

COVID-19 CARES Act Compliance for Healthcare Organizations BEST PRACTICES COMPLIANCE CHECKLIST

Applying for, retaining and monitoring CARES Act funding can be a complex process requiring careful oversight and a significant time commitment. Failure to comply with the relevant requirements set forth by the federal government for Provider Relief Fund recipients could put your healthcare organization at substantial risk. Just to start with, any provider that received more than \$150,000 in funding will need to file detailed quarterly reports; and those that received more than \$750,000 will be automatically audited by the Office of Inspector General (OIG).

From providing guidance with respect to proper policy enhancements, accounting considerations, necessary documentation, training, and report/audit preparation, to assisting your organization in fully understanding the risks of noncompliance, Buchanan's experienced CARES Act Compliance Team can help make sure your organization is both prepared and protected. If you'd like more information, please contact us at CARESActCompliance@bipc.com.

Using our Compliance Checklist will help get you started on the right path:

☐ Sign an Attestation Confirming Receipt of CARES Act Funds Within 90 Days

- Healthcare organizations that received CARES Act funds must sign an [Attestation](#) confirming receipt of the funds and *agree* to the [Terms and Conditions](#) within 90 days of an ACH payment or within 90 days of check payment issuance.
- For a presumptive or actual case of COVID-19, healthcare organizations must certify that they will not seek to collect from the patient out-of-pocket expenses in an amount greater than what the patient would have been required to pay if the care had been provided by an in-network provider.
- Should the healthcare organization choose to reject the CARES Act funds, the organization is still required to complete the attestation to *indicate its rejection* of the funds through the [CARES Act Payment Portal](#).

☐ Healthcare Organizations Receiving More than \$150,000 Must Submit Quarterly Reports

- Healthcare organizations receiving more than \$150,000 in CARES Act funding must submit a report to the Department of Health and Human Services (HHS) Secretary and the Pandemic Response Accountability Committee (PRAC) no later than 10 days after each calendar quarter. Among other items, these reports must include:
 - The total amount of funds received;
 - The amount of funds received that were expended or obligated for each project or activity;
 - A detailed list of projects for which the funds were expended or obligated, including the name and description of the project or activity and the estimated number of jobs created or retained by the project or activity.

☐ Enhance Your Compliance Program to Account for COVID-19 Considerations

- Healthcare organizations that *do not* currently have a comprehensive compliance program in place should prioritize its design, development and implementation.
- Organizations that *do* maintain an existing compliance program should evaluate and, as necessary, enhance their program to account for changes in their risk profile due to COVID-19 and associated legal and regulatory requirements.
- Any edits, amendments, enhancements, or updates to an organization's program should also be specifically tailored to ensure compliance with applicable loan provisions related to CARES Act funding.
- As resources permit, designate a specific CARES Act compliance manager from the Legal and/or Compliance group to act as an informed leader for training, risk assessment, communication and monitoring of relevant compliance measures.

☐ Maintain Clear, Organized and Accessible Books and Records

- All recipients are required to submit documents to substantiate that *any* CARES Act funds were used *only* to reimburse healthcare-related expenses or lost revenues attributable to COVID-19 and that these expenses (or losses) were not refunded by other sources (and that other sources were not obligated to reimburse them).
- Documentation showing the expenditure(s) of any CARES Act relief funds must be *readily available* at the request of the HHS Secretary and, likewise, if the Inspector General or PRAC decides to conduct an audit of the organization.
- Such documentation must be carefully maintained in accordance with [45 CFR § 75.302](#), and [45 CFR § 75.361](#) through [45 CFR § 75.365](#).
- HHS reserves the right to audit CARES Act fund recipients in the future and collect any amounts that were used inappropriately.

□ Integrate the Following Measures to Account for CARES Act Funding and Utilization

- Maintain segregated bank accounts and establish separate general ledger accounts for CARES Act funds to help ensure the accuracy of booking, tracking, monitoring and reporting COVID-19 vs. non-COVID-19 transactions.
- Keep detailed documentation demonstrating that each expenditure from the segregated CARES Act fund complies with the Terms and Conditions of the attestation by showing that the funds were used only to prevent, prepare for, and respond to COVID-19, and to reimburse the recipient healthcare organization only for healthcare-related expenses or lost revenues attributable to COVID-19.
- Identify and implement an appropriate allocation methodology, with accounting oversight, to distribute indirect departmental expenses to COVID-19 accounts.
- Clearly track and maintain detailed descriptions of COVID-19 expenses and losses, making expeditious, timely adjustments and updates (in real-time, when possible).
- Designate Accounting, in coordination with other groups, to utilize a proven record-keeping procedure to identify and quantify lost revenue as a result of COVID-19.

□ Follow Title VI Civil Rights Considerations and the CARES Act

- HHS has alerted healthcare organizations to ensure compliance with Title VI of the Civil Rights Act of 1964 during the COVID-19 public health emergency; recipients of federal financial assistance, including state and local agencies, hospitals and other healthcare providers should:
 - Adopt policies to prevent and address harassment or other unlawful discrimination on the basis of race, color or national origin.
 - When site selection is determined by a recipient of HHS funds, ensure that Community-Based Testing Sites and Alternate Care Sites are accessible to racial and ethnic minority populations. For example, fund recipients may consider making walk-in testing sites available in urban areas where racial and ethnic minority populations may not have access to vehicle transportation, or providing home visitation testing in rural areas where transportation is a challenge for minorities.
 - Confirm that existing policies and procedures with respect to COVID-19-related services (including testing) do not exclude or otherwise deny persons on the basis of race, color or national origin.
 - Ensure that individuals from minority groups are not subjected to excessive wait times, rejected for hospital admissions, or denied access to intensive care units compared to similarly situated, non-minority individuals.
 - Provide ambulance service, non-emergency medical transportation and home health services – if part of the program or services offered by the provider – to all neighborhoods within the provider’s service area, without regard to race, color or national origin.
 - Appoint or select individuals to participate as members of a planning or advisory body, which is an integral part of the provider’s program, without exclusions on the basis of race, color or national origin.
 - Assign physicians, nurses and volunteer caregivers, without regard to race, color or national origin (do not honor a patient’s request for a same-race physician, nurse or volunteer caregiver).

- Assign beds and rooms, without regard to race, color or national origin. For multi-bed rooms, providers should not grant a patient's request to exclude a roommate of a particular race, and for single-bed rooms, recipients should assign patients in a non-discriminatory manner.
- Make available to patients, beneficiaries and customers information on how the provider does not discriminate on the basis of race, color or national origin in accordance with applicable laws and regulations.

□ **The Safety Net: Designate a CARES Act Compliance Oversight Committee**

- Organizations should consider promptly designating a specific committee of managers (or other leaders) from relevant teams (groups), including Legal and Compliance, to lead compliance efforts with respect to the CARES Act (to be led and spearheaded by the specific CARES Act compliance manager, as discussed above).
- The Committee should develop and implement internal protocols for approving the use of CARES Act funding, to appropriately address the following inquiries:
 - Who will be responsible for approving the use of CARES Act funds?
 - What specific information must the requesting individual or department provide to the approver when requesting the funds?
 - How will the provider ensure that funds are never spent without prior authorization and/or approval?
 - How will funds be monitored to ensure that the amount remains within the approved parameters?
 - If additional funds are needed, will the approval process begin again or will there be a separate process for requesting additional funds?
- Ensure that the organization has adequate reporting mechanisms and a clear chain of command in place for the reporting of alleged misconduct or illegalities throughout the entity (particularly where they may involve CARES Act funds).
- Implement virtual or in-person training programs for the legal team, compliance staff and other employees who have access to CARES Act funds (or CARES Act responsibilities) to help ensure the funds are spent and recorded appropriately.
- Stay fully updated and informed about periodic government clarifications, guidance documents and new regulations to ensure that any inaccuracies in information previously submitted are identified and promptly corrected.
- Adequately vet all subcontractors to whom COVID-19-related funds are distributed for compliance with applicable laws, regulations, Terms and Conditions, certifications, attestations and other relevant requirements.
- Track statements made in any previous filings and verify assertions with personnel knowledgeable on the subject matter to ensure that any and all representations made in connection with the application are consistent and accurate.

We're Ready to Help

The Checklist is really just a starting point for compliance. If you have questions about the list, how to apply it or would like to have a more customized discussion around your particular needs and concerns, please contact us.

[We're here to help.](#)

In addition to this Checklist, having trusted legal counsel to assist with internal investigations of misconduct or noncompliance can help avoid whistleblower suits, treble damages and potential penalties under the False Claims Act. And if the unfortunate reality of litigation arises, having a law firm partner experienced with these issues can save much more than time and money.

At Buchanan, our team of [healthcare compliance](#) attorneys, seasoned litigators and government relations professionals can help you to make sure legal challenges don't create additional obstacles in your fight against COVID-19.

Our CARES Act Compliance Team



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