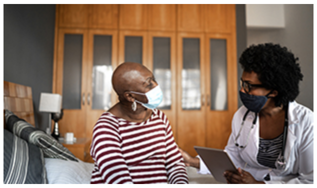

Provider Relief Fund audits coming; pick your method and keep good records

by: Roy Edroso

Effective Feb 11, 2021

Published Feb 15, 2021
Last Reviewed Feb 11, 2021

Compliance

If you are among the hundreds of thousands of providers who received Provider Relief Fund (PRF) payments last year, you'll be pleased to hear that one of your deadlines had been postponed, and your chances of hanging onto the money are better than they were in October when the last tranche of payments was distributed. But you should still be prepared for audits.

HHS announced on Jan. 11 that PRF payments authorized under the CARES Act has bestowed payments totaling nearly $102 billion on 403,235 provider groups, based on tax identification numbers (TIN). The payments came in an initial general disbursement in April, a more targeted second helping shortly thereafter and a third general distribution in October (*PBN blog 3/27/20*, *4/30/20*, *10/22/20*).

Recipients were required to attest to the PRF terms and conditions, which generally required that recipients use the money to make up for revenue losses incurred as a result of COVID-19, either through direct treatment of the virus or through revenue shortfalls attributable to its effect on their business.

If you received money from the relief fund — which required that you attest to the terms and conditions of the funding — you were expected to keep documentation that supported your claim of eligibility.

Originally, providers who got more than $10,000 would also have to submit their documentation via a portal opened by the Health Resources and Service Administration (HRSA) by Feb.15, 2021.

The portal is now open at https://prfreporting.hrsa.gov/s/ and all fund recipients of $10K or more are "encouraged" to register for it, but the Consolidated Appropriations Act (CAA), passed in December and containing new funds for future provider relief, made an important adjustment in the reporting requirements: The deadline has been postponed indefinitely.

Indefinitely doesn't mean forever, though, and experts tell *Part B News* that recipients should expect audits. Even the ones receiving small payments have at least a chance of being audited by OIG or HRSA, while those that received over $175,000 are guaranteed a grilling.

New fund: $3 billion and counting

Distribution of the new PRF funds from the CAA — currently pegged at $3 billion — has not yet been arranged.

Robert H. Iseman, a partner in the health services practice group at Rivkin Radler in Albany, N.Y., predicts they "will be more targeted" to particularly needful provider types as they were in the second tranche than in the first and third.

Industry group AMGA has asked the Biden administration to pump the $3 billion up to $100 billion and to exempt PRF payment to for-profit health care providers from taxation, arguing that too many of their members are still deep in the hole.

"When they passed the first pandemic bill in April and started distributing the PRF dollars, our members were in dire straits," says Jamie Miller, AMGA senior director of government relations. "We did a survey of our members in April and [found] 84% of our health care systems were furloughing their employees. And a lot of our members had less than six months cash on hand."

In comes a new standard

The specific terms of your funding are contained in the agreement you accepted when you got it — for example, the terms sent with the third tranche (*see resources, below*). These are fairly straightforward, requiring that "payment will only be used to prevent, prepare for, and respond to coronavirus, and that the payment shall reimburse the recipient only for health care-related expenses or lost revenues that are attributable to coronavirus," and that you won't use it for "expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse." The terms also rule out expenditures on things like executive pay and lobbying.

The current standards for what constitutes "expenses or lost revenues" may be easier to meet for many providers than the standard that was established in September, just before the third tranche went out. At that time, HHS moved from its original "any reasonable method" standard — whereby providers could basically come up with their own rationale for how their expenses met the terms and conditions — to one that relied on the difference between the provider's 2019 expenses and their 2020 expenses.

Industry groups protested. AMGA noted that "examining the data in this manner does not account for year-over-year clinician growth within a group practice," for example, or other planned or personnel changes that would make financial comparison of the two years inappropriate.

"Certainly there are changes that may have occurred between 2019 and 2020 that you would have expected to result in higher revenues in 2020 than 2019," says Jeffrey I. Davis, senior advisor at Baker Donelson in Washington, D.C.

In the CAA, Congress directed HHS to change that, and now they allow providers to pick among three methods: the original reasonableness standard, the 2019-2020 comparison standard and, as HHS explained in a January 15 "Post-Payment Notice of Reporting Requirements," a standard based on "the difference between 2020 budgeted and 2020 actual patient care revenue" that would more accurately reflect the effect of COVID-19 on what providers might otherwise have expected in revenue.

Note: If you choose the original method, your chance of an HRSA audit increases, HHS says. You will be asked for "a description of the methodology, an explanation of why the methodology is reasonable and establish how the identified lost revenues were in fact a loss attributable to coronavirus, as opposed to a loss caused by any other source," the agency adds.

"They're going to want a description of the methodology," Davis says: "Why did you believe it's reasonable?"

Also, if you use the budgeted-2020-versus-actual-2020 method, Davis cautions, "you need to be able to have a C-suite person certify that you had [such] a budget that had been approved as of March 27, when the CARES Act was enacted."

How's your documentation?

If audited, you will have to demonstrate compliance.

"Document everything that you're spending the funds on and make sure that you're only spending it for the appropriate reasons," advises Heather Alleva, an associate with the law firm Buchanan Ingersoll & Rooney PC in Philadelphia.

Man providers have come to Alleva with concerns that have inadvertently taken too much money. "Often, it's coming in because the provider has had some type of change in the past year, either by selling or retiring a practice or changing some of the services they provide," Alleva says. "So they worry that their financial information didn't properly reflect all of their revenue because at the time the application was submitted, they were in the middle of some sale or acquisition."

But generally speaking, if your reporting and documentation is honest and complete, and your expenditure of the funds meets the requirements, you should be good, "even if the financials of that organization might be different now because they've sold or closed or cease operations of a practice," Alleva says.

Given the PRF's broad definition of COVID-related issues, the providers with the most genuine cause for concern would be those who never had any real access to such issues — "if you're exclusively a behavioral health provider, for example, and you incur costs because you switch to telehealth," Alleva says. Or you might be "a boutique concierge medicine provider who does some type of specialty care and they just never deal with COVID cases."

Reasonableness is the key, whichever method you use to measure your losses, Iseman says. "If a reasonable mind could find a connection between COVID and the item of expense should be allowed, even if the regulator questions it — unless it is an irrational position, meaning one that no reasonable person could support — I think the expense or debt should be accepted," he says. —

Resources

"Provider Relief Fund (PRF) Reporting Portal Frequently Asked Questions (FAQs)": *https://hrsac19.my.salesforce.com/sfc/p/#t00000004XgP/a/t0000001FId8/wN.4dTa.NRiNhwh_0CBblH6gvvedhqOt7_.5OS7rP6U*

Third tranche, Acceptance of Terms and Conditions: *www.hhs.gov/sites/default/files/terms-and-conditions-phase-3-general-distribution-relief-fund.pdf*

HHS "Post-Payment Notice of Reporting Requirements": *www.hhs.gov/sites/default/files/provider-post-payment-notice-of-reporting-requirements-january-2021.pdf*

- NPP Report Archive
- Part B News Archive

- Medicare Transmittals
  - 100-04

Subscribe | Log In | FAQ | CEUs Part B Answers Select Coder

Join us on LinkedIn

Read and comment on the PBN Editors' Blog

Participate in PBN Discussion Forum

Contact the Part B News Editors