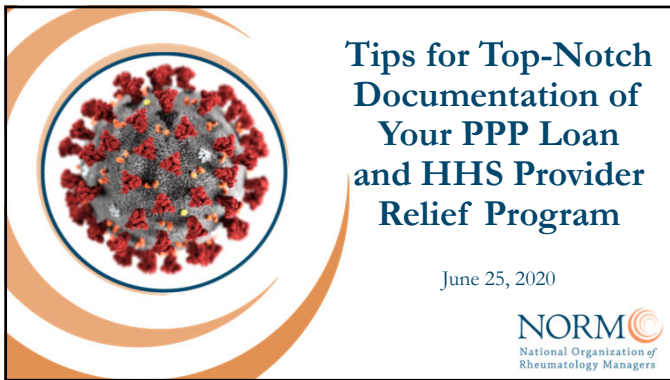
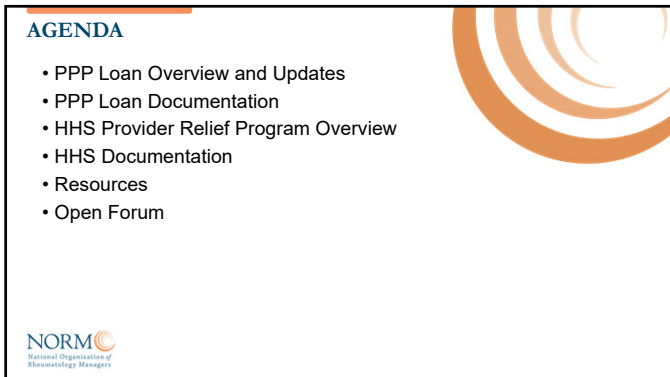




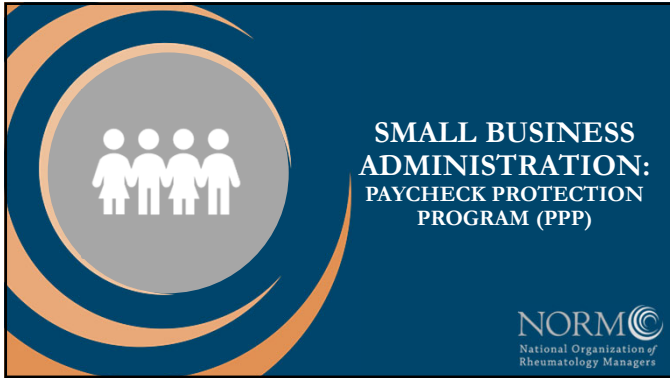
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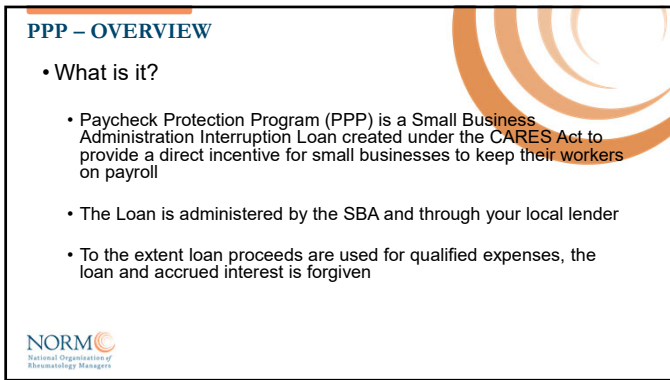
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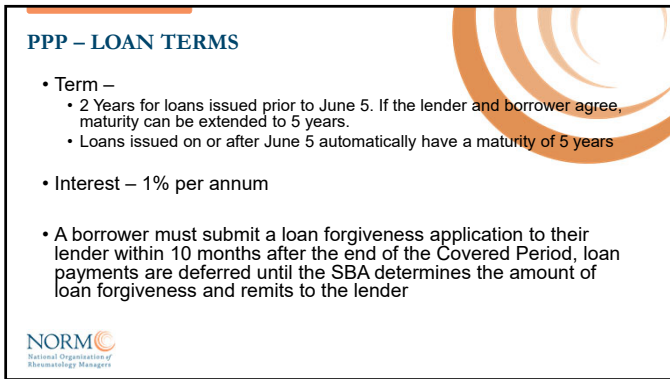
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5



6

PPP – COVERED PERIOD

- The period over which a borrower may accumulate forgivable costs
- A 24-week (168-day) period beginning on the PPP Loan Disbursement Date or if the Disbursement Date was before June 5, 2020, an 8-week (56-day) period can be used
- A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan – including before the end of the covered period – if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness.
- The Covered Period cannot extend beyond December 31, 2020
- Eligible costs must be either paid or incurred during the Covered Period



7

PPP – FORGIVENESS TERMS

- Forgiveness Terms:
 - Must use loan proceeds for the following expenses during the Covered Period:
 - Payroll costs:
 - Gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the FFCR Act), and allowances for dismissal or separation;
 - Employer contributions for employee health insurance;
 - Employer contributions for employee retirement plans; and
 - Employer state and local taxes paid by the borrower and assessed on employee compensation (e.g., state unemployment insurance tax)
 - Business rent or lease payments for real or personal property, pursuant to lease agreements in force before February 15, 2020;
 - Mortgage interest on any business mortgage obligation on real or personal property incurred before February 15, 2020; and
 - Utilities for which service began before February 15, 2020 (e.g., electricity, gas, water, transportation, telephone, and internet access)
 - Per the PPP Flexibility Act, not more than 40% of the forgiveness amount can be used for non-payroll costs (e.g., rent, mortgage interest, and utilities)



8

PPP – FORGIVENESS APPLICATION

- Forms 3508 and 3508EZ were released on June 16, 2020. Use the Checklist provided in the 3508EZ instructions to determine if you qualify to use the shorter application.
- Forgiveness is not automatic. Borrowers must apply to their lenders for loan forgiveness. Lenders may have additional requirements, so borrowers should verify application and documentation requirements with their lenders.
- Lenders will likely require Borrowers to submit documentation in a digital format. Scan any paper documents and keep backups of your digital records.



9

PPP – DOCUMENTATION

- Documents that substantiate payroll costs, number of full-time equivalent employees on payroll and their pay rates for the relevant periods borrowers have used to meet the staffing and pay requirements:
 - Payroll and FTE Reports for periods included on the application (internal reports and/or reports from third-party payroll service providers);
 - Tax forms for the periods that overlap with the Covered Period (IRS Forms 941 and State Quarterly Business and Individual Employee Wage Reporting and Unemployment Insurance Tax Filings);
 - Payment Receipts and/or Canceled Checks verifying Employer Non-Cash Benefits; and
 - Bank Account Statements
- Documents verifying eligible mortgage interest:
 - Copy of lender amortization schedule;
 - Receipts, Canceled Checks; and/or
 - Lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amounts and eligible payments.



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PPP – DOCUMENTATION (CONT.)

- Documents verifying eligible rent:
 - Copy of current lease agreement;
 - Receipts, Canceled Checks; and/or
 - Bank Account Statements listing the payee on the agreement
- Documents verifying eligible utility payments:
 - Copy of invoices from February 2020 and those paid during the Covered Period;
 - Receipts, Canceled Checks; and/or
 - Bank Account Statements



11

PPP – DOCUMENT RETENTION

- Borrowers must retain all documentation for six years after the date the loan is forgiven or repaid in full. This includes:
 - Documentation submitted with the PPP loan application;
 - Documentation supporting the Borrower's certifications as to the necessity of the loan request and its eligibility for a PPP loan;
 - Documentation necessary to support the loan forgiveness application; and
 - Documentation demonstrating the Borrower's material compliance with PPP requirements
- Borrowers must permit authorized representatives of the SBA to access such files upon request.



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PPP – DOCUMENTATION BEST PRACTICES

- Borrowers should utilize some or all of the practices as appropriate within their practices:
 - Consider opening a separate bank account to deposit and disperse PPP loan proceeds.
 - Keep accurate records of all expenditures from the PPP loan proceeds during the Covered Period. Borrowers should retain documentation for expenditures that may arguably not be forgivable, in case of a dispute or disallowance on these or other items or an update in guidance.
 - Maintain a file of all correspondence involving terminations, voluntary resignations, offers to hire and re-hire, employee requests for reductions in work schedule, and responses to such offers. Document contemporaneously any communications from prospective hires/re-hires that are not in writing.



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PPP – DOCUMENTATION BEST PRACTICES (CONT.)

- Familiarize yourself with the SBA's Checklist for Using SBA Form 3508EZ to understand if the 3508EZ form or the 3508 form applies to your Forgiveness request.
- Borrowers should maintain continuous communications with their lenders about their anticipated forgiveness processes. These processes likely will evolve and vary from lender to lender.
- Borrowers should consult with counsel and/or other professionals to advise them and possibly represent them to maximize the amounts forgiven by lenders. Particularly with evolving guidance, lenders may vary in terms of how much risk they may be willing to take under scrutiny from the SBA, Treasury, and the public.



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PPP – CERTIFICATION

- When applying forgiveness, recall that, as a borrower, you were required to certify in good faith in your application that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."
- In addition to the public relations impact on borrowers who may be perceived as unworthy of the loans, numerous fraud charges against borrowers have been reported in connection with PPP loans.
- Under SBA guidance, borrowers that (together with its affiliates) received PPP loans with an original amount of less than \$2 million are deemed to have made the required certification concerning the necessity of the loan request in good faith.



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PPP – CERTIFICATION (CONT.)

- If the SBA determines during its review that a borrower did not have an adequate basis for certifying the necessity of its loan, the SBA will seek repayment of the outstanding loan balance and inform the lender that the borrower is not eligible for loan forgiveness. According to the FAQs, the SBA will not pursue administrative enforcement or referrals to other agencies for borrowers who return their loan proceeds after receiving notification from the SBA.
- The loan forgiveness application requires additional representations and certifications. Strong documentation is key to support these certifications.
- The SBA and the Department of Treasury have announced plans to share additional information regarding PPP Loan borrowers with the public. For loans of \$150,000 or more, the disclosures will include the business name, address, NAICS code, zip code, business type, demographic data, non-profit information, and jobs supported grouped by loan amount ranges.



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CARES ACT – PROVIDER RELIEF FUND: OVERVIEW

- Program Highlights
 - The United States Department of Health and Human Services (HHS) distributed \$50 billion to providers who bill Medicare Fee-For-Service (FFS) in order to provide relief during the pandemic.
- Distribution Method
 - **Initial \$30 Billion**
 - Payment allocation per Provider = (2019 Medicare Fee-For-Service Payments / \$453 Billion) X \$30 Billion
 - **Additional \$20 Billion**
 - Payment Allocation per Provider = ((Most Recent Tax Year Annual Gross Receipts X \$50 Billion) / \$2.5 Trillion) – Initial General Distribution Payment to Provider



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CARES ACT – PROVIDER RELIEF FUND: ELIGIBILITY

- All facilities and providers that received Medicare FFS reimbursements in 2019 are eligible for this initial rapid distribution.
 - All relief payments are made to the billing organization according to its Taxpayer Identification Number (TIN).
 - Payments to practices that are part of larger medical groups will be sent to the group's central billing office.
- HHS partnered with UnitedHealth Group (UHG) to provide rapid payment Medicaid and CHIP Distribution to providers eligible for the distribution of the initial \$30 billion in funds.
 - Providers are paid via Automated Clearing House account information on file with UHG or the Centers for Medicare & Medicaid Services (CMS).
 - Providers must sign an attestation confirming receipt of the funds and agreeing to the terms and conditions of payment within 90 days of receiving the payment. Not returning the payment within 90 days of receipt will be viewed as acceptance of the terms and conditions.



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CARES ACT – PROVIDER RELIEF FUND: ATTESTATION

- HHS continues to issue new instructions and guidance related to the relief fund payments. For each payment under the relief fund, a recipient must accept or reject the funding. To accept the funding, a provider must agree to the terms and conditions associated with the payment. Different terms and conditions apply to each payment distribution.
- However, the same allowed and prohibited uses of the funding apply across each terms and condition document. For example:
 - Recipient must use the funds to "prevent, prepare for and respond to coronavirus";
 - Recipient must use the funds to "reimburse the recipient only for health care related expenses or lost revenues that are attributable to coronavirus."
 - Recipient may *not* use the funds to:
 - "Reimburse expense or losses that have been reimbursed from other sources or that other sources are obligated to reimburse" (e.g., PPP Funds (payroll, rent, and utilities));
 - Salaries above \$197,300;
 - Lobbying Expenses



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CARES ACT – PROVIDER RELIEF FUND: FAQs

- HHS has also made available an FAQ document addressing the use of the General Distribution Portal and the process to complete attestations.
- **Overpayments:** Per the FAQ, if a provider believes it was overpaid, it should reject the entire payment and submit revenue information through the General Distribution Portal for HHS to use to determine the correct payment. The FAQ does not define what would constitute an overpayment or how a provider would know if it has been overpaid. The FAQ also does not address what a provider should do if it has already completed an attestation to accept a payment and the provider now believes it has been overpaid.
 - **Reporting Requirements:** Providers receiving more than \$150,000 in funding under the CARES Act and related legislation to address COVID-19 must submit quarterly reports to the government outlining use of funding. The first quarterly reporting will be for the current calendar quarter, which ends on June 30, 2020. The terms and conditions associated with the Relief Fund payments indicate that reports will be due within 10 days of the end of each calendar quarter. This would appear to make the first reports due by July 10, 2020. The FAQ also indicates that HHS may request additional reports prior to then and that HHS will issue more guidance about the type of documentation the agency will expect providers to submit.



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CARES ACT – PROVIDER RELIEF FUND: FAQs

- **Balance Billing:** The terms and conditions associated with the Relief Fund payments prohibit balance billing, but the scope of the ban has not been clear. The terms and conditions describe the ban as applying to all care for a *presumptive* or actual case of COVID-19. A new FAQ defines a “presumptive case” of COVID-19 as “a case where a patient’s medical record documentation supports a diagnosis of COVID-19, even if the patient does not have a positive in vitro diagnostic test result in his or her medical record.
- **Change in Ownership:** The FAQs do not address a common question raised by providers related to the attestation process when there has been a change in ownership. In some cases, HHS distributed a Relief Fund payment to a previous owner of a provider organization instead of the current owner. Providers have raised questions as to how the new owner could complete the attestation process to accept the payment, given that the Attestation Portal requires a provider to enter the TIN bank account number of the entity that received the payment.



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CARES ACT – PROVIDER RELIEF FUND: FAQs

- **Repayment:** Retention and use of these funds are subject to certain Terms and Conditions available at HHS’s website. If these terms and conditions are met, payments do not need to be repaid at a later date.
- **Classification of Revenue:** CMS will issue guidance about how Provider Relief Fund payments should be treated for purposes of uncompensated care and how it should be reported on cost reports.
- **Acceptance/Rejection:** If a provider would like to reject one payment, the provider may still accept future distribution payments. The provider must use the attestation portal to accept or reject payments.
- **Oversight:** Failure by a provider that received payment from the Provider Relief Fund to comply with any term or condition can subject the provider to recoupment of some or all of the payment. Per the Terms & Conditions, all recipients will be required to submit documents 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. HHS will have significant anti-fraud monitoring of the funds distributed, and the Office of Inspector General will provide oversight as required in the CARES ACT to ensure that Federal dollars are used appropriately.



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CARES ACT – PROVIDER RELIEF FUND: FAQs

- **Recoupment:** The Terms and Conditions require that recipients be able to demonstrate that lost revenues and increased expenses attributable to COVID-19, excluding expenses and losses that have been reimbursed from other sources or that other sources are obligated to reimburse, exceed total payments from the Relief Fund.
 - Generally, HHS does not intend to recoup funds as long as a provider’s lost revenue and increased expenses exceed the amount of Provider Relief funding a provider has received.
 - However, HHS reserves the right to audit Relief Fund recipients in the future to ensure that this requirement is met and collect any Relief Fund amounts that were made in error or exceeded lost revenue or increased expenses due to COVID-19. Failure to comply with the Terms and Conditions may be grounds for recoupment.
- **Recoupment Process:** HHS has not yet detailed how recoupment or repayment will work. However, the terms and conditions associated with payment require that the recipient be able to certify, among other requirements, that it was eligible to receive the funds (e.g., provides or provided after January 31, 2020, diagnoses, testing, or care for individuals with possible or actual cases of COVID-19) and that the funds were used in accordance with allowable purposes (e.g., to prevent, prepare for, and respond to coronavirus).



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CARES ACT – PROVIDER RELIEF FUND: FAQs

- **Use Period:** HHS expects that providers will only use Provider Relief Fund payments for as long as they have eligible expenses or lost revenue. If, at the conclusion of the pandemic, providers have leftover Provider Relief Fund money that they cannot expend on permissible expenses or losses, then they will return this money to HHS. HHS will provide directions in the future about how to return unused funds. HHS reserves the right to audit Provider Relief Fund recipients in the future and collect any Relief Fund amounts that were used inappropriately. All payment recipients must attest to the Terms and Conditions, which require the submission of documentation to substantiate that these funds were used for increased healthcare related expenses or lost revenue attributable to coronavirus.
- **Document Retention:** All recipients receiving payments under the Provider Relief Fund will be required to comply with the Terms and Conditions. Some Terms and Conditions relate to the provider's use of the funds, and thus they apply to a longer time period, for example, regarding maintaining all records pertaining to expenditures under the Provider Relief Fund payment for three years from the date of the final expenditure.



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RESOURCES

- <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>
- <https://www.sba.gov/document/support-faq-lenders-borrowers>
- <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>
- <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/faqs/index.html>
- <https://www.doctors-management.com/coronavirus-covid19/>



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