

HHS' FAQs Address Restrictions on the Transfer of Provider Relief Fund Payments in Healthcare Transactions

By John Waters

Purchasers and sellers of healthcare entities that received or intend to apply for Provider Relief Fund payments need to be aware of the restrictions on the receipt and transfer of those payments. By way of background, Congress established a \$100 billion Public Health and Social Services Emergency Fund ("Provider Relief Fund") to be administered by the Department of Health and Human Services ("HHS") to provide financial support to healthcare providers during the COVID-19 pandemic. To expedite the distribution of these funds, HHS automatically distributed a portion of these funds to Medicare providers who received 2019 Medicare fee-for-service payments. Additional funding has been made available to certain healthcare providers by application. All healthcare providers that received and retained such funds are required to provide revenue and other information to HHS and to agree to certain Terms and Conditions regarding the use of such funds. To aid Provider Relief Fund applicants and recipients, HHS has published Frequently Asked Questions and Answers ("FAQs"), which it has periodically updated. Among the FAQs are Questions and Answers regarding restrictions on the transfer and receipt of Provider Relief Fund payments by buyers and sellers of healthcare organizations.

The following is a summary of those FAQs:

- Applicants for Provider Relief Fund payments that are contemplating a prospective practice purchase at the time of their application should only report their own revenues in their application for funds and should not include those of the practices they intend to purchase.
- Providers that received Provider Relief Fund payments prior to a sale of their assets may not transfer those funds to the buyer; however, the provider may continue to use the payments to cover its own COVID-19 related lost revenues and increased health-care related expenses and must return any unused funds to HHS. The buyer, if eligible, may be able to apply for future Provider Relief Fund payments in such circumstances.
- Providers that have obtained Provider Relief Funds payments prior to a sale of their equity (e.g., stock or membership interests) may continue to use the payments for eligible purposes.
- Providers that sold their businesses under a change in ownership in 2019 and are no longer providing healthcare services on or after January 31, 2020 must reject the Provider Relief Fund payments because they cannot attest that they were providing diagnoses, testing, or care for individuals with possible or actual cases of COVID-19, 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, if eligible.
- A provider that purchased a TIN in 2019 cannot accept a Provider Relief Fund payment from a previous owner and cannot complete the attestation for the Terms and Conditions on behalf of the previous owner.
- If an organization that received a Provider Relief Fund payment and provided care on or after January 31, 2020 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, then it may accept the funds. Specifically, all recipients will be required to substantiate that these funds were used for increased health care-related expenses or lost revenue attributable to COVID-19, and that those expenses or losses were not reimbursed or reimbursable from other sources.

In the event that you desire further information and assistance regarding this topic, please consult the following individuals at Roetzel.

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