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Healthcare Alert

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Provider Relief Fund update: Reporting obligations, reconsideration requests, and payment clawbacks

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Health care providers who received Provider Relief Fund distributions must adhere to reporting obligations as the government ramps up efforts to recover payments.



What's the Impact?

- / The \$178B Provider Relief Fund (PRF) program played a key role in the nationwide federal response to COVID-19
- / HRSA is allowing providers that missed the initial PRF reporting deadline to submit a Request to Report Late Due to Extenuating Circumstances Form by April 22, 2022, and providers who believe that their Phase 4 PRF payments were incorrectly calculated must submit a PRF Reconsideration Request Form by May 2, 2022
- / PRF payments are conditioned grants—providers who fail to comply with PRF conditions may be subject to enforcement actions that seek the return of PRF payments

As the COVID-19 pandemic gripped the country in Spring 2020, a grant program established almost two years ago by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L.

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116-136), the Provider Relief Fund (PRF) financially supported healthcare providers affected by the coronavirus pandemic. Together, PRF and its corollary American Rescue Plan (ARP) Rural Provider Fund distributed billions of dollars to support the health industry and sustain healthcare services. Now, almost two years after the distribution first began, the healthcare industry is continuing to grapple with how the U.S. Department of Health and Human Services, Health Resources & Services Administration (HRSA) is administering the PRF program, including the requirements to report on the use of funds, request reconsiderations, and return PRF payments.

PRF distributions and reporting

Starting in April 2020, HRSA began to distribute funds to providers via multiple phases of general allocation funding and several targeted allocations. Most recently, applications for Phase 4 Distributions opened in September 2021, and related payments began in December 2021.

The federal government authorized funding through PRF in record time due to the emergency situation caused by the pandemic, but the quick distribution of funds meant that guidelines continued to shift and evolve, especially for providers' reporting obligations.

The Terms and Conditions that PRF recipients were required to sign (or were "deemed" to have signed) placed restrictions on fund eligibility and use. Among other conditions (including establishing that services were provided after January 1, 2020), each PRF recipient had to substantiate that the PRF funds were "used for healthcare-related expenses or lost revenues attributable to coronavirus and that those expenses or losses were not reimbursed from other sources and other sources were not obligated to reimburse them."

Funding recipients must adhere to reporting obligations through the [PRF Reporting Portal](#) detailing the use of funds received through PRF.

	PAYMENT RECEIVED PERIOD (PAYMENTS EXCEEDING \$10,000 IN AGGREGATE RECEIVED)	DEADLINE TO USE FUNDS	REPORTING TIME PERIOD
Phase 1	April 10 to June 30, 2020	June 30, 2021	July 1 to Sept. 30, 2021 (<i>now with a 60-day grace period</i>)
Phase 2	July 1 to Dec. 31, 2020	Dec. 31, 2021	Jan. 1 to March 31, 2022
Phase 3	Jan. 1 to June 30, 2021	June 30, 2022	July 1 to Sept. 30, 2022
Phase 4	July 1 to Dec. 31, 2021	Dec. 31, 2022	Jan. 1 to March 31, 2023

Importantly, providers must comply with these reporting obligations, or they will be asked to return the funds. Two weeks ago, HRSA sent notices to all providers non-compliant with reporting obligations thus far, affirming its intent to enforce its strict reporting policies. Roughly 10,000 recipients of the PRF were asked to return anywhere from \$30,000 to \$250,000 each by April 10.

HRSA also recently announced that providers who missed the reporting deadline have an opportunity to submit a [Request to Report Late Due to Extenuating Circumstances Form](#). HRSA has identified the following as extenuating circumstances:

- / Provider or key staff member's severe illness or death
- / Provider is impacted by natural disaster
- / Provider lack of receipt of reporting communications as a result of incorrect email or address
- / The recipient failed to click "submit"
- / There was an internal miscommunication or error
- / Subsidiary recipient of targeted distributions was not captured by the parent entity's report

If the Form is approved, the provider will have an opportunity to complete their report in the PRF Reporting Portal. Providers that missed the Period 1 deadline have until Friday, April 22, 2022, to submit the request.

The PRF Phase 4 Reconsideration Request Form: An essential administrative remedy

While HRSA's post facto rulemaking surrounding its most recent clawback of pandemic assistance has not yet been legally challenged, the PRF does have an appeals process for providers who believe they have not received adequate funds through the Phase 4 Distributions. Healthcare providers seeking to challenge the PRF amounts received must first engage in an administrative appeals process by submitting a PRF Reconsideration Request Form.

The [PRF Reconsideration Request Form](#) and [instructions for submitting it](#) are accessible online, with an upcoming deadline of May 2, 2022. The PRF reconsideration process is intended for providers who believe their payment was not calculated correctly. HRSA notes that:

- / This reconsideration process is not an opportunity for providers to submit an application for Phase 4/ARP Rural funding—the deadline to apply has passed
- / Providers will not be able to revise or correct their original application (e.g., elect to be considered for ARP Rural payment after their Phase 4/ARP Rural application was submitted)
- / HRSA will not make changes to payment determinations that would require a change to payment methodology or policy

Importantly, HRSA states that it "will not make changes to payment determinations that would require a change to payment methodology or policy." While submission of the PRF Reconsideration Request Form does not guarantee an approval of or adjustment to payment

amounts, it serves as an important administrative remedy. If a provider does not receive a satisfactory response through the PRF reconsideration process, it may be able to challenge HRSA's decision in federal court pursuant to the Administrative Procedures Act (APA). Before a provider may seek redress in court, the APA requires the provider to exhaust its administrative remedies. Since regulations regarding how the PRF money would be distributed, spent, and accounted for have changed several times since the pandemic began, it is increasingly important for providers to adhere to all obligations, including any existing administrative appeals set in place by HRSA. Failure to do so may result in a provider losing the ability to challenge an HRSA decision regarding the PRF reconsideration process under the APA in the future since the government may take the position that the provider failed to exhaust its administrative remedies.

The deadline to submit the Reconsideration Request Form is May 2, 2022.

Nixon Peabody has successfully litigated cases on behalf of providers with respect to invalid agency guidance in the past and received an attorneys fee award pursuant to the Equal Access to Justice Act. The firm continues to track COVID-19 developments related to the CARES Act, legislative changes, administrative interpretations, and beyond. We are well-positioned to represent parties injured by administrative overreach or invalid agency rulemaking.

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