WINSTON & STRAWN LLP

CLIENT ALERT

Eleven Key Provisions of the CARES Act for Hospitals and Health Systems

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The recent Coronavirus Aid, Relief, and Economic Security (CARES) Act passed by Congress and signed into law by the President on March 27, 2020, was drafted in large part to address the impact of the COVID-19 pandemic on hospitals. The spread of this novel coronavirus has put an especially difficult strain on hospitals' resources as they work tirelessly on the front lines to provide care to patients suffering from COVID-19 on top of individuals with other illnesses and ailments. The following is a brief summary of the sections in this 854-page Act that are relevant to hospitals and health systems:

Section 3201. Coverage of diagnostic testing for COVID-19

All group health plans and health insurance issuers that offer group or individual coverage must cover FDA-approved testing to detect or diagnose COVID-19, as well as any services or items provided during a related medical visit—including telehealth services, in-person doctor visits, urgent care center visits, and emergency room visits—without requiring any cost-sharing or prior authorization.

Hospital staff, particularly those in a billing-related function, should be aware of this provision so that patient screening and testing can be done efficiently.

Section 3202. Pricing of diagnostic testing

All group health plans and health insurance issuers that offer group or individual coverage must reimburse providers for COVID-19 screening and testing based on the negotiated rate that was in effect prior to this emergency period. If the provider did not have a negotiated rate, the plan must reimburse the provider in the amount of the provider's cash price, which the provider must list on a public internet website. Failure by a provider to make its price publicly available could result in a civil monetary penalty of up to $300 per day.

Health systems and hospitals should identify their cash price for these services and list them publicly on their websites as soon as possible, if they have not already done so.

Section 3203. Rapid coverage of preventive services and vaccines for coronavirus

All group health plans and health insurance issuers that offer group or individual coverage must cover, without any cost-sharing on the part of any beneficiary, qualifying COVID-19 preventive services—including vaccines, once developed, and other items or services intended to prevent or mitigate COVID-19—within 15 days after the recommendation for such preventive services. Patients who are enrolled in Medicare Part B and/or Medicare Advantage plans are also able to receive COVID-19 preventive services.

Hospital staff should be aware that patients with insurance, including Medicare Part B or Medicare Advantage plans, are eligible for the COVID-19 vaccine at no out-of-pocket cost, and should plan accordingly in terms of supply once a vaccine is developed and released. They should also be prepared to inform patients of this benefit, in case a patient is concerned about cost for a vaccine or other preventive service.

Section 3215. Limitation on liability for volunteer health care professionals during COVID-19 emergency response

Health care providers who assist with the treatment of patients in response to the COVID-19 public health emergency on a volunteer basis will not be liable under any state or federal law for any harm caused by an act or omission that occurs while they are providing health care services within the scope of their license, registration, or certification. This law does not, of course, limit liability for harm caused by acts or omissions that constitute willful or criminal misconduct, gross negligence, reckless misconduct, or conscious flagrant indifference to the rights or safety of the harmed individual by the volunteer health care professional, or in cases where the volunteer was under the influence.

Due to the large influx of patients during this crisis, hospitals are dealing with overcrowding and insufficient staffing. Volunteer health care providers are an excellent resource for hospitals during this time, and this section of the Act creates some comfort for both the volunteers and the hospitals, that they are shielded from liability to an extent.

Section 3708. Improving care planning for Medicare home health services

During the next sixth months, nurse practitioners, clinical nurse specialists, and physician assistants may order home health services for patients. Hospitals should ensure that their nurse practitioners, clinical nurse specialists, and physician assistants are familiar with this authorization and should establish guidelines putting this provision into effect. The law allows for more efficient allocation of resources by not requiring physicians to make each and every home health care decision. It also allows for faster discharge of patients who are able to transition out of the hospital and into a home health care setting, which opens up capacity and resources for treatment of patients with COVID-19.

Section 3709. Adjustment of sequestration

The Act temporarily suspends reductions to Medicare programs that were planned under sequestration orders from May 1, 2020, through December 31, 2020.

The provision provides economic assistance to health care providers and hospitals during the COVID-19 emergency period by increasing (or more accurately, not decreasing) payments for services provided to Medicare beneficiaries.

Section 3710. Medicare hospital inpatient prospective payment system add-on payment for COVID-19 patients during emergency period

When calculating payments to hospitals for inpatient treatment of an individual covered by Medicare who has been diagnosed with COVID-19, the weighting factor that would otherwise apply to the COVID-19 patient's diagnosis-related group at discharge will be increased by 20%. These adjustments will not be taken into account in applying budget neutrality.

Hospitals that treat Medicare-covered patients admitted with COVID-19 will receive payment for treating those patients that is 20% higher than the standard payment amount. These are complex cases that tend to incur greater costs, plus the reporting will allow better tracking of COVID-19 diagnoses and treatments.

Section 3713. Coverage of the COVID-19 vaccine under part B of the Medicare program without any cost-sharing

As referenced above, Medicare Part B recipients will not need to pay a deductible or any cost-sharing amount for a COVID-19 vaccine.

Hospitals should be aware of this provision and prepared to provide patients a COVID-19 vaccine, once developed, on a broad scale.

Section 3715. Providing home and community-based services in acute care hospitals.

State Medicaid programs may reimburse services provided by caregivers and direct support providers (who usually provide home health care or community-based services) to patients admitted in acute care hospitals if the services are identified in the patient's plan of care, not provided by the hospital, not in substitution of the services that the hospital is obligated to provide, and are designed to facilitate the patient's transition out of the hospital and into the home or a community-based setting.

Hospitals can provide disabled patients admitted in their facilities (who are Medicare beneficiaries) with services that they would ordinarily receive after being discharged. The goal is to alleviate the burden on hospitals and expediting the patient's smooth transition out of the hospital and into a community-based setting (*e.g.*, a nursing home). This will help increase hospitals' capacity and available resources to treat patients with COVID-19.

Section 3718. Amendments relating to reporting requirements with respect to clinical diagnostic laboratory tests

Planned reductions during 2021 in Medicare payments for clinical diagnostic laboratory tests are halted. Laboratories offering clinical diagnostic tests are given a one-year deadline extension for the reporting of private payer data.

Hospital laboratories are able to continue receiving the full payment, without reductions, for diagnostic testing services covered by Medicare. This will allow the laboratories to focus on increasing their testing capabilities.

Section 3719. Expansion of the Medicare hospital accelerated payment program during the COVID-19 public health emergency

During the COVID-19 emergency, inpatient acute care hospitals, children's hospitals, cancer hospitals, and critical access hospitals are eligible to benefit from an expansion of an already-existing CMS program that offers accelerated and advance payments to providers whose cash flow is impaired because of a temporary delay in billing or payment, or when CMS determines such accelerated and advance payments are appropriate. Hospitals may request up to six months of advance Medicare payments (in lump sum or periodic payments), up to the full amount (100%) of the payment it is expected to be due during the period – in the case of a critical access hospital, up to 125% of what it is expected to be due. The advance payment will be collected by offsetting actual claims subsequently filed with Medicare, but such offsets can be held off for up to four months before applicability. Full payment on the outstanding balance of the accelerated payment will only be required 12 months after the advance payment was made.

Hospitals, which are faced with particularly significant financial and cash flow strains during this emergency, can take advantage of what is effectively a no-interest loan to bolster their cash flow, which can be used to maintain adequate staffing, procure necessary supplies and equipment, and continue to focus on providing quality care to their patients.

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The intended effect of these laws is to alleviate some of the burden on hospitals during this unprecedented time by allowing hospitals to reallocate more of their resources toward effectively and efficiently identifying, testing, and treating COVID-19 patients. Winston & Strawn Health Care and Life Sciences Group attorneys will continue to monitor the implementation of these laws and stay apprised of further developments affecting hospitals, health systems, and other members of the health care and life sciences industries. For more information on the nuances of these and other sections of the CARES Act, and for guidance on how to navigate through this pandemic from a regulatory and risk standpoint, please contact our Health Care and Life Sciences Group or your Winston & Strawn, LLP relationship attorney.

View all of our COVID-19 perspectives here. Contact a member of our COVID-19 Legal Task Force here.

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