MURTHA CULLINA
ATTORNEYS AT LAW

NEWS ALERT

HEALTH CARE

The Cares Act and Health Care Providers: What You Should Know

By Paul E. Knag, Daniel J. Kagan and Madiha M. Malik | April 24, 2020

Below, we have summarized key provisions of the Coronavirus Aid, Relief and Economic Security Act, commonly known as the CARES Act, as they pertain to health care providers, and the expected expansion of funding under the Paycheck Protection Program and Health Care Enhancement Act ("PPPHCE Act").

Funding Provisions

The Public Health and Social Services Emergency Fund (the "Fund"). Through the Fund, hospitals and other health care providers will have access to $100 billion, through grants or other mechanisms. This money is set aside for health care-related expenses or lost revenues directly attributable to COVID-19. These expenses will include, but are not limited to, obtaining medical supplies and equipment including testing supplies and personal protective equipment ("PPE"), increased staffing and training, preparing for surge capacity, and costs associated with structural improvements such as building temporary structures, leasing property, and retrofitting facilities. The Centers for Medicare and Medicaid Services ("CMS") extended the deadline for hospitals to submit information to determine how the $10 billion will be allocated for a targeted distribution to hospitals in areas that have been particularly impacted by the COVID-19 outbreak. The deadline is now 3:00 PM ET, Saturday, April 25, 2020.

The PPPHCE Act, once enacted, will allocate an additional $75 billion to the Fund to reimburse health care providers for expenses or lost revenue resulting from COVID-19. In addition, $25 billion is being allotted to expand COVID-19 testing, with $225 million to be allocated to federally qualified health centers ("FQHC") and $1 billion to cover costs of testing for uninsured individuals.

The Fund will be administered by the HHS Office of Assistant Secretary for Preparedness and Response. Once open, the agency will review applications and make payments on a rolling basis. To be eligible for payment, health care providers must submit an application explaining the need for the payment. Accordingly, providers should monitor and retain documentation of all COVID-19-related expenses. HHS has yet to release the formal application.

HHS announced that the initial $30 billion of the Fund has begun to be distributed to all facilities and providers that received Medicare fee-for-service reimbursements in 2019. The amount of the payment is based on the percentage of the provider's contribution of the total Medicare payments in 2019. Providers who receive the payment, either by direct deposit labeled "HHSPAYMENT" or by paper check, must sign an attestation form within 30 days, confirming receipt of the funds and agreeing to the terms and conditions of payment. *See* Confirmation of Funds and Attestation Form. HHS will assume that the provider accepts the Terms and Conditions if the payment is not returned within thirty (30) days. As one of several conditions to accepting the funds, providers agree to collect out-of-pocket payment from a COVID-19 patient equivalent to that of an in-network provider. *See* Terms and Conditions.

According to HHS, the remaining $70 billion distribution will prioritize providers in areas that have been hit particularly hard by COVID-19 pandemic, rural providers, providers of services with lower shares of Medicare reimbursement or who predominantly serve the Medicaid population, and providers requesting reimbursement for the treatment of uninsured patients.

The Act provides that an additional $27 billion will be available to the Fund through September 30, 2024 to assist in medical response efforts. Of this amount:

- $16 billion is dedicated to the procurement of essential medical supplies (including ventilators and PPE);
- $3.5 billion will be available to assist with advancing the manufacture, production and purchase of vaccines and other therapies; and
- $250 million is for grants to the Hospital Preparedness Program, which supports the emergency preparedness of health care facilities.

The Act also contains various other provisions designed to ensure the supply of medical equipment, supplies, and drugs.

Health Resources and Services Administration ("HRSA"). HRSA, which oversees FQHCs, rural hospitals, and Ryan White HIV/AIDS programs, will receive $275 million to address COVID-19. Separately, community health centers will receive an additional $1.32 billion in supplemental funding for fiscal year 2020.

The Substance Abuse and Mental Health Services Administration ("SAMHSA"). SAMHSA is receiving $425 million through September 30, 2021 to address mental health and substance use disorders due to COVID-19.

The Centers for Disease Control and Prevention ("CDC"). The Act provides for $4.3 billion through September 3, 2024 to public health agencies on the federal, state and local levels for preparedness activities, including testing, infection control and mitigation, and surveillance, among others.

The Federal Communications Commission ("FCC"). The Act allocates $200 million to the FCC to support health care providers in their efforts to establish telehealth services during the emergency, including providing telecommunication services, information services, and devices necessary to provide care.

Office of Inspector General ("OIG"). When enacted, the PPPHCE Act will allocate $6 million to the HHS OIG to oversee activities funded by HHS grants.

Insurance Coverage and Reimbursement Provisions

Insurance Provisions. Group health plans and private health insurers must cover qualifying preventative services, including diagnostic testing for COVID-19 and vaccines (once available), without any cost-sharing. The insurer must pay providers the previously-contracted rate for these services. If there is no contracted rate, the insurer must either pay the provider's cash price for the service or a lesser negotiated rate. The cash price for diagnostic testing for COVID-19 must be published on the provider's website.

Medicare Reimbursement. There is additional reimbursement for hospitals treating Medicare inpatients with COVID-19. Hospitals will receive a twenty percent (20%) add-on payment for treating such patients during the public health emergency. Medicare has also implemented an accelerated payment program. *See* CMS Expands Accelerated and Advance Payment Program to Provide Financial Assistance to Medicare Providers During COVID-19 Emergency. In addition, from May 1, 2020 through the end of the year, the Act suspends Medicare sequestration, which when in effect, decreases provider reimbursement by two percent (2%). Proposed reductions for certain other providers are also deferred.

Medicare Telehealth Coverage. The Act expands access and reimbursement for telehealth services under Medicare. Specifically, in part, the Act broadens the ability for the Department of Health and Human Services to waive Medicare telehealth requirements. Separately, CMS released guidance on this topic. *See* CMS guidance. Additionally, the Act allows FQHCs and rural health clinics to be reimbursed under Medicare for telehealth services. This opens the door for more provider-types to implement and provide telehealth programs during the public health emergency. In addition, high deductible plans are allowed to cover telehealth before patients reach their deductibles.

Medicaid. Through the Act, the federal government is also providing additional reimbursement to states' Medicaid programs.

Expansion of Existing Regulations & Other Provisions

Certification and Recertification of Hospice and Medicare/Medicaid Home Health Services. The Act allows hospice physicians and nurse practitioners to use telehealth services to conduct face-to-face encounters when recertifying patients for hospice services.

In addition, the Act provides that regulations will be enacted within 6 months to allow nurse practitioners, clinical nurse specialists, and physician assistants to certify Medicare or Medicaid beneficiaries' need for home health services and establish and review plans of care, along with physicians who were already authorized to do so.

HIPAA/Part 2 Authorizations and Patient Privacy. In a welcomed revision, the Act allows covered entities to disclose substance use disorder information upon obtaining the patient's written consent that authorizes future uses and disclosures. This aligns Part 2 substance abuse record rules with HIPAA.

The Act instructs HHS to issue guidance within 180 days to healthcare providers on sharing patient health information during emergencies.

Limitation on Liability for Volunteer Health Care Professionals. The Act ensures that health care professionals responding to the COVID-19 emergency in a volunteer capacity and acting within the scope of their practice, will not be liable under Federal or State law for any harm caused by an act or omission during the public health emergency. This limitation of liability does not apply to intentional, grossly negligent, or reckless misconduct.

If you have any questions about this bulletin, please contact:
Paul E Knag at 203.653.5407 or pknag@murthalaw.com, Daniel J. Kagan at 203.772.7726 or dkagan@murthalaw.com, or Madiha M. Malik at 203.772.7710 or mmalik@murthalaw.com.

Paul E. Knag, Co-Chair
203.653.5407
pknag@murthalaw.com

Stephanie S. Sobkowiak, Co-Chair
203.772.7782
ssobkowiak@murthalaw.com

Heather O. Berchem
203.772.7728
hberchem@murthalaw.com

Julia P. Boisvert
860.240.6018
jboisvert@murthalaw.com

Daniel J. Kagan
203.772.7726
dkagan@murthalaw.com

Madiha M. Malik
203.772.7710
mmalik@murthalaw.com

Mindy S. Tompkins
860.240.6063
mtompkins@murthalaw.com