

Healthcare Legal Alert: HRSA Clarifies Important Terms Applicable to Provider Relief Fund Payments Issued to Providers

On June 19, 2020, the Office of Policy Analysis within the Health Resources and Services Administration (HRSA) updated an answer to one of the “Frequently Asked Questions” posted on the CARES Act Provider Relief Fund website regarding what expenses and lost revenues may be credited against a provider’s distribution to date from the Provider Relief Fund. As hoped, both clarified definitions are quite broad.

Background

Through the Provider Relief Fund, the United States Department of Health and Human Services (HHS) is in the process of distributing \$175 billion to hospitals and other healthcare providers on the front lines of the coronavirus response. The Terms and Conditions tied to these payments require providers to use the funds to prevent, prepare for and/or respond to coronavirus, and to reimburse providers for healthcare-related expenses or lost revenues attributable to coronavirus. Providers have been anxiously awaiting further guidance on exactly what the federal government will consider allowable expenses and lost revenues for this purpose.

Allowable Expenses

In the recent update, HRSA clarifies that the term “healthcare related expenses attributable to coronavirus” is quite broad, covering a range of items and services purchased by a provider to prevent, prepare for and/or respond to coronavirus. Specific examples given include:

- supplies used to provide healthcare services for possible or actual COVID-19 patients;
- equipment used to provide healthcare services for possible or actual COVID-19 patients;
- workforce training;
- developing and staffing emergency operation centers;
- reporting COVID-19 test results to federal, state, or local governments;
- building or constructing temporary structures to expand capacity for COVID-19 patient care or to provide healthcare services to non-COVID-19 patients in a separate area from where COVID-19 patients are being treated; and
- acquiring additional resources, including facilities, equipment, supplies, healthcare practices, staffing, and technology to expand or preserve care delivery.

The new posting also clarifies that a provider may have incurred allowable expenses prior to the date on which the provider received the Provider Relief Fund payment. The funds can be allocated to allowable expenses incurred on any date, so long as those expenses were attributable to coronavirus

and were used to prevent, prepare for and/or respond to coronavirus. However, the guidance cautions that it would be highly unusual for providers to have incurred eligible expenses prior to January 1, 2020.

Allowable Lost Revenues

Similar to its interpretation of allowable expenses, HRSA has clarified that “lost revenues that are attributable to coronavirus” include **any** revenue a provider lost due to coronavirus, including losses associated with fewer outpatient visits, canceled elective procedures or services, or increased uncompensated care. Providers may use payments attributable to lost revenue to cover any cost that the lost revenue would have covered, so long as identified costs are attributable to the providers’ prevention of, preparation for and/or response to coronavirus. Therefore, while the eligible costs do not need to be directly related to patient care, the lost revenue that a provider wishes to credit against the payments the provider receives must have been lost due to coronavirus. HHS is encouraging providers to use Provider Relief Fund payments related to lost revenue to help maintain their healthcare delivery capacity. Examples of allowable expenditures include:

- employee or contractor payroll;
- employee health insurance;
- rent or mortgage payments;
- equipment lease payments; and
- electronic health record licensing fees.

HRSA has clarified that providers may use any reasonable method to estimate foregone revenue for March and April 2020. For example, providers could use budgets that were prepared without taking into account the impact of COVID-19 as their benchmark and estimate lost revenue as the difference between budgeted and actual revenue for the period. Providers could also compare actual 2020 revenue to the same period in 2019.

Finally, providers are reminded that as a condition of receiving Provider Relief Act payments, they must comply with the reporting requirements for the type of payments they receive.

Provider Relief Fund Terms and Conditions and “Frequently Asked Questions” can be accessed at the links below.

<https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/for-providers/index.html>

<https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/faqs/index.html>

Please visit our [Healthcare Law Practice Area](#) to learn more about the legal services we can provide in this area. If you have any questions or would like more information on the issues discussed in this communication, please contact any member of our Healthcare Law practice.
