COSMOS
Navigate the Compliance Universe

Compliance Today - January 2022
The Provider Relief Fund: Reporting unreimbursed expenses and lost revenue

By Lynn M. Barrett and Stephen Shaver

Lynn M. Barrett (lbarrett@wachler.com) is a Partner and **Stephen Shaver** (sshaver@wachler.com) is an Associate Attorney at Wachler & Associates PC in Royal Oak, Michigan, and Weston, Florida.

Lynn M. Barrett

Stephen Shaver

The reporting deadlines for healthcare providers who received payments under the Provider Relief Fund (PRF) to report on their use of the payments have begun. Perhaps the largest compliance challenge for providers in PRF reporting is demonstrating that the provider used the payment in accordance with the terms and conditions of the PRF, as well as the numerous items of guidance released by the Department of Health & Human Services (HHS) in connection therewith. Specifically, providers who received PRF funds must demonstrate that they applied the PRF payment toward eligible expenses that were not reimbursed by other sources or toward lost revenue.

Background on the PRF

The PRF consists of $175 billion in funds set aside by Congress at the beginning of the COVID-19 pandemic. At the time, in March and April 2020, hospitals and other healthcare providers saw revenue-generating procedures cancelled en masse and other services dry up in the face of social-distancing requirements and fear of the coronavirus. These circumstances left many healthcare providers struggling to operate or in danger of shutting down—and at a time when they were needed the most. In response, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020,[1] and the Paycheck Protection Program and Health Care Enhancement Act on April 24, 2020,[2] which created the PRF and together set aside $175 billion to provide financial relief to hospitals and healthcare providers by distributing funds directly to the providers. The PRF is administered by the HHS through the Health Resources and Services Administration.

The HHS has divided the PRF into a series of general and targeted distributions. The bulk of the funds were allotted to general distributions, which have been divided into four phases. Phase 1 involved nearly $50 billion deposited directly into providers' accounts in April 2020.[3] Providers did not need to apply for or request these funds but were deemed to have accepted the payment and all associated terms and conditions if they did not return the funds or affirmatively accept the terms and conditions within a certain time frame.[4] To make payments quickly, the HHS used Medicare payment information and costs reports already on file. Consequently, Phase 1 payments only went to providers who had billed Medicare in 2019. Phase 2 of the general distributions involved nearly $6 billion in payments to providers who received smaller or no payments in Phase 1 due to Phase 1's reliance on 2019 Medicare data.[5] Providers were required to apply for Phase 2 payments and accept the associated terms and conditions. Combined, payments under Phases 1 and 2 were intended to represent approximately 2% of a provider's annual patient care revenue.

For Phase 3, in October 2020, the HHS invited providers who had previously received PRF payments and some providers who had not previously been eligible for PRF payments to apply for an additional $24.5 billion in payments. Phase 3 was intended to take into account providers' "financial losses and changes in operating expenses caused by the coronavirus." In September 2021, the HHS invited providers to apply for an additional $17 billion in Phase 4 payments.[6] Phase 4 payments were based on providers' changes in operating revenues and expenses from July 1, 2020, to March 31, 2021; reimbursed smaller providers for changes in operating revenues and expenses at a higher rate compared to larger providers; and included bonus payments based on the number of services providers furnish to Medicaid/Children's Health Insurance Program and Medicare beneficiaries.[7]