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Check Your Numbers as Provider Relief Fund Spigot Keeps Running

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The fourth phase of the Provider Relief Fund (PRF), originally planned to end in December, is still delivering payments to health care providers. The ongoing disbursement serves as a reminder to report your previous PRF payments and, if you want the feds to recalculate your most recent payment, make sure it's worth an audit risk.

The PRF began with a $100 billion allocation via the Coronavirus Aid, Relief and Economic Security (CARES) Act passed by Congress and signed by President Trump on March 27, 2020 (PBN blog 3/30/20). HHS' Health Resources and Services Administration (HRSA) was put in charge of the program and made a general distribution of Phase 1 payments via an initial $30 billion allotment, calculated by HHS for each Medicare-enrolled TIN based on 2019 fee-for-service payments — amounting to about 6.2% of reimbursement per provider. A second $20 billion distribution, also part of Phase 1, of about 2% of 2018 net patient revenue quickly followed (PBN 4/20/20). HRSA simultaneously allocated targeted distributions to rural, Medicaid and other provider types.

All recipients who accepted the payments were required to attest to the terms, meaning generally that the payments would be used for COVID-19-related expenses which had not been covered by other programs; that the entities associated with the TIN were not disqualified (e.g., had not been excluded from Medicare); and that, if the entity received $10,000 or more from the program, it would report to HRSA how the funds were deployed and support its report with documentation (PBN 5/1/20).

On to Phase 4

After the first allotment, HRSA scheduled three more phases of the PRF, covering different periods during the pandemic and requiring entities to apply for each one and then explain their COVID losses during a later reporting period. Congress added billions to the program in the Consolidated Appropriations Act passed in December 2020. On Sept. 10, 2021, HHS released an extra $22.5 billion in payments, followed by further outlays of $2 billion in December 2020 and $9 billion in January 2021 (PBN 2/15/21, 9/13/21).

By Jan. 26, 2022, HRSA reported that payments for the first three phases had been completed and that the Phase 4 payments, which began rolling out on Dec. 16, 2021, were ongoing. Phase 4 payments are based on changes in revenue and expenses incurred between July 1, 2020, to March 31, 2021.

HRSA says Phase 4 payments have amounted to "nearly $11 billion" out of $17 billion allocated (see resources below). Smaller and medium-sized entities and those serving Medicaid and Children's Health Insurance Program (CHIP) patients get augmented payments.

Dawn Helak, a partner with McDermott Will & Emery in Washington, D.C., says Phase 4 payments in general should be larger than payments from previous tranches because of the relative volumes of applications and allotments: "If you actually look at the expenditures and compare them to the total amount allocated for Phase 4, it appears the payments on a proportionate basis to the applications are going to be higher if they were [in previous phases]," she says. "That's just the math of it, not something HRSA has officially indicated."

Despite the Dec. 31, 2021, closing date on Phase 4 distribution, HRSA acknowledges that some payments have been delayed for administrative reasons. Venson Wallin, managing director in the health care advisory practice and national health care compliance and regulatory leader at BDO in Richmond, Va., saw recent distributions among his own clients: "Some were paid this week," Wallin says. "It could be later this month or March before they get the final amounts distributed. The fact that HRSA said you have until May 2 to request a recalculation of Phase 4 funding indicates there's probably going to be a bit longer before all Phase 4 funds are remitted."

Recalculate and reconsider

You still have reporting responsibilities for earlier payments of $10,000 or more. HRSA began the reporting period for Phase 2 on Jan. 1, 2022. If you have a qualifying payment, you have until March 31, 2022, to account for the lost revenue and expenses related to COVID-19 that you reported for the final six months of 2020.

If you reported for Phase 1, Wallin says Phase 2 shouldn't be too difficult. But take note of a new feature in the reporting process: You can change the way you're calculating your lost revenue.

Currently, entities have three options for reporting lost revenue:

- For each quarter during the "period of availability" (for Phase 2, all of 2020 and 2021) as a standalone calculation;
- For each quarter during the period of availability as a standalone calculation with budgeted quarters serving as a baseline; or
- By "an alternate reasonable methodology."

If you picked one methodology in Phase 1, you can switch to a different one for Phase 2 that may give you a better payoff and ask HRSA to recalculate your payment on that basis. "Each time a reporting entity changes the method used to calculate lost revenues, the system will recalculate total lost revenues for the entire period of availability," states a frequently asked question (FAQ) memorandum from HRSA, and that means your Phase 1 payment may be affected retroactively as well.

But beware, Wallin cautions: if you choose to revise the formula, “you have to write a memo explaining why you changed that, which obviously will generate some additional scrutiny on the part of HRSA,” he says.

The HRSA FAQ has several items added in December 2021 and January 2022 pertaining to payments to subsidiaries, nursing home infection control payment distribution, bankruptcies and mergers and acquisitions (see resources, below). If they’re relevant to you, run them by your legal and financial counsel. “Implementation of PRF guidance and compliance approach can depend on facts and circumstances,” Helak says, and “reporting entities may encounter additional questions when common accounting, tax and legal definitions do not neatly align on undefined terms or with existing reporting portal design.”

If your Phase 4 payment seems a little light to you, you have until May 2 to ask HRSA for a reconsideration. (See resources, below, for a HRSA page describing the process.) However, asking for more money may also be treated as a red flag when it comes time for HRSA to start auditing.

“If providers that are seeking to get more or think that their calculation has been wrong want reconsideration, they should just be very, very meticulous in their rationale and methodology and accounting,” says Christopher J. Kutner, a partner in the health services practice group at Rivkin Radler LLP in Uniondale, N.Y.

Missed a step?

The Phase 1 reporting period ended on Sept. 30. If you didn’t report your expenses and lost revenue, you’re late — and you should reach out ASAP.

“It would be the safe and conservative move for anyone who did not meet the September deadline to reach out to HRSA now,” Wallin says. “The more proactive you can be in resolving the issue, the better; it’s not advisable to wait for them to come looking. Reach out to HRSA through the toll-free number, explain why you missed it and tell them you want to get into compliance.”

Extra phases possible

There have been rumors that still more PRF payments will be released. Some members of Congress are pushing for it with legislation, and on Jan. 22 American Hospital Association executive vice president Stacey Hughes sent an open letter to congressional leaders asking them to “provide additional PRF dollars in the amount of $25 billion to health care providers who continue to have lost revenues and increased expenses due to the tremendous financial strain that the delta and omicron variant are causing.”

“I think there’s a few billion left [in PRF] to be distributed,” Wallin says. “Some of [that] relates to Phase 4. You’ve also got the funding that’s being recaptured from providers that were not able to justify their use of all the funds. With the combination of recaptured funds and the balance of the appropriated funds, I would not be surprised if there were another appropriation and we had a Phase 5 distribution.”

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