration (HRSA) and HHS to assess whether recipients properly used PRF payments, consistent with the T&Cs. Acquired or divested recipients must self-report ownership changes to HRSA; special provisions will apply to Single Audit Status Reporting Entities.

In general, Reporting Entities will report on their PRF expenditures using a two-step process in which PRF payments are first applied to cover health care-related coronavirus expenses, then allocated to lost revenues attributable to coronavirus.

Step One

In Step One, Reporting Entities must identify their health care-related expenses ?attributable to coronavirus,? including those incurred in treating confirmed or suspected coronavirus cases, preparing for possible or actual coronavirus cases, maintaining health care delivery capacity, etc.

These expenses are to be reported in two categories: (1) ?General and Administrative? (G&A) expenses; and (2) other ?health care-related? expenses. The Notice describes seven G&A expense types and five health care-related expense groupings. Providers who received $500,000 or more in PRF payments must report even more detailed information within these two categories using designated subcategories.

Importantly, Step One expenses include only those not reimbursed or reimbursable by another source, such as funds from the Treasury, Small Business Administration (SBA), CARES Act/Paycheck Protection Program (PPP), FEMA CARES Act, CARES Act Testing, Local, State, and Tribal Government Assistance, Business Insurance, or other federal and/or coronavirus-related assistance.

Step Two

In Step Two, Reporting Entities must apply any PRF payment amounts not fully expended on the above-described expenses to lost revenues. The Notice requires lost revenue to be represented as a negative change in year-over-year net patient care operating income (*i.e.*, patient care revenue less patient care-related expenses), net of the health care-related expenses attributable to coronavirus calculated under Step One.

Essentially, the Notice mandates use of this defined ?year-over-year? comparison approach and abandons the notion that providers could develop their own methodologies to represent their total lost revenues.

Once revenue information is provided, cost/expense impacts will be calculated using a calendar year comparison of 2019 to 2020 healthcare expenses to determine net operating income. Revenues and expenses include all lost patient care revenues and patient care cost/expense impacts.

The Notice effectively imposes a ceiling on the PRF dollars that can be applied to lost revenue: PRF payments can only be used for lost revenue up to the provider?s 2019 net gain from health care-related sources. Recipients reporting negative net operating income from patient care in 2019 may apply PRF amounts to lost revenues up to a net zero gain/loss in 2020.

Providers not fully expending PRF funds by calendar year-end 2020 will have an additional six months to apply remaining amounts toward expenses attributable to coronavirus (not reimbursed by other sources), or to apply those sums toward lost revenues in an amount not to exceed their 2019 net gains. For example, the reporting period from January?June 2021 will be compared to the same period in 2019.

Recipients with unused funds after December 31, 2020 must submit a second and final report no later than July 31, 2021 to identify patient care revenue earned between January 1 and June 30, 2021. Again, lost revenues reported for 2021 may not exceed the provider?s 2019 net gain.

The PRF Reporting System will open on January 15, 2021. HRSA, the federal agency that administers the PRF, plans to provide recipients with Question and Answer (Q&A) Sessions via Webinar prior to the submission deadline.

It is important to note that PRF recipients ?may be subject to auditing to ensure the accuracy of the data submitted to HHS for payment,? and ?[a]ny Recipients identified as having provided inaccurate information to HHS will be subject to payment recoupment and other legal action.? HHS has stated that ?[d]eliberate omission, misrepresentation, or falsification of any information contained in payment applications or future reports may be punishable by criminal, civil, or administrative penalties, including but not limited to revocation of Medicare billing privileges, exclusion from federal health care programs, and/or the imposition of fines, civil damages, and/or imprisonment.? *See* **here**.

For more details, please refer to the text of the Notice, the Terms and Conditions associated with each payment distribution, and the FAQs.

[1] If a PRF recipient has subsidiary entities that received General Distribution payments under a different Tax Identification Number (TIN), the recipient may submit a single report covering payments received by itself and its subsidiaries. However, if the provider entity?s subsidiary received a Targeted Distribution payment under a different TIN, the subsidiary must separately report use of funds for

that payment.

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