

HHS Issues Additional Terms and Conditions and Guidance Under the Provider Relief Fund FAQs – General Distribution Eligibility; Sold, Transferred, and Terminated Providers; and Parent-Subsidiary Relationships

Late on May 21, 2020, the U.S. Department of Health and Human Services (HHS) issued further updates to its [Frequently Asked Questions \(FAQs\)](#) regarding distributions from the [Provider Relief Fund](#), as well as [Rural Health Clinic \(RHC\) Terms and Conditions](#). HHS also issued [Skilled Nursing Facility Relief Fund Payment Terms and Conditions](#) earlier today.

The RHC and Skilled Nursing Facility Fund Payment Terms and Conditions are the only additional terms and conditions issued since May 5. They should be reviewed by all RHC and Skilled Nursing Facilities planning to accept funds under the Provider Relief Fund. The May 21 FAQ update is the third round of FAQ updates issued this week and one of multiple changes HHS has issued over the last two weeks without notice. The May 21 FAQs address eligibility for General Distribution payments; sold, transferred, or terminated providers; and various matters regarding parent-subsubsidiary relationships.

A Summary of the May 21 FAQ Guidance Follows:

- **Acquiring a Practice Eligible for General Distribution** – Consistent with previously issued FAQs and Provider Relief Fund eligibility requirements, HHS reiterated that to be eligible for a General Distribution payment, a provider must have billed Medicare fee-for-service in 2019. The purchase of a practice in 2019 or January 2020 that would have otherwise been eligible to receive a General Distribution payment has no bearing on whether the acquiring provider is eligible.
- **Sold, Transferred, or Terminated Providers** – If an organization sold, terminated, transferred, or otherwise disposed of a provider that was included in its most recent tax return gross receipts or sales (or program services revenue) figure and it can attest to meeting the [Terms and Conditions](#), it may accept a General Distribution payment that accounts for such provider. 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. 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 [Provider Relief Fund Payment Portal](#) to facilitate HHS to determine the correct payment.
- **Disregarded or Consolidated Entities** – If a parent entity that does not bill Medicare has one or more subsidiaries that bill Medicare but do not file tax returns (i.e., disregarded or consolidated entities), the parent entity must complete the Provider Payment Portal application. The parent should (1) list the billing TINs of the respective eligible subsidiaries (but should not provide its filing TIN within the application); (2) enter the sum of all “gross sales or receipts” or “program service revenue” of all subsidiary entities with billing TINs in the applicable field in the

application form; and (3) submit a statement on the first page of its uploaded tax return file stating (i) the parent entity's filing TIN and that it does not bill Medicare and (ii) a schedule of the billing subsidiaries, their billing TINs, and gross sales or receipts.

- **Transfer of Payment from Parent to Subsidiaries** – A parent organization can accept Provider Relief Fund payments and allocate such funds at its discretion to its subsidiaries. In such case, the parent organization will be required to substantiate that these funds were used for increased health care-related expenses or lost revenue attributable to COVID-19, and that those expenses or losses were not reimbursed from other sources and other sources were not obligated to reimburse them.
- **Vertically-Integrated Organizations** – For vertically-integrated organizations that have both patient care revenues and revenues not directly related to patient care, when completing an application for funding, the organization should (1) list the billing TINs of all eligible subsidiaries (i.e., those that provided diagnoses, testing, or care for individuals with COVID-19 on or after January 31, 2020); (2) enter the sum of all “gross sales or receipts” or “program service revenue” of all eligible subsidiary entities; and (3) submit a statement on the first page of its uploaded tax return file stating (i) the parent entity's filing TIN and (ii) a schedule of the eligible subsidiaries, their billing TINs, and gross sales or receipts. Revenues from subsidiaries that are not directly providing diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 may not be included.

Key Takeaways:

- **To be eligible for a General Distribution payment**, a provider must have billed Medicare fee-for-service in 2019. This requirement stands regardless of a provider's other circumstances, including whether a provider purchased a practice that would have otherwise been eligible for a General Distribution payment.
- **If an organization sold, transferred, terminated, or otherwise disposed of a provider that was included in its most recent tax return gross receipts or sales (or program services revenue) figure**, the organization has the option to keep any distribution received that accounts for such provider. 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 you are a Medicare-billing disregarded or consolidated entity** (i.e., a subsidiary that does not file a tax return), your parent organization should complete the Provider Payment Portal application on your behalf.
- **If you are a vertically-integrated entity**, only revenues from subsidiaries that have directly provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 on or after January 31, 2020, may be included in your revenue submission.
- **If you are a parent entity**, you may accept Provider Relief Fund Payments on behalf of your subsidiaries. However, you will be required to substantiate that your subsidiaries used the funds in accordance with use restrictions. Consider establishing a process to document and collect information to meet such requirements.
- **To submit an application on behalf of one or more subsidiaries**, a parent entity should generally: (1) include the billing TINs of all eligible subsidiaries (i.e., those that provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 on or after January 31, 2020); (2) enter the sum of all “gross sales or receipts” or “program service revenue” of all eligible subsidiary entities; and (3) submit a statement on the first page of its uploaded tax return file stating (i) the parent entity's filing TIN; (ii) a schedule of the eligible subsidiaries, their billing TINs, and gross sales or receipts; and (3) for a parent entity of any one or more Medicare-billing disregarded or consolidated entities, a statement that it does not bill Medicare.

Additional Resources:

- [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](#)
- [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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