

Congress of the United States
Washington, DC 20515

October 29, 2020

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

Dear Secretary Azar,

We write to follow up on a June 23 letter regarding the Department of Health and Human Services (HHS) requirements for health care providers who received federal aid through the Provider Relief Fund (PRF). To ensure that taxpayer dollars are being spent appropriately and health care workers are adequately supported, HHS must enforce the statutory reporting requirements tied to the PRF. However, HHS's June 13 guidance inexplicably suspended reporting requirements with no certainty of when these requirements will be reinstated or when the public and oversight officials will receive this important information.ⁱ HHS released guidance on September 19 that is in contrast to the June 13 guidance. The new guidance still fails to follow the \$150,000 threshold outlined in the Coronavirus Aid, Response, and Economic Security Act (CARES Act) and creates a new problematic definition of lost revenue.ⁱⁱ These rapid and bizarre changes do not help our health care providers struggling to stay afloat.

Many hospitals operate on razor thin margins.ⁱⁱⁱ Required essential safety measures to prevent virus spread have forced many already strained hospitals to reach a financial breaking point.^{iv} In anticipation of this crisis, Congress established the \$175 billion PRF in the CARES Act to support providers on the frontlines and preserve patients access to care.^v

Like other relief funds in this legislation, Congress established reporting requirements to hold health care companies and large health care systems accountable to workers, patients and taxpayers. The CARES Act required recipients to submit quarterly reports to HHS and an independent Congressionally established oversight panel about how funds were spent. This applies to all recipients of "large covered funds", meaning funds that amount to more than \$150,000.^{vi} Under Section 15011 of the CARES Act and HHS's June 19 Terms and Conditions guidance document,^{vii} PRF recipients are required to submit a report to HHS 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...*

However, the September 19 guidance only requires recipients to report “healthcare related expenses attributable to coronavirus that another source has not reimbursed and is not obligated to reimburse.”^{viii} This shift in definitions sows confusion where the legislation, and this moment, require clarity. We appreciate that HHS released updated guidance on October 22 that clarifies the reporting instructions for the definition of “lost revenue.”^{ix} However, this updated guidance does not address the questions asked in a June 23 letter, nor does it address the confusion caused by the change in reporting requirements in the September 19 guidance.

Please provide responses to the following questions by November 12, 2020:

1. Please explain if the September 19 guidance supersedes the June 13 guidance.
2. Will HHS still require providers to report the information required by Section 15011 of the CARES Act and the June 19 Terms and Conditions guidance? If not, please explain why.
3. Will HHS allow the June 19 Terms and Conditions guidance to remain in effect until January 1, 2021 to provide clarity for providers without a delay in reporting?
4. Please explain HHS’ decision to delay reporting requirements in June.
5. Please explain HHS’ decision to institute new requirements on September 19.
6. Please explain the guidance changes in the monetary threshold, the discrepancies with statutory requirements, and the change in the lost revenue definition.
7. Please provide justification for waiving statutorily mandated reporting requirements in the June 13 guidance.
8. Please explain if HHS provided a “user-friendly” means for covered recipients to meet reporting requirements, as directed by Congress?^x If not, please explain and provide a timeline for expected rollout and implementation.

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 issuance of appropriate guidance no later than November 12, 2020.

Sincerely,




Bill Pascrell, Jr.
Member of Congress



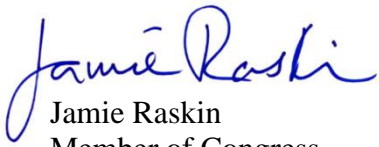
Katie Porter
Member of Congress



Susan Wild
Member of Congress



Emanuel Cleaver, II
Member of Congress

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Jamie Raskin
Member of Congress

Handwritten signature of Terri A. Sewell in blue ink.

Terri A. Sewell
Member of Congress

Handwritten signature of Suzan DelBene in black ink.

Suzan DelBene
Member of Congress

Handwritten signature of Donald S. Beyer, Jr. in black ink.

Donald S. Beyer, Jr.
Member of Congress

ⁱ HHS Delays Reporting Requirement for Provider Relief Fund, retrieved at: <https://www.natlawreview.com/article/hhs-delays-reporting-requirement-provider-relief-fund>

ⁱⁱ Post-Payment Notice of Reporting Requirements, retrieved at: <https://www.hhs.gov/sites/default/files/post-payment-notice-of-reporting-requirements.pdf>

ⁱⁱⁱ 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>

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

^v Public Law No: 116-136, Section 15011

^{vi} Section 15011 (3)

^{vii} Relief Fund Payment Terms and Conditions, retrieved at: <https://www.hhs.gov/sites/default/files/terms-and-conditions-provider-relief-30-b.pdf?language=es>

^{viii} Post-Payment Notice of Reporting Requirements, retrieved at: <https://www.hhs.gov/sites/default/files/post-payment-notice-of-reporting-requirements.pdf>

^{ix} Reporting Requirements Policy Update, retrieved at: <https://www.hhs.gov/sites/default/files/reporting-requirements-policy-update.pdf>

^x Section 15011 (4)(a)