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CLIENT ALERT

The CARES Act:
Key Provisions for Health Care Providers

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While the business and personal relief provisions of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") are understandably receiving the greatest coverage in the immediate aftermath of the bill's signing, the CARES Act also contains substantial support for the expansion of the health care delivery system to meet the enormous stress that is now beginning to overwhelm the system. The CARES Act provisions range from expansive financial relief for health care providers to a waiver of copays and deductibles for Medicare and Medicaid beneficiaries. The vast majority of the statutory provisions are temporary, effective only during the COVID-19 emergency, and many of them will require the issuance of regulations and/or administrative guidance in order to implement them.[1] Among the most significant of these provisions are the following:

$100 Billion for Hospitals and Health Care Providers

The CARES Act makes $100 billion available to "eligible health care providers" for health care-related expenses or lost revenues attributable to the COVID-19 pandemic, whether domestically or internationally. The money is to be made available through grants or other mechanisms. "Eligible health care providers" are defined by the CARES Act as "public entities, Medicare or Medicaid enrolled suppliers and providers" and other entities "as specified by [the Department of Health and Human Services ('DHHS')] . . . that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19." CARES Act funds may be used for construction of temporary structures, leasing of property, medical supplies and equipment, workforce and training, emergency operation centers, retrofitting facilities, and surge capacity. DHHS must provide the

[1] The legislation was signed by President Trump on March 27, 2020, and its relief provisions are essentially effective immediately unless they require further requirements from Department of Health and Human Services. The text of the CARES Act is available at https://www.congress.gov/bill/116th-congress/house-bill/748/text.

detailed requirements and guidance concerning application procedures, criteria for funding, and required documentation and reporting. DHHS has not announced as yet when those detailed requirements will become available.

Telehealth

The CARES Act greatly expands the availability of telehealth services past the expansions already authorized under the Families First Coronavirus Response Act,[2] in order to further facilitate the provision of care during the COVID-19 emergency, including for telehealth services beyond diagnosis and treatment for COVID-19. The Federal Communications Commission will receive $200 million to provide telecommunications and information services and devices. Restrictions on health savings accounts have been waived to allow high-deductible health plans to cover telehealth services without a deductible. The CARES Act removes the existing requirement that a Medicare beneficiary have a preexisting patient/provider relationship in order to be treated through telehealth. The CARES Act also enables federally qualified health centers and rural health clinics to be sites for telehealth consultations, and enhances payments for such telehealth services provided during the emergency period. Various Medicare face-to-face requirements, such as for home dialysis patients, home health, and hospice care, have been waived for the duration of the emergency. The CARES Act also appropriates $25 million for telemedicine and distance learning in rural areas.

Medicare and Medicaid Coverage and Payment

The CARES Act suspends Medicare "sequestration"—the current across-the-board annual 2 percent reduction in Medicare payments—from May 1, 2020, to December 31, 2020. Even more powerfully, direct Medicare payments for Medicare beneficiaries hospitalized with COVID-19 during the emergency are being increased by 20 percent. The CARES Act also significantly expands eligibility for, and the benefits of, accelerated and advance Medicare payments, particularly for those hospitals experiencing significant cash flow challenges, and relaxes various rules related to such accelerated payments. The Centers for Medicare & Medicaid Services has announced immediate implementation of these particular changes. COVID-19 vaccines will be covered by the Medicare program without any Medicare beneficiary cost share and before application of the Part B deductible. Medicaid will cover diagnostic products for COVID-19 even if not approved by the Food and Drug Administration ("FDA"). The CARES Act further delays the $4 billion Medicaid disproportionate share payment reduction for hospitals until November 30, 2020, also pushing back the reductions in each succeeding year through 2025. States have been granted the option to expand Medicaid coverage of COVID-19 diagnostic tests and related services to uninsured individuals who would not otherwise qualify for Medicaid. However, the CARES Act does not expand health coverage to include COVID-19 treatment more generally to uninsured individuals.

[2] Families First Coronavirus Response Act, Pub. L. 116-127, *available at* https://www.congress.gov/bill/116th-congress/house-bill/6201/text.

Commercial Insurance

The CARES Act provides for limits on the cost of diagnostic testing related to COVID-19 and requires rapid coverage of COVID-19-preventive services by commercial health insurance plans.[3]

Coverage of COVID-19 Testing Without Copay

Large and small group plans, including self-insured plans, and individual market plans must cover preventive services and vaccines for COVID-19 without cost sharing.

Good Samaritan Protection

Health care professionals providing volunteer services to prevent, diagnose, and treat COVID-19 during the emergency will not be liable for causing any harm unless the harm was caused by an act or omission constituting willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the individual, or the provider was under the influence of alcohol or a drug. These protections expressly preempt more restrictive state or local laws.

Supply Shortages

Looking to the future, the CARES Act requires an evaluation of the drug and device supply chain, enhances the requirements for ventilators and personal protective equipment as part of the Strategic National Stockpile, prioritizes the review of drug applications to address drug shortages, requires drug and device manufacturers to develop risk management plans related to shortages, and adds reporting requirements related to drug supply disruptions.

Other Notable Provisions

The CARES Act gives the FDA more flexibility in approving over-the-counter ("OTC") drugs and provides an 18-month exclusivity period for new OTC drugs.

In addition to extending numerous expiring programs, the CARES Act includes the following appropriations:

- $150 billion in a Coronavirus Relief Fund for state and local governments,
- $1 billion for Indian Health Services,
- $340 billion appropriations for federal departments and federal agencies, and
- $200 million for nursing home infection control measures.

[3] The CARES Act amends Section 2713 of the Affordable Care Act.

Epstein Becker Green will be monitoring all of these areas for issuance of guidance and regulations necessary for implementation.

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This Client Alert was authored by **Arthur J. Fried**. *For additional information about the issues discussed in this Client Alert, please contact the author or the Epstein Becker Green attorney who regularly handles your legal matters.*

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