
Free Money with Strings Attached: CARES Act Provider Relief Fund

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October 1, 2020

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\$175 Billion CARES Act Provider Relief Fund HHS Allocation To Date

1. General Distribution, Phase I - \$50 billion
 - a. Round I - \$30 billion
 - b. Round II - \$20 billion
2. General Distribution, Phase II (Medicaid, CHIP, & Dental Providers) - \$15 billion
3. Targeted Distributions
 - a. COVID-19 High Impact Hospitals - \$22 billion
 - b. Rural Providers - \$11.3 billion
 - c. Skilled Nursing Facilities - \$4.9 billion
 - d. Safety Net Hospitals - \$14.4 billion
 - e. Nursing Homes - \$5 billion
 - f. Tribal Hospitals, Clinics, & Health Centers - \$500 million
4. COVID Testing and Treatment for Uninsured (\$??)

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The Price You Pay - Attestation

- Within **90 days** of receiving *each* payment, recipient must (1) sign attestation confirming receipt of funds and agreeing to Terms and Conditions or (2) reject funds and remit full payment to HHS as instructed
 - Accomplished via online Payment Attestation Portal
 - Failure to complete within 90 days = deemed acceptance

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Terms & Conditions – Use of Funds

- Certify that recipient provides “diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.”
 - HHS: “Care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19.”
- 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.**”
- 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.”

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September 19 Post-Payment Notice of Reporting Requirements

- Applies to any recipient that received \$10,000 in aggregate
 - For General Distributions, parent may submit single report for multiple subsidiaries
 - For Targeted Distributions, each TIN must report separately
 - Nursing Home Infection Control and Rural Health Clinic Testing distribution to have separate reporting requirements
- Timing
 - By 02/15/21 – funds expended through 12/31/20
 - By 07/31/21 – funds expended 01/01/21 through 06/30/21
- On-line reporting portal to be available in early 2021
 1. Demographic Information
 2. Expenses Attributable to Coronavirus Not Reimbursed by Other Sources
 3. Lost Revenues Attributable to Coronavirus
 4. Additional Non-Financial Data

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Expenses Attributable to Coronavirus Not Reimbursed by Other Sources

- “Expenses attributable to coronavirus may be incurred both in treating confirmed or suspected cases of coronavirus, preparing for possible or actual coronavirus cases, **maintaining healthcare delivery capacity, etc.”**
- Two types of causation
 - Cause-in-fact (but-for)
 - Proximate cause (sufficient relationship)

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Reporting Requirements

- If received **less than \$500,000** in the aggregate, report expenses net of other reimbursed sources in two aggregated categories:
 - G&A expenses
 - Other healthcare related expenses
- “**Net of other reimbursed sources**” includes “payments received from insurance and/or patients, and amounts received from federal, state or local governments, etc.”
 - Payroll Protection Program, FEMA, CARES Act Testing
 - Medicare Advanced Payments?
 - Cost-based reimbursement?

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Reporting Requirements

- If received *\$500,000 or more*, report the following net of other reimbursed sources
 - **General and Administrative Expenses** Attributable to Coronavirus
 - Mortgage/Rent
 - Insurance
 - Personnel
 - Fringe Benefits
 - Lease Payments.
 - Utilities/Operations
 - Other G&A
 - **Healthcare Related Expenses** Attributable to Coronavirus
 - Supplies (*e.g.*, PPE, hand sanitizer, supplies for patient screening)
 - Equipment (*e.g.*, ventilators, updates to HVAC systems)
 - IT/interoperability systems (*e.g.*, telehealth infrastructure, increased bandwidth)
 - Facilities (*e.g.*, modifications to facilities to accommodate patient treatment practices revised due to coronavirus)
 - Other Healthcare Related Expenses - any other actual expenses, not previously captured above, that were paid to prevent, prepare for, or respond to the coronavirus

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Lost Revenue Attributable to Coronavirus

- June 19 FAQ
 - “[M]ay include revenue losses associated with fewer outpatient visits, canceled elective procedures or services, or increased uncompensated care.”
 - Use any reasonable method of estimating the revenue during March and April 2020 compared to the same period had COVID-19 not appeared.
 - Compare budget to actual revenue
 - Compare prior year to actual revenue
- September 19 Notice of Reporting Requirements
 - ***Negative change in year-over-year net operating income from patient care related sources***
 - For 2021, use comparable period in 2019
 - If negative net operating income in 2019, apply PRF amounts to lost revenues up to a net zero gain/loss in 2020

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Reporting Requirements Information Used To Calculate Lost Revenues

- 1. Total revenue/net charges from patient care related sources (by quarter for 2019 and 2020)**
 - Net of uncollectible patient service revenue recognized as bad debt
 - Exclude insurance, retail, real estate values, grant funding, tuition
- 2. Revenue from patient care payer mix (2019 and 2020)**
 - Traditional Medicare, Medicare Advantage, Medicaid, commercial, self-pay, other
- 3. Other assistance received (2020 only)**
 - PPP, FEMA, CARES Act testing, local & state government, business insurance
- 4. Total expenses (by quarter for 2019 and 2020)**
 - G&A
 - Healthcare-related expenses

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PRF Funds Expended

- **Assumptions**
 - Receive \$5M in PRF funds
 - Incurred \$3M in expenses related to coronavirus
 - \$1.5 million operating expense (included on income statement)
 - \$1.5 million in capital expense (not included on income statement)
 - Experienced \$2 million in lost revenue (i.e., year-over-year reduction in net operating income from patient care related sources)
- **Calculation**
 - Retain \$3M in PRF funds for expenses related to coronavirus
 - Retain lost revenue minus expenses related to coronavirus
 - \$2 million minus \$1.5 million (operating expense only) = \$500,000
 - \$2 million minus \$3 million (total expenses) = ?
 - Retain full \$3 million for expenses; repay \$2 million?
 - Reduce expenses by \$1 million; repay \$3 million?

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As a Practical Matter....

- HHS' formulation incentivizes providers to maximize expenses/penalizes those who aggressively managed expenses
- Budgeted increases in 2020 operating expenses reduce lost revenue without corresponding increase in PRF funds
- New definition of lost revenue creates administrative and accounting nightmares
 - Providers with June 30 year-end
 - Physician practices operating on cash basis
 - Publicly-traded corporations
- Exclusion of non-patient care revenue results in inaccurate picture of provider's financial condition
- Recipients of targeted distributions (especially rural providers and safety net hospitals) likely required to return significant portion of PRF payments received
- Parental reporting of general distributions vs. subsidiary reporting of targeted distributions

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Answers Forthcoming?

- Will offer Question & Answer Sessions via webinar in advance of the reporting deadline
- As needed, will issue Frequently Asked Questions to aid in the reporting process

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Non-Financial Information

- **For each calendar quarter -**
 - **Personnel Metrics**
 - Total personnel by labor category (FT, PT, contract, other), total re-hires, total new hires, total personnel separations by labor category
 - **Patient Metrics**
 - Total # patient visits (in-person/telehealth), total # patients admitted, total # resident patients
 - **Facility Metrics**
 - Total available staffed beds for medical/surgical, critical care, other
 - **Changes in Ownership**
 - If reporting entity acquires or divests of related subsidiary, include specified information regarding transaction

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Terms & Conditions – Use of Funds

- Recipient will not use funds for any purpose for which CARES Act funds cannot be used
 - To pay individual salary in excess of \$197,300 (Executive Level II)
 - Direct salary (exclusive of fringe benefits, indirect costs)
 - May pay up to that amount, but not more
 - If allocation 0.5 FTE, limited to \$98,650
 - To fund lobbying, abortion, embryonic research, needle exchange, etc.
 - To do business with any entity that requires employees to sign confidentiality agreement prohibiting reporting of fraud, waste, or abuse to federal officials
 - To do business with a corporation that has unpaid federal tax liability or has been convicted of a felony federal criminal violation in preceding 24 months

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Terms & Conditions – Balance Billing

- “For all care for a *presumptive or actual case* of COVID-19, Recipient certifies that it will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have otherwise been required to pay if the care had been provided by an in network [provider].”
 - 5/6/2020 FAQs: “A presumptive case of COVID-19 is a case where a patient’s medical record documentation supports a diagnosis of COVID-19, even if the patient does not have a positive in vitro diagnostic test result in his or her medical record.”
 - Treat balance as COVID-19 expense or lost revenue?
- T&C “do not impose any limitation on the ability of a provider to submit a claim for payment to the patient’s insurance company.”
 - Most payers have committed to pay out-of-network providers at in-network rates
 - If not, can charge patient in-network co-payment amount
- T&Cs do not address diagnosis and treatment for uninsured.

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Audit Requirements

- Non-federal entity (state, local government, not-for-profit) that expends \geq \$750,000 in federal funds - *including PRF payments* - in a fiscal year must submit audit in compliance with 45 CFR Part 75, Subpart F (“Single Audit”)
 - Submit through Federal Audit Clearinghouse
 - Refer to OMB website regarding deadlines
- For-profit entity must submit financial audit conducted in accordance with Generally Accepted Government Auditing Standards (45 CFR 75.216) or Single Audit
 - Submit through HHS Audit Resolution Division
 - Contact HRSA Division of Financial Integrity regarding deadlines

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False Claims Act Considerations

- **Present or “causes to be presented”** a false or fraudulent claim, record, or statement to get payment from federal government
- **Use a false record or statement to:**
 - get a false or fraudulent claim paid or approved by federal government
 - avoid repaying federal government
- **Penalties:** \$12,000-\$24,000 per claim plus treble damages
- **“Whistleblower” cases:**
 - Case filed by private individual (“relator”) on behalf of federal government
 - Huge financial incentives – Up to 25% of the amount recovered + attorney fees
 - ***You won’t know until it’s too late!***
 - Filed under seal
 - Could be years before provider notified
 - Government can intervene but doesn’t have to

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Federal False Claims Act Considerations

- **Provider Relief Fund risk areas -**
 - Knowing or reckless failure to comply with Program requirements
 - Knowingly or recklessly misrepresenting compliance with Program requirements
 - Knowingly or recklessly failing to keep adequate records reflecting use of Program Funds
 - Intermingling of Program funds with general funds
 - Knowingly or recklessly using Program funds for prohibited expenses.

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Key Takeaways for Compliance Professionals

- Guidance is updating often - sometimes daily
- Decisions that make sense in the moment may not be as clear upon retrospective review
- Documentation will be key regardless of program or decision
- Decisions and application are being made throughout the organization; challenge for Compliance is to identify areas of greatest risk and help ensure a plan is in place to mitigate that risk to the greatest extent possible

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PYA Resources

COVID-19 HUB

Because we are living through an unprecedented healthcare phenomenon, PYA is committed to sharing timely and relevant information that we hope will benefit our clients and colleagues. The COVID-19 HUB will centralize PYA's thought leadership, guidance, and resources related to the COVID-19 pandemic.

- Prior webinar recordings, slides, transcripts, follow-up Q&As
- Thought leadership
- Links to important resources

www.pyapc.com/covid-19-hub/

<https://www.pyapc.com/insights/compliance-officer-role-in-covid-19-checklist/>

<https://www.pyapc.com/insights/covid-19-physician-compensation-form-for-transitioned-physicians/>

<https://www.pyapc.com/insights/stark-law-blanket-waiver-checklist-covid-19/>

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