

March 15, 2020

## Forward Thinking Healthcare Solutions It's What We Do

### Our Health Law Practice Group:

Joan W. Feldman  
(860) 251-5104  
jfeldman@goodwin.com

Vincenzo Carannante  
(860) 251-5096  
vcarannante@goodwin.com

William J. Roberts  
(860) 251-5051  
wroberts@goodwin.com

Damian J. Privitera  
(860) 251-5504  
dprivitera@goodwin.com

Alexander R. Cox  
(860) 251-5236  
acox@goodwin.com

Stephanie M. Gomes-Ganhão  
(860) 251-5239  
sgomesganhao@goodwin.com

## COVID-19: New CMS Waivers

On March 13, 2020, the President declared a National Emergency and authorized CMS to take necessary action to reduce regulatory hurdles for the purpose of addressing COVID-19. See, <https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fact-sheet.pdf>.

Based upon the Emergency Declaration, the following CMS waivers have been issued so far:

**Skilled Nursing Facilities (“SNF”):** CMS is waiving the requirement that a patient be hospitalized for 3 days before there is coverage for a SNF stay. In addition, for patients who have exhausted their SNF benefit, CMS is authorizing renewed SNF coverage without first having to start a new benefit period. SNFs will also be relieved of the timeframe requirements for Minimum Data Set assessments and transmission.

**Critical Access Hospitals:** CMS is removing both the restriction on the 25-bed limit and the requirements for a 96-hour stay.

**Housing Acute Care Patients in Excluded Distinct Part Units:** CMS is allowing acute care inpatients to be placed in excluded distinct part units, so long as such units are appropriate for the care of acute inpatients. Billing should be under the PPS for acute care, and the patient’s medical record should indicate that the patient is being placed in an excluded distinct part unit due to capacity issues relating to the public health emergency.

**Durable Medical Equipment:** CMS is waiving its requirements for a new physician’s order, face-to-face requirements and new medical necessity documentation for replacement equipment and supplies. Suppliers must explain the reasons for the new equipment when billing (e.g, destroyed, irreparably damaged, or unusable).

**Care for Excluded Inpatient Psychiatric Unit Patients in the Acute Care Unit of a Hospital:** CMS will allow acute care hospitals to relocate inpatients from their excluded distinct part psychiatric unit to an acute care bed unit as a result of the public health emergency. However, the acute care unit must be safe for the psychiatric patient and the reasons for the relocation of the patient on an acute care unit must be documented in the patient’s medical record. Billing will continue under the Inpatient Psychiatric Facility PPS.

**Care for Excluded Inpatient Rehabilitation Unit Patients in the Acute Care Unit of a Hospital:** CMS will allow acute care hospitals with excluded distinct part inpatient rehabilitation units to relocate inpatients from the excluded distinct part rehabilitation unit

to an acute care unit due to the public health emergency. The hospital should bill for inpatient rehabilitation services under the inpatient rehabilitation facility PPS for such patients, and document in the medical record the reasons for the patient being placed on an acute care unit. This waiver also applies to providers attempting to obtain IRF classification, but who have yet to be classified as such.

**Supporting Care for Patients in Long-Term Care Acute Hospitals (LTCHs):** CMS will waive the 25-day average length-of-stay requirement to meet the demands of the public health emergency.

**Home Health Agencies:** CMS is providing relief to Home Health Agencies on the timeframes related to OASIS Transmission and allowing Medicare Administrative Contractors to extend the auto-cancellation date of Requests for Anticipated Payment (RAPs) during the public health emergency.

**Provider Locations:** With respect to Medicare and Medicaid patients, CMS is temporarily waiving requirements that out-of-state providers be licensed in the state where they are providing services when they are licensed in another state.

**Provider Enrollment:** CMS will establish a toll-free hotline for non-certified Part B suppliers, physicians and non-physician practitioners to enroll and receive temporary Medicare billing privileges and waive the application fee, waive criminal background checks associated with fingerprint criminal background checks, waive site visits, and postpone all revalidation actions, allow licensed providers to render services outside of their state of enrollment, and expedite any pending or new applications from providers.

**Medicare Appeals In Fee for Service, MA and Part D:** CMS is providing the following: extensions to file appeals, waiving timeliness for requests for additional information to adjudicate the appeal, processing the appeal even with incomplete Appointment of Representation forms, processing requests for appeals that don't meet the required elements using information that is available, and utilizing all flexibilities available in the appeal process as if good cause requirements are satisfied.

**Non-Emergency Survey Inspections:** CMS is temporarily suspending non-emergency survey inspections so that providers may focus on current health and safety threats.

We expect to see additional waivers for Medicare and Medicaid so stay tuned and refer to: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/EPRO-Home>.

### **Questions or Assistance**

If you have any questions about this alert, please contact any member of our Health Law Practice Group listed on page 1.

These materials have been prepared by Shipman & Goodwin LLP for informational purposes only. They are not intended as advertising and should not be considered legal advice. This information is not intended to create, and receipt of it does not create, a lawyer-client relationship. Viewers should not act upon this information without seeking professional counsel. © 2020 Shipman & Goodwin LLP. One Constitution Plaza, Hartford, CT 06103.

CONNECTICUT

NEW YORK

WASHINGTON, D.C.

[www.shipmangoodwin.com](http://www.shipmangoodwin.com)