

CORONAVIRUS INFORMATION & UPDATES

September 25, 2020

HHS Releases Provider Relief Fund Reporting Requirements

This week, HHS released detailed [guidance](#), as well as a [summary](#), on reporting required for Provider Relief Funding (PRF) recipients and delayed the opening of the reporting system to January 15, 2021. These requirements do not apply to the Nursing Home Infection Control, Rural Health Clinic Testing, or the HRSA Uninsured Program funding streams.

Below are key features of the new guidance, though HHS has said that additional guidance will be forthcoming through HHS webinars and FAQ guidance, as needed, prior to the reporting deadlines.

Key Deadlines

The new guidance, issued September 19, 2020, is intended to supplement HHS's July 20, 2020 reporting [guidance](#) (updated August 14, 2020) but has also created a few inconsistencies.

The reporting system, originally slated to launch October 1, 2020, will now become available on January 15, 2021. Recipients must submit their initial reports within 45 days of the end of the calendar year 2020 (February 15, 2021). In its July 20, 2020 guidance, HHS previously stated that, if a recipient expends its funds in full prior to December 31, 2020, the recipient could submit a single final report at any time during the period beginning October 1, 2020, and ending February 15, 2021. However, given that the reporting system will not open until January 15, 2021, the reporting time frame for those recipients who expended their PRF funds by the end of calendar year 2020 is now between January 15, 2021, and February 15, 2021.

The new reporting guidance also requires providers to expend all PRF funds within six months after the end of calendar year 2020 (June 30, 2021); HHS's previous guidance afforded recipients until July 31, 2021, to spend the funds. Recipients with funds unexpended after December 31, 2020 must now submit a second and final report no later than July 31, 2021.

Reporting Entities

Generally, the entity that received the PRF payment is the entity required to report.

In the case of integrated health care delivery systems operating under multiple tax identifications numbers (TINs), however, the guidance provides parent entities of these systems with different reporting options depending on whether their subsidiaries received General Distribution or Targeted Distribution funds.

- If the parent entity has subsidiary TINs that received General Distribution funds, the parent entity may report on, and direct the use of, the General Distribution payments without regard to which entity attested to the funds.
- If the parent entity has subsidiary TINs that received Targeted Distribution funds, it may not report on or transfer the Targeted Distribution Funds; only the entity receiving the Targeted Distribution payment may transfer or report on the use of those payments.

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Information Required for Reporting

The amount and type of information required for reporting varies with the amount of funding received. Additional reporting is required for recipients receiving more than \$500,000 from all PRF funding distributions in the aggregate.

PRF recipients also will be required to report other assistance received as of the end date of the reporting period that could potentially be duplicative of PRF grants, including:

- Paycheck Protection Program funds;
- FEMA funding;
- CARES Act COVID-19 testing-related funds;¹
- Local, state, and tribal government assistance; and
- Business insurance.

Recipients of Greater than \$10,000 but Less than \$500,000

Any such recipient is required to submit the following information:

- Reporting and recipient entity **demographic information**;
- **Health care-related expenses** “attributable to coronavirus” that another source has not reimbursed and is not obligated to reimburse, net of expenses reimbursed from other sources such as insurance or government payors, aggregated into two categories of (i) General and Administrative expenses and (ii) other health care-related expenses; and
- PRF payment amounts allocated to **lost revenues**, as discussed in more detail below.

Recipients of Greater than \$500,000

In addition to the information described above, recipients of more than \$500,000 in aggregated PRF payments are required to provide more detailed information related to the two expense categories to demonstrate that the expenses were incurred “over and above what has been reimbursed by other sources.”

Categories of Expenses

HHS has provided the following non-exhaustive list of examples of expenses that might be included in the relevant categories.

Category 1: General and Administrative Expenses

- *Mortgage/Rent*: Monthly payments related to mortgage or rent for a facility.

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- *Insurance:* Premiums paid for property, malpractice, business insurance, or other insurance relevant to operations.
- *Personnel:* Workforce-related actual expenses paid to prevent, prepare for, or respond to the coronavirus during the reporting period, such as workforce training, staffing, temporary employee or contractor payroll, overhead employees, or security personnel.
- *Fringe Benefits:* Extra benefits supplementing an employee's salary, which may include hazard pay, travel reimbursement, and employee health insurance.
- *Lease Payments:* New equipment or software leases.
- *Utilities/Operations:* Lighting, cooling/ventilation, cleaning, or additional third-party vendor services not included in "Personnel."
- *Other General and Administrative Expenses:* Costs not captured above that are generally considered part of overhead structure.

Category 2: Health care-Related Expenses Attributable to Coronavirus

- *Supplies:* Expenses paid for purchase of supplies used to prevent, prepare for, or respond to the coronavirus during the reporting period. Such items could include personal protective equipment, hand sanitizer, or supplies for patient screening.
- *Equipment:* Expenses paid for purchase of equipment used to prevent, prepare for, or respond to the coronavirus during the reporting period, such as ventilators, and updates to HVAC systems.
- *Information Technology:* Expenses paid for information technology or interoperability systems to expand or preserve care delivery during the reporting period, such as electronic health record licensing fees, telehealth infrastructure, increased bandwidth, and teleworking to support remote workforce.
- *Facilities:* Expenses paid for facility-related costs used to prevent, prepare for, or respond to the coronavirus during the reporting period, such as expenses associated with the lease or purchase of permanent or temporary structures, or expenses incurred to modify facilities to accommodate patient treatment practices revised due to coronavirus.
- *Other Health care-Related Expenses:* Any other actual expenses, not previously captured above, that were paid to prevent, prepare for, or respond to the coronavirus.

New Guidance on Eligible Expenses and Lost Revenues

By highlighting a new category of expenses, "General and Administrative Expenses," the reporting requirements clarify that patient care overhead activities related to coronavirus care as well as operational and facility maintenance expenses

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qualify as eligible expenses.² The examples listed in the guidance for “General and Administrative Expenses” are non-exhaustive, and include costs associated with food preparation and supplies, housing for surge staffing, consulting support, and other expenses that could be considered overhead.

The new guidance further clarifies the determination of lost revenues. While HHS previously had suggested flexibility in the calculation of lost revenues, the new guidance clearly **defines lost revenue as the “negative change in year-over-year net operating income from patient care related sources.”** HHS defines patient care as “health care, services and support, as provided in a medical setting, at home, or in the community,” excluding “1) insurance, retail, or real estate values (except for SNFs, where that is allowable as a patient care cost), or 2) grants or tuition.” Additionally, HHS has introduced **caps on the amount of PRF funding that may be allocated to reimburse lost revenue.** If a recipient reported a 2019 net gain, then that recipient may apply PRF money to lost revenues only up to the amount of its 2019 net gains from health care-related sources. If, instead, the recipient reported negative net operating income from patient care in 2019, then the recipient may apply PRF funds to lost revenues only up to a net zero “gain/loss” in 2020. It appears that HHS’s intent is not to grant entities a 2020 net operating gain when the entity reported a loss in 2019.

Order of Use of Funds

The reporting guidance also introduces a required order for allocating PRF funds, suggesting that funds must first be allocated to reimbursement of eligible health care-related expenses and only then to lost revenues. Although the Terms and Conditions for the relevant PRF funding streams state that funding may be used for increased health care related expenses *or* lost revenues, both HHS’s September 19 guidance and its reporting summary make clear that HHS expects PRF funds to be allocated first to eligible expenses and *then* to lost revenues.

Looking Ahead

HHS plans to conduct webinars and to publish frequently asked questions, as needed, prior to the first reporting deadline on January 15, 2021. Ropes & Gray LLP will continue to monitor HHS guidance for updates to reporting and other PRF matters.

The guidance from HHS and other agencies on federal funding is constantly evolving. Please visit the Ropes & Gray [Coronavirus Resource Center](#) for more information and updates regarding COVID-19 provider funding relief.

¹ While HHS did not expand on which testing-related funds are included in this term, we understand this phrase to mean the Rural Health Clinic Testing and HRSA Uninsured Program funding streams.

² HHS’ recent guidance provides that “expenses attributable to coronavirus may be incurred in [] direct patient care overhead activities related to treatment of confirmed or suspected cases of coronavirus, preparing for possible or actual coronavirus cases, [and] maintaining healthcare delivery capacity[,] which includes operating and maintaining facilities”