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CSW
CHEHARDY SHERMAN WILLIAMS
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COVID - 19 HEALTHCARE UPDATES

The Chehardy Sherman Williams Healthcare Practice Group is constantly monitoring the way the COVID-19 Pandemic is affecting the industry.

President Trump Signs "CARES" Act as a Coronavirus Relief Bill

The Act provides much-needed stimulus to individuals, businesses & hospitals in response to economic distress caused by the COVID-19 pandemic.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), commonly known as "Phase Three" of coronavirus
economic relief, into law. The CARES Act provides much needed stimulus to individuals, businesses, and hospitals in response to the economic distress caused by the coronavirus (COVID-19) pandemic.

Below are some highlights of how the CARES Act applies to healthcare providers:

- Amends federal regulations governing the confidentiality and disclosure of substance use disorder patient records, including allowing certain re-disclosures to covered entities, business associates, or other programs subject to HIPAA after obtaining the patient's prior written consent.
- Limits potential liability for volunteer health care professionals (those who provide services without compensation) for harm caused to patients relating to the diagnosis, prevention, or treatment of COVID-19.
- Allows for the Secretary of Health and Human Services (HHS) to temporarily waive or modify the application of portions of the Social Security Act in the case of a telehealth service furnished in any emergency area during an emergency period.

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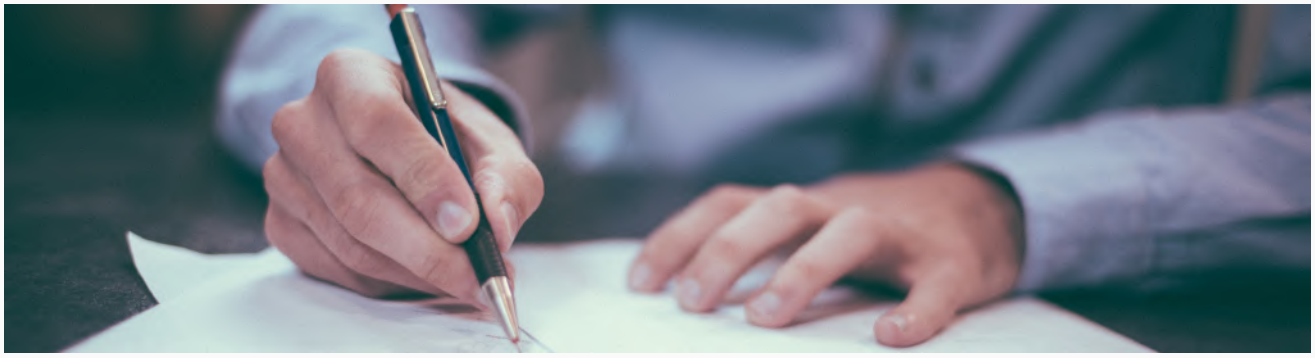
- Provides that by September 23, 2020, the Secretary of HHS shall issue guidance on the sharing of patient's protected health information related to COVID-19, including guidance on compliance with HIPAA regulations.
- Approves appropriations for a variety of health programs, with focus on programs serving medically underserved populations (rural and geriatric).
- Allows High Deductible Health Plans (for plan years beginning on or before December 31, 2021) to pay for telehealth and other remote care without a deductible requirement.
- Sets the price of COVID-19 diagnostic tests paid by group health plans and insurers to providers at pre-emergency-period negotiated rates or, in instances without previously negotiated rates, the cash price for services listed by the provider on a publicly-available website, or a lower negotiated rate. All providers of a diagnostic test for COVID-19 are required to publicize the cash price for such tests. Failure to comply with these requirements could result in HHS assessing a civil monetary penalty of up to $300 per day.
- Enhances payment for telehealth services furnished by federally qualified health centers and rural health clinics during an emergency period. Payment methods for federally qualified health centers and rural health clinics that serve as distant sites shall be based on payment rates similar to the national average payment rates for comparable telehealth services under the physician fee schedule.
- Allows the Secretary of HHS to waive the requirement that individuals with end stage renal disease receiving home dialysis receive certain periodic face-to-face (non-telehealth) clinical assessments in order to be eligible to receive end stage disease-related clinical assessments via telehealth.
- Expands coverage of testing. Any future vaccine under Medicare Part B will have no deductibles. Additionally, there will be no cost for Medicaid beneficiaries.
- Allows a hospice physician or hospice nurse practitioner during an emergency period to conduct a face-to-face encounter via telehealth to determine recertification for continued eligibility for hospice care.
- Provides that, during the emergency period, the Secretary of HHS will waive the requirement that patients of inpatient rehabilitation facilities receive at least 15 hours of therapy per week. For long-term care hospitals furnishing services during the emergency period, the Secretary of HHS will further waive discharge percent requirements and the general application of site neutral payment rates.
- Requires, during the emergency period, prescription drug plans and MA-PD plans to permit a Part D eligible individual reenrolled in such plan to obtain a single fill or refill the total day supply prescribed for such individual for a covered Part D drug.
- Increases by 20% the Medicare payment rate to hospitals treating COVID-19 inpatients for the length of the patient's stay.
- Requires that Medicare Part D and Medicare Advantage plans allow for refills and fills for up to three months. The provision does give exceptions for cost and utilization management like step therapy or prior authorization and medication therapy management.
- Between May 1, 2020 and December 31, 2020, the CARES Act exempts Medicare programs from reduction under any sequestration order issued before, on, or after March 27, 2020.
- Extends the delay of scheduled reductions in Medicaid disproportionate share hospital payments through November 30, 2020.
- Increases prepayment amounts from 70% to 100% (125% for critical access hospitals) of expected Medicare payments.
- Increases the length of time accelerated payments may cover, from three to six months.
- Delays the start of recoupment of any overpayments from 90 to 120 days.



***A*dditionally, the CARES Act provides for more than $100 billion in reimbursements to hospitals and other healthcare entities for COVID-19 related expenses and lost revenue (the "Fund").**

Below are some practical takeaways and recommendations:

- Healthcare entities should immediately start tracking and documenting expenses incurred as part of their COVID-19 response efforts.
- Healthcare entities should immediately start estimating and documenting lost revenues related to their COVID-10 response efforts.
- This includes, for example, developing mechanisms for estimating and documenting lost revenue as a result of delaying and cancelling non-emergency procedures, decreases in operating revenues and margins as a result of shifts in types of services and losses tied to providing free tests and screening as part of the COVID-19 response effort.
- "Eligible Entities" is broadly defined to include hospitals, critical access hospitals ("CAHs") and all types of Medicare enrolled providers and suppliers.
- The Secretary of Health and Human Services (HHS) will have broad discretion in allocating the fund among different healthcare entities and will have to provide additional guidance from the Secretary in the upcoming days and weeks.
- The CARES Act states that "eligible healthcare providers" can qualify for reimbursement under the Fund and defines "eligible healthcare providers" as follows: public entities, Medicare or Medicaid enrolled suppliers and providers, and such for profit entities and non for profit entities not otherwise described in this provision as the Secretary may specify, within the United States (including territories), that provide diagnosis, testing or care for individuals with possible or actual cases of COVID-19.
- Reimbursement is available not only for hospitals, but also for other Medicare enrolled providers such as skilled nursing facilities, hospitals, home health agencies, comprehensive outpatient rehabilitation facilities and suppliers, as well as other types of entities designated by the HHS.
- Examples of reimbursable expenses include: "building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity."

Should you have any specific questions or needs, please contact the Chehardy Sherman Williams Healthcare Team

~ David Sherman, George Mueller, Adam Stumpf, Chris Martin, Adrienne Ellis & Rory Bellina