

CARES Act Waivers Part II

Background

During the emergency period, the CARES Act provides several waivers and flexibilities. nThrive has summarized some of the key provisions related to hospitals and health systems. A copy of H.R. 748 may be found at:

https://www.majorityleader.gov/sites/democraticwhip.house.gov/files/Senate%20Amendment%20to%20H.R.%20748_0.pdf

Post-acute Care Flexibilities Waive (Section 3711)

Inpatient Rehabilitation Facility (IRF) 3-hour of therapy/day rule.

LTCH site-neutral payment policy.

LTCH "50% Rule".

Medicaid DSH Relief (Section 3813)

Eliminates the \$4 billion in Medicaid DSH cuts in FY 2020.

Reduces the cut for FY 2021 to \$4 billion from \$8 billion.

Implementation of the FY 2021 cuts are delayed until December 1, 2020.

No additional cuts after the current end-date of FY 2025.

Home-based Services (Sections 3705-3708, 3715)

Reduces requirements that pertain to face-to-face evaluations for home dialysis patients.

Expands the ability of physician assistants, nurse practitioners and certified nurse specialists regarding the certification of home health services and document-related requirements.

Expands certain state and community-based services guidelines to include self-directed personal assistance services and attendant services and supports.

- ✓ Many of these policy changes also will apply to Medicaid home health services.

Nothing in this title, title XVIII, or title XI shall be construed as prohibiting receipt of any care or services specified in paragraph (1) in an acute care hospital that are:

- ✓ Identified in an individual's person-centered service plan (or comparable plan of care).
- ✓ Provided to meet needs of the individual that are not met through the provision of hospital services.
- ✓ Not a substitute for services that the hospital is obligated to provide through its conditions of participation or under Federal or State law under another applicable requirement.
- ✓ Designed to ensure smooth transitions between acute care settings and home and community-based settings, and to preserve the individual's functional abilities.

A summary may also be found on the American Hospital Association site at:

<https://www.aha.org/special-bulletin/2020-03-26-senate-passes-coronavirus-aid-relief-and-economic-security-cares-act>

nThrive has referenced both to provide a summary of some of the key provisions related to hospitals and health systems not otherwise covered in the specific coding updates.

Supplies and Drugs (Section 3001)

Amends the Public Health Service Act to require that certain medical supplies and drugs be included in the strategic national stockpile. Specifically, it will require the inclusion of:

- ✓ Personal protective equipment.
- ✓ Ancillary medical supplies.
- ✓ Supplies necessary for the administration of drugs.
- ✓ Diagnostic tests.
- ✓ Vaccines.
- ✓ Other biologic products and medical devices.

Requires HHS to enter into an agreement with the National Academies to produce a report assessing and evaluating the medical device and pharmaceutical supply chain.

Includes the MEDS Act which:

- ✓ Requires additional manufacturer notification and reporting requirements in response to drug shortages.
- ✓ Requires Government Accountability Office to report on intra-agency coordination focused on drug manufacturing and application prioritization.
- ✓ Reports within two years of passage on encouraging the manufacturing of drugs in shortage or at risk of being in shortage.

Prevents device shortages.

- ✓ New requirements on device manufacturers to notify the HHS Secretary of potential or likely shortages due to discontinuance or interruption during or in advance of a public health emergency.
- ✓ Expedited inspection and review to curb any potential shortages.
- ✓ Specific devices that will be covered are those that are life-supporting, life-sustaining, used in emergency medical care or during surgery. The list will be made publicly available unless otherwise determined by the HHS Secretary and will include relevant information about the device and the reason for the shortage.

Coverage of COVID-19 Testing and Other Services (Sections 3201-3203, 3701)

Expands the types of diagnostic tests that will be covered to include laboratory tests that have not been approved by the FDA but meet certain conditions:

- ✓ Applicable state or territory has assumed responsibility for the validity of the tests.
- ✓ The legislation then directs certain commercial payers and public programs to cover this broader range of tests.

Directs health plans to pay providers of laboratory services the full negotiated rate or, if the provider and plan do not have a contract in place, they must reimburse the provider the cash price for the service.

- ✓ Each provider of such laboratory services will be required to post a cash price for COVID-19 testing on a public website and failure to comply could result in civil monetary penalties.

Requires Health plans to cover qualifying COVID-19 preventive services such as an item, service or immunization recommended by the US Preventive Services Task Force or CDC's Advisory Committee on Immunization Practices.

Requires High Deductible Health Plan (HDHP) with HSAs to cover telehealth services before a patient reaches his or her deductible amount.

Small Business Loans via the "Paycheck Protection Program" (Section 1102)

Makes available loan opportunities for organizations with less than 500 total employees (i.e., both full time and part time employees).

These loans may be up to \$10 million and may be forgivable.

They could be used to pay:

- ✓ Salaries.
- ✓ Leave and health benefits.
- ✓ Rent.
- ✓ Retirement obligations.
- ✓ Other specific uses outlined in Section 1102.
- ✓ Both for-profit and non-profit hospitals will be eligible for these loans; however, affiliation rules will apply. The affiliation rules are intended to determine whether the organization, considering the "totality of circumstances," is operating as part of a larger organization and therefore not considered a small business, which will be evaluated on a case-by-case basis.

Blood Supply Awareness Campaign (Section 3226)

National campaign to improve awareness of, and support outreach to, public and health care providers about the importance and safety of blood donation and the need for donations for the blood supply during the public health emergency.

FMLA (Sections 3601-3602)

Amends changes to the family and medical leave and sick leave policies established by the Families First Coronavirus Response Act to limit the total amount employers may have to pay under each benefit, among other changes.

Substance Use Disorder Records (Section 3221)

Allows records pertaining to substance use disorder (SUD) treatment or other activities to be used or disclosed to covered entities for the purposes of treatment, payment or health care operations as permitted by HIPAA

- ✓ Requires patient's written consent

Allows disclosures of de-identified health information from these records to public health authorities as defined by HIPAA.

Prohibits the use of this information for use in any civil, criminal, administrative or legislative proceedings (except as otherwise authorized).

Inclusion of anti-discrimination clause ensuring that the information may not be used in decisions around treatment, employment, housing, access to courts or social services.

Patients will still have the right to request restrictions on the use or disclosure of their SUD treatment records.

HRSA Grants for Rural Entities (Sections 3211-3212)

Expands rural health care services.

- ✓ Outreach grants.
- ✓ Rural health network development grants.
- ✓ Small health care provider quality improvement grants.

Increases the time period of grants from three to five years.

Focuses the grants on assistance to rural underserved populations.

Removes the eligibility criterion of public or non-profit status for rural health care services outreach and rural health network development grants.

- ✓ Eligible entities must "be an entity with demonstrated experience serving, or the capacity to serve rural underserved populations"

Grants quality improvement activities related to:

- ✓ Increasing care coordination.
- ✓ Enhancing chronic disease management.
- ✓ Improving patient health outcomes.

Authorizes \$79.5 million for each of fiscal years 2021 through 2025.

Requires a report on the activities and outcomes of these grant programs, including the impact of funded projects on the health status of rural residents with chronic conditions.

Guidance

- ✓ Share with appropriate staff.
- ✓ Review provisions of H.R. 478 to identify those that are applicable.
- ✓ Research additional information available prior to implementation. ■