Client Alert: CARES Act Provisions Assisting Health Care Providers' Response to the Pandemic

BY PETER J. MARTIN • APRIL 1, 2020

The acceleration of COVID-19 cases is placing extraordinary burdens on the health care provider network. Enacted on March 27, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress's $2 trillion economic stimulus package, devotes one third of its almost 900 pages to statutory amendments aimed at supporting America's health care system.

The CARES Act contains a number of measures designed to streamline and expedite the delivery of health care, increase the number of health care providers available to respond to the crisis, and remove barriers to patients seeking needed care. These provisions are in addition to numerous measures oriented toward institutional providers in this massive bill, such as exempting acute care hospitals until the end of this year from automatic sequestration cuts, further postponing the $4 billion Medicaid Disproportionate Share Hospital payment cut, and increasing the DRG weighting factor by 20% for pandemic-related inpatient services. Together, these provisions serve to bring more assets to the pandemic fight and remove impediments to providing and receiving needed care.

The CARES Act:

STREAMLINES AND EXPEDITES THE DELIVERY OF CARE BY:

- Waiving the normal rules that a face-to-face encounter is required for conducting a home dialysis clinical assessment or recertifying a hospice stay.
- Expanding the use of telehealth services to include substance use disorder services and the use of telehealth in rural areas, not just medically underserved areas.
- Extending certain HIPAA rules to substance use disorder treatment records, including rules to encourage the disclosure of de-identified SUD-related protected health information to public health authorities.
- Appropriating $29 million in grants to telehealth network providers, including for-profit entities to promote the growth and development of the telehealth industry.

ENCOURAGES THE BROADEST POSSIBLE DEPLOYMENT OF HEALTH CARE PERSONNEL BY:

- Permitting nurse practitioners, clinical nurse specialists and physician assistants, and not just physicians, to certify the need for home health services, and establish a home health plan of care.
- Affording volunteer physicians assisting during the Public Health Emergency greater protections from liability than is provided under the Volunteer Protection Act of 1997, by expanding the scope of that protection beyond service on behalf of non-profit organizations or governmental entities, and including full protection for noneconomic losses.

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- Appropriating $79.5 million for each of fiscal years 2021 through 2025 to provide grants to entities (including for-profits) that provide health care services in rural areas.

REMOVES CERTAIN FINANCIAL BARRIERS TO PATIENTS RECEIVING NEEDED TREATMENT BY:

- Mandating that group health plans and individual health insurers must cover "qualifying coronavirus preventive services" (when developed and approved) without subscriber cost-sharing.
- Providing that high-deductible health plans will not lose that status by covering certain telehealth services without deductibles.
- Ensuring that there will be no Medicare Part B deductible for any coronavirus vaccine or its administration.
- Appropriating $1.32 billion to federally-qualified health centers to cover the cost of detecting and treating COVID-19.

ADDRESSES SUPPLY SHORTAGES BY:

- Calling for the Secretary of Health and Human Services to procure a report from the National Academies of Sciences, Engineering, and Medicine addressing "the security of the United States medical supply chain," dependence on critical drugs and devices that are sources or manufactured outside of the U.S., and recommending improvements to the resiliency of the supply chain.
- Mandating that the strategic national stockpile include personal protective equipment, supplies required for the administration of drugs and vaccines, medical devices, and diagnostic tests.
- Requiring manufacturers of drugs that are critical to the public health to develop a risk management plan that evaluates the risk of supplies of the drug during a public health emergency.
- Requiring manufacturers of critical medical devices (like respirators) to warn the Secretary of Health and Human Services in advance of any discontinuance or interruption in the supply of the device.
- Directing the Secretary of Health and Human Services to prioritize the review of drug applications.

REAUTHORIZES AND FUNDS HEALTH PROFESSIONS WORKFORCE PROGRAMS, INCLUDING:

- Designating millions of dollars in grants, scholarships, and fellowships for programs that train under-represented or disadvantages students in the health professions.
- Appropriating $137 million for each of fiscal years 2021 – 2025 to develop the nursing workforce and an additional $117 million each year in loan repayment and scholarship programs for nursing students.

Health care providers should keep informed about this fast-moving area of pandemic response actions. In the longer term, it is possible that some of these measures will outlast the current public health emergency and become more or less permanent features of the health care regulatory landscape. The increased scope of practice for physician extenders, the expanded use of telehealth, and the application of more HIPAA provisions to SUD treatment records, are immediate examples of where the CARES Act perhaps permanently changes the health care system in the United States.

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