



## Public Health and Social Services Emergency Fund

*So you've retained funds provided under the Public Health and Social Services Emergency Fund in the CARES Act. What next? We've compiled a checklist to maintain your compliance with the program's conditions and reduce the risk of audit issues, government investigations and potential civil liability.*

### Segregate funding received under the Public Health and Social Services Emergency Fund

- Consider maintaining the provider relief funding in a separate bank account than accounts used for non-COVID-19 relief purposes. This will instill discipline in using the funds only for qualified purposes. One of the conditions with funding includes the requirement to maintain records and cost documentation, which is easier when the funding is kept separate. And it will make responding to any subsequent audit, if one occurs, that much less painful.

### Educate, educate, educate: These funds are to prevent, prepare for, and respond to COVID-19

- Develop or commission trainings that capture this message, ensure your trainers are communicating this message clearly, mandate training for the right employee populations, and check that your employees really get it.
- Create or revise policies that may touch on this funding. For many, that will include creating a written policy delineating which services are COVID-19-related and which are not. In addition, policies surrounding audit and records documentation, among others, likely need updating to specifically address this new funding.
- A well-informed work force is also more likely to identify and raise any potential concerns internally, which aids your ability to remediate issues. Create mechanisms for employees to do so, including by anonymous reporting. In addition to quickly surfacing compliance concerns, employees that feel empowered to raise concerns are less likely to become whistleblowers.

### Document your decisions about the use of funding received under the Public Health and Social Services Emergency Fund

- Involve key constituents in determining how you are using this funding and how that use relates to the purpose of responding to the COVID-19 pandemic. Key constituents might include including management, Board members, internal control functions like Compliance and Audit, finance, and external advisors.
- Document those decisions and continue to ask the question and document the use and relation to the funding's purpose at each decision-point.

## Assess the general stead of your controls functions, including Compliance and Audit

- Is your program generally well-designed, implemented effectively, and working in practice? Now is a chance to return to first principles, to ensure that you have the structures in place to promote compliance and the mechanisms in place to foster it. For some, this might mean reviewing their key risks, which may now include receipt of this funding. For others, it might entail a review of controls in place to mitigate risk. Still others may need to put in place key structures, including dedicated controls functions, or may need to create new processes, including for the investigation of possible non-compliance and disciplinary sanctions for confirmed non-compliance.
- These steps help confirm your organization's commitment to compliance. That commitment must be manifest from the top-down and affirmed throughout the organization across your activities, and not simply confined to the use of these funds.

## What You Certified:

- After January 31, 2020, you provide or provided diagnoses, testing, or care for individuals possible or actual cases of COVID-19.
- You will use the funding received only to prevent, prepare for, and respond to COVID-19.
- You will use the funding received only for healthcare-related expenses or lost revenue attributable to COVID-19.
- For presumptive or actual cases of COVID-19, you will not seek to collect out-of-pocket expenses from the patient greater than what the patient would pay if in-network.
- You will still seek third-party payment, where applicable, for potential, presumptive, and actual COVID-19 cases.
- You will maintain appropriate records and cost documentation including, as set forth in 45 CFR § 75.302.
- If receiving more than \$150,000, you will provide quarterly reporting.
- That the information you provided is accurate.

## Contacts:



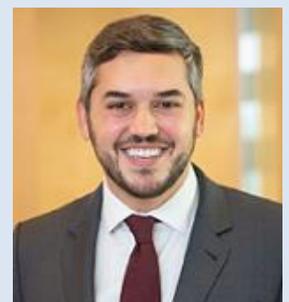
**Kristyn Bunce DeFilipp**  
Partner, BOSTON  
617.832.1218  
kbunce@foleyhoag.com



**Caroline Donovan**  
Partner, BOSTON  
617.832.1165  
cdonovan@foleyhoag.com



**Michael Licker**  
Partner, BOSTON  
617.832.1197  
mlicker@foleyhoag.com



**Ross Margulies**  
Associate, D.C.  
202.261.7351  
rmargulies@foleyhoag.com