December XX, 2020

The Honorable Alex M. Azar II

Secretary

U.S. Department of Health & Human Services

200 Independence Avenue, S.W.

Washington, D.C. 20201

Dear Secretary Azar:

On October 22, 2020, 244 Members of Congress wrote to you expressing concerns regarding changes to the definition of lost revenues in Provider Relief Fund (PRF) reporting requirements. That same day, the Department of Health and Human Services (HHS) announced that it was amending these requirements to increase flexibility.[[1]](#footnote-1) Unfortunately, these requirements are still too narrow to deliver the relief that providers need. Providers should not be required to return funds they have already received as a result of HHS’s shift in methodology.

Congress established the PRF as part of the CARES Act in order to reimburse health care providers for health care-related expenses or lost revenues not otherwise reimbursed that are attributable to the Coronavirus Disease 2019 (COVID-19) pandemic. On June 19, 2020, HHS informed providers that they may “use any reasonable method” to estimate lost revenues. The guidance goes on to state, “the estimated lost revenue could be the difference between… budgeted revenue and actual revenue. It would also be reasonable to compare the revenues to the same period last year.”

Many providers used this guidance for budgeting, accounting, auditing, and bond rating purposes, and were blindsided when HHS issued a notice of reporting requirements on September 19, 2020 defining lost revenues as the “negative change in year-over-year net patient care operating income.” In response to stakeholder feedback, on October 22, 2020 HHS issued a new notice redefining lost revenues as the “negative change in year-over-year actual revenue from patient care related sources.” While this was a slight improvement, it still predicates the amount of relief a provider may receive on data from 2019, which contradicts earlier guidance.

On its face, utilizing a year-over-year comparison may seem like a reasonable way to prevent providers from using the PRF to increase their profits, which is a laudable goal. However, this methodology results in many unintended consequences because it does not account for other year-over-year changes unrelated to COVID-19. For example:

1. It does not account for rate increases that providers may establish in order to cover regular yearly expense increases.
2. It disadvantages providers that invested in their communities by establishing or acquiring new facilities in late 2019 or early 2020, thereby increasing both revenues and expenses.
3. It does not account for delays in Centers for Medicare and Medicaid Services (CMS) approval of Medicaid fees or settlements related to provider taxes, which prevented certain providers from recognizing certain 2019 revenue until 2020.

Countless health care providers are struggling to meet the demand for care in their communities during the current surge of COVID-19 cases and hospitalizations. They desperately need more resources, not less. While it would be fair for HHS to claw back funds from providers who have intentionally violated the terms of service, providers should not be required to return funds they have already received solely as a result of HHS’s shift in methodology. We urge HHS to take all necessary steps to protect providers from such repercussions, which may include reinstating the June 19 requirements. Thank you for your prompt consideration of this urgent request.

Sincerely,

1. <https://www.hhs.gov/about/news/2020/10/22/hhs-expands-relief-fund-eligibility-and-updates-reporting-requirements.html> [↑](#footnote-ref-1)