

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

Late on May 20, 2020, the U.S. Department of Health and Human Services (HHS) issued another round of updates to its [Frequently Asked Questions \(FAQs\)](#) regarding distributions from the [Provider Relief Fund](#). The May 20 update is the second round of updates to the FAQs issued this week and one of multiple changes HHS has issued over the last two weeks without notice. HHS' most recent guidance addresses deadlines for attestation, rejecting distributions, publication of providers and payment, recent changes in practices, and rural distributions.

A Summary of the May 20 Guidance Follows:

- **Attestation to Terms and Conditions** – If a provider chooses to keep a distribution from the Provider Relief Fund, the provider is required to attest that it meets certain [Terms and Conditions](#) of payment. Previously, HHS advised that a provider is required to attest to such Terms and Conditions within 45 days after receipt of payment, but HHS has now clarified that attestation should occur within 45 days after receipt of payment *if* paid by ACH or within 60 days after receipt of payment *if* paid by check. Multiple provisions in the FAQs were modified on May 20 to reflect this change. Collectively, we refer to these 45 and 60 day attestation deadlines as the “attestation deadline.”
- **Automatic Acceptance of Terms and Conditions** – Previously, HHS advised that if a provider fails to return payment within 45 days after receipt of a distribution from the Provider Relief Fund, the provider will be viewed as having automatically accepted the Terms and Conditions of payment. HHS' May 20 guidance clarifies that a provider will be viewed as automatically accepting the Terms and Conditions if payment is not returned within the applicable attestation deadline.
- **Rejecting Payment** – Previously, HHS advised that payment may be rejected by a provider within 45 days after receiving payment through the [CARES Act Provider Relief Fund Payment Attestation Portal](#). HHS' May 20 guidance clarifies that rejection of payment through the attestation portal must occur within the applicable deadline.
- **Public List of Providers and Payment** – Each provider who accepts distributions under the Provider Relief Fund is added to a [public list of providers and payments](#) after the provider attests to the Terms and Conditions of payment. HHS previously advised that providers who retain funds past 45 days of receipt, but do not attest to the Terms and Conditions, will be included in the public release of providers and payments. On May 20, HHS modified this guidance to provide that providers who retain funds past the applicable attestation deadline, but do not attest to the Terms and Conditions, will be included in the public release of providers and payment. HHS also clarified on May 20 that providers cannot request or choose to have their payment data omitted from the Provider Relief Fund data set.
- **Recent Merger of Practices** – In the event of a merger or other consolidation of two or more entities (each with a billing TIN) between January 1, 2018, and January 31, 2020, the surviving entity may apply for additional funding by accepting its General Distribution payment and submitting its adjusted gross receipts *if* its adjusted gross receipts exceed the gross receipts shown in its tax return by more than 20%. If the non-surviving entity received a General Distribution payment, but was not providing diagnoses, testing, or care to COVID-19 patients on or after January 31, 2020, the non-surviving entity must return the payment.
- **Pending Change in Ownership** – If an organization is currently undergoing a change in ownership to purchase a practice (but the transaction is not complete), the organization should only report its current gross receipts on its

application. Revenue submissions must be based on the organization that exists at the time of application—any pending changes in ownership should not be included in revenue submissions.

- **Sale of Part of Practice** – If a provider sold part of its practice in 2019 or January 2020, it *may* keep its entire Provider Relief Fund distribution, even if the distribution accounts for the sold practice, so long as (a) the sold practice is included in the provider's most recent tax return gross receipts or sales (or program service revenue) figure, and (b) the provider can attest to meeting the Terms and Conditions. Note that the Terms and Conditions restrict how funds may be used (e.g., for increased health care-related expenses, lost revenue attributable to the coronavirus, and for expenses or losses not reimbursed from other sources), and recipients will be required to substantiate their use of the funds for such purposes. Additionally, a provider may not return a portion of a Provider Relief Fund payment. **Accordingly, if a provider anticipates that its COVID-19 related lost revenues and increased expenses will be materially less than the value of the distribution received, it should reject the entire General Distribution payment** and submit appropriate revenue documents through the General Distribution portal to facilitate HHS to determine the correct payment.
- **Accounting for Subsidiaries with Billing TINs** – A parent entity submitting an application for a General Distribution should account for all of its subsidiaries with billing tax identification numbers (TINs) in its application. If a parent has more subsidiaries with billing TINs than space in the application allows, the parent should attach and submit a statement as the first page of its uploaded tax return indicating any additional subsidiaries with billing TINs and the Provider Relief Fund payment each listed billing TIN received.
- **Rural Distributions** – Facilities eligible to receive Rural Distributions were identified in the December 2019 [CMS Provider of Services file](#). Facilities not included in the file were not included in the rural allocation.

Key Takeaways:

- **If you receive a distribution from the Provider Relief Fund by ACH**, you are required to attest to the Terms and Conditions of payment or reject the payment within the applicable attestation deadline (45 days from receipt for payments received by ACH and 60 days from receipt for payments received by check). If you fail to affirmatively attest to the Terms and Conditions or reject payment within the applicable attestation deadline, you automatically accept the payment and attest to the Terms and Conditions.
- **If you accept a distribution from the Provider Relief Fund**, whether by attesting to the Terms and Conditions of payment or automatically, your name and the amount of funding received will be added to a public provider and payment list.
- **If a new billing entity is the result of a merger or other consolidation that occurred between January 1, 2018, and January 31, 2020**, the surviving entity should accept its General Distribution payment and submit its adjusted gross receipts in the Provider Relief Fund Payment Portal *if* its adjusted gross receipts exceed the gross receipts show in its tax return by more than 20% in order to be considered for additional Provider Relief Fund payments.
 - In guidance issued on May 19, HHS clarified that adjusted gross receipts after an acquisition should be calculated as follows: gross receipts as shown on the organization's most recent tax return plus gross receipts of the practice acquired minus gross receipts of providers sold. Although likely, it is currently unclear whether this same calculation should be used and tailored to a merger structure.
- **If an organization is currently undergoing a change in ownership to purchase a practice**, but the transaction is not yet complete, the organization should only report its current gross receipts on its application (i.e., the gross receipts of the practice the organization is planning to acquire should *not* be included in the organization's revenue information).
- **If a provider recently sold a portion of their practice in 2019 or January 2020 and received a General Distribution based on revenue information that accounts for the sold practice**, the provider has the option to keep the entire distribution. However, the provider should consider whether it needs the entire distribution. There are restrictions on how distributions can be used, and a provider cannot return only a portion of a distribution. If a provider determines it received more funding than needed for its anticipated needs, it should return the *entire* distribution and resubmit revenue information to HHS to determine the correct amount.
- **If a parent entity does not have enough room to list all of its subsidiaries with billing TINs in its application**, it should attach a cover page to its uploaded tax return listing the remaining subsidiaries and the total distribution each received under the Provider Relief Fund.
- **If you received a Rural Distribution**, you were identified as eligible in the December 2019 CMS Provider of Services file.

At this time, it is unclear how HHS would view a provider's retention of funding beyond the applicable attestation deadline followed thereafter by an attempted return or rejection of that funding. In prior FAQ updates, HHS has instructed that failure to comply with any term or condition of the Provider Relief Fund program can subject the provider to recoupment of some or all of that provider's payment, and HHS cautioned that it will have significant anti-fraud monitoring of the funds distributed to ensure that federal dollars are used appropriately.

Providers should therefore be discerning in retaining, rejecting, and/or applying for Provider Relief Fund payments and understand that HHS and the Office of the Inspector General have reserved the right to audit recipients in the future.

Additional Resources:

- [HHS Updates Provider Relief Fund FAQs – Distribution Errors, Recent Acquisitions of Practices/Hospitals, and Updating High Impact Data](#)
- [HHS Provider Relief Fund: General Distribution FAQ Updates; Addition of Targeted Allocation FAQs](#)
- [HHS Updates Provider Relief Fund General Distribution FAQs – Extends Attestation Deadline to 45 Days](#)
- [Available Now: HHS Frequently Asked Questions Regarding General Distribution Portal](#)
- [Open Now: HHS General Distribution Portal](#)
- [Delivery of Next Wave of HHS Provider Relief Authorized](#)
- [Health Care Providers: What Can I Do With the Money I Just Received from HHS?](#)
- [CARES Act Provider Relief Fund](#)

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