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HHS PUBLISHES PROVIDER RELIEF FUND DETAILED REPORTING GUIDELINES: WHERE DID LOST REVENUE GO?

On Saturday, September 19, the Department of Health and Human Services ("HHS") published its highly anticipated Final Provider Relief Fund Reporting Guidelines ("Reporting Guidelines") for providers ("Recipients") who received more than $10,000 in relief fund payments from the Provider Relief Fund created by the CARES Act ("Relief Fund"). The Reporting Guidelines (available **here**) include detailed information on provider reporting guidelines, use of funds and the specific data elements Recipients must report.

In this guidance, HHS abandons the traditional concepts of "lost revenue," as stated in the statute and prior guidance, adopting instead "net operating income from patient care related sources" as the key definition of lost revenue. HHS's guidance also precludes the option of using prior year or budget comparisons to 2020 actual results and instead requires a 2019 to 2020 comparison of actual operating income. Finally, the methodology outlined in the guidance appears to require applying Relief Funds first to COVID-19 related expenses, possibly negating the benefit of other funding sources. The definitions and methodologies for qualifying COVID-19 expenses and lost revenue included in the Reporting Guidelines will have a potentially significant impact on Relief Fund retention calculations– benefiting some Recipients and hurting others. Recipients need to evaluate the impact of this new guidance on their Relief Fund revenue recognition and the ultimate ability to retain funds already received.

HIGHLIGHTS AND KEY TAKEAWAYS

- Reporting Timeline/Deadline: The HHS website states that the post-payment reporting system will be available in "early 2021" and that final reports will be due no later than July 31, 2021.
- COVID-19 Expenses: Recipients *must* report health care-related expenses attributable to COVID-19.
- Specific Methodology for Calculating Lost Revenue: The Reporting Guidelines include a specific methodology for calculating and reporting "Lost Revenues Attributable to Coronavirus" that is a stark departure from prior HHS guidance.
- Allocation of Relief Funds amongst Related Entities: Similar to some Relief Fund FAQs, the Reporting Guidelines appears to prohibit health system's from redirecting or transferring Targeted Distributions between subsidiary legal entities.
- Additional Upcoming Guidance: Despite the statement that the Reporting Guidelines are the "complete, detailed information on provider reporting," the document states that it plans (via HRSA) to offer Question & Answer Sessions via webinars and issue Frequently Asked Questions to aid in the reporting process.
- Separate Reporting Guidelines: There will be separate reporting requirements applicable to the Nursing Home Infection Control distribution and the Rural Health Clinic Testing distribution. There may be separate reporting requirements for the Uninsured Reimbursement Program.
- Begin Preparing Now: While reporting will not begin until early 2021, Recipients should begin reviewing and applying the Reporting Guidelines to their specific situation well in advance of this time period.

BACKGROUND

The CARES Act, signed into law on March 27, 2020, created the Relief Fund to reimburse eligible health care providers for health care-related expenses or lost revenues attributable to the COVID-19 pandemic. Originally appropriated $100 billion, an additional $75 billion was added as part of the Paycheck Protection Program and Health Care Enhancement Act signed into law on April 24, 2020. To date, approximately $140 billion of the $175 billion Relief Fund has been distributed or allocated via separate general and targeted distributions. The CARES Act also stated that recipients of Relief Funds would be required to "submit reports . . . in such form, with such content, and in such time as [HHS] may prescribe for such purpose." This obligation to complete future reporting was reiterated in the various Terms and Conditions attached to each of the Relief Fund distributions. In July, HHS announced that it would release detailed Reporting Guidelines by August 17, 2020. Shortly before that self-imposed deadline, however, HHS published an updated notice informing Recipients that it would not meet the

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August 17 deadline but that it would release the detailed guidance "well in advance of the reporting system being made available."

FINAL REPORTING GUIDELINES

At only six pages in length, the Reporting Guidelines do not provide the level of detail many were expecting or hoping for from HHS. Perhaps most notably absent from the document are any examples of how to interpret and apply the information that is provided. Still, the Reporting Guidelines provide new details about the information Recipients must report, the timing of reporting and how to calculate COVID-19 related expenses and "lost revenue."

TIMING

The HHS website states that the system for the post-payment reporting process will be available in "early 2021," which is a significant delay from the previously announced anticipated opening date of October 1, 2020. The actual final deadline for reporting is also unclear. The document states that "Reporting Entities with unused funds after December 31, 2020, must submit a second and final report no later than July 31, 2021, that includes patient care related revenue amounts earned January 1– June 30, 2021." While this would appear to establish a hard deadline for all reporting, the language suggests that a first report is due sometime before July 31, 2021. No such deadline is included in these Reporting Guidelines as published, but previous guidance established the first reporting deadline as February 15, 2021. Since the reporting is now to be done on a calendar year to year (2019 to 2020) comparison, this initial reporting deadline may need to be pushed back. The July 31, 2021 deadline establishes an end date by which HHS believes all Provider Relief Funding should be expended. No instructions are provided if an entity does not expend funding by this date and according to these guidelines.

CALCULATING COVID-19 EXPENSES

Recipients must report health care-related expenses attributable to COVID-19, which are separated into two broad categories: General and Administrative Expenses and Healthcare Related Expenses. The Reporting Guidelines provide additional details and descriptions for both categories and note both categories should not include expenses covered by other types of relief funding. While most Recipients likely planned on reporting such expenses, the Reporting Guidelines appear to make reporting these expenses mandatory. The Reporting Guidelines also imply that Recipients should use qualifying COVID-19 expenses to justify the retention of Relief Fund payments prior to looking to COVID-19 related "lost revenue."

CALCULATING LOST REVENUE

The most notable part of the Reporting Guidelines is the section describing how Recipients must calculate and report "Lost Revenues Attributable to Coronavirus." The Reporting Guidelines describe a single required approach to calculating "lost revenue" as represented as "a negative change in year-over-year net operating income from patient care related sources." This is a stark departure from prior HHS guidance in two significant ways.

First, prior guidance stated that Recipients could use "any reasonable method of estimating lost revenue," including either comparing budgeted revenue to actual revenue or using a year-over-year comparison. However, in the Reporting Guidelines, HHS provides a much more rigid method of calculating lost revenue (although there are still many open questions). Under the Reporting Guidelines, an entity must net out the COVID-19 expenses (claimed in Step 1) from this year-to-year comparison. In addition, the Reporting Guidelines call for quarter by quarter reporting, but the impact of that is not clear.

Second, the prior guidance (and statute) has referred to lost revenue, but the Reporting Guidelines change to a calculation based on operating income. This will have a potentially significant impact on the retention calculation – benefiting some and hurting others – which may lead to challenges to this methodology.

ALLOCATION OF RELIEF FUNDS AMONGST RELATED ENTITIES

The section describing the demographic information that must be reported states that "if a subsidiary TIN received a Targeted Distribution payment, the subsidiary TIN must report the use of funds for that payment, and the parent organization that reports on a subsidiary's General Distribution payment cannot also report on (**or transfer**) the subsidiary's Targeted Distribution payment." Similar to some Relief Fund FAQs, this appears to restrict a health system's options for redirecting or transferring Targeted Distributions between subsidiary legal entities. Notably, the American Hospital Association sent HHS Secretary Alex Azar a letter dated September 18, 2020 (the day before the Reporting Guidelines were published) that, in part, urged the Secretary to allow health system's to more freely allocate payments from a Targeted Distribution amongst related legal entities.

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ADDITIONAL UPCOMING GUIDANCE

Despite the statement that the Reporting Guidelines are the "complete, detailed information on provider reporting," the document states that it plans (via HRSA) to offer Question & Answer Sessions via webinars and issue Frequently Asked Questions to aid in the reporting process.

SEPARATE REPORTING GUIDELINES

HHS says there will be separate reporting requirements applicable to the Nursing Home Infection Control distribution and the Rural Health Clinic Testing distribution and that there may be separate reporting requirements for the Uninsured Reimbursement Program.

Hall Render will provide additional updates as more information becomes available.

If you have questions or would like additional information about this topic, please contact:

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