

Morgan Lewis

# COVID-19 HEALTHCARE PROVIDER UPDATES

**HOSPICE, HOME HEALTH,  
AND NURSING HOME CARE CONTINUUM**

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# **CORONAVIRUS COVID-19**



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# Agenda

- CARES Act – Key Provisions Affecting Hospice, Home Health and Nursing Facilities
- Section 1135 Waivers; Blanket and Individual Waivers
- Quality Reporting and Survey Relief
- Other Medicare Regulatory Relief
- Requested Regulatory Relief from HHS
- State Role in COVID Post Acute Care Relief
- Cooperation among the Post Acute Care Continuum

# CARES Act and Post-Acute Healthcare Providers

- \$375 billion in small business relief, including \$349 billion for forgivable loans to small businesses to pay their employees and keep them on the payroll; \$17 billion for debt relief for current and new SBA borrowers; and \$10 billion in immediate disaster grants.
- About \$200 billion in our hospitals, health systems, and health research, including expanding funding for the personal protective equipment desperately needed by our healthcare workers, including ventilators, n95 masks, gowns, gloves, etc.
- Exemption from the Medicare 2% sequestration May 1 to Dec. 31, 2020.
- Hospice – telehealth by Physician or NP for face-to-face visits
- Home health – expands home health certifications to physician extenders (NPs, PAs) and also allows face-to-face visits to be done by physician extenders. This change is not limited to the National Emergency period, and will allow greater flexibility and utilization of physician extenders and mid-level practitioners (subject to applicable state law) in the home care spectrum

# CARES Act and CMS Regulatory Relief – Expanded Medicare Telehealth Coverage

- Medicare will pay for telehealth “visits” furnished via telehealth across the country and including in patient’s places of residence starting March 6, 2020, greatly expanding prior limited Medicare telehealth coverage.
- A range of providers, such as doctors, nurse practitioners, clinical psychologists, and licensed clinical social workers, will be able to offer telehealth to their patients, whether for new or established patients.
- Additionally, the HHS OIG is providing flexibility for providers to reduce or waive cost-sharing for telehealth visits paid by federal healthcare programs.
- Telehealth coverage for non-billable F2F visits for home health, hospice and DME also extended by CARES Act and CMS regulatory relief.
- CARES Act directs HHS to promote use of telehealth for home health agencies in a manner that is consistent with plans of care for individual patients.

# Medicare – Accelerated and Advanced Payments

- On March 28, 2020, CMS announced accelerated and advanced payments to Medicare providers; repayment through offset on payments after 120 days, with 210 days to repay balance (1 year for hospitals)
  - help with the financial hardship and extraordinary COVID-19 challenges due to requests to delay non-essential procedures, healthcare staff unable to work due to childcare demands, and disruption to billing.
- To qualify for accelerated or advance payments, the provider must:
  - Have billed Medicare for claims within 180 days immediately prior to the date of signature on the provider's/ supplier's request form,
  - Not be in bankruptcy,
  - Not be under active medical review or program integrity investigation, and
  - Not have any outstanding delinquent Medicare overpayments.
- Medicare MACs will start accepting and processing the Accelerated/Advance Payment Request forms immediately. Must request a specific amount. CMS anticipates that the payments will be issued within seven days of the provider's request.

# CMS Regulatory Relief – Surveys

- March 20, 2020 CMS memo (QSO-20-20-All) to all state survey agencies: For 3 week emergency period (likely extended), all Medicare surveys suspended except
  - Targeted infection control surveys in facilities with no COVID cases, in conjunction with CDC and ASPR and pending availability of PPE
  - Complaint/Immediate Jeopardy surveys (streamlined infection control surveys done concurrently)
- Infection control checklist shared with providers for voluntary self-assessments
- Continue to stress limiting visitors consistent with CDC Guidelines
  - Does NOT mean SNFs are directed not to permit hospice and home health staff (in ALFs) to care for patients at the facilities with PPE (some governors have also stressed hospice access to NHs during COVID emergency)
- Infection control checklist available <https://www.cms.gov/files/document/qso-20-20-allpdf.pdf>

# CMS Regulatory Relief – Reporting

- Home Health - blanket waiver provides relief to on the timeframes related to OASIS Transmission
- Quality reporting programs – For home health, hospice and SNFs, among other providers, CMS announced relief on reporting (March 20, 2020)
  - CAHPS survey reporting data – HHA and Hospice
  - *Skilled Nursing Facility (SNF) Value-Based Purchasing Program*, qualifying claims will be excluded from the claims-based SNF 30-Day All-Cause Readmission Measure
- Data for services provided January 1, 2020 through June 30, 2020 won't be used in CMS calculations for Medicare quality reporting and value-based purchasing programs.
  - reduce the data collection and reporting burden on providers



# SNF Regulatory Relief – 1135 Blanket Waivers

- Section 1812(f): Blanket waiver - This waiver of the requirement for a 3-day prior hospitalization for coverage of a SNF stay provides temporary emergency coverage of SNF services without a qualifying hospital stay, for patients affected (including dislocation) by COVID. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes renewed SNF coverage without first having to start a new benefit period.
- 42 CFR 483.20: Blanket waiver - This waiver provides relief to SNFs on the timeframe requirements for Minimum Data Set assessments and transmission

# Home Healthcare Planning-Expansion of Service Providers

- Care Planning Services may be provided by nurse practitioners, clinical nurse specialists and physician assistants, not just physicians.
- Non-Physician practitioner can establish plan of care and certify eligibility without supervising physician review and signature.
- Non-physician practitioner may conduct all face-to-face encounters via telehealth.
- Allows/Encourages telehealth home health services, including remote patient monitoring. Details need clarification and potential waiver.
- CMS proposed Final Interim Rule (NEW) expands definition of home bound status for COVID self-quarantine

# COVID-19 and HIPAA

- HIPAA is not intended to be an obstacle to a healthcare organization's essential treatment, emergency response and public health functions.
- HHS Office for Civil Rights (OCR) has the bulletin "HIPAA Privacy and Novel Coronavirus" in February.
- OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered healthcare providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency.
- CARES Act section 3224 – HHS to issue guidance within 180 days of March 27 on the sharing of patients' PHI during the COVID-19 public health emergency. The guidance is required to include information on compliance with the HIPAA and applicable policies.

# Seeking Additional Regulatory Relief

- Hospice
  - Asking CMS for timing relief on 14 day RN supervisory visits (in CMS Hospice guidance) and 5 day notice of election filing
  - Expanded use of telehealth for hospice care visits (in new Rule)
  - Asking for audit response relief (some states, like TX OIG, have granted) (in new CMS FAQ)
  - Allow contracting for core staff requirements
- Home Health
  - Identify authorized telecommunications communications that will provide home health services during emergency period.
  - CMS authorization or clarification may still be needed to allow telehealth and outline permissible remote patient monitoring
  - 1135 waivers should proceed notwithstanding the CARE Act provisions until CMS clarifies its telehealth and monitoring criteria
  - Identify areas for specific waivers. COPs and time frames most likely areas for further review (plans of care, supervising visits)
- Nursing Homes
  - Suspend payroll-based journal submission
  - Relax comprehensive care plan requirements and timelines
  - Relax requirements for physician assessment every 30 days in the first 90 days and every 60 days thereafter

# State Law Relief

- Regulatory relief enacted through governor's executive orders, licensing boards and Medicaid agencies
  - *e.g.*, Gov. Cuomo Executive Order included relief on documentation when reasonably related to COVID-19
- As part of March 18 Families First Coronavirus Relief bill, Congress has increased federal share for Medicaid by 6.2% in each state, to help free up state funds for other COVID-19 relief
  - Ensure you are seeking a piece of that pie, though state budgets will be taking a big hit with lower tax revenue

# Hospice, Home Health and Nursing Facility Coordination Issues

- Challenges to Care Continuum Will Continue
- Patient Access to Care Will Need Healthy Direct Caregivers and Strong Adherence to COVID Infection Protocols To Manage Trust
- Increase demand for post-acute care for both skilled and home based services
- Expansion of Clinicians Available to Provide Services in Home Health
- Some details remain murky but CMS is expanding Telehealth guidance and embracing encouraged public health approach to healthcare services.
- Telephone only services not covered, but may be consistent with plan of care for hospice (new CMS rule) even if exact regulatory criteria is fully not defined. Not billable. Continue seeking 1135 waiver for telehealth services consistent with CARE purposes and State regulatory guidance

# Citations and Resources

- CMS Interim Final Rule, March 30, 2020, Policy and Regulatory Revisions In Response to the COVID-19 Public Health Emergency.
  - <https://www.cms.gov/files/document/covid-final-ifc.pdf>
- See also CMS COVID-19 Waiver and related materials available at <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>

# Biography



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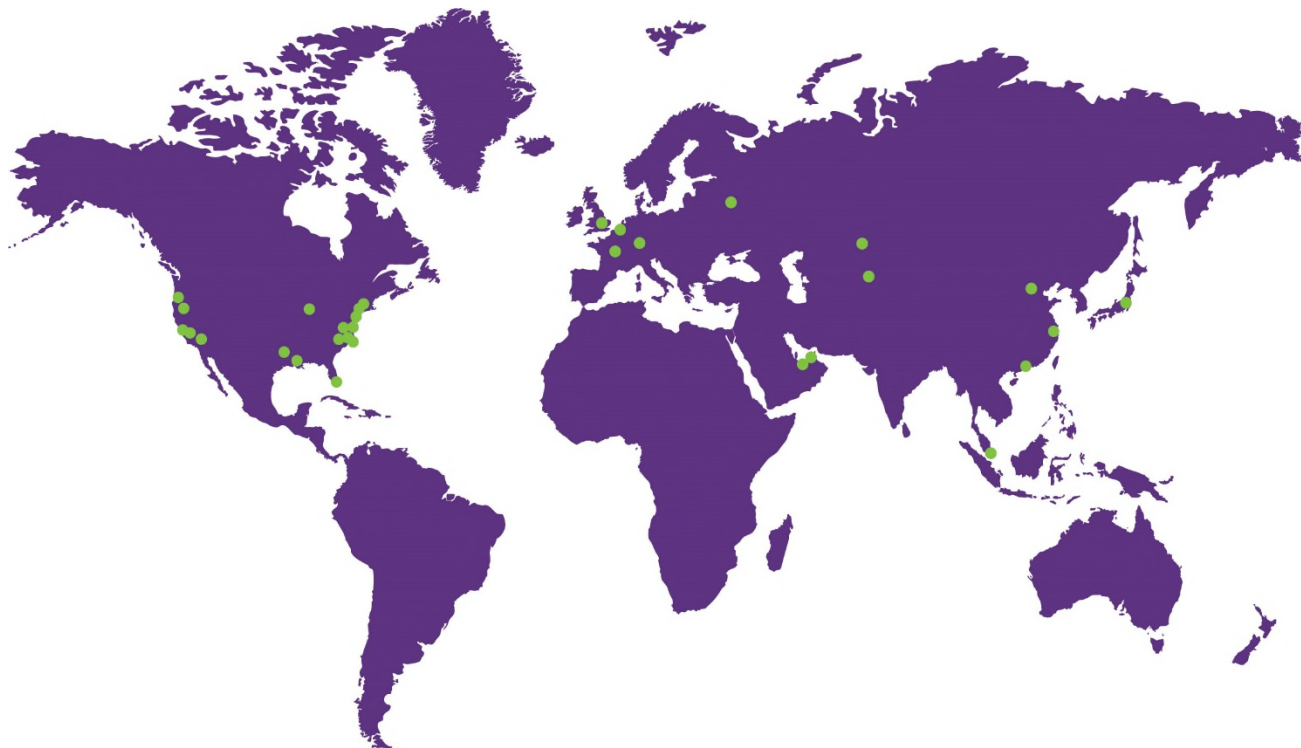
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