NELSON HARDIMAN
HEALTHCARE LAWYERS

CMS Waives Additional Requirements for Healthcare Professionals During COVID-19 Pandemic

For the second time in two weeks, the Centers for Medicare & Medicaid Services (CMS) has announced additional waivers intended to maximize the use of medical personnel amid the public health emergency (PHE) declared in response to the COVID-19 pandemic. Like CMS's earlier waivers, summarized here, these latest changes are retroactive to March 1, 2020.

With these recent waivers, CMS seeks to allow medical professionals to work at the highest level permitted by their license ("practicing at the top of their license") to assist in potential staffing shortages during the PHE. These will last through the end of the PHE and primarily address critical access hospitals (CAHs), rural health clinics (RHCs) and Federally Qualified Health Centers (FQHCs), and long-term care facilities related to the provision of physician services.

Some key provisions are summarized below, with the ongoing caveat that providers should refer to full CMS guidance here for details and remain cognizant of state-level requirements pertaining to supervision and scope of practice, as well as other applicable laws and regulations and payor requirements. For ongoing COVID-19 legal updates check out our COVID-19 Resource Page and subscribe to our COVID-19 Task Force Newsletter.

Under certain circumstances, CMS is waiving:

• **Limitations on Physician Delegation of Tasks in Skilled Nursing Facilities (SNFs).** During the PHE, physicians may delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who meets applicable definitions per regulations as long as they are acting within the scope of practice laws as defined by state law and in accordance with facility policy.

• **Limitations on Physician Delegation of Patient Visits in SNFs.** Under normal circumstances, physician visits must be made by physicians personally, but now physicians may delegate any required physician visit to a nurse practitioner, physician assistant, or clinical nurse specialist who is not an employee of the facility who is working in collaboration with a physician, and who is licensed by the state and performing within the state's scope of practice laws. Additionally, these healthcare providers may conduct such visits via telehealth, if appropriate.

• **Occupational Therapist (OT) Assessment for All Patients.** Usually, OTs are required to perform the initial and comprehensive assessment if occupational therapy is the service that establishes eligibility for the patient to be receiving home health care. Now, under this temporary blanket modification, OTs may perform the initial and comprehensive assessment for all patients receiving therapy services as part of the plan of care, to the extent permitted under state law, regardless of whether OT is the service that establishes eligibility.

• **Physician On-Site Availability in CAHs.** Usually, at CAHs, a doctor of medicine or osteopathy must be physically present to provide direction, consultation, and supervision for the services provided in the CAH. During the PHE physicians may be available "through direct radio or telephone communication, or electronic communication for consultation, assistance with medical emergencies, or patient referral," which will allow the physician to perform responsibilities remotely, as appropriate, and will allow CAHs to use nurse practitioners and physician assistants to the fullest extent possible.

• **Supervision of Nurse Practitioners in RHCs and FQHCs.** Among other waivers applicable to these facilities, CMS is modifying the requirement that physicians must provide medical supervision to nurse practitioners (to the extent permitted by state law), thus allowing RHCs and FQHCs to use nurse practitioners to the fullest extent possible and physicians to direct their time to more critical tasks.

Additional Resources From CMS:

COVID-19 Frequently Asked Questions on Medicare Fee-for-Service Billing, which includes a section addressing Medicare Telehealth, are available here.
CMS's Comprehensive "Coronavirus Waivers & Flexibilities" are available here.

For more COVID-19 related legal updates, please consider subscribing to our COVID-19 Task Force Newsletter.

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