

Issue Brief

FEDERAL ISSUE BRIEF • MARCH 30, 2020

President Enacts CARES Act (HR 748)

Last week, Congress passed and the president signed the \$2 trillion *Cares Act* (Coronavirus Aid, Relief and Economic Security). A copy of the 335-page legislative bill is at: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>. Many provisions are broadly written and will require much further details from the Executive branch, including a major provision regarding \$100 billion in aid to hospitals.

Below are some highlights of provisions affecting hospitals and other providers.

HOSPITALS

DIVISION B (beginning page 225) —

Includes the **Emergency Appropriations for Coronavirus Health Response and Agency Operations**. This section includes the wording for \$100 billion to provide hospitals with relief. Below are excerpts of the material beginning on page 283.

“For an additional amount for ‘Public Health and Social Services Emergency Fund,’ \$100,000,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus, domestically or internationally, for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care-related expenses or lost revenues that are attributable to coronavirus: *Provided*, That these funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse: *Provided further*, That recipients of payments under this paragraph shall submit reports and maintain documentation as the Secretary determines are needed to ensure compliance with conditions that are imposed by this paragraph for such payments, and such reports and documentation shall be in such form, with such content, and in such time as the Secretary may prescribe for such purpose: *Provided further*, That ‘eligible health care providers’ means public entities, Medicare or Medicaid enrolled suppliers and providers, and such

for-profit entities and not-for-profit entities not otherwise described in this provision as the Secretary may specify, within the United States (including territories), that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19: *Provided further*, That the Secretary of Health and Human Services shall, on a rolling basis, review applications and make payments under this paragraph in this Act: *Provided further*, That funds appropriated under this paragraph in this Act shall be available for 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: *Provided further*, That, in this paragraph, the term ‘payment’ means a pre-payment, prospective payment, or retrospective payment, as determined appropriate by the Secretary: *Provided further*, That payments under this paragraph shall be made in consideration of the most efficient payment systems practicable to provide emergency payment: ***Provided further, That to be eligible for a payment under this paragraph, an eligible health care provider shall submit to the Secretary of Health and Human Services an application that includes a statement justifying the need of the provider for the payment and the eligible health care provider shall have a valid tax identification number:*** *Provided further*, That, not later than three years after final payments are made under this paragraph, the Office of Inspector General of the Department of Health and Human Services shall transmit a final report on audit findings with respect to this program to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That nothing in this section limits the authority of the Inspector General or the Comptroller General to conduct audits of interim payments at an earlier date: *Provided further*, That not later than 60 days after the date of enactment of this Act, the Secretary of Health and Human Services shall provide a report.”

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COMMENT

Hospitals will not automatically receive any payments from this \$100 billion appropriations. They will need to apply, but guidance on how to seek such is pending.

There is another \$17 billion in funds from the Strategic National Stockpile to procure personal protective equipment, ventilators and other medical supplies for federal and state response efforts. Further, there is \$10 billion for vaccines, therapeutics, diagnostics, and other medical or preparedness needs.

SEC. 3710. Medicare Hospital Inpatient Prospective Payment System Add-On Payment for COVID-19 Patients During Emergency Period (page 142)

For discharges occurring during the emergency period in the case of a discharge of an individual diagnosed with COVID-19, the Secretary shall increase the weighting factor that otherwise would apply to the diagnosis-related group to which the discharge is assigned by 20%. The Secretary shall identify a discharge of such an individual through the use of diagnosis codes, condition codes or other such means as may be necessary.

Any adjustment shall not be taken into account in applying budget neutrality.

SEC. 3709. Adjustment of Sequestration (page 141)

During the period beginning on May 1, 2020, and ending on Dec. 31, 2020, the Medicare programs under title XVIII of the *Social Security Act* shall be exempt from reductions under any sequestration order issued before, on or after the date of enactment of this Act.

However, the sequester reduction period is extended from 2029 to 2030.

SEC. 3704. Enhancing Medicare Telehealth Services for Federally Qualified Health Centers and Rural Health Clinics During Emergency Period (page 136)

The Secretary shall pay for telehealth services that are furnished via a telecommunications system by a Federally Qualified Health Center or a Rural Health Clinic to an eligible telehealth individual enrolled under this part notwithstanding that the FQHC or RHC providing the telehealth service is not at the same location as the beneficiary.

Payment methods shall be based on payment rates that are similar to the national average payment rates for comparable telehealth

services under the physician fee schedule. The Secretary may implement such payment methods through program instruction or otherwise.

SEC. 3705. Temporary Waiver of Requirement for Face-To-Face Visits Between Home Dialysis Patients and Physicians (page 138)

SEC. 3706. Use of Telehealth to Conduct Face-to-Face Encounter Prior to Recertification of Eligibility for Hospice Care During Emergency Period (page 138)

SEC. 3707. Encouraging Use of Telecommunications Systems for Home Health Services Furnished During Emergency Period (page 138)

The above three sections are modifying/eliminating the current face-to-face requirements for telehealth services. The intent is to expand these services and avoid face-to-face contact.

SEC. 3212. Telehealth Network and Telehealth Resource Centers Grant Program (page 88)

This section provides grants of \$29,000,000 for each of fiscal years 2021 through 2025.

SEC. 3213. Rural Health Care Services Outreach, Rural Health Network Development and Small Health Care Provider Quality Improvement Grant Programs (page 92)

This section provides \$79,500,000 for each of fiscal years 2021 through 2025.

SEC. 3711. Increasing Access to Post-Acute Care During Emergency Period (Page 142)

- (a) Waiver of IRF 3-Hour Rule — With respect to inpatient rehabilitation services furnished by a rehabilitation facility, the Secretary of Health and Human Services shall waive section 412.622(a)(3)(ii) of title 42, Code of Federal Regulations (or any successor regulations), relating to the requirement that patients of an inpatient rehabilitation facility receive at least 15 hours of therapy per week.
- (b) Waiver of Site-Neutral Payment Rate Provisions for Long-Term Care Hospitals — With respect to inpatient hospital services furnished by a long-term care hospital, the Secretary of Health and Human Services shall waive the following provisions of section 1886(m)(6) of such Act (42 U.S.C. 1395ww(m)(6)).

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- (1) LTCH 50% Rule — Relating to the payment adjustment for long-term care hospitals that do not have a discharge payment percentage for the period that is at least 50%.
- (2) Site-Neutral IPPS Payment Rate — Relating to the application of the site-neutral payment rate, payment shall be made to a long-term care hospital without regard if the admission occurs during such emergency period and is in response to the public health emergency.

service as listed by the provider on a public internet website, or such plan or issuer may negotiate a rate with such provider for less than such cash price.

FINAL THOUGHTS

The link address above provides a copy of the “engrossed bill,” as signed by the president and now published by the Government Printing Office. That’s why this copy is only 335 pages versus the double-spaced 880-page PDF files previously released.

The items named above are just a few of the health care subjects addressed in the bill.

Health care issues are but one small part of this huge stimulus action. The only way to see how your organization is impacted is to review the entire law.

SEC. 3801. Extension of the Work Geographic Index Floor under the Medicare Program (page 147)

The Medicare physician geographic index floor is extended from May 23, 2020, to Dec. 1, 2020.

SEC. 3802. Extension of Funding for Quality Measure Endorsement, Input and Selection (Page 147)

Increases funding to \$20 million for FY 2020, and for the period beginning on Oct. 1, 2020, and ending on Nov. 30, 2020.

SEC. 3813. Delay of DSH Reductions (page 149)

Section 1923(f)(7)(A) of the Social Security Act is amended — by striking “May 23, 2020, and ending Sept. 30, 2020,” and for each of fiscal years 2021 and 2022.

SEC. 3202. Pricing of Diagnostic Testing (page 87)

A group health plan or a health insurance issuer providing coverage of items and services described in section 6001(a) of division F of the *Families First Coronavirus Response Act* with respect to an enrollee shall reimburse the provider of the diagnostic testing as follows.

- (1) If the health plan or issuer has a negotiated rate with such provider in effect before the public health emergency declared under section 319 of the *Public Health Service Act*, such negotiated rate shall apply throughout the period of such declaration.
- (2) If the health plan or issuer does not have a negotiated rate with such provider, such plan or issuer shall reimburse the provider in an amount that equals the cash price for such

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