

COVID-19: “Hold Harmless” DIRECTIVE
Frequently Asked Questions (FAQ)
Revised May 28, 2020

Purpose: The purpose of the COVID-19 “Hold Harmless” Directive FAQ is to provide guidance and clarity to stakeholders, HSD staff, and service providers for how the directive effects contract agreements, amendments, new base calculations, and payments.

Question 1: What contracts are affected by the “Hold Harmless” directive?

The directive affects general fund contracts.

Question 2: What are the “Hold Harmless” directive effective dates?

The directive is in effect from January 1 through December 31, 2020. The initial directive had an end date of June 30, 2020. However, the original end date was extended through December 31, 2020.

Question 3: How does “Hold Harmless” affect Line Item Reimbursement (LIR) contracts?

“Hold Harmless” for general fund LIR contracts means that service providers can shift more than 10% of a line item amount without a contract amendment during this time to minimize delays in payments in response to COVID-19.

Service providers may shift costs between personnel and operating to meet agency/program needs accordingly. Although there may be shifts between line items, there should be minimal changes to the LIR contract invoices. ***Changes to budget line items, including the rationale, must be documented.*

Question 4: How does “Hold Harmless” affect Unit Cost Reimbursement (UCR) contracts?

“Hold Harmless” for general fund UCR contracts means minimal/no risks involved in adjusting and/or modifying timelines. As an example, an agency may have a timeline for service deliverables on a monthly or quarterly basis, but because of the COVID-19 response, that

timeline may be delayed. There will be no penalty to the service providers for adjusting the timeline to meet their deliverables. ***Changes to timelines must be documented.*

Question 5: How does “Hold Harmless” affect Outcome Based Reimbursement (OBR) contracts?

Prior to the “Hold Harmless” directive, 2020 OBR general fund contracts reimburse for:

1. contracted monthly/quarterly earned performance outcomes, or
2. a monthly allotted base payment, which is usually 80% of the total contract amount.

The details of OBR contracts may vary, as follows:

- Not all contracts are 80%/20%, some have a different % split.
- Base Pay may be monthly or quarterly.
- There is no standard number of performance commitments (PCs). There could be 1 or more PCs.
- Not all contracts pay PC equally, and one PC could be valued higher than another.

In response to COVID-19, HSD’s “Hold Harmless” directive allows for invoices to be paid in equal, 100 percent, base payments, effectively removing PC pay. Therefore, service providers may invoice for 100 percent of the allotted amount for each month (i.e. 100% can be billed as “base”) from January -December 2020 rather than the 80/20 split, as contractually obligated.

As warranted, service providers who have already billed or have additional questions should contact their assigned Program Specialist (PS) for clarification. ***Recalculations for base payments must be documented.*

The new base payments are calculated by dividing the remaining contract balance by the number of months remaining through December 31,2020.

The following are guidelines for the new base calculation:

- **If no invoices or PCs have been paid, monthly base payments are calculated as follows:**

Monthly Base Payments = *Total Contract Budget/12

**Note: The total contract budget for January through December 2020*

- **If invoices or PCs have been paid, for example, January & February invoices have been paid:**

Step 1: Calculate the Total Budget Remaining for March-December:

Total Budget Remaining for March-December = (Total contract budget) –
(Amount paid for January & February invoices)

Step 2: Calculate the new monthly base for March-December invoices:

New monthly base for March-December invoices = Total Budget
Remaining / Number of Months Remaining

****Note: Recalculations due to the extension of the “Hold Harmless” to December 31st should not affect 100 percent base payments recalculated for the original June 30th deadline.** Please have the service providers contact their PS if they have any questions or need clarification.

Question 6: In order to accommodate the changes to the LIR, UCR, or OBR contracts, will we need to amend the contracts?

No. Contract amendments are not required at this time. Any questions regarding contract amendments should be directed to the assigned PS.

Question 7: How does the “Hold Harmless” Directive impact the service providers that may expend less than the total amount they are paid by HSD? Do they have to pay back the excess payment? Do they still have to submit the Mid-Year expenditure report?

Yes, agencies will be required to repay excess payments over \$10,000 and mid-year expenditure reports are still required.

“Hold Harmless” means service providers with contracted performance commitments are paid at 100% even if they do not meet all their performance commitments from January 2020 - December 2020. However, documentation is still required to verify invoice reimbursements, and ensure funds were expended.

Question 8: What is 100% base payment?

The 100% base payment is applicable to OBR contracts only. Service providers with OBR contracts may invoice HSD for 100% of the allotted amount for each month (i.e. 100% can be billed as “base”) from January through December 2020. Service providers will receive payments allotted for base and performance regardless of their performance status during January – December 2020.

Question 9: How do I calculate what my 100% base payment will be?

Calculations for the 100% base payments for OBR contracts for January through December 2020 invoices will be determined by the PS. See Question #5 for recalculations.

Question 10: Can I adjust payment for January and February to receive the adjusted 100% base payment even if we already submitted and received payment for those months?

No, it is not necessary to adjust these invoices. The funds allotted for additional base payments will be included on payments for invoices from March through December 2020. The calculation will be determined by the PS. See Question #5 for recalculations.

Question 11: For an OBR contract with a total budget of \$120,000, is the new monthly base for January through December \$10,000? ($\$120,000$ divided by $12 = \$10,000$).

Yes, the new base for January through December is \$10,000.

See question #5 above for recalculation guidance.

Question 12: For OBR contracts and providers who have billed for performance, do we have discretion to use the new 100% base or are we expected to deduct performance from the 100% base to come up with the new base?

Paid performance commitments should be deducted from the 100% base to calculate the new base amount. Otherwise, the total contract budget will be over.

For new base calculations, examples are referenced in question #5 above.

Question 13: Should PS email providers new invoice forms with the new base amounts? How are 2019-2020 contracts affected?

No. PS should have service providers use the “Adjustments (+/-) section to document the additional base.

Service providers should bill for the existing monthly base amount, as is included on the invoice form, and bill for the additional base amounts in the “Adjustments +/- row. For 2019/2020 contracts that had invoices paid in 2019, the recalculation of base payments on the remaining contract budget is the same as 2020 calendar year contracts. See Question #5 for calculation guidance.

Question 14: Some service providers have OBR contracts (80% base pay; 20% performance commitments) in which PC pay is on a trimester schedule with service providers able to bill for PCs in April, August and December invoices. How does this affect base payment recalculations?

The service providers do not bill for PCs in April since they will bill 100% base for January through December invoices. If invoices were paid prior to the “Hold Harmless” directive, the remaining base payments can be recalculated, as outlined in question #5.

Question 15: Can service providers bill for the regular base, plus the additional base amount using +/- adjustment section of the invoice form?

Yes, this is the suggested method of documenting the additional base amounts on existing invoice forms. One advantage is that it is easier to track the PC payments that are converted to base payments. See Question #13 for details.

Question 16: Regarding UCR contracts, “providers may adjust what the units are in response to COVID-19 with approval.” Are Program Specialists authorized to approve changes (in consultation with their supervisor, when needed)?

Due to COVID-19, HSD needs to assist the service providers promptly. Therefore, the “Hold Harmless” Directive is in effect until December 31, 2020.

Service providers need to contact their assigned PS on any budget changes, contract modification, justification requests and all other changes. The PS will work with the service provider on a timeline and/or authorization for any contract amendments in consultation with

their supervisor, when needed, and with approval from the Division Management or SLT.

***Documentation must be maintained for all changes to budgeted amounts and/or timelines.*

Question 17: What do I do if I want to shift or change my contract budget to meet our needs during this time?

See response to Question 16.

Question 18: Will my contract need an amendment if I wanted to make budget changes?

See response to Question 16.

Question 19: Can I add new budget items to my contract budget? For example, I did not have an amount budgeted for operating expenses, but as a result of staff working remotely, we had to purchase a laptop and other items for my advocate to work and provide services from home.

See response to Question 16.

Question 20: Can I shift money from our operating supplies to client assistance?

See response to Question 16.

Question 21: Due to the “Stay Home, Stay Healthy” order, we may not meet our targeted goal of new clients served for second quarter. Will this affect our contract payment?

See response to Question 16.

Question 22: If we need to decrease our outcomes/performance commitments, do we need to do a contract amendment?

See response to Question 16.

Question 23: Can we shift money from one strategy/service to another strategy/service?

See response to Question 16.

Question 24: Will we be able to decrease our total outcomes, or will we be required to meet the total number by end of contract?

See response to Question 16.

Question 25: We want to purchase gift cards in advance to provide them to clients quickly when needed. Is this allowable?

See response to Question 16.

Question 26: Can we receive our invoice payments via direct deposit?

See response to Question 16.

Question 27: How does the directive impact current contracts seeking FEMA reimbursement? Do we have to amend these contracts?

HSD is not seeking FEMA reimbursement on current contracts. New contracts will be developed for COVID-19 purchases and for FEMA reimbursement requests.