Role of Compliance Officer in Managing Risks Associated with Government COVID "Provider Relief Funds"

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1

CARES Act Background

- Enacted on March 27, 2020
- Addresses the economic fallout of the COVID-19 pandemic in the US.
- Provide emergency assistance and health care response for individuals, families and businesses
- $2.2 Trillion in economic relief

2

Provider Relief Funds - Overview

- Federal funds for reimbursement to hospitals and other healthcare entities for their COVID-19 healthcare-related expenses and lost revenues.
- HHS distributing billions in general and targeted distributions
- Retention of funds are subject to Terms and Conditions which govern the use of the funds

3

Provider Relief Fund – General Distributions

- **Phase 1** - Direct Allocation
  - Initial Medicare Distribution - $30B
  - Additional Medicare Distribution - $20B
- **Phase 2** - Applicant Submission Based
  - Medicaid, Dental & CHIP Distribution - $18B
- **Phase 3** - Applicant Submission Based
  - Expanded Behavioral Health Providers, Previously Ineligible Providers, and Providers who Previously Received Funding - $20B

4

Provider Relief Funds – Targeted Distributions

- High Impact Area Distribution - $22B
- Rural Distribution – $11.3B
- Skilled Nursing Facilities - $7.4B
- Indian Health Service Distribution – $500M
- Safety Net Hospital Distribution - $14.4B

5

High Level Terms and Conditions

- Different Terms and Conditions for different distributions
- Providers are required to certify that they are eligible for receipt of the funds and that the funds were used in accordance with allowable purposes(e.g., to prevent, prepare for, and respond to coronavirus).
- Providers certify that they provide or provided after January 31, 2020 diagnosis, testing, or care for individuals with possible or actual cases of COVID-19.
  - HHS clarified early on that it broadly views every patient as a possible COVID-19 patient
- Funds were not used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.
  - PPP, FEMA, insurance reimbursement, local, state, tribal government assistance,
- Recipients who received over $10,000 must submit all required reports as determined by the Secretary that are necessary to allow HHS to ensure compliance with payment Terms and Conditions.
- Provider agrees to fully cooperate in all audits the Secretary, Inspector General or Pandemic Response Accountability Committee conducts to ensure compliance with the Terms and Conditions.

6

Terms and Conditions Required Policies

- Financial and cash management
- Record retention and access
- Other information to substantiate the reimbursement of cost under this award, such as
  - Allowable costs and expenses methodology
  - Allowable lost revenue methodology
  - Procurement approval process

7

Provider Relief Fund Reporting

The reporting system will become available to recipients for reporting on **January 15, 2021**.

- All recipients must report within 45 days of the end of calendar year 2020 on their expenditures through the period ending December 31, 2020.
- Recipients who have expended funds in full prior to December 31, 2020 may submit a single final report at any time during the window that January 15, 2021, but no later than **February 15, 2021**.
- Recipients with funds unexpended after December 31, 2020, must submit a second and final report no later than **July 31, 2021**.

8

Application of Funds

- **Allocation of PRF payments to expenses and losses.** PRF payments will first be applied to offset healthcare-related expenses attributable to coronavirus. If there are PRF payment balances remaining after allocating them to such expenses, the remainder will be allocated to lost revenues attributable to coronavirus.
- Funds must be used by June 30, 2021 (Final Report is due July 31, 2021).

9

Reporting Healthcare Related Expenses

- Providers that received between $10,000 and $499,999 in aggregated PRF payments must report healthcare-related expenses attributable to coronavirus (net of other reimbursed sources) in two general categories:
  - general and administrative expenses
  - other healthcare-related expenses
- Providers that received $500,000 or more in PRF payments must report more detailed information within these two general categories.

General and Administrative Expenses	Healthcare Related Expenses
Mortgage/Rent	Supplies
Insurance	Equipment
Personnel	Information Technology
Fringe Benefits	Facilities
Lease Payments	Other Healthcare Related Expenses
Utilities/Operations	
Other G&A Expenses	

10

Allowable Lost Revenue

PRIOR GUIDANCE

- HHS examples of allowable lost revenue that is attributable to COVID:
  - Fewer outpatient visits
  - Canceled elective procedures or surgeries
  - Increased uncompensated care
- Per FAQs
  - Lost revenue may be calculated in a "reasonable manner"
  - Expected revenue v. actual revenue
  - Expected budget v. actual budget
  - Any reasonable method of estimating revenue

CURRENT GUIDANCE

- Per HHS, on October 22, 2020
  - Year over Year……… (lost patient care revenue only)
  - Apply PRF funds up to the amount of 2019 patient care revenue healthcare sources

11

Reporting Lost Revenue

- ***Lost Revenue Methodology:***
  - *Lost revenues attributable to coronavirus will be reported as:*
    - *the difference between 2019 and 2020 "patient care revenue (i.e., patient care revenue less expected discounts and bad debt).*
- ***Cap on amount of reportable lost revenue:***
  - *PRF payments may be applied toward lost revenue only up to the amount of the difference between their 2019 and 2020 actual patient care revenue.*

12

Provider Relief Fund - Auditing Requirements

- Providers who receive and expend $750,000+ in the aggregate during provider's fiscal year must engage an independent auditor and undergo one of the following audits:
  - Financial audit of awards conducted in accordance with Generally Accepted Government Auditing Standards (45 CFR 75.216), OR
  - Single audit conducted in accordance with 45 CFR Part 75, Subpart F
    - Not-for-profit organizations will be required to perform Single Audit
- https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/reporting-auditing/index.html

****A single audit looks at compliance elements that are determined by HHS each year in its compliance supplemental. GAGAS has its own audit standards – which are more like a regular audit.**

13

Reporting and Auditing Requirements Summary

Funding Amount	Requirements	Due Date
$10K+	Reporting portal was to open October 1, 2020 - delayed. Guidance on such reporting was released by HHS on 9.18.20 Up to $500,000 has simplified reporting Over $500,000 must provide further details on expenses	2.15.21 (45 days after end of the calendar year) for funds spent through 12.31.20 7.31.21 for funds spent after 12.31.20
$750K+	Providers must report and undergo a 1) single audit; or 2.) audit performed under Government Auditing Standards. If an organization has other federal awards, then the total of the federal award expended, including provider relief fund, must be considered	9 months after end of provider's cost reporting year

14

Compliance Officer's Role with Receipt of the Provider Relief Funds

15

Overarching Compliance Officers Check Points

- Educated and informed on CARES Act
  - Terms and Conditions
  - Funding and Allowable Uses
- Networked
  - Legal – in-house and/or external
  - CO network and associations
- Up to date – process for continuous updating – dynamic environment – includes understanding your company
- Asking Questions – right seats, timely, feeling stakeholders are engaged

16

Oversight, validation, consultation

- Organization will be expected to adhere to external rules
  - Laws
  - Regulations
  - Guidance/Instructions
- Internal controls will be important for demonstrating appropriate use of and accounting for funds
- New – so important
  - Seat at right tables
  - Recognize dynamic and ever-changing environment

17

Strategies for Oversight

- Project Approach
  - Includes charter, project manager, cross disciplinary team members, work plans with responsible teams, identification of interdependencies, common documentation repository, etc.
  - Usually reports to CFO or other C-suite
- Committee – Subcommittee - work is under the oversight of a pre-existing body
- Department/Division – usually most impact or a trusted 2nd or 3rd line of defense oversees the organization and workstreams
- C-level special activity – "draft" support as needed
- All of the above include roles for Compliance and provide updates to Board or subcommittees

18

Acceptance of Terms and Conditions (T&C's)

- Inventory all T&C's for funds received
- Confirm if attestation was provided or receipt of funds with default acceptance occurred
- Consider if any additional guidance through FAQ's or other instructions have impacted applicable T&C's
- Confirm if the T&C's have been met or remediation is needed
- Are the final T&C's and assessments organized and connected with the reporting on acceptance and use of funds

19

Understanding need for effective tracking, documentation, accounting and reporting for funds received

- Usage consistent with terms and conditions from Health and Human Services ("HHS")
- Governance focus – who is responsible for performing, internal review or audit processes, executive and board roles
- Does it appear comprehensive and are risk factors identified and dealt with in appropriate manner
- Built to withstand external financial audit, Single Audit and various government agencies examinations

20

How to utilize funds received when not all HHS terms and conditions have been released and/or clarified

- Does your organization have a written "COVID19" story and have you reviewed it
- Was there a philosophy on acceptance of funds and how does that reconcile to current understanding of HHS T&C's today
- Process to monitor T&C's, FAQ's, and other instructions to assess alignment with use of funds
- We are approaching the time for a "look back" on funds received and usage planned versus actual

21

Effective controls and assurance process

- Comfort level that process exists (or is being considered) to support the HHS reporting requirements
  - Preparation – appropriate subject matter skills
  - Documentation is being retained that effectively supports numbers and control effectiveness
  - Clear understanding of temporary procurement and other practices utilized during the emergency – logical, approved, will sunset at end of emergency
  - Discussions are occurring on what audits or examinations may occur and process to prepare and support

22

Readiness for future audits by the Office of Inspector General & Others

- Already announced these funds will be audited
  - HHS-OIG
  - HHS-OMB
  - External Auditor – Single Audit (not for profit), GAGAS or Program Expenditure Review
  - TBD
- Process or project anticipated to support readiness for audit
- Documentation retention, organization and context will be critical
- How is organization addressing turnover in assessing level of detail and narratives supporting material expenditures and why they are allowable

23

Managing risks associated with False Claims Act

- Consider performing under appropriate direction an assessment of risk for FCA
- Government states they will apply FCA to inappropriate usage and retention of CARES Act funds – could include duplicate cost claims
- Good processes for accurate accounting, supporting documentation, written interpretation of guidance (with dates) and quality reviews for use of funds should support appropriate mitigation of FCA risk

24

QUESTIONS

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25

Resources

- Provider Relief Fund Terms and Conditions:
  - https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/for-providers/index.html
- General and Targeted Distribution Timeline
  - https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/general-information/index.html
- Provider Relief Funds Frequently Asked Questions
  - https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/faqs/index.html

26