

HHS Extends Deadline to Attest to Provider Relief Fund Terms and Conditions by 45 Days

Key Takeaways:

- HHS has extended the 45-day deadline to accept the Terms and Conditions or reject payment from the Provider Relief Fund to 90 days from the date a payment was received.
- If a provider fails to accept the Terms and Conditions within 90 days, the provider is deemed to have accepted the Terms and Conditions.
- The 45-day extension does not impact the June 3, 2020, deadline for providers to submit revenue information through the General Distribution Payment Portal in order to apply for potential additional payments.
- It is unclear at this time whether providers who have received payment by check from the Provider Relief Fund will also receive a 45-day deadline extension.

On May 22, 2020, HHS announced in a press release that providers who have received payment from the Provider Relief Fund now have 90 days from the date they received payment to accept HHS' [Terms and Conditions](#) (Terms and Conditions) or to return the funds. This is the third modification to the Terms and Conditions attestation deadline, coming after the original 30-day deadline was extended to 45 days on May 7, 2020, and after HHS' quieter May 20, 2020, clarification in its [Frequently Asked Questions \(FAQs\)](#). HHS' latest extension of the deadline comes in response to frontline providers' request for additional time to review and agree to the Terms and Conditions.

Although it is not explicitly stated that the new 90-day deadline applies to all payments received under the Provider Relief Fund, given that HHS references both the first and second tranches of the \$50 billion General Distribution in its press release – as well as the targeted distributions for hospitals in high-impact areas, rural providers, tribal health care providers, and skilled nursing facilities – it seems fairly clear that a provider receiving any distribution made pursuant to the Provider Relief Fund now has 90 days from the date payment was received to attest to the Terms and Conditions applicable to that payment.

The 45-day extension also applies to HHS' guidance regarding automatic acceptance of the Terms and Conditions. HHS is now instructing that if a provider receives payment and fails to accept the Terms and Conditions within 90 days after receipt of payment, the provider is deemed to have *automatically* accepted the Terms and Conditions.

It should be noted, however, that this deadline extension seems limited to attesting to the Terms and Conditions tied to receipt of a payment, without effecting the June 3, 2020, deadline previously addressed in our recent client update ([HHS "Reminds" Providers of June 3 Attestation Deadline](#)) with respect to submitting tax return and financial statements into the [CARES Provider Relief Fund Payment Portal](#) in order to apply for additional payments from the General Distribution. In other words, providers who intend to apply for additional funding from the General Distribution (i.e., the second \$20 billion tranche) will still need to upload their revenue information by June 3, 2020, in order to be eligible for potential additional payments from the General Distribution.

As somewhat of a side note, keep in mind that HHS' press release is silent as to the applicability of the 45-day extension to the 60-day deadline for payments received by check. As noted above, in unannounced guidance on May 20, 2020, HHS updated the FAQs to instruct that a provider who receives payment via check has 60 days from the date the check was issued to accept the Terms and Conditions or reject payment. It seems plausible that a provider

who received a payment by check may now have as much as 105 days from the date the check was issued to accept the Terms and Conditions or return the funds, although as of the date of this update (May 22), HHS has not clarified this apparent ambiguity. We will continue to monitor available guidance from HHS regarding this and other the Provider Relief Fund issues.

Additional Resources:

- [HHS “Reminds” Providers of June 3 Attestation Deadline](#)
- [HHS Issues Additional Guidance under the Provider Relief Fund FAQs – Deadline for Attestation; Rejecting Payment; Recent Mergers, Sales and Change of Ownership; Publication of Providers; and Rural Distributions](#)

Our Chambliss team continues to monitor health care developments and other legal impacts of the COVID-19 pandemic. Please contact [Mark Cunningham](#), [Courtney Keehan](#), [Jed Roebuck](#), or your relationship attorney if you have questions or need additional information.

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