CARES Act Provides Vital Financial Support for Health Care Providers on COVID-19 Front Lines

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On March 27, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, or the Act), Public Law 116-136, a trillion-dollar stimulus bill intended to provide financial assistance to individuals and business affected by the COVID-19 pandemic. The Act contains a broad range of measures intended to bolster the economy in the midst of the COVID-19 pandemic. Unsurprisingly, a central focus of the Act is the provision of relief and support for hospitals and health care providers on the front lines of the COVID-19 pandemic. This article provides a brief overview of some of the major pieces of the CARES Act, and the firm will provide additional updates on key aspects of the Act.

The Act contains a number of provisions intended to support the health care system in its efforts to prevent, detect and treat patients for COVID-19, including without limitation provisions that:

- Address supply shortages, including of essential protective equipment, drugs and devices for combatting COVID-19;

- Promote access to care for COVID-19 patients, including via increased insurance coverage of testing and preventive services, increased financial support for providers, and relaxing perceived barriers to information sharing;
• Limit liability for volunteer health care professionals providing COVID-19 response services;

• Relax current restrictions on care modalities such as telehealth and dialysis during national emergencies; and

• Establish payment standards for services related to the COVID-19 pandemic and require public disclosure of the cash price of COVID-19 tests.

The Act includes an appropriation of $100 billion for a “Public Health and Social Services Emergency Fund” intended to support the COVID-19 response via reimbursement and grants for health care providers “for health care related expenses or lost revenues that are attributable to coronavirus,” which may 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.” The Act also appropriates $16 billion for the Strategic National Stockpile, and separately requires that such Stockpile now include personal protective equipment, among other items.

Among other provisions relevant for health care organizations, Section 3703 of the Act increases “telehealth flexibilities” under Medicare during national emergencies by allowing the Secretary of Health and Human Services (Secretary) to waive any requirements for Medicare reimbursement of telehealth services during an emergency under Section 1135 of the Social Security Act. Currently, the Secretary is only able to waive Medicare telehealth requirements related to the patient’s location for receipt of telehealth services, and the use of a telephone (as long as the phone has audio and video capabilities) to deliver telehealth services pursuant to a so-called “1135 Waiver.” Section 3704 of the Act will enable federally qualified health centers (FQHCs) and rural health clinics (RHCs) to furnish telehealth services during a national emergency to beneficiaries not located at the treating FQHC or RHC.

The Act allows the Secretary to waive the physician-patient face-to-face visit requirement for home dialysis services during national emergencies, and to determine when a hospice physician or nurse practitioner may conduct a face-to-face encounter via telehealth to recertify hospice services during a national emergency. The Act also requires the Secretary to consider how to “encourage the use of telecommunications systems” with respect to the delivery of home health services furnished during an emergency period.

The Act notably makes changes to federal laws that provide heightened confidentiality protections for substance use disorder records that could have a significant effect on uses and disclosures of patient information. Specifically, the Act would allow an individual to consent to allowing his/her substance use disorder records to be used or disclosed in accordance with HIPAA – and not under the more restrictive regulatory scheme in 42 C.F.R. Part 2. The Act proposes additional changes that would appear likely to have the effect of easing current restrictions on uses and disclosures of substance use disorder records in favor of aligning requirements with those for other health care records under HIPAA.