HHS Updates Reporting Guidance for Recipients of Provider Relief Fund Payments

The following is an update to the Reporting Guidance for Recipients of Provider Relief Fund Payments article published in the January issue of the RPA Newsletter. On Dec. 27, 2020, President Trump signed the Consolidated Appropriations Act, 2021 (H.R. 133), an appropriations and stimulus package that includes changes to the Public Health and Social Services Emergency Fund (Provider Relief Fund) to assist providers responding to the COVID-19 pandemic. Of interest to RPA members, H.R. 133 adds flexibility under the Provider Relief Fund for reporting “lost revenue” to allow providers to keep more of their payments and creates an additional funding phase.

1. Changes to Provider Relief Fund Reporting Requirements’ “Lost Revenue” Definition.

H.R. 133 directs HHS to return to a more flexible definition of “lost revenue” from FAQs published in June 2020 for healthcare providers to utilize in their required program reports. (The first report was originally due Feb. 15, 2021, but that deadline was postponed, without the announcement of a new one.) This change could allow providers to retain more payments received under the Provider Relief Fund. Until HHS’ October 22, 2020 Post-Payment Notice of Reporting Requirement (the “Notice”), HHS’ FAQs consistently stated that providers applying for Phase 2 General Distribution funding could calculate their lost revenues attributable to COVID-19 with “any reasonable method of estimating revenue during March and April 2020 compared to the same period had COVID-19 not appeared,” including using the difference between “budgeted revenue and actual revenue.” In the Notice, HHS revised its guidance to allow recipients to apply Provider Relief Fund payments toward lost revenue, “up to the amount of the difference between [a recipient’s] 2019 and 2020 actual patient care revenue,” capping lost revenue based on 2019 revenues. H.R. 133 directs HHS to revert its previous definition with no reference to 2019 revenues, and sets a March 27, 2020, deadline for the provider recipient to have previously established and approved such a budget for reporting lost revenue. That said, reporting providers should continue to keep accurate documentation, including their previously approved budget, as support for any potential future audits.

2. Additional $3 Billion and Successor General Distribution Phase.

Finally, H.R. 133 provides $3 billion in additional appropriations for the Provider Relief Fund and directs HHS to create a new successor General Distribution phase for eligible healthcare providers. This successor distribution would need to “consider financial losses and changes in operating expenses occurring in the third or fourth quarter of calendar year 2020 or the first quarter of calendar year 2021 that are attributable to coronavirus.” Earlier phases of the General Distributions considered such calculations only for the first half of 2020 for eligible providers. H.R. 133 directs HHS to utilize 85 percent of the CARES Act unobligated balance from the appropriation to the Provider Relief Fund, and any funds recovered from healthcare providers after the legislation’s enactment, for those impacted in the second half of 2020 and through March 31, 2021, for this new distribution phase.
Further guidance from HHS will be critical to utilizing the new flexibility and additional Provider Relief Fund payments and any additional opportunities to apply for additional funding.


Kimberly J. Kannensohn

Colin P. McCarthy
Mr. McCarthy is counsel in the McGuireWoods Healthcare Practice who regularly advises clients on Provider Relief Fund questions.

Author’s Note: This article is for information purposes only and not for providing legal advice. You should contact your attorney and/or tax advisor to obtain advice with respect to any particular issue or problem. The opinions expressed at or through this article are the opinions of the individual authors and may not reflect the opinions of the firm or any individual attorney.