



Congress of the United States
House of Representatives
Washington, DC 20515

June 23, 2020

The Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Azar,

We write today regarding the Department of Health and Human Services (HHS) recent decision to lift reporting requirements for health care providers who received federal aid through the Provider Relief Fund (PRF).¹ Just last week, we wrote to you raising concerns regarding which health care providers are receiving these funds,² and Members of Congress on both sides of the aisle have also raised serious questions regarding reporting for PRF recipients.³ To ensure that taxpayer dollars are being spent appropriately, it is critical that HHS enforce the statutory reporting requirements tied to the PRF. Unfortunately, the agency's most recent guidance suspends reporting with no certainty of when these requirements will be reinstated or when the public and oversight officials will receive this important information.

Many hospitals, especially those that make up the health care safety net, operate on razor thin margins.⁴ Because of essential safety measures that hospitals and workers must take to prevent virus spread, as well as necessary investments in infrastructure for COVID-19 treatment, many hospitals have reached a financial breaking point.⁵ Because of this, Congress took aggressive measures to support providers on the frontlines and to preserve access to care for patients. Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress established the \$175 billion Provider Relief Fund, to support frontline health care providers.⁶

Just as with many of the other relief funds included in this legislation, Congress believed it essential that we establish reporting requirements to ensure taxpayer dollars were being spent appropriately. The reporting requirements in the CARES Act are important to hold health care

¹ HHS delays first deadline for COVID-19 provider grant reports, Modern Healthcare, Retrieved at: https://www.modernhealthcare.com/law-regulation/hhs-delays-first-deadline-covid-19-provider-grant-reports?utm_source=modern-healthcare-covid-19-coverage&utm_medium=email&utm_campaign=20200618&utm_content=article3-headline

² Pascrell, Porter, DeLauro Call Out Government COVID Favoritism of Private Equity, Congressman Bill Pascrell, Retrieved at: <https://pascrell.house.gov/news/documentsingle.aspx?DocumentID=4345>

³ Letter from Senators Chuck Grassley and Ron Wyden to Secretary Alex Azar, Senate Finance Committee, Retrieved at: <https://www.finance.senate.gov/imo/media/doc/061120%20Grassley%20Wyden%20HHS%20Provider%20Funds%20transparency.pdf>

⁴ Nonprofit, public hospital margins hit 10-year record low, Moody's report says, Healthcare Finance, Retrieved at: <https://www.healthcarefinancenews.com/news/nonprofit-public-hospital-margins-hit-10-year-record-low-moodys-report-says>

⁵ Operating margins plummet at US hospitals, Kaufman Hall says, Healthcare Dive, Retrieved at: <https://www.healthcaredive.com/news/Kaufman-hospitals-operating-margin-decline/576491/#:~:text=Dive%20Brief%3A&text-Based%20on%20March%20data%20from,dire%20picture%20for%20U.S.%20hospitals.>

⁶ Public Law No: 116-136, Section 15011

companies and large health care systems accountable to their workers, their patients and taxpayers. Recipients are required to submit quarterly reports to HHS and an independent Congressionally established oversight panel about how those funds were spent. This applies to all recipients of “large covered funds” meaning funds that amount to more than \$150,000.⁷ Under Section 15011 of the CARES Act, PRF recipients are required to submit a report to the agency no later than 10 days after the end of each quarter that contains:

- (A) *the total amount of large covered funds received from the agency;*
- (B) *the amount of large covered funds received that were expended or obligated for each project or activity;*
- (C) *a detailed list of all projects or activities for which large covered funds were expended or obligated, including—*
 - (i) *the name of the project or activity;*
 - (ii) *a description of the project or activity; and*
 - (iii) *the estimated number of jobs created or retained by the project or activity, where applicable; and*
- (D) *detailed information on any level of subcontracts or subgrants awarded by the covered recipient or its subcontractors or subgrantees...*

The need for this reporting is already clear. As we have previously noted, there are some companies who hold sufficient funds to cover the increased costs of care and the decrease in revenue, but they still received PRF dollars.⁸ Initially, it appears that the agency understood the importance of gathering this information. In response to the standards established under the CARES Act, HHS included these reporting requirements in its Terms and Conditions for recipients of the PRF,⁹ and in further guidance HHS informed health care providers that they would be expected to file their first report on their use of PRF funds for the second quarter of 2020 by July 10.¹⁰ On June 13, HHS replaced this requirement with guidance that recipients would not have to submit anything yet for this quarter.^{11,12} The agency has yet to release additional guidelines on timing and contents for future reports. This violates the requirements under Section 15011 of the CARES Act and undermines constitutionally required Congressional oversight of taxpayer funds.

We recognize that for small providers, additional reporting requirements may be burdensome. With this in mind, Congress provided that HHS, in coordination with the previously mentioned oversight body and with the Director of the Office of Management and Budget, must provide “user-friendly” means for covered recipients to meet these requirements.¹³ If HHS has not yet been able

⁷ Section 15011 (3)

⁸ Pascrell, Porter, DeLauro Call Out Government COVID Favoritism of Private Equity, Congressman Bill Pascrell, Retrieved at: <https://pascrell.house.gov/news/documentsingle.aspx?DocumentID=4345>

⁹From the Provider Relief Fund Terms and Conditions: *Not later than 10 days after the end of each calendar quarter, any Recipient that is an entity receiving more than \$150,000 total in funds under the Coronavirus Aid, Relief, and Economics Security Act (P.L. 116-136), the Coronavirus Preparedness and Response Supplemental Appropriations Act (P.L. 116-123), the Families First Coronavirus Response Act (P.L. 116-127), or any other Act primarily making appropriations for the coronavirus response and related activities, shall submit to the Secretary and the Pandemic Response Accountability Committee a report.* Retrieved at: <https://www.hhs.gov/sites/default/files/terms-and-conditions-provider-relief-30-b.pdf>

¹⁰ CARES Act Provider Relief Fund Frequently Asked Questions, HHS, Retrieved at: <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/faqs/index.html>

¹¹ Provider Relief Fund Reports Temporarily Suspended, JD Supra, Retrieved at: <https://www.jdsupra.com/legalnews/provider-relief-fund-reports-12122/>.

¹² CARES Act Provider Relief Fund Frequently Asked Questions, HHS, Retrieved at: <https://www.hhs.gov/sites/default/files/provider-relief-fund-general-distribution-faqs.pdf>

¹³ Section 15011 (4)(a)

to employ a system for covered recipients, we demand the agency must do so immediately, rather than simply delaying these statutory requirements. If small hospitals and other providers who have received these funds have informed HHS that they are having difficulty meeting the reporting requirements, then we request additional steps be taken to support them with appropriate public explanation for delay. There has been no substantive justification for delaying or waiving reporting requirements for all or any group of providers. We insist HHS enforce the statutory reporting requirements tied to the PRF to ensure that American taxpayer dollars are spent appropriately.

Thank you very much for your attention to our requests. Understanding that our hospitals and health systems need time to compile these reports, we ask for a response to this letter and issue appropriate guidance no later than June 30, 2020.

Best,

The image shows two handwritten signatures in blue ink. The signature on the left is "Katie Porter" and the signature on the right is "Bill Pascrell Jr." Both signatures are written in a cursive style.

KATIE PORTER
Member of Congress

BILL PASCRELL
Member of Congress