

October 1, 2020

The Honorable Alex M. Azar, II  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201-0004

Dear Secretary Azar:

The Kentucky Hospital Association (KHA) recently contacted me to share its concerns regarding the Post-Payment Notice of Reporting Requirements published on September 19, 2020. Like KHA, I have serious concerns that these new requirements will cause great uncertainty and financial hardship for Kentucky hospitals.

As you may know, Kentucky was one of the earliest states to halt elective medical procedures to prepare for a potential influx of COVID-19 patients. Unlike other states, Kentucky mostly did not experience large spikes in COVID-19 cases. Therefore, the elective procedure ban resulted in a dramatic decline in patient volume and, consequently, severe revenue loss for Kentucky hospitals. To mitigate the sudden drop in revenue, many hospitals were forced to furlough staff to cut costs.

I recognized the grave impact the elective procedure ban had on our hospitals early in the pandemic, along with the broader health and economic challenges the Commonwealth faced—which is why I authored the CARES Act to bring relief to Kentuckians and businesses, like our hospitals and health care workers. Specifically, the CARES Act included a \$100 billion Provider Relief Fund to reimburse hospitals for lost revenue due to the pandemic. I also secured an additional \$75 billion to support the Provider Relief Fund in companion legislation I helped author. The intent of this funding was to create certainty for our hospitals during an already tumultuous time.

As KHA President Nancy Galvagni describes in her letter, which I have enclosed for your reference, the recent changes to the reporting requirements will force Kentucky hospitals to return payments they have already received from the Provider Relief Fund. Hospitals have already accounted for these payments as they continue to budget for an unpredictable future, which complicates their accounting, auditing, and bond rating.

Additionally, as you know, Kentucky is a predominately rural state and many of our hospitals benefited from the targeted distributions for rural and safety net hospitals. In turn, these hospitals will be the most adversely impacted by the updated requirements. As the only congressional leader not from New York or California, it is my responsibility to look out for

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rural America. HHS must not impose requirements that will disproportionately affect rural hospitals that already operate on thin margins.

Based on the impact these updates will cause, I urge you to take KHA's concerns into consideration as you assess the Provider Relief Fund's reporting requirements.

Sincerely,



MITCH McCONNELL  
UNITED STATES SENATOR

MM/arn

ENCLOSURE



*Representing Kentucky Hospitals and Health Systems*

September 28, 2020

The Honorable Alex M. Azar  
Secretary  
U. S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Azar:

On behalf of the hospitals in the Commonwealth of Kentucky, the Kentucky Hospital Association (KHA) asks the Secretary of Health and Human Services (HHS) to reinstate the COVID-19 Provider Relief Fund (PRF) reporting requirements outlined in your June 19 Frequently Asked Question (FAQ) document that defined both expenses and lost revenues attributable to COVID-19. These requirements, which stated that lost revenue was "any revenue that ... a health care provider lost due to coronavirus," should replace those outlined in HHS's September 19 notice.

For many months, through its Frequently Asked Question document, which was last modified June 19, 2020, HHS has indicated that "lost revenues" means "any revenue that you as a health care provider lost due to coronavirus," explicitly including "revenue losses associated with fewer outpatient visits, canceled elective procedures or services, or increased uncompensated care." Hospitals were advised they could compare lost revenue to a prior period in the preceding year and/or current year budgeted revenue:

FAQ, Page 8 stated, "You may use any reasonable method of estimating the revenue during March and April 2020 compared to the same period had COVID-19 not appeared. For example, if you have a budget prepared without taking into account the impact of COVID-19, the estimated lost revenue could be the difference between your budgeted revenue and actual revenue. It would also be reasonable to compare the revenues to the same period last year."

The September 19 guidance contains a new definition of lost revenue, stating it was "represented as a negative change in year-over-year net patient care operating income." It specified that after covering the cost of COVID-19 related expenses, hospitals generally only will be able to apply PRF payments toward lost revenue up to the amount of their 2019 net patient operating income.

The new definition of lost revenue, which focuses on comparing 2019 and 2020 operating income, rather than budgeted 2020 revenue, fails to recognize the substantial cost-cutting measures that hospitals have taken throughout 2020 to weather the pandemic. If this





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definition is retained, providers that took normal steps to reduce costs as a result of COVID-related disruptions in operations would be required to return PRF payments despite the fact that they may have endured, and continue to endure, disastrous revenue losses.

HHS made distributions to rural and safety-net hospitals because they recognized that COVID-19 could exacerbate the precarious financial position of these important caregivers for their communities. In distributing funds, HHS indicated the importance of these hospitals because they “focus on treating the most vulnerable Americans, including low income and minority patients and are absolutely essential to our fight against COVID-19.” The new HHS guidance runs counter to this reasoning.

Kentucky is the fourth poorest state and the tenth most rural state in the nation, and was one of the first to be mandated by a state Executive Order to stop elective procedures. Many of Kentucky’s rural and safety-net hospitals took aggressive cost cutting measures, including furloughing thousands of health care workers when elective procedures were shut down, and are most at risk of being forced to return payments. We do not believe this was the intent of Congress.

The new HHS guidance also prevents hospitals from benefitting from other actions they may have taken, unrelated to COVID-19, to improve their operating margin, such as through cost reduction or initiatives to improve revenue (i.e., improved coding, renegotiation of payer contracts), because a higher operation margin this year as compared to last year, for whatever reason, would require that the hospital return provider relief funds. Furthermore, often times a hospital may experience a temporary setback in any given year. By limiting a hospital to an artificial benchmark of the prior year may unfairly lock them into a number that is abnormal.

Additionally, this sudden shift is extremely problematic, not only for planning and budgeting but also for accounting, auditing and bond rating purposes. Hospitals have accounted for the distribution based on the original guidance through the FAQs and will now have to adjust future statements for a different definition of losses.

Hospitals with June 30 fiscal year ends were in the final process of closing their books and are now unable to do so and scrambling to understand how this unexpected shift in methodology will impact them. Some may even be put in a position of failing their bond covenants.

**KHA urges HHS to act swiftly to reinstate the June reporting requirements and its prior, and more reasonable definition of “lost revenues,” contained in the FAQs.** HHS must allow providers to calculate lost revenues using any reasonable method, including by comparing 2020 budgeted revenue to actual revenue, or by comparing 2020 revenues to those for the same period in 2019.



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KHA also requests that HHS clarify that reporting may be done at the Tax Filer Level. Under existing reporting requirements, General Distributions can be allocated within a reporting Tax Identification Number but targeted relief funds cannot be shared within a hospital system to cover losses beyond the hospital that received the targeted funding. **With more than 75 percent of Kentucky hospitals being part of a system, KHA asks that this be changed to allow targeted PRFs to remain in Kentucky and be used within health systems to reduce COVID-19 losses.**

Kentucky is continuing to experience regional outbreaks, requiring hospitals to incur additional costs and postpone elective procedures to assure sufficient capacity to care for coronavirus patients. Kentucky's hospitals need to be able to retain their provider relief funds to cover existing and growing lost revenue. Your action to reverse the September 19 guidance and retain the June FAQ definition of lost revenue, along with providing flexibility in the use of PRF among hospital systems, will help our hospitals continue to fight COVID-19 and serve the patients of our communities.

Thank you for your consideration of our needs. Please call on us if we can provide further information or otherwise be helpful.

Very truly yours,

A handwritten signature in black ink that reads "Nancy Galvagni". The signature is fluid and cursive.

Nancy Galvagni  
President and CEO  
Kentucky Hospital Association