

# HHS Issues Three Additional Rounds of Updates to the Provider Relief Fund FAQs

This week, the U.S. Department of Health and Human Services (HHS) issued three additional rounds of updates to its [Frequently Asked Questions](#) (FAQs) regarding distributions from the [Provider Relief Fund](#). The updates were released on May 29, June 2, and June 3, and the updates published on May 29 include a few changes backdated to May 26, as well as other updates visible only by running a comparison against the prior iteration of the FAQ .pdf. These updates to the FAQs are just a few of multiple rounds of changes HHS has issued over the last four weeks without notice. HHS' most recent guidance provides clarity on a wide variety of issues, including attestation deadlines, authorized use of Provider Relief Fund payments, and additional distributions.

## Key Guidance Issued This Week:

- Long awaited details regarding appropriate use of payments were provided, which generally may be placed in one of two buckets: (1) health care-related expenses attributable to the coronavirus (i.e., supplies, equipment, training, reporting test results, and building temporary structures), and (2) costs that lost revenues attributable to the coronavirus would have covered (i.e., employee payroll, employee health insurance, mortgage/rent payments, and equipment leases).
- The Executive Level II salary limitations included in the [Terms and Conditions](#) apply only to the rate of pay charged to Provider Relief Fund payments and other HHS awards, and an organization receiving Provider Relief Fund payments may pay an individual's salary amount in excess of the salary cap with other non-federal funds.
- HHS reinforced that a provider securing COVID-19 funding separate from the Provider Relief Fund, such as the Small Business Administration's Paycheck Protection Program (PPP), is not banned from accepting a payment from the Provider Relief Fund.
- Previously published restrictions regarding additional funding were softened and now state that a provider, who has received at least 2% of its annual patient revenue for 2018 (or the most recent complete tax year) through payments made from the first \$30 billion tranche, *may* still receive additional payments from the second \$20 billion tranche.

## Other Noteworthy FAQs Issued This Week:

## May 29 FAQ Updates

- **Executive Level II Salary** – HHS previously explained in the Terms and Conditions that Provider Relief Fund payments cannot be used to pay the salary of an individual at a rate in excess of Executive Level II pursuant to the Consolidated Appropriations Act 2020, which effective January 5, 2020, is \$197,300. HHS has now clarified that for the purposes of the salary cap, the direct salary is exclusive of fringe benefits and indirect costs and that the limitation only applies to the rate of pay charged to Provider Relief Fund payments and other HHS awards. In other words, HHS is now affirmatively stating that organizations receiving Provider Relief Funds may pay an individual's salary in an amount in excess of the \$197,300 salary cap with other non-federal funds.
- **Accepting Multiple Forms of Stimulus** – A provider may accept payment from the Provider Relief Fund and other sources, such as a PPP loan, so long as the payment from the Provider Relief Fund is used in accordance with the Terms and Conditions, and the recipient does not use the payment to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
- **Recoupment of Funds** – HHS has not yet determined how recoupment or repayment of funds will work. However, HHS has clarified that each recipient will be required to (1) certify its eligibility to receive funds (i.e., that it provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 on or after January 31, 2020); (2) that the funds were used in accordance with allowable purposes (i.e., to prevent, prepare for, and respond to

COVID-19); and (3) submit all required reports as determined by the HHS Secretary. Noncompliance with the Terms and Conditions is grounds for direct recoupment of some or all of any payments made.

- **Additional General Distribution Payments** – Previously, HHS provided that if an initial General Distribution payment received by a provider between April 10 and April 17 was determined to be 2% of the provider's annual patient revenue, the provider *will* not receive additional General Distribution payments. On May 29, HHS modified this language to provide that if an initial General Distribution payment was at least 2% of a provider's annual patient revenue, the provider *may* not receive additional General Distribution payments. This modification indicates that there is potential for a provider who has received at least 2% of its annual patient revenue for 2018 (or the most recent complete tax year) through payments made from the first \$30 billion tranche to still receive additional payments from the second \$20 billion tranche. This potentially softens the prior restriction on potential additional funding.
- **Rejection of Payment** – Without notice, HHS removed language from two previous updates (published on May 20 and May 21) which provided that "if a provider anticipates that COVID related lost revenues or increased expenses will be materially less than the value of the Provider Relief Fund payment received, the provider should reject its entire General Distribution payment and submit appropriate revenue documents through the General Distribution portal to facilitate HHS in determining the correct payment." Despite removal of this language, it would seem that sufficient evidence remains in other FAQs to support a potential finding by HHS that retaining a payment that is greater than a provider's anticipated losses and expenses will be grounds for recoupment.

## June 2 FAQ Updates

- **Authorized Use of Funds** – Pursuant to the [Terms and Conditions](#), Provider Relief Fund payments should be used for one of two broad categories (1) health care-related expenses attributable to COVID-19, or (2) to cover costs that lost revenues attributable to the coronavirus would have covered and that are attributable to COVID-19.

**"Health care-related expenses attributable to coronavirus"** covers a range of items and services purchased to prevent, prepare for, and respond to coronavirus, including:

- Supplies used to provide health care services for possible or actual COVID-19 patients
- Equipment used to provide health care services for possible or actual COVID-19 patients
- Workforce training
- Developing and staffing emergency operation centers
- Reporting COVID-19 test results to federal, state, or local governments
- Building or constructing temporary structures to expand capacity for COVID-19 patient care or to provide health care services to non-COVID-19 patients in a separate area from where COVID-19 patients are being treated
- Acquiring additional resources, including facilities, equipment, supplies, health care practices, staffing, and technology to expand or preserve care delivery

Providers can use their payment for health-care related expenses incurred on any date (even a date before the payment was received), so long as the expenses are attributable to the coronavirus and were incurred to prevent, prepare for, and respond to coronavirus. HHS noted, however, that it expects that it would be highly unusual for providers to have incurred eligible expenses prior to January 1, 2020.

**"Lost revenues that are attributable to coronavirus"** means any revenue that a health care provider lost due to coronavirus (i.e., revenue losses associated with fewer outpatient visits, canceled elective procedures or services, or increased uncompensated care). Providers can use Provider Relief Fund payments to cover any cost that the lost revenue otherwise would have covered, so long as that cost prevents, prepares for, or responds to coronavirus. Thus, these costs do not need to be specific to providing care for possible or actual coronavirus patients, but the lost revenue that the Provider Relief Fund payment covers must have been lost due to coronavirus. For example, the funds may be used for:

- Employee or contractor payroll
  - Employee health insurance
  - Rent or mortgage payments
  - Equipment lease payments
  - Electronic health record licensing fees
- **Parent Organization Receipt of Funds** – If a parent organization with subsidiary billing TINs received payment, it may attest and keep the payment so long as the providers associated with the parent organization were providing

diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 on or after January 31, 2020, and can otherwise attest to the Terms and Conditions. If the parent organization desires to control and allocate the payment to its subsidiaries, it must attest to accepting its subsidiaries' payments and agree to the Terms and Conditions.

## June 3 FAQ Updates

- **Rejecting Funds After Acceptance** – After attesting and accepting a Provider Relief Fund payment, a provider can reject the funds and retract its attestation by calling (866) 569-3522 (for TTY dial 711). The provider's name will still be published on a [public list](#) after attesting to the receipt of payment and agreeing to the Terms and Conditions.
- **June 3 Deadline for General Distributions** – If a provider failed to submit its revenue information to the General Distribution Portal by June 3, 2020, it will not be considered for the \$20 billion General Distributor. However, it will be considered for future Provider Relief Fund Payments. Providers have 90 days from the receipt of their payment from the \$20 billion General Distribution to attest and agree to the Terms and Conditions.

*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.*

### Additional Resources:

- [HHS Extends Deadline to Attest to Provider Relief Fund Terms and Conditions by 45 Days](#)
- [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](#)
- [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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