



CARES Act Title III Summary of Changes

April 14, 2020

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

- \$2 Trillion Coronavirus Economic Stimulus Bill
- Signed into law on March 27, 2020
- Goal: Providing relief for individuals and businesses that have been negatively impacted by the coronavirus outbreak
- CARES Act has four sections, including Title III, which focuses on the following provisions for healthcare:
 - Additional funding
 - Increased telehealth services
 - ‘Relaxation’ of some HIPAA provisions
 - Revised payment schedules
 - Workforce support for nurses and physicians
- Includes funding for health systems and providers
- Provides additional compensation and payment for other services not previously reimbursable

Key Provisions in Title III

- **Payment**
 - Coverage for diagnostic testing for COVID-19
 - Commercial, no-cost sharing
 - Use of telehealth for pre-hospice admission
 - Use of telehealth for home and office visits
 - Add on for COVID-19 for PPS Inpatient (this is a bump in payment on DX and discharge - 20%)
 - 80 telehealth services covered
- **Privacy & Security**
 - Changes in disclosure of records relating to substance abuse
 - Guidance on protected health information (to be issued 180 days after signed into law)
- **Other**
 - Supplemental awards for telehealth centers
 - Telehealth grant programs
 - Rural health expansion for telehealth
 - Exemption for telehealth services
 - Increased Medicare flexibility for telehealth during the emergency
 - Enhanced Medicare/Medicaid flexibility for Federally Qualified Health Centers (FQHC)
 - Temporary waiver of face-to-face visits
 - Provide community/home-based services at acute care centers

- These waivers provide relief on a number of fronts including:
 - Prior authorization and provider enrollment requirements
 - Suspending certain nursing home pre-admission reviews
 - Facilitating reimbursement to providers for care delivered in alternative settings due to facility evacuations
- 13 states have been granted waivers so far
- New states added weekly
- MA received waiver status on March 26
- These Section 1135 waivers are effective March 1, 2020 and will end upon termination of the public health emergency (including any extensions)

HIPAA Telehealth Guidance

- On March 17, Health and Human Services (HHS) allowed for enhanced telehealth communications with some non-standard providers that normally would have been excluded
 - For example: FaceTime
- This was done to help expedite telehealth communication
 - Patients must provide consent
 - Organizations and applications still need to have end-to-end security and protection
- Some organizations have Business Associate Agreements (BAA)
 - For example: Zoom for Healthcare, or Skype
- Many organizations don't have a formalized telehealth strategy or funding
- Payment(s) are retroactive to March 1, 2020
- This is temporary under the emergency



What's Included - Telehealth

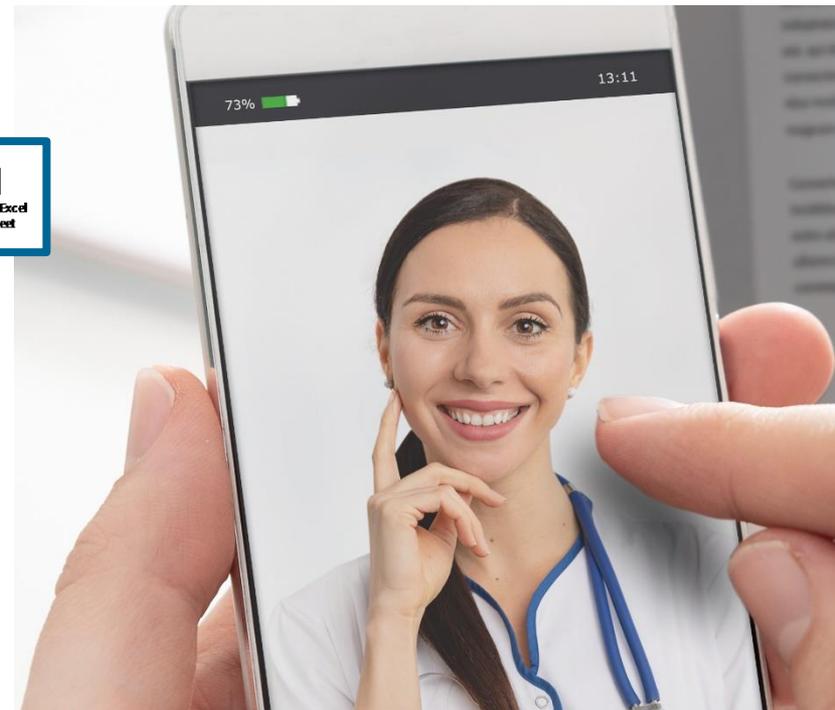
Medicare

- The attached link details the covered services
- The list has greatly expanded from the initial list
- This covers Medicare, but commercial will follow
- Note that everything says 'temporary addition'
- Potentially could reverse after the emergency is over



Medicaid (managed at the State level)

- States have the option/flexibility to determine whether to cover telemedicine
- Types of telemedicine to cover; where in the state it can be covered; how it's provided/covered
- Types of telemedicine practitioners/providers that may be covered/reimbursed (as long as such practitioners/providers are "recognized" and qualified according to Medicaid statute/regulation)
- How much to reimburse for telemedicine services, as long as such payments do not exceed Federal Upper Limits



Massachusetts coverage for telehealth services

- During the COVID-19 outbreak, MassHealth is covering telehealth services for both physical and behavioral health when appropriate

Privacy and Security Changes

- No later than 180 days after enactment, HHS must issue guidance regarding the sharing of patients' protected health information during a public health emergency. The guidance must include information on compliance with regulations promulgated pursuant to HIPAA and applicable policies, including policies that may come into effect during such emergencies.
- Revisions associated with the confidentiality and disclosure of substance abuse records:
 - Now referred to as substance abuse disorder
 - Consent
 - The provisions regarding consent and use of the content found in such records was overhauled to explicitly allow use not only specifically consented to by a patient, but also as permitted by the HIPAA regulations
 - The consent and use provisions now also make clear that prior written consent applies for all such future uses or disclosures for purposes of treatment, payment, and healthcare operations
 - De-identified records to a public authority is now allowed
 - Criminal and civil context added on what could be disclosed
 - Requirement of covered entities to update their notices of privacy practices (NOPP)

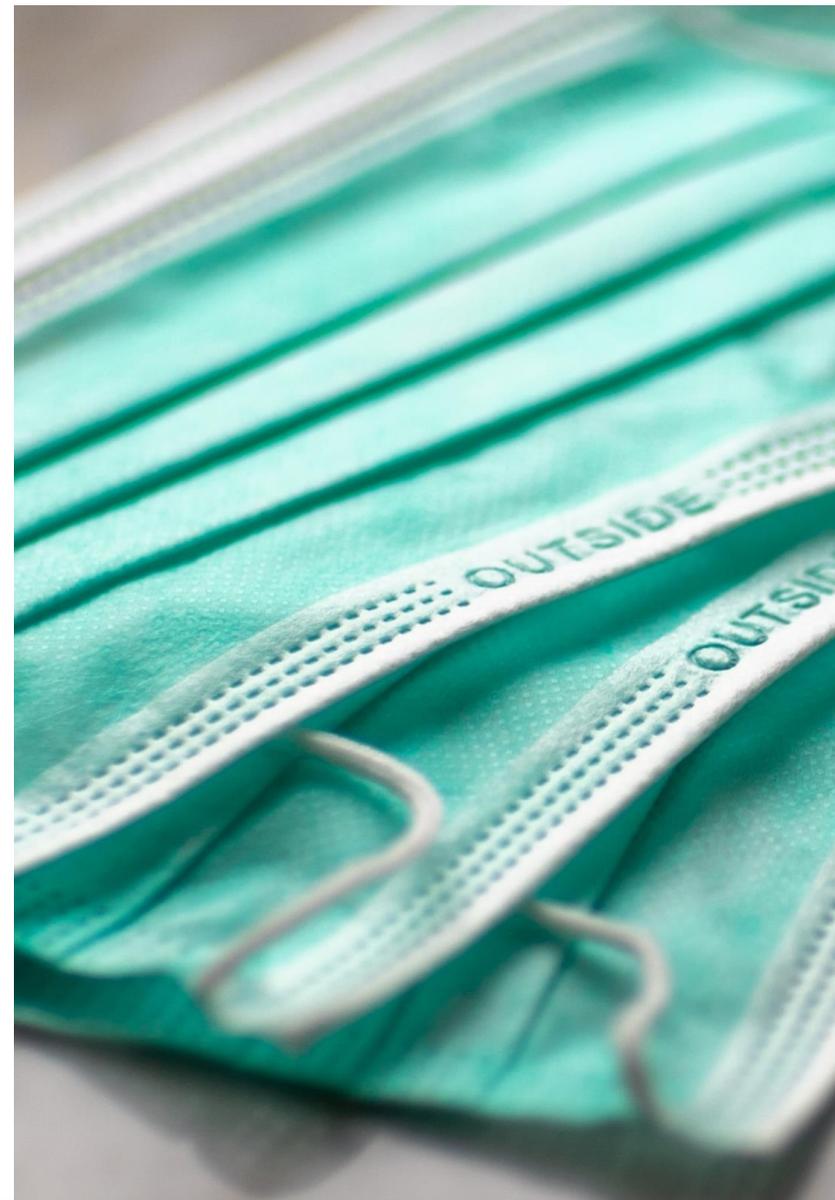
Breach Notification Changes

- The CARES Act makes the breach notification provisions of the Health Information Technology and Clinical Health (HITECH) Act applicable to unauthorized uses and disclosures of Part II Information. It does so in the same way the breach notification provisions of the HITECH Act apply to breaches of unsecured protected health information (as those terms are defined by HIPAA).
- (42 U.S.C. § 290dd-2(j)) Practically, this provision of the CARES Act only creates a change for the limited subset of Part II Programs that are not already subject to HIPAA.
- Part II Information
 - Federally assisted programs offering Substance Abuse and Disorder (SUD) treatment (Part II Programs) that receive SUD patient information pursuant to the patient's written consent to re-disclose that information for treatment, payment, and health care operations purposes

Other Key Provisions - Medical Products, Emergency Drugs & Lab Test

The CARES Act also:

- Addresses structural shortcomings that are viewed as contributing to shortages being experienced by healthcare providers attempting to procure medical products, emergency drugs, and COVID-19 laboratory tests
- HHS to examine and evaluate the U.S. medical supply chain and our dependence on critical drugs and medical devices
- Evaluation of the current stockpile of certain types of medical supplies and equipment, including personal protective equipment (PPE) and other supplies needed for COVID-19 testing and treatment



Other Key Provisions - Medical Products, Emergency Drugs & Lab Test

- Incentivizes additional production and distribution of personal respiratory protective devices, such as masks and respirators
 - The CARES Act provides manufacturers of these devices permanent immunity from suit and liability under federal and state law with respect to any use of such devices during the COVID-19 public health emergency that is related to COVID-19 testing or treatment
- Prioritizes for the Food and Drug Administration (FDA) to expedite the review of drug applications and inspections to prevent or mitigate a drug shortage
- Requires that pharmaceutical and medical device manufacturers:
 - Disclose any discontinuation or interruption in the manufacturing of emergency drugs and essential medical devices (or any ingredients of a drug or components of a device)
 - Provide information about the volume of such drugs and devices
 - Maintain redundancy risk management plans to mitigate shortages
- Requires that HHS prepares and submits an annual report listing of the current drug shortages to the FDA and the Centers for Medicare & Medicaid Services (CMS), and prepares and maintains an up-to-date list of medical devices

Once the emergency period is lifted, there may be a number of challenges faced by Covered Entities and Business Associates including:

- Billing systems, the right codes for bills, subject to audit and lookback
- Documentation, incomplete documentation and medical records
- Wrongful disclosure of information
- Lapse in security measures in order to facilitate services
- Getting organizations back to doing things prior to the emergency period



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