

Resources for Surgeons who are Professionally Affected by COVID-19

Congress is expected to pass, and President Trump is expected to sign into law, The Coronavirus Aid, Relief and Economic Security (CARES) Act into law. Below is a summary of some of the provisions of the legislation that may be most applicable to surgeons and their practices. As information is announced regarding how to access these programs, we will update this page.

Small Business Loans

Relief for small businesses run by physicians was included in the \$2 trillion dollar legislation passed by Congress. Among the provisions specific to small business are modifications in the 7(a) Small Business Administration (SBA) loan program. While previously the program was more focused on traditional business development, the CARES Act legislation modifies the program in the following ways:

- 1) Setting eligibility requirements at 500 employees or fewer
- 2) Allowing 501(c)(3) non-profits to be eligible
- 3) Increasing the maximum loan amount to \$10 million
- 4) Expanding allowable uses to include payroll support, employee salaries, and debt obligations

The modifications in the CARES Act also provide a process for loan forgiveness for certain payroll costs as well as mortgage, rent and utilities.

In addition to the changes in the program itself, the legislation also included the appropriation of \$562 million dollars for Economic Injury Disaster Loans, including the 7(a) program, to ensure that the SBA has adequate resources to assist businesses in need.

Public Health and Social Services Emergency Fund

The CARES Act includes \$100 billion for health care services related to the COVID-19. Specifically, the funds are to prevent, prepare for, and respond to coronavirus, domestically or internationally, for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus. The funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.

Who Qualifies?

Eligible health care providers means public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit entities and not-for-profit entities within the United States (including territories), that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.

Payments

The legislation directs the Secretary of Health and Human Services to, on a rolling basis, review applications and make payments. The term payment means a pre-payment, prospective payment, or retrospective payment, as determined appropriate by the Secretary. Payments are directed to be made in consideration of the most efficient payment systems practicable to provide emergency payment. Funds are available for building or construction of temporary structures, leasing of properties, medical supplies

and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity.

Relief from Sequestration

The Budget Control Act of 2011 (P.L. 112–2) requires mandatory across-the-board reductions in federal spending, also known as sequestration. When applied to Medicare, the sequester reduces payments to providers by 2 percent. The recently passed Coronavirus Aid, Relief, and Economic Security (CARES) Act, temporarily lifts the sequester on Medicare from May 1 through December 31, 2020. Because of this provision, **physicians treating Medicare beneficiaries will see payment rates increase by 2 percent during this time period.** In order to provide this immediate relief without worsening Medicare’s long-term financial outlook, the Medicare sequester would be extended by one-year beyond current law, through fiscal year 2030.

Good Samaritan Provisions

In response to the current coronavirus pandemic, volunteer private-sector health care providers will very likely be needed to provide surge capacity — in their own states and across state lines — to relieve overwhelmed state and local health systems. The current federal and state Good Samaritan laws provide some civil liability protections for volunteer health care providers, but only if they are licensed in the state where the services are provided. This will leave many health care professional volunteers who provide care in other states without Good Samaritan protections.

The recently passed Corona Aid, Relief and Economic Security (CARES) Act response package extends federal Good Samaritan civil liability protections (equivalent to the protections found in the federal Volunteer Protection Act of 1997 and many state laws) to inter-state volunteers who are licensed in their home state. **The legislation makes clear that doctors who provide volunteer medical services during the public health emergency related to COVID-19 have liability protections.**

The American College of Surgeons previous work on this issue can be found here:

<https://www.facs.org/advocacy/federal/liability>

Telehealth Information Regarding COVID-19 Response

Congress and the Administration have made several changes to federal telehealth provisions in the wake of the COVID-19 pandemic in an effort increase access to care.

Legislative Activity

On March 6, the president March 6 signed into law the first of three spending bills intended to fund the federal government’s response to the coronavirus disease 2019 (COVID-19). The legislation includes provisions that grant the Secretary of the U.S. Department of Health and Human Services (HHS) with the authority to temporarily ease restrictions around telehealth services for Medicare beneficiaries, including: lifting the rural and geographic requirements to provide and receive telehealth services, waiving federal requirements that physicians and health professionals be licensed in the state in which they are providing services if they have an

equivalent license in another state, and loosening restrictions on the use of telephones to deliver care.

The Corona Aid, Relief and Economic Security (CARES) Act, the third piece of legislation to address the COVID-19 public health crisis, contained several telehealth provisions. Building on the telehealth expansions already put into place for the COVID-19 public health emergency in previous bills, the CARES Act further facilitates the use of telehealth services for providers and patients:

- Reauthorizes Health Resources and Services Administration (HRSA) grant programs that promote the use of telehealth technologies for health care delivery, education, and health information services.
- Allows high deductible insurance plans with a health savings account (HSA) to cover telehealth services prior to a patient reaching the deductible.
- Removes restrictions that limited Medicare telehealth service situations where the physician or other professional has treated the patient in the past three years. Previous legislation provided flexibility only for established patients seen within the past three years.
- Allows FQHCs and RHCs to provide telehealth services to Medicare patients not located at the clinic.
- Expands telehealth services to include home dialysis, home care, and hospice care.

Medical licensing, credentials, and out of network issues

While Secretary Azar was able to waive certain licensure requirements to allow for Medicare and Medicaid payments to providers who do not have a license within that state, the waiver does not extend to non-Federal programs. As such, some states require physicians to have a medical license in the same state that their patient is located in order to provide virtual healthcare. And, especially with respect to controlled substances, states may have additional requirements for e-prescribing those products. Further, even if the state opts to waive the licensure requirements, it may still have additional requirements regarding credentialing. Finally, even if an out-of-state provider is able to address the licensure and credentialing issues, the provider will likely be considered out-of-network by private payers.

Given challenges with clinicians providing care across state lines, the Federation of State Medical Board (FSMB) established the Interstate Medical License Compact Commission (IMLCC). According to IMLCC, “[t]he Interstate Medical Licensure Compact offers a new, voluntary expedited pathway to licensure for qualified physicians who wish to practice in multiple states.” At this time, 29 states, the District of Columbia and the Territory of Guam, have agreed to the compact. [Additional information about FSMB and telemedicine policy is available here.](#)

Regulatory Activity

On March 17, CMS provided new information regarding the implementation of this new waiver authority including a [press release](#), [fact sheet](#) and [updated FAQ](#). This waiver authority is separate and distinct from the section 1135 waiver authority. The key takeaways from the announcement are as follows:

HIPAA and Privacy Considerations

On March 17, the Office of Civil Rights (OCR) announced enforcement discretion for certain widely used communications. Specifically, the OCR press release states “effective immediately,

that it will exercise its enforcement discretion and will waive potential penalties for HIPAA violations against health care providers that serve patients through everyday communications technologies during the COVID-19 nationwide public health emergency. This exercise of discretion applies to widely available communications apps, such as FaceTime or Skype, when used in good faith for any telehealth treatment or diagnostic purpose, regardless of whether the telehealth service is directly related to COVID-19. For more information, see the [statement](#) and [Bulletin](#).

Private payers (especially ERISA covered plans)

While CMS Administrator Seem Verma has made it clear that the Administration is urging private payers to make similar modifications, so far, there has not been a broad announcement to that effect. While some states are moving forward to address the topic at the state level, state activities cannot address ERISA-covered plans.

Additional Information

On March 20, [OCR further announced enforcement discretion](#) regarding HIPAA security, privacy, and breach requirements, while clarifying that this discretion does not apply to the confidentiality of substance use disorder records, given the Substance Abuse and Mental Health Services Administration (SAMHSA) has announced separate enforcement discretion regarding those rules. OCR continues to discourage the use of certain “public facing” platforms such as Facebook Live, Twitch, and TikTok. [For additional OCR FAQs, visit here](#)