

REGULATORY RELIEF FOR HEALTH CARE PROVIDERS

Congress has passed several laws that provide emergency funding and regulatory relief for health care providers during the COVID-19 pandemic, including most recently the *American Rescue Plan*.

WHAT IS NEW IN THE AMERICAN RESCUE PLAN

Payment for Ambulance Services

The *American Rescue Plan* provides authority for the secretary of the Department of Health and Human Services to let Medicare pay for ambulance services provided to individuals who are treated in place instead of transported to a hospital or other location.

Post-Acute Care for Medicare

The *Coronavirus Aid, Relief, and Economic Security (CARES) Act* provides acute care hospitals flexibilities during the coronavirus emergency period in order to transfer patients out of their facilities and into alternative care settings, and to open up existing beds in post-acute care settings. For the duration of the public health emergency, the bill:

- Waives the Inpatient Rehabilitation Facility (IRF) 3-hour rule, which requires a beneficiary to be expected to participate in at least 3 hours of intensive rehabilitation at least 5 days per week to be admitted to an IRF.
- Allows Long Term Care Hospitals (LTCHs) to maintain their designation even if more than 50 percent of their cases are less intensive.
- Pauses the LTCH site-neutral payment methodology.

Medicare Home Health

The *CARES Act* permanently allows physician assistants, nurse practitioners, and clinical nurse specialists to order home health services for beneficiaries, which will reduce delays and increase beneficiary access to care in the safety of their homes. Before this provision, only physicians were able to certify the need for home health services. This provision goes into effect no later than 6 months after March 27, 2020.

The *CARES Act* also directs the secretary of health and human services to encourage the use of telecommunications systems, including remote patient monitoring, to deliver home health services consistent with the beneficiary care plan during the COVID-19 emergency period. This allows patients to receive certain home health services without a provider entering their home.

Medicare Hospice

In order for a qualified beneficiary to receive hospice benefits, a hospice physician or nurse practitioner must certify their eligibility. Typically, a recertification must be done in person. The *CARES Act* allows hospice physicians and nurse practitioners to conduct these visits via telehealth for the duration of the public health emergency.

Requirements for Medicare Quality Reporting Programs

The Centers for Medicare & Medicaid Services (CMS) has granted exceptions from reporting requirements and extensions for providers participating in Medicare quality reporting programs for upcoming measure reporting and data submission. More information is available at this [link](#).

Medicare Blanket Waivers and New Rules

CMS has used its existing waiver authority under a public health emergency to issue blanket waivers for Medicare and an interim final rule with many new payment rules and policies to respond to the pandemic. These temporary policies are meant to expand hospital capacity, expand the health care workforce, reduce paperwork requirements, and further promote telehealth. For information on the waivers and guidance, and the interim final rule, please go to the CMS COVID-19 flexibilities [webpage](#). This webpage also includes provider-specific fact sheets and FAQs. A fact sheet on blanket waivers is also available [here](#) and a summary is available [here](#).

Telehealth

Many telehealth flexibilities are available, and there will be a separate fact sheet available on Senator Schatz's website on those flexibilities.

Medicaid Home and Community-Based Support

Under the *CARES Act*, if patients have COVID-19 and are admitted to a hospital, state Medicaid programs now have the ability to allow direct support professionals to continue to provide care and services in the hospital for patients they are supporting, including seniors and individuals with disabilities.

Medicaid Waivers

CMS has approved a section 1135 waiver request for Med-QUEST to waive authorities under Medicaid and Hawaii's request to amend the 1915(c) Home and Community-Based Services waiver. The section 1135 waiver approval is available [here](#).

Liability Protections for Volunteer Health Care Professionals

The *CARES Act* specifies that health care providers who provide volunteer medical services during the coronavirus public health emergency have liability protections under certain conditions for any harm caused by an act or omission of the provider while providing health care services.

- The provider must be providing health care services within the scope of their license, registration, or certification.
- The provider must be a volunteer who does not receive compensation or any other thing of value in lieu of compensation.
- Liability protections do not apply if the harm was caused by willful or criminal misconduct, gross negligence, reckless misconduct, or conscious flagrant indifference to

an individual's rights or safety or if the volunteer rendered the health care services under the influence of alcohol or an intoxicating drug.

- These protections preempt state laws unless state laws provider greater liability protections.

Sharing of Patient Health Information

The *CARES Act* requires HHS to issue guidance clarifying what patient information may be shared during the COVID-19 public health emergency.

Other Information from CMS

Additional guidance and information from CMS is available [here](#).