

The COVID-19 Aid, Relief, and Economic Security (CARES) Act and its Effects on Healthcare Providers, Hospitals, and Other Professionals

03.30.20

On March 27, the CARES Act was signed into law by President Trump in an effort to stem the nationwide effects of the COVID-19 emergency crisis. Healthcare providers, in particular, are currently overwhelmed with the surge in COVID-19 cases. Consequently, the CARES Act allocates over \$330 billion to the healthcare industry as a temporary economic respite and makes numerous policy changes to provide greater flexibility to healthcare providers as they continue to fight this disease from the front lines. Below are some relevant provisions of the CARES Act specifically targeted to the healthcare industry.

- **Public Health and Social Services Emergency Fund:** The CARES Act allocates \$100 billion to reimburse healthcare providers for costs associated with COVID-19, including lost revenue. Healthcare providers will need to apply to the Secretary of Health and Human Services to determine eligibility for fund reimbursement.
- **Expansion of Hospital Medicare Accelerated Payment Program:** The CARES Act expands the current Medicare accelerated payment program and will allow hospitals to request up to six months' advance payments (either lump-sum or periodic). Critical access hospitals can receive up to 125% of prior period payments for up to 6 months, while other hospitals, including PPS-exempt cancer hospitals, can receive up to 100% for up to 3 months. Funds distributed under this program are akin to a loan, repaid over 12 months, with 0% interest, and repayment beginning 4 months after distribution.
- **Add-On Payments:** The CARES Act increases DRG inpatient reimbursement by 20% for hospitals treating Medicare beneficiaries with COVID-19 during the emergency period.
- **Sequestration Delayed:** The CARES Act pushes the mandatory sequestration order to reduce Medicare reimbursement by 2% until the end of the year. This will result in a net 2% increase for payments to hospitals, physicians, nursing homes, and home health agencies for the rest of 2020.
- **Suspension of Medicare Reductions to DME and Clinical Lab Test Payments:** Scheduled DME Medicare payment reductions are suspended by the CARES Act during the emergency period. The CARES Act further suspends the 2021 scheduled Medicare payment reductions for clinical diagnostic lab tests, as well as delaying the reporting of private payer clinical lab data.
- **Liability Waivers:** The CARES Act provides permanent liability protections for manufacturers of personal respiratory protective equipment, including respirators, during the emergency period; although, it also requires manufacturers to submit information about device or component shortages to the FDA upon request. Additionally, the CARES Act provides liability protections for physicians who volunteer their services during the emergency period.
- **Telehealth Expansion:** The CARES Act allocates \$185 million to telehealth services and relaxes numerous telehealth regulatory requirements. The CARES Act supersedes the prior COVID-19 Preparedness and Response Supplemental Appropriations Act of 2020 in that it now allows physician or other healthcare providers of telehealth services to be reimbursed regardless of whether the provider, in the past 3 years, has established a relationship with the Medicare beneficiary. Additionally, the CARES Act makes Federally Qualified Health Centers and Rural Health Clinics official sites for telehealth, as well as waiving the End-Stage Renal Disease, hospice, and home health services face-to-face requirements.
- **COVID-19 Testing Reimbursement:** The CARES Act requires all health plans to reimburse any COVID-19 testing providers at either a pre-declared, contractually negotiated price, or, absent such contractual price, at the cash price for the COVID-19 test. The cash prices for all COVID-19 tests must also be publicly available online, and each provider administering a test must list its price on its public website. Additionally, the CARES Act will

proactively cover any future COVID-19 vaccines under Medicare Part B (with no deductibles), and establishes that there will be no COVID-19-vaccine related costs to Medicare beneficiaries.

- **Medical Supplies:** The CARES Act attempts to combat the staggering medical supply demands of the healthcare system by allocating \$27 billion for Personal Protection Equipment (“PPE”). PPE will be distributed by the Assistant Secretary for Preparedness and Response through the Strategic National Stockpile. \$1.5 billion is allocated for federal, state, and local health agencies so that they can afford such PPE. Additionally, the CARES Act allocates \$16 billion dollars to replenish the Strategic National Stockpile.
- **Post-Acute Care Regulatory Waivers:** Certain requirements for post-acute care providers are waived during the emergency period by the CARES Act, without penalty, resulting in the ability for post-acute care providers to transfer COVID-19-negative patients into alternative settings, no longer provide 3 hours of therapy per day to post-acute-care patients, nor maintain a 50% patient mix based on acuity. The CARES Act also temporarily waives CMS’ site-neutral payment policy for post-acute providers.
- **Health Centers:** The CARES Act allocates over \$1 billion supplemental dollars for health centers for FY 2020.
- **Delays for Medicaid Cuts:** FY 2020 was supposed to bring with it \$4 billion in Medicaid cuts, while FY 2021 was supposed to bring \$8 billion. However, under the CARES Act, FY 2020 cuts are eliminated, and FY 2021 cuts are lowered to \$4 billion, resulting in an overall \$8 billion delay in Medicaid cuts over FY 2020 and FY 2021. Specifically, the CARES Act delays cuts to Medicaid Disproportionate Share Hospital payments through November 30, 2020.
- **Direct Support Professionals:** The CARES Act allows Medicaid programs to pay for Home and Community-based Support Services that help with daily living activities for disabled individuals in hospital settings.

Implementation and specific allocation of this funding under the CARES Act will be left to each specific agencies’ jurisdiction. We expect future clarification from agencies as implementation of the CARES Act’s provisions progresses.

Contacts:

[Sarah Churchill Llamas](mailto:sllamas@winstead.com) | 512.370.2889 | sllamas@winstead.com

[Corinne Smith](mailto:cssmith@winstead.com) | 512.370.2808 | cssmith@winstead.com

[Kevin Wood](mailto:kwood@winstead.com) | 512.370.2826 | kwood@winstead.com

Disclaimer: Content contained within this news alert provides information on general legal issues and is not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.