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CLIENT ALERT

Post-Acute Care and "COVID-19 Centers of Excellence"

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April 2020

As infections of COVID-19 continue to increase throughout the nation, health care policymakers have focused primarily on increasing acute-care hospital bed capacity, promoting (and decreasing the regulatory requirements concerning) the use of telemedicine, curtailing non-urgent services, granting flexibilities from regulatory responsibilities, and distributing stimulus funding to help struggling providers continue operations. Policymakers have also imposed strict and sweeping restrictions on access to residential settings for the elderly and persons with disabilities to prevent the transmission of COVID-19 among these high-risk populations.

However, to date, there has been limited activity focused on addressing the impending need for post-acute care for the patients hospitalized with COVID-19. Not only does the post-acute care system face capacity shortages that are similar to (or worse than) those faced by acute-care hospitals, these settings, especially skilled-nursing facilities ("SNFs"), are currently serving long-term residents at tremendous risk for infection.

As states begin to identify the impending capacity shortage in post-acute care, they have taken a variety of steps, only some of which are also focused on reducing the risk of infection for those patients and long-term residents already residing within the SNF. This Client Alert reviews a few of the initial state activities in this area, including the development of the "COVID-19 Centers of Excellence."

Background on Post-Acute Care

"Post-acute care" is a term that was coined in the Medicare program but has broad adoption throughout the health care delivery system. Medicare coverage includes multiple levels of post-acute care, including SNFs, inpatient rehabilitation facilities, long-term care hospitals, and home health agency services. Most commercial insurance companies cover a similar range of post-acute services, with SNF and home health services being the most common levels of care.

Post-acute care serves a variety of important patient needs. For example, post-acute care provides short-term rehabilitation services to help patients recover strength and functional skills following an inpatient hospitalization, as well as long-term services (generally funded by Medicaid) for patients unable to safely live at a lower level of care. SNFs and long-term care hospitals also serve as excess capacity for hospitals, in that patients who no longer need intensive acute-care services but continue to need intensive nursing care can be served in a nursing facility, freeing up capacity in a hospital.

COVID-19 and the Post-Acute Care System

Large-scale projections of the need for post-acute care related to COVID-19 have not yet been performed, while the impact of COVID-19 on the health care system carries contradictory implications.

For instance, many of the COVID-19 patients treated in intensive care will require extensive therapy before being able to return to the community. Hospitals are also more likely to try to shift patients to post-acute providers in order to maintain capacity for COVID-19 patients. Similarly, many payers are facilitating these attempts to optimize resource allocation by streamlining certain elements of discharge planning requirements for transfer from the acute inpatient hospital, waiving prior authorization requirements for admission to post-acute treatment facilities, and lowering related administrative hurdles that could otherwise inhibit post-acute care facilities from meeting the resource demands created by COVID-19.

However, post-acute treatment facilities in areas that have not experienced a drastic surge in demand due to COVID-19 have conversely seen significant decreases in demand. One reason is that many non-emergency procedures have been postponed in order to take steps to adhere to social distancing mandates and address individual concerns about potential disease transmission. Similarly, the reduction in inpatient hospital use for non-COVID-19 patients has led to wide variation in hospital capacity. While a sub-set of hospitals in areas with a high density of patients with severe COVID-19 symptoms are experiencing bed shortages, hospitals in many other areas have significant excess capacity.

Nevertheless, policymakers at the federal and state levels are beginning to prepare for a large number of COVID-19 patients requiring admission to post-acute care facilities. For example, the Centers for Medicare & Medicaid Services ("CMS") has taken steps to reduce barriers to the use of post-acute care facilities, waiving the Medicare requirement for patients to spend at least three days in a hospital before becoming eligible for SNF care. Further, CMS has provided guidance on flexibilities that exist for SNFs to expand their physical environment and to transfer residents to other facilities in order to increase capacity and to ensure that all patients are being treated in facilities that are sufficiently prepared to care for them.

Although nursing facilities are regulated at the federal level, enforcement of federal and state laws are largely left to the states. As such, among the emergency waivers that

CMS has implemented, CMS has modified (or lifted) many of the federal requirements for SNFs ***to the extent that*** a deviation from federal rules is approved by the state agency. As such, states have broad authority to implement significant emergency actions to help address COVID-19.

However, only a small number of states have exercised this authority to prepare the post-acute care system to address COVID-19 so far, and these states have taken dramatically divergent approaches.

On the one hand, Massachusetts has taken steps to free up 12 nursing facilities to reserve them exclusively for COVID-19 patients. Connecticut has taken similar steps to free up four sites for the exclusive use by COVID-19 patients. At least one facility in Virginia has begun to operate effectively as a COVID-19 specialty facility, with support from the state in a variety of operational adaptions.

Conversely, authorities in New York State issued a directive that all nursing facilities must take patients from hospitals, and that facilities are prohibited from requiring COVID-19 tests as a condition of admission. California is taking a similar approach. These approaches require all nursing facilities to establish complex isolation mechanisms for newly admitted patients in parallel with existing isolation activities to address current patients with COVID-19 symptoms.

This divergence of policy approaches to residential post-acute care has sparked a flurry of commentary from the public and health policy community. For example, in a recent JAMA column, David Grabowksi, a professor of health policy at the Harvard University Medical School, brought attention to the likely shortage in post-acute care capacity and recommended that states follow the Massachusetts and Connecticut approaches in order to protect existing patients, ensure adequate dedicated capacity, more efficiently manage staff, and manage personal protective equipment. Professor Grabowski even coined the term "COVID-19 Centers of Excellence" to refer to these dedicated facilities in a manner to mitigate potential public communications challenges associated with establishing dedicated cohort facilities for COVID-19 patients. Similar arguments have been made in *Skilled Nursing News*, *McKnight's Long-Term Care News*, and a Howard Gleckman column in *Forbes*.

Opportunities for Payers

The challenges facing the post-acute care system present an opportunity for health plans to collaborate with states to ensure the safe transition of COVID-19 patients to post-acute care without jeopardizing other nursing facility patients. Health plans have a strong incentive to prevent the spread of COVID-19 to their vulnerable members being served by SNFs. In addition, health plans, particularly Medicare Advantage and Medicaid managed care plans, play an important role in supporting the post-acute care system. This includes managing discharge planning from hospitals and transitions of care. Health plans can also take steps to ensure that utilization management policies are aligned with the transition system to avoid any delays in admission.

One of the biggest challenges facing states and nursing facilities is establishing financial arrangements to address the unique costs associated with the more intensive services necessary for COVID-19 patients. This includes significant stress on staffing budgets and can require the use of expensive coverage contracts from outside the facility's immediate area. Therefore, health plans can work with nursing facilities to establish unique rates for COVID-19 facilities and work with hospitals to establish streamlined discharge and nursing facility admission policies. Health plans should also consider offering advance payments, supplemental payments as short-term case rates, and other strategies to facilitate the ability of providers to develop COVID-19 post-acute care Centers of Excellence by helping to offset the infrastructure costs of doing so.

Conclusion and Next Steps for States, Plans, and Providers

States, health plans, and providers have a unique opportunity in which to take steps to prepare for the inevitable influx of COVID-19 patients into post-acute care facilities. All stakeholders should carefully consider the risks of different approaches to managing this influx and monitor the early experiences in Connecticut, California, Massachusetts, and New York to determine which approach to take.

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