AMERICAN MEDICAL ASSOCIATION

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October 30, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

**Re: Medicare Claw Backs as a Result of Provider Relief Fund Reporting Deficiencies**

Dear Secretary Becerra and Secretary Yellen:

On behalf of the physician and medical student members of the American Medical Association (AMA), I write to you regarding concerning developments with the Provider Relief Fund (PRF), a critical source of funding to keep physician offices from shuttering especially during the mandated lockdown and initial surge of COVID-19 in early 2020.

After months of consistent accounts of practices being unaware of reporting requirements due to a lack of clear and effective communication from the U.S. Department of Health and Human Services (HHS) and U.S. Department of the Treasury (Treasury), it has recently been brought to our attention that practices are receiving correspondence from the Health Resources & Services Administration (HRSA) explaining that due to failure to comply with the terms and conditions of said PRF payments, they are having these amounts, along with 11.5 percent annual interest plus penalties assessed at six percent interest, recouped by reducing their Medicare payments by collection agencies without advanced notice. Further, when practices call the collection agency with questions, they are told that the account is no longer with the agency and are instead directed to a general 1-800 number for the Treasury, which has multi-hour long wait times. **We have serious questions about whether HHS has the authority to engage in this punitive, non-transparent debt collection process on Medicare claims for something that is not a Medicare overpayment without going through rulemaking or providing any public notice through sub-regulatory guidance.**

This round of notices relates to the Phase 1 General Distribution of PRF funding which was distributed to practices based on a HRSA-created formula at the height of the pandemic in spring 2020. At that time, revenues were down as patients were cancelling non-essential procedures and appointments at the direction of Centers for Medicare & Medicaid Services, and practices were simultaneously contending with rising practice costs, workforce challenges, and supply shortages.

These PRF payments were a lifeline for thousands of practices across the country that were experiencing sudden, unprecedented financial strain, particularly small, rural, and safety net practices. An AMA analysis of changes in Medicare physician spending in 2020 found that the estimated reduction in Medicare physician spending associated with the pandemic was $13.9 billion (a 14 percent decrease from expected). A separate AMA nationwide survey of more than 3,500 physicians across the country taken in July and August of 2020 similarly found that 81 percent of physicians said revenue was still lower than pre-pandemic and the average drop in revenue was 32 percent as practices were also dealing with increased costs due to supply shortages and workforce challenges. Spending on personal protective equipment alone was 57 percent higher on average. These funds provided an injection of financial support for practices at a critical time that allowed many to keep their doors open and continue serving patients as they continued to battle the largest pandemic this country had ever seen.

**Importantly, practices neither requested the funding nor were asked to sign any sort of terms and conditions, including reporting requirements, up-front. Rather, the terms and conditions referenced in these repayment letters were retroactively instated through general announcements, rather than proactively informing practices through direct mail. As a result, more than 16,000 providers missed the initial reporting deadline.**

Despite claims that practices received multiple notices about the need to report and make repayment, the AMA and national medical specialty societies have repeatedly and consistently voiced concerns over a lack of direct communication from HRSA regarding reporting deadlines, as well as opportunities to request late submissions or appeals. In April 2022, the AMA wrote a letter urging HRSA to issue targeted, proactive outreach to noncompliant practices, which the AMA offered to assist with, but never heard back. While HRSA did open a late reporting window at our request, this window was limited to only 11 days and was not accompanied with targeted communications despite our repeated pleas, thereby perpetuating the same communication gaps. Practices also reported confusing instructions and a lack of opportunity to further explain or appeal, as outlined in previous letters to the agency.

The AMA appreciates this administration's need to ensure the integrity of these funds and believes that funds spent on activities not concurrent to the allowed reasons should be repaid. If practices had reported data and been found not to meet the criteria that would be one thing, but the fact that thousands of practices are being penalized because they did not report data at all demonstrates that the problem is not the criteria, but clearly a breakdown in communication from HRSA about reporting expectations and deadlines. If HHS's goals are to ensure the funds were used appropriately, which we suspect is the case for the vast majority of these practices, they should provide practices with an opportunity to make this case, with sufficient advance, ***targeted*** notice.

We strongly believe that noncompliant practices are primarily under-resourced small, rural, and safety net providers who are overwhelmed and were not sufficiently informed and therefore aware of the reporting requirements, particularly with staffing turnover that was so prevalent during and immediately following the pandemic. We have repeatedly asked for more information regarding the practices that remain noncompliant and have received no response or additional information in this regard. Small, rural and safety net practices also cannot afford these systematic claw backs, particularly all at once and with 11.5 percent interest. Under no circumstances should this administration allow private collection agencies to profit off the backs of small, rural, and safety net medical providers. Doing so directly undercuts this Administration's commitment to support and protect vulnerable patient communities.

**The AMA is extremely concerned by the abruptness and lack of transparency of these claw backs on Medicare payments at 11.5 percent interest and six percent penalty with no rulemaking or public notice, particularly after the AMA raised persistent concerns over HRSA's lack of communication regarding the PRF reporting requirements and deadlines. We continue to be concerned that these claw backs will disproportionately harm small, rural, and safety net practices and the communities they serve, putting them in serious financial jeopardy and potentially at risk of closure.**

For all these reasons, we make the following asks:

- Offer one final reporting opportunity for practices that did not report **coupled with targeted outreach efforts**, which the AMA has previously offered to assist with;
- Eliminate or reduce the 11.5 percent interest and six percent penalties being charged for late PRF payments, particularly for small, rural, and safety net practices; and
- Spread out any recoupments over at least 12 months and at a maximum of 25 percent of total Medicare payments per month, as consistent with HHS' policy for repaying COVID-19 Accelerated and Advance Medicare Payments.

We reiterate once again our desire to work with HRSA and the Treasury to address these gaps, bring practices into compliance, and mitigate the potentially devastating impact on thousands of practices across the country and the patients they serve. If you have any questions regarding the content of this letter, please contact Margaret Garikes, Vice President of Federal Affairs, at 202-789-7409 or margaret.garikes@ama-assn.org.

Sincerely,

James L. Madara, MD