



March 30, 2020

Coronavirus Aid, Relief, and Economic Security (CARES) Act – Telehealth Provisions

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed into law on March 27, 2020,¹ provides financial relief and resources to individuals, families, and businesses affected by the COVID-19 public health emergency, including hospitals, health systems, healthcare providers, and health insurers. Several provisions contained in the CARES Act create flexibility and expand access and coverage for telehealth services during the COVID-19 emergency period.² CMS previously expanded Medicare's telehealth benefits pursuant to Section 1135 of the Social Security Act.³ This alert focuses on the provisions of the CARES Act that relate to the expansion of telehealth services, which are aimed at increasing patient access to providers while minimizing potential exposure associated with COVID-19.⁴

- **Telehealth Grant Programs.** Section 3212 of the CARES Act reauthorizes Health Resources and Services Administration grant programs that promote the use of telehealth technologies for healthcare delivery, education, and health information services. This offers flexibility for patients with, or at risk of contracting, COVID-19 to access screening or monitoring care while avoiding exposure to others.
- **High Deductible Health Plan Exemption for Telehealth Services.** Section 3701 of the CARES Act allows a high-deductible health plan with a health savings account to cover telehealth and other remote care services prior to a patient reaching the deductible. This increases access for patients who may have the COVID-19 virus and protecting other patients from potential exposure.
- **Medicare Telehealth Flexibilities.** Section 3703 of the CARES Act eliminates the requirement – contained in the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 – that limits Medicare telehealth expansion authority during the COVID-19 emergency period to situations where the physician or other professional has treated the patient in the past three years. This enables beneficiaries to access telehealth, including in their home, from a broader range of providers.
- **Enhancing Medicare Telehealth Services for Federally Qualified Health Centers and Rural Health Clinics.** Section 3704 of the CARES Act allows, during the COVID-19 emergency period, Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) to serve as a distant site for telehealth consultations. This allows FQHCs and RHCs to furnish telehealth services to beneficiaries in their home. Medicare will reimburse for these telehealth services based on payment rates similar to the national average payment rates for comparable telehealth services under the Medicare Physician Fee Schedule.

¹ The CARES Act can be found [here](#).

² We note that relaxing telehealth standards and providing flexibility will trigger other considerations that healthcare providers will need to consider, including privacy and security issues. We have prepared a separate client alert addressing prior guidance from the Office of Civil Rights (OCR) related to privacy and security rules during the COVID-19 emergency period. See our [Client Alert: COVID-19 and HIPAA – Waiver of Certain Sanctions and Penalties, and OCR Guidance Regarding Telehealth and Continued Applicability](#) for more information. The CARES Act also requires the Department of Health and Human Services (HHS) to issue further guidance regarding protected health information during the COVID-19 emergency period, which we expect to be released in the coming days.

³ See our [Client Alert: COVID-19 Section 1135 Waiver Update – Telehealth Waiver](#) for more information.

⁴ See our parallel alerts regarding specific healthcare-related provisions of the CARES Act [here](#).

- **Expanding Medicare Telehealth for Home Dialysis Patients.** Section 3705 of the CARES Act eliminates the requirement, during the COVID-19 emergency period, that a nephrologist conduct required periodic evaluations of a patient on home dialysis in a face-to-face visit. This allows vulnerable beneficiaries to receive care via telehealth in the safety of their home.
- **Using Telehealth for Medicare Hospice Care Recertification Process.** Section 3706 of the CARES Act allows, during the COVID-19 emergency period, qualified providers to use telehealth technologies in order to fulfill the hospice face-to-face recertification encounter requirement.
- **Encouraging the Use of Telecommunications Systems for Home Health Services in Medicare.** Section 3707 of the CARES Act requires the Department of Health and Human Services (HHS) to issue clarifying guidance encouraging the use of telecommunications systems, including remote patient monitoring, to furnish home health services consistent with the beneficiary care plan during the COVID-19 emergency period.

Despite the telehealth flexibility created by the CARES Act, many states continue to restrict the provision of telehealth services by out-of-state providers, require in-person visits to establish a provider-patient relationship, and/or require certain additional informed consent requirements to be met. Healthcare providers are encouraged to contact state licensing agencies and medical boards to determine whether state licensing requirements are temporarily relaxed due to the COVID-19 emergency.

We anticipate that additional guidance in response to COVID-19 will be issued in the coming days and weeks. Healthcare providers who are or may be affected by the consequences of the COVID-19 pandemic should monitor additional developments and announcements from the Department of Health and Human Services, including the Office for Civil Rights and the Centers Medicare and Medicaid Services, as well as state agencies. If you have questions about the impact of COVID-19 on healthcare providers, the CARES Act, or related guidance, please contact a member of our [national Healthcare practice group](#).

Contacts			
Steven Amen	Omaha	(402) 231-8721	Steven.Amen@KutakRock.com
Kevin Burr	Omaha	(402) 231-8829	Kevin.Burr@KutakRock.com
Robert Cohen	Omaha	(402) 231-8738	Robert.Cohen@KutakRock.com
Torri Criger	Omaha	(402) 661-8649	Torri.Criger@KutakRock.com
Debra Fiala	Omaha	(402) 231-8750	Debra.Fiala@KutakRock.com
Kelsey Fohner	Rogers	(479) 250-9708	Kelsey.Fohner@KutakRock.com
Jennifer Forbes	Minneapolis	(612) 334-5000	Jennifer.Forbes@KutakRock.com
Alex Gansebom	Omaha	(402) 661-8685	Alexander.Gansebom@KutakRock.com
Howard Hahn	Omaha	(402) 231-8868	Howard.Hahn@KutakRock.com
Ashley Welch Hudson	Little Rock	(501) 975-3108	Ashley.Hudson@KutakRock.com
Jacy Hurst	Kansas City	(816) 502-4612	Jacy.Hurst@KutakRock.com
Eric Jackson	Fayetteville	(479) 695-1936	Eric.Jackson@KutakRock.com
Alexander Justiss	Little Rock	(501) 975-3153	Alexander.Justiss@KutakRock.com
Bryan Looney	Rogers	(479) 250-9703	Bryan.Looney@KutakRock.com
Debby Thetford Nye	Fayetteville	(479) 695-1966	Debby.Nye@KutakRock.com

Christopher Phillips	Omaha	(402) 231-8787	Christopher.Phillips@KutakRock.com
Anna Regnier	Fayetteville	(479) 695-3846	Anna.Regnier@KutakRock.com
Mark Sappington	Kansas City	(816) 502-4620	Mark.Sappington@KutakRock.com
Jennifer Sewell	Omaha	(402) 661-8620	Jennifer.Sewell@KutakRock.com
Marceda Starks	Kansas City	(816) 502-4621	Marceda.Starks@KutakRock.com
Leslie Stewart	Rogers	(479) 250-9700	Leslie.Stewart@KutakRock.com
Erin Thompson	Fayetteville	(479) 695-1949	Erin.Thompson@KutakRock.com
Taylor Trippe	Fayetteville	(479) 973-4200	Taylor.Trippe@KutakRock.com
Whitney West	Omaha	(402) 346-6000	Whitney.West@KutakRock.com

This Client Alert is a publication of Kutak Rock LLP. It is intended to notify our clients and friends of current events and provide general information about healthcare issues. This Client Alert is not intended, nor should it be used, as specific legal advice, and it does not create an attorney-client relationship.

© *Kutak Rock LLP* 2020 – All Rights Reserved. This communication could be considered advertising in some jurisdictions. The choice of a lawyer is an important decision and should not be based solely upon advertisements.