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Vizient Office of Public Policy and Government Relations

H.R. 748 - Coronavirus Aid, Relief, and Economic Security Act or the "CARES Act"

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Overview:

Signed into law on March 27, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, H.R 748, is the third, and most significant effort from Congress thus far to respond to the coronavirus crisis. The law provides more than $2 trillion in emergency aid through broad economic stimulus for businesses, direct payments to most American taxpayers and direct funding for hospitals.

This summary will focus primarily on provisions that directly relate to hospitals and health care systems.

Hospitals and Health Systems Provisions:

Financial Relief Available for Hospitals

- The CARES Act provides **$100 billion** in direct funding to support hospitals and other health care providers through the Public Health and Social Services Emergency Fund (PHSSEF). Eligible health care providers may apply for funding to cover health care related expenses or lost revenues that are attributable to coronavirus. The law defines 'eligible health care providers' as "public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit entities and not-for-profit entities not otherwise described…that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID–19." The Department of Health and Human Services (HHS) is instructed to review applications (which must include a statement justifying the need of the provider for the payment) and make payments on a rolling basis in order to get money into the health system as quickly as possible. As such, HHS is given significant flexibility in determining how the funds are allocated, as opposed to operating under a mandated formula or process for awarding the funds. All non-reimbursable expenses attributable to COVID-19 qualify for funding. Examples include building or retrofitting new ICUs, increased staffing or training, personal protective equipment, the building of temporary structures and more. Forgone revenue from cancelled procedures is also a qualified expense, but funds may not be used to reimburse expenses or losses that have been reimbursed by other sources (or that other sources are obligated to reimburse). HHS is expected to offer additional guidance on how hospitals can apply for and receive funding in the coming days.
- The law increases the weighting factor of DRGs for inpatients diagnosed with COVID-19 by 20 percent. This add-on payment for inpatient hospital services

recognizes the increased costs incurred by providers and will be applied for the duration of the public health emergency.

- Companies, such as hospitals, physician practices and non-profit entities with fewer than 500 employees may be eligible for Small Business Administration (SBA) loans via the Paycheck Protection Program (PPP). Under the program, hospitals will be eligible to take out loans to support salaries and benefits (including state and local taxes); rent, utilities and interest on mortgages; and interest on existing debt. Borrowers that retain employees may be able to have a portion of the loans forgiven. Additional guidance is expected out of the SBA regarding how to apply for these loans.
- Hospitals that do not have loans forgiven through the PPP may be eligible for a delay of their portion of the payroll tax. Under the law, employers may delay payment of the employer share of the Social Security portion of the Federal Insurance Contributions Act (FICA) from the date of enactment through Dec. 31. The delayed payments would be repaid interest free over two years.
- The Secretary of the Treasury was allotted $500 billion to provide loans and other grants to private businesses and non-profit organizations (with between 500 and 10,000 employees) that have been impacted by coronavirus related closures through the Treasury Economic Stabilization Fund (ESF). Hospitals may be eligible to apply for these emergency loans, as $454 billion of the ESF is made available for non-specified businesses. These ESF loans must be repaid, and further information on eligibility will be forthcoming.
- The $4 billion in Medicaid DSH cuts scheduled for FY 2020 have been delayed; while the FY 2021 cuts were both delayed until December 1, 2020, and reduced to $4 billion from $8 billion.
- The law eliminates the Medicare sequester from May 1 through Dec. 31, 2020.
- The Medicare Accelerated and Advanced Payment Program has been expanded throughout the length of the emergency to include additional Part A and B providers and suppliers. All eligible providers are able to request accelerated payments under the program for a period of up to six months. The amount of payment is up to 100% (or up to 125% for Critical Access Hospitals) of what the hospital would have otherwise received. This is an increase in payment from 70% in the current program, and payment could be made periodically or once up front. The law also extends the timeframe for recoupment of the accelerated payment. Hospitals will have up to 120 days until their claims are offset to recoup the funds (up from 90 days), and at least 12 months before being required to pay any outstanding balances.

Health Care Supply Chain

- The law requires that the Strategic National Stockpile (SNS) begin to include additional items including “personal protective equipment, ancillary medical supplies, and other applicable supplies required for the administration of drugs, vaccines and other biological products, medical devices, and diagnostic tests.”
- $27 billion in funding was allocated to be used to develop and demonstrate innovations and enhancements to manufacturing platforms in the medical supply chain. Specifically, $16 billion of this funding would be allocated to the SNS for critical medical supplies, personal protective equipment, and life-saving medicine;

and $3.5 billion will advance the construction and manufacturing of vaccines and therapeutics.
- The law also included legislative language that was largely similar to the Mitigating Emergency Drug Shortages (MEDS) Act, which will require additional reporting from drug manufacturers in response to drug shortages; a Government Accountability Office report on intra-agency coordination focused on drug manufacturing; and, a report on incentives to encourage manufacturing of drugs in shortage or at risk of being in shortage. Vizient signed on to an industry letter in support for the legislation last fall.
- The law also includes a Vizient-endorsed provision that establishes new requirements for 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.
- The law requires HHS to enter into an agreement with the National Academies to produce a report that assesses the medical device and pharmaceutical supply chains on an ongoing basis. The report would focus on critical drugs and devices to mitigate disruptions in the future, will include analysis on redundancy, recommended practices for domestic manufacturing and hopes to promote improved information sharing.

Telehealth

- The CARES Act makes several policy changes related to telehealth. Primarily, the law updates the recently-approved Coronavirus Preparedness and Response Supplemental Appropriations Act (Public Law 116–123) to eliminate a provision that required providers to have treated the patient in the past three years to provide them with a telehealth service during the ongoing public health emergency. Under the CARES Act, this requirement has been clarified to provide the HHS Secretary with broad authority to specify requirements for telehealth services, including those related to the provider's relationship with the patient.
- Provisions of the law also amend reporting requirements to allow hospice recertification to be completed via telehealth, as opposed to an in-person visit; provides a temporary waiver for visits between home dialysis patients and physicians to be completed via telehealth; and encourages the use of telecommunications systems for home health services furnished during emergency period.
- The law waives certain restrictions on Medicare telehealth services for Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) during the public health emergency. As a result, FQHCs and RHCs will be able to serve as distant sites to provide telehealth services to patients in their homes and other eligible locations.

Sharing of Health Records Related to Substance Use Disorder

- The law will also allow for patient records related to substance use disorders (SUDs) to be used for payment, treatment or health care operations as allowed under HIPAA

with a patient's written consent. The law would require the additional regulations related to these disclosures to be issued within one year.

Coverage of COVID-19 Testing and Diagnostic Services

- The CARES Act expands the types of diagnostic tests that will be covered under the cost-sharing provisions of the "Families First Coronavirus Response Act" to include laboratory tests that have not been approved by the Food and Drug Administration (FDA) but meet certain conditions, although the state or territory must assume responsibility for the validity of the tests. The legislation clarifies that certain commercial payers and public programs must also cover these tests.
- In the law, health plans are directed to pay providers the full negotiated rate, or the cash price for services relating to COVID-19 testing and diagnostic services. As a result, each provider of such laboratory services will be required to post a cash price for COVID-19 testing on a public website.

Additional Medicare and Medicaid Flexibilities

- The law also provides flexibility for post-acute care providers to increase the capacity of the health care system. This includes waiving: the inpatient rehabilitation facility (IRF) 3-hour rule; the Long-Term Care Hospital (LTCH) site-neutral payment policy, which uses an IPPS-level payment rate for lower-acuity patients; and the LTCH "50% Rule," which requires that greater than 50% of patients be paid a standard LTCH PPS rate for the hospital to maintain an LTCH designation.
- In addition, the law provides clarity for certain states that have not expanded their Medicaid program that they can use Medicaid to cover COVID-19-related services for uninsured adults who would have otherwise qualified for Medicaid if the state had chosen to expand.

Additional Agency Funding Increases

Food and Drug Administration (FDA): The law provides $80 million for the FDA to continue responding to COVID-19. Funding will be used to continue efforts related to shortages of critical medicines, pre and post market work on medical countermeasures, therapies and vaccines.

Centers for Disease Control and Prevention (CDC): The law will provide $4.3 billion to the CDC for coronavirus response. $1.5 billion will go directly to states, local governments, territories, and tribes; $500 million will be set aside for public health data surveillance and analytics infrastructure modernization; and $1.5 billion will go to efforts to contain and combat the virus.

National Institutes of Health (NIH): The law includes $945 million to support research for an improved understanding of the prevalence of COVID-19, including the detection of past infection and developing countermeasures for various stages of treatment.

Centers for Medicare & Medicaid Services (CMS): The law includes $200 million for CMS to assist nursing homes with infection control and support states' efforts to prevent the spread of coronavirus in nursing homes.

Department of Defense (DoD): The law provides $10.5 billion in additional funding to the DoD. Certain health care related funding related to defense includes: $1 billion for the Defense Production Act for investment in health care equipment manufacturing, $1.5 billion for the expansion of military hospitals, and $415 million for the continuation of military medical research for vaccines and anti-viral pharmaceuticals.

Health and Resources Services Administrations (HRSA): The law provides an increase in funding of $275 million to HRSA through the Public Health and Social Services Emergency Fund. A significant portion of those funds, about $185 million, would be allocated to rural health critical access hospitals and other rural health activities.

Federal Communications Commission (FCC): The law provides an increase in funding of $200 million to FCC to support health care providers' efforts to provide "telecommunications services, information services and devices necessary to enable the provision of telehealth during an emergency period".

Additional Resources:

Please reach out to the Vizient Office of Public Policy and Government Relations if you have any questions or if Vizient can provide any assistance as you consider these issues.

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