

## Compliance Today – August 2021 Seven compliance hacks for after the COVID-19 pandemic

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By Sarah Swank and Charles R. Whipple

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At the end of 2019, the Centers for Disease Control and Prevention reported an outbreak of respiratory disease caused by a *novel* (new) coronavirus that was first detected in China. It then was detected in other locations internationally, including in the United States. In response to the pandemic, laws were waived to ensure healthcare providers could prepare and respond to the outbreak. These legal changes created an opportunity for rapid evolution of science, innovation, and technology-driven care models. The pandemic shone a light on discussions regarding social determinants of health and health justice. These changes will likely influence care and payment models, enforcement priorities, and compliance risk beyond the pandemic. Here are seven compliance hacks for staying compliant after the pandemic.

### **One: Track and ensure PRF compliance**

Through the Coronavirus Aid, Relief, and Economic Security (CARES) Act<sup>[1]</sup> and the Paycheck Protection Program and Health Care Enhancement Act,<sup>[2]</sup> the federal government allocated payments to be distributed through the Provider Relief Fund (PRF).<sup>[3]</sup> The intent of the PRF is to support healthcare providers in the battle against the COVID-19 pandemic. Qualified providers of healthcare, services, and support received federal PRF payments for healthcare-related expenses or lost revenue due to COVID-19. These distributions do not need to be repaid, assuming providers comply with the terms and conditions. These obligations include the proper use of the funds, reporting obligations, and return of unused funds to the U.S. Department of Health & Human Services (HHS).

In receiving these funds, the recipient certifies that the payment will only be used to prevent, prepare for, and respond to the coronavirus and that the payment will reimburse the recipient only for healthcare-related expenses or lost revenues that are attributable to the coronavirus. Additionally, recipients must submit all required reports as determined by the secretary of the HHS. The PRF and the terms and conditions for the distributions require that recipients demonstrate that lost revenues and increased expenses are attributable to COVID-19, excluding expenses and losses reimbursed from other sources, or other sources are obligated to reimburse, and exceed total payments from the PRF. PRF payment amounts that have not been fully expended on the combination of healthcare expenses and lost revenues attributable to the coronavirus by the end of the deadline that corresponds to the date the payment was received (or the “Payment Received Period”) must be returned to the HHS.

The recipients of PRF payments may be subject to additional auditing to ensure the accuracy of the data submitted to the HHS for payment.<sup>[4]</sup> Any recipients identified as having provided inaccurate information to the HHS will be subject to payment recoupment and further legal action.<sup>[5]</sup> All recipients of PRF payments are required to maintain appropriate records and cost documentation to substantiate that recipients used all PRF

payments appropriately.

Noncompliance with any term or condition is grounds for the HHS secretary to direct recoupment of some or all of the payments made. HHS will have significant anti-fraud monitoring of the funds distributed, and the Office of Inspector General (OIG) will provide oversight under the CARES Act to ensure that federal dollars are used appropriately. The recipient of the funds acknowledges in the terms and conditions that any deliberate omission, misrepresentation, or falsification of any information contained in the payment application or future reports may be punishable by criminal, civil, or administrative penalties, including, but not limited to, revocation of Medicare billing privileges; exclusion from federal healthcare programs; and/or the imposition of fines, civil damages, and/or imprisonment.

Use of the PRF should be documented and consistent with the terms and conditions of those funds. No “double-dipping” is allowed, including in conjunction with Paycheck Protection Program loans. Review and audit the documentation related to the use and repayment of unused funds back to the federal government. Retain documentation related to PRF uses and repayments. Report these findings to the board of your organizations to ensure transparency.

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