



L. David Taylor
Chief Operating Officer

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Via First-Class Mail and Electronic Mail to DEspinosa@hrsa.gov

Diana Espinosa, Deputy Administrator
Health Resources and Services Administration
U.S. Department of Health and Human Services
5600 Fishers Lane
Rockville, MD 20857

RE: Provider Relief Fund Guidance – Clarifications Sought

Dear Deputy Administrator Espinoza:

On behalf of our nation’s 1,400 Federally Qualified Health Centers (FQHCs), and the more than 30 million medically underserved patients they treat, we thank you and your colleagues for your leadership in administering the COVID-19 Provider Relief Fund (PRF).

FQHCs (also known as “health centers”) are committed to ensuring that they use PRF funding in a manner that is consistent with Congressional intent and HHS policy. To ensure that they are able to do so, we are writing with several time-sensitive recommendations and requests regarding the appropriate use of PRF funds. Our requests are summarized at the start of this letter, and then discussed further in detail below.

Summary of Requests and Recommendations

1. Carefully consider the detailed comments submitted by the American Hospital Association addressing numerous issues including, but not limited to, the changing definitions of “incremental costs” and “lost revenues”.
2. Appoint a single point of contact within HRSA for FQHCs which have questions on PRF issues.
3. Clarify that federal grantees (such as Section 330 grantees) are not required to exhaust those grant funds before they can allocate coronavirus-related expenses to PRF funding.
4. Clarify that “other reimbursed sources” are limited to those reimbursements received in response to COVID expenses.

5. Regarding the time periods for calculating lost revenues:
 - a. To reduce administrative burden and confusion, allow providers to make comparisons based on their fiscal year rather than the calendar year.
 - b. Consider each quarter separately for purposes of calculating lost patient revenues.
 - c. Allow providers to stop reporting after the quarter in which they allocate the last of their PRF funds.
6. Regarding the definition of “patient care” with regard to expenses and revenues:
 - a. Clarify whether enabling services, etc. are considered “patient care”.
 - b. Clarify that the grant funds referred to in footnote 5 are limited to grants received by the Health Center , and do not include grants made by the health center.
 - c. Clarify what type of tuition is not to be included.
7. Regarding the February 15, 2021 due date for initial reports:
 - a. Delay the Feb. 15 deadline to reflect timelines for insurance reimbursement and FQHCs’ UDS deadline.
 - b. Allow health centers whose Paycheck Protection Program loans are not forgiven to amend their initial PRF report after the submission deadline.
8. Clarify that the total purchase price of a capital item -- whether equipment, information technology, or facilities – may be charged to the PRF award.
9. Extend the deadline for using PRF funding through at least December 2021.

Detailed Requests and Recommendations

1. Carefully consider the detailed comments submitted by the American Hospital Association addressing numerous issues including, but not limited to, the changing definitions of “incremental costs” and “lost revenues”. Similar to other types of providers, FQHCs are confused and concerned by the frequent additions and changes to HHS’s rules for the use of PRF funds. Whereas these funds were once considered one of the most flexible types of Federal COVID relief available, the ever-expanding set of FAQs and reporting requirements have made FQHCs nervous about spending them – despite extensive financial need – for fear of violating a rule that may be instituted or changed in the future. We believe strongly that this outcome is contrary to Congress’ intent for the PRF to provide immediate and flexible financial relief -- particularly to frontline providers such as FQHCs.

For this reason, we strongly encourage HRSA to carefully consider the detailed comments to be submitted by the American Hospital Association (AHA), particularly those around the changing definition of “lost revenues” and “incremental costs.” While we do not discuss these concerns at length in this letter, please know that NACHC and FQHCs share the AHA’s concerns and questions on these topics.

2. Appoint a single point of contact within HRSA for FQHCs with questions on PRF issues: While all provider types share questions about the allowable use of PRF funds, FQHCs have

numerous questions that are specific to them, given their unique role as front-line, safety net, Federal grantee organizations. (For example, see Section 3.) While FQHCs have been calling the PRF provider support line with these questions, they are receiving inconsistent answers. For this reason, we respectfully request that HRSA designate a staff person to serve as a single point of contact (SPOC) for all FQHCs and PCAs with PRF questions.

3. Clarify that Federal grantees (such as Section 330 grantees) are not required to exhaust those grant funds before they can allocate coronavirus-related expenses to PRF funding. The Terms and Conditions that apply to all PRF funds state:

“The Recipient certifies that it will not use the Payment to reimburse expenses or losses that have been reimbursed from other sources or that ***other sources are obligated to reimburse.***”

We are concerned that future auditors could interpret this language as requiring federal grantees to expend all of their (non-PRF) Federal grant funds before they can allocate any COVID-related costs to PRF funds. (In other words, the auditors might view other F federal grants related to health care – such as Section 330 grants – as fully “obligated to reimburse” COVID-related expenses, thereby making these expenses ineligible for PRF funding until all those federal grants are exhausted.) As you know, FQHCs receive grants from BPHC, etc., to help support a broad range of preventive, primary, dental, and behavioral health care. FQHCs provide detailed project plans outlining the use of these funds, and must receive HRSA approval for any significant changes in how funds are allocated. For these reasons, it would be inappropriate for an auditor to expect that an FQHC divert grant funds from their HRSA-approved purposes to cover COVID-related costs before the FQHC can access its PRF funds. However, to avoid future confusion, we request that HRSA issue a clarification indicating that providers are not expected to exhaust other federal grant funds prior to using PRF funds for eligible COVID-related expenses.

4. Clarify that “other reimbursed sources” are limited to those reimbursement received in response to COVID expenses. Page 3 of the November 2, 2020 Reporting Requirements states that:

“Reporting Entities . . . are required to report healthcare related expenses attributable to coronavirus, ***net of other reimbursed sources*** (e.g., payments received from insurance and/or patients, and amounts received from federal, state or local governments, etc.) . . . These are the actual expenses incurred over and above what has been reimbursed by other sources.”

We believe that the term “other reimbursed sources” is meant to refer only to those reimbursements that result from, or are otherwise related to, specific “healthcare related expenses attributable to coronavirus.” However, we are concerned that future auditors could misinterpret this language to include other reimbursements that were received for different purposes. Including those received prior to the pandemic. Thus, this provision could be interpreted to mean that a recipient entity must exhaust all reserves, donations, grant funds, or any other available cash before it could use any PRF funds. As we do not think this was the intent of the language, we request that it be clarified.

5. Regarding the time periods for calculating lost revenues: The requirement to compare revenue *on a cumulative calendar year basis* creates several important concerns and questions for health centers, leading to the following recommendations:

- a. **To reduce administrative burden and confusion, allow providers to make comparisons based on their fiscal year rather than the calendar year.** The requirement to compare revenues on a calendar year basis creates a significant burden for health centers (and other providers) whose fiscal years do not align with the calendar year. Using the recipient's fiscal year is the method followed whether it is indirect cost rate agreements or Medicare/Medicaid cost reports. Therefore, to avoid confusion, administrative burden, and unnecessary audit findings, we request that HRSA allow providers to make these comparisons based on their fiscal year.
- b. **Consider each quarter separately for purposes of calculating lost patient revenues.** We request that providers be allowed to compare revenues on quarterly basis, as opposed to an annual basis. This change would allow providers to use PRF funds to compensate for significant lost revenues from the second quarter of 2020, without penalizing them for successful efforts to increase revenues later in the year.
- c. **Allow providers to stop reporting after the quarter in which they allocate the last of their PRF funds.** Following up on our previous recommendations, if a provider expends all of its PRF funding before the final quarter of the reporting period, they should be permitted to report only on those quarters during which they used PRF funding.

This would reduce administrative burden for health care providers and HRSA.

6. Definition of "patient care" with regard to expenses and revenues: Footnote 5 of the "Post-Payment Notice of Reporting Requirements," published November 2, 2020 defines "patient care" for purposes of calculating patient care revenues and patient care cost/expense impacts. We seek the following clarifications regarding this definition:

- a. **Clarify whether enabling services, etc., are considered "patient care".** Please clarify whether enabling services, care coordination, *etc.* fall within the category of "services and supports" that should be included when calculating patient care revenues and expenses.
- b. **Clarify that the grant funds referred to in Footnote 5 are limited to grants *received* by the health center, and do not include grants *made* by the health center.** The footnote states that grants are not to be included, and we assume that this refers to grant dollars that an organization *receives*. However, we request that HHS clarify that this definition does not apply to grant dollars that an organization *provides* to other groups, even if the recipient will use those grants for patient care.
- c. **Clarify what type of tuition is not included.** The footnote also states that tuition is not to be included. Does that mean that tuition that a health center pays on behalf of an employee to a formal educational program should not be considered a patient care expense? Also, if a health center receives tuition payments, should that be considered patient care revenue?

7. February 15, 2021, due date for initial reports: The Feb. 15, 2021, deadline for reporting on spending through December 31, 2020, creates challenges for FQHCs, leading to the following recommendations:

- a. **Delay the Feb. 15 deadline to reflect timelines for insurance reimbursement and FQHCs' UDS deadline:** NACHC requests that HRSA consider extending the Feb. 15 deadline by at least 30 days for FQHCs, for two reasons:
 - The current schedule allows only 45 days between the end of the reporting period and the report due date. This is not enough time for FQHCs to have complete information on what payments they will receive for services provided through December 31. For example, it can take longer than 45 days to file a claim and receive reimbursement. Also, Medicaid can reimburse for services provided to an eligible patient up to three months prior to applying for Medicaid. Thus, patients who apply for Medicaid in March 2021, could have their December 2020, services covered by Medicaid. Thus, FQHCs will not have complete reimbursement data in time to finalize their reports by February 15, 2021.
 - FQHCs have another major HRSA reporting deadline on February 15 – the Uniform Data System.
- b. **Allow health centers whose Paycheck Protection Program loans are not forgiven to amend their initial PRF report after the submission deadline:** Most FQHC organizations with fewer than 500 staff received loans under the Paycheck Protection Program (PPP). However, most of them will not know if these PPP loans will be forgiven until after the current February 15, 2021, due date for the 2020 PRF report. For this reason, unless the reporting periods and dates are changed, we request that providers whose PPP forgiveness applications are denied be allowed to amend their Feb. 2021 submissions, to use PRF to cover expenses that they had hoped to cover with a forgivable PPP loan.

8. Clarify that the total purchase price of a capital item -- whether equipment, information technology, or facilities – may be charged to the PRF award: The November 2 Reporting Requirements states that PRF funds can be used to pay “[t]he actual healthcare related expenses incurred over and above what has been reimbursed by other sources.” Included in the list of “expenses” is “[e]xpenses paid for the purchase of equipment used to prevent, prepare for, or respond to the coronavirus . . . such as ventilators, updates to HVAC systems, *etc.*” and “[e]xpenses paid for facility-related costs used to prevent, prepare for, or respond to the coronavirus during the reporting period, such as lease or purchase of permanent or temporary structures, or to modify facilities to accommodate patient treatment practices revised due to coronavirus.”

We are very concerned that the word “expenses” will be interpreted to mean that the full cost of acquiring equipment, facilities or other capital items cannot be charged to PRF funds but only a much more limited allowance, *i.e.* current expenses or current operating costs as opposed to capital acquisition cost as defined in both the tax code and the Uniform Guidance. This idea is reinforced by a recent October 28, 2020, addition to the HHS “CARES Act Provider Relief Fund Frequently Asked Questions” (PRF FAQ) document, which responded to the question, “Do providers report total purchase price of capital equipment or only the depreciated value?” In response, HRSA states that a recipient can charge depreciation either on a cash or accrual basis

but does not answer or even address the question of whether a recipient can charge the “total purchase price” to PRF funds.

We have heard from many health Centers that want to invest PRF funds in permanent capital improvements such as renovations to build drive through pharmacies or additions to allow case management teams to be properly distanced. These projects, which are likely not an acceptable use of non-PRF grant funds awarded to Health Centers under the CARES Act, will, in many cases, not take place if a health center must borrow the funds for construction and can only recover depreciation and perhaps mortgage interest through June 30, 2021. Accordingly, we ask that your office issue clarifying guidance that the total purchase price of a capital item -- whether equipment, information technology, or facilities -- be an allowable charge to the PRF award if that acquisition meets the other criteria laid out in the FAQs and the Reporting Requirements.

9. Extend the deadline for using PRF funding through at least December 2021: Given that a vaccine is not yet broadly available, we think it is unrealistic to expect that FQHCs (and other providers) will no longer incur COVID-related expenses or lost revenues as of June 31, 2021. For this reason, we strongly encourage HHS to extend the deadline for using PRF funds for allowable purposes through December 2021 or at least three months after the end of the Public Health Emergency, whichever occurs later.

10. Miscellaneous

- a. If an organization received more than \$10,000 in PRF funding and chooses to return all of it, will it still be required to file a report?
- b. When will guidance be released on how PRF will be treated for Uniform Guidance Audits?
- c. Is it permissible to use PRF funds to pay mortgage principal beyond the minimum amount due each month?

If you have any questions about this letter, please contact Ms. Gervean Williams at gwilliams@nachc.org. We thank you again for your leadership in these challenging times, and look forward to your response.

Sincerely,



L. David Taylor
Chief Operating Officer

cc: Mr. Jim Macrae
Associate Administrator for Primary Care
HRSA

