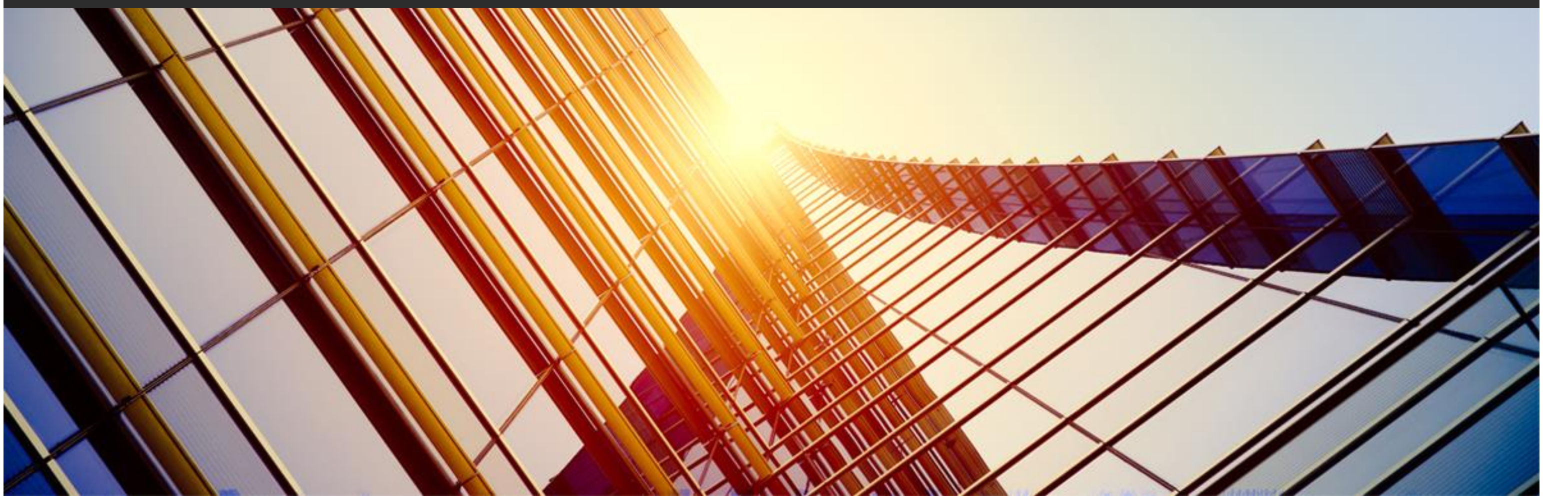
Alert | Health Emergency Preparedness Task Force: COVID-19 Economic Stimulus



May 22, 2020

Availability of CARES Act Provider Relief Funds After a Change of Ownership

The Department of Health and Human Services (HHS) recently[1] updated its CARES Act Provider Relief Fund Frequently Asked Questions (FAQs) to clarify how a change in ownership may impact the availability of relief funds. Some key points are as follows:

- If, as a result of the sale of a practice/hospital, the tax identification number (TIN) that received a General Distribution payment did not provide diagnoses, testing, or care for individuals with possible or actual cases of Coronavirus Disease 2019 (COVID-19) on or after Jan. 31, 2020, the selling provider must reject the payment and cannot transfer a payment received from HHS to another entity. This is consistent with our analysis in the earlier GT Alert on Provider Relief Fund.
- If an organization purchased a practice during or after the year of the organization's most recent tax filing, the organization's adjusted gross receipts can be calculated as the sum of (i) the gross receipts as shown on the organization's most recent tax return; (ii) plus gross receipts of the acquired practice not reflected in the organization's tax return; and (iii) less gross receipts of providers sold not reflected in the organization's tax return. If the organization's adjusted gross receipts exceed the gross receipts shown in its tax return by more than 20%, the organization is eligible to enter the adjusted gross receipts figure in the Provider Relief Fund Payment Portal. However, the adjusted gross receipts figure

[1] The information contained herein is current as of May 22, 2020. HHS is continuing to offer new or amended guidelines.

should not include gross receipts of acquired entities that provide care as of January 31, 2020, and file their own tax returns, because they should submit their own application as tax return filers.

- Until the purchase is complete, the organization should only report current gross receipts in its application and should exclude the practice it is intending to purchase. Any changes in ownership that have not occurred should not be included in the revenue submission.
- Organizations, whether on the buy-side or sell-side of the prior transaction, should also refer to the transaction documents to determine whether proration, net working capital, and other provisions may impact the allocation, use, or control of such funds.
- HHS reminded recipients that they are required to substantiate that these funds were used for increased health care-related expenses or lost revenue attributable to coronavirus, and that those expenses or losses were not reimbursed from other sources and other sources were not obligated to reimburse them.

The relevant FAQs are copied below and available here:

> **If, as a result of the sale of a practice/hospital, the TIN that received a General Distribution payment is no longer providing health care services as of January 31, 2020, is it required to return the General Distribution payment? (*Added 5/19/2020*)**
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> Yes. If, as a result of the sale of a practice/hospital, the TIN that received a General Distribution payment did not provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 on or after January 31, 2020, the provider must reject the payment. The CARES Act Provider Relief Fund Payment Attestation Portal will guide you through the attestation process to reject the payment.
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> **An organization purchased a practice during or after the year of the organization's most recent tax filing and the purchased practice's revenues are not reflected in the most recent tax return. How does the organization account for these acquisitions when submitting revenue information in the Payment Portal? (*Added 5/19/2020*)**
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> An organization's adjusted gross receipts should be calculated as gross receipts as shown on the organization's most recent tax return plus gross receipts of the practice acquired not reflected in the organization's tax return minus gross receipts of providers sold not reflected in the organization's tax return. If an organization's adjusted gross receipts exceed the gross receipts shown in the tax return by more than 20%, the organization is eligible to enter the adjusted gross receipts figure in the Provider Relief Fund Payment Portal. Otherwise, the organization should enter the gross receipts figure as shown on the tax return. Organizations that have already submitted an application in the Payment Portal can resubmit a revised application using the adjusted gross receipts number accounting for acquisitions, if the adjusted gross receipts exceeds the gross receipts shown in the tax return by more than 20%. Gross receipts of acquired entities that provide care as of January 31, 2020 and file their own tax returns cannot be included in such adjusted gross receipts figure, because they should submit their own application as tax return filers.
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> **Can an organization that sold its only practice or facility under a change in ownership in 2019 and is no longer providing services, accept payment and transfer it to the new owner? (*Added 5/19/2020*)**

No. A provider that sold its only practice or facility must reject the Provider Relief Fund payment because it cannot attest that it was providing diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 on or after January 31, 2020, as required by the Terms and Conditions. Seller organizations should not transfer a payment received from HHS to another entity. If the current TIN owner has not yet received any payment from the Provider Relief Fund, it may still receive funds in other distributions.

Can a provider that purchased a TIN in 2019 accept a Provider Relief Fund payment from a previous owner and complete the attestation for the Terms and Conditions? (*Added 5/19/2020*)

No. The new TIN owner cannot accept the payment from another entity nor attest to the Terms and Conditions on behalf of the previous owner in order to retain the Provider Relief Fund payment. If the new TIN owner did not receive a direct payment under the General Distribution, it is not eligible to receive a payment under the General Distribution. However, the new TIN owner may still receive funds in other distributions.

In the case of a merger of a provider entity (billing TIN) into another entity (billing TIN), or the consolidation of two or more entities (each with a billing TIN), resulting in the creation of a new entity (single billing TIN) between January 1, 2018 through January 31, 2020, how should the entities apply? (*Added 5/20/2020*)

If the non-surviving entity (billing TIN) received a General Distribution payment but was not providing diagnoses, testing, or care for individuals with possible or actual cases of COVID-19 on or after January 31, 2020, that provider must reject the General Distribution payment. If the surviving entity (billing TIN) received a General Distribution payment, it should accept the payment and submit its adjusted gross receipts if its adjusted gross receipts exceed the gross receipts shown in the tax return by more than 20% in the Provider Relief Fund Payment Portal to be considered for additional Provider Relief Fund payments.

How should an organization currently undergoing a change in ownership to purchase a practice report revenue in its application? (*Added 5/20/2020*)

Until the purchase is complete, the organization should only report current gross receipts in its application and should exclude the practice it is intending to purchase. Any changes in ownership that have not occurred should not be included in your revenue submission. Submissions must be based on the organization that exists at the time of application, not a projection of expected lost revenue from the practice that is being acquired.

An organization that sold part of a practice in 2019 or January 2020 received a payment under the General Distribution that reflected the 2019 Medicare fee-for-service billing of that part of the practice. Can it return a portion of the payment for the part of the practice it no longer owns? (*Added 5/20/2020*)

No. A provider may not return a portion of a Provider Relief Fund payment. If a provider that sold a practice that was included in its most recent tax return gross receipts or sales (or program services revenue) figure, can attest to meeting the Terms and Conditions, it may accept the funds. The Terms and Conditions place restrictions on how the funds can be used. In particular, all recipients will be required to substantiate that these funds were used for increased healthcare-related expenses or lost revenue attributable to coronavirus, and that those expenses or losses were not reimbursed from other sources and other sources were not obligated to reimburse them. Generally, if a provider anticipates that its COVID-related lost revenues or increased expenses will be materially less than the value of the Provider Relief Fund payment received, the provider should reject the entire General Distribution payment and submit the appropriate revenue documents through the General Distribution portal to facilitate HHS determining their correct payment.

A new organization that did not bill Medicare fee-for-service in 2019, and thus did not receive a payment under the General Distribution, purchased in 2019 or January 2020 all or part of a practice (i.e., a full or partial change in ownership) that did bill Medicare fee- for-service in 2019. Can the new organization submit documentation through the Provider Portal to receive payment? (*Added 5/21/2020*)

If a provider that purchased a practice or facility in 2019 or January 2020 did not bill Medicare fee-for-service in 2019 and did not receive any Provider Relief Fund payment, it is not eligible for payments under the General Distribution and may not submit its gross revenue receipts in the Provider Relief Fund Payment Portal. However, the provider may still receive funds in future distributions.

A parent entity submitting an application for a General Distribution payment from the $20 billion payment tranche has more than 20 subsidiaries with Billing TINs. How should it complete the application in the Provider Relief Fund Payment Portal? (*Added 5/20/2020*)

The parent entity should attach and submit a statement as the first page of the uploaded tax return file indicating any additional billing TINs not previously entered into the application forms as well as the Provider Relief Fund payments that these billing TINs received.

Can an organization that received a General Distribution payment and provided care on or after January 31, 2020 that sold, terminated, transferred, or otherwise disposed of a provider accept the General Distribution payment (received via ACH or check) associated with the sold provider? (*Added 5/21/2020*)

If an organization that sold, terminated, transferred, or otherwise disposed of a provider that was included in its most recent tax return gross receipts or sales (or program services revenue) figure can attest to meeting the Terms and Conditions, it may accept the funds. The Terms and Conditions place restrictions on how the funds can be used. In particular, all recipients will be required to substantiate that these funds were used for increased healthcare-related expenses or lost revenue attributable to coronavirus, and that those expenses or losses were not reimbursed from other sources and other sources were not obligated to reimburse them. Generally, if a provider anticipates that its COVID-related lost revenues or increased expenses will be materially less than the value of the General Distribution payments received, the provider should reject the payment and submit its adjusted gross receipts in the Provider Relief Fund Payment Portal.

For more information and updates on the developing situation, visit GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019 or GT's COVID-19 Economic Stimulus Team.

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