



SENATOR BILL CASSIDY, M.D.
H.R. 748
CORONAVIRUS AID, RELIEF,
AND ECONOMIC SECURITY ACT



Geared toward physicians, this document provides a high-level summary of the healthcare and tax provisions contained within H.R. 748, which passed the Senate on Wednesday, March 25th. The full legislative text of the CARES Act will be posted on Congress.gov and will be accessible by searching H.R. 748.

Health Care Provisions:

Leveraging Community Health Care Providers

CMS will shortly promulgate rules allowing Ambulatory Surgical Centers and other facilities to be used as ancillary to the hospital. ASCs could be turned into COVID-19 triage and testing centers, or ICU settings for complex, high-risk cases. ASCs can take on the caseload of urgent surgeries for the community such as emergency fractures. They can also assist in migrating overflow inpatient and outpatient surgical volume, serve as a triage center for diversion from the emergency room, serve as an infusion center, and provide inpatient overnight beds.

Home Health

CMS will be releasing a rule in the coming days that will provide policy clarifications on home health homebound rules and telemedicine. Based on our conversations, it is likely CMS will allow a COVID-19 suspected or confirmed diagnosis as a condition to satisfy the Medicare homebound rule, allowing a provider to order home health services without additional statutory authority.

Home Health and Telehealth: The CARES Act, Section 3707 of the latest draft directs the HHS Secretary to examine ways to encourage the use of telecommunications systems, including remote patient monitoring and other communications or monitoring services, including clarifying guidance and conducting outreach. This provision should result in the Secretary expanding flexibilities to perform certain home health activities via remote telemedicine, such as condition assessment, management and evaluation of coordination, compliance with care plan, or medication adherence.

Expanding Home Health Access: Section 3708 of the Act would allow nurse practitioners or physician assistants for ordering home health services. This has been a top priority issue for the home health community for many years, and will provide greater access for patients in need of home health services.

The legislation also suspends Medicare sequestration, which will free up additional reimbursement dollars.

Telehealth

Medicare telehealth flexibilities: Through authorities granted in the Coronavirus Preparedness and Response Supplemental Appropriations Act and Section 1135 waiver authority, CMS is now waiving certain restrictions related to the Medicare coverage of telehealth services for the duration of the coronavirus response. Some of the

flexibilities recently granted include: 1) Medicare will now reimburse for telehealth services provided to the patient when he or she is in their home beginning on March 6, 2020; 2) The HHS Office of Inspector General (OIG) is ensuring that Stark and anti-kickback rules will not be enforced by giving health care providers flexibility to reduce or waive cost sharing for telehealth visits; and 3) The HHS Office of Civil Rights will waive penalties for HIPAA violations for providers who are treating patients in good faith through communications technologies such as FaceTime or Skype.

This fact sheet provides answers to frequently asked questions about Medicare coverage of telehealth services during the coronavirus response: <https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>

There are additional Medicare telehealth provisions in the CARES legislation, which enable providers practicing within rural health centers and federally qualified health centers to be reimbursed for telehealth services (section 3704); broaden the range of providers who can treat Medicare patients in their home via telehealth (section 3703); and allow nephrologists to certify patients for dialysis through telehealth instead of face-to-face (section 3705) during the coronavirus emergency period.

Treating out of state patients: Part of the CMS telehealth waiver enables providers to be reimbursed for treating Medicare patients that are out of state as part of this emergency response. This does not address licensure issues, which must be dealt with on the state level. Many governors have relaxed licensure requirements to enable out of state providers to treat patients within their state. State boards of medicine will have the latest information related to licensure requirements.

Legislation sponsored by Senator Cassidy, the Good Samaritan Health Professionals Act, was included in the CARES package, which extends liability protections to health care providers who are treating patients in a state other than the one they're licensed in for the duration of the coronavirus response (section 3215).

Medicaid telehealth coverage:

Through a waiver from the federal government, the Louisiana Department of Health (LDH) has provided additional flexibilities around the provision of telehealth in the Medicaid program, as follows:

1. Clarified that there is no limitation on originating site (where the patient is) so the patient can be at home;
2. Clarified that there is no limitation on the distant site (where the provider is)--clearly, in usual circumstances, a best practice is for the provider to be in a healthcare facility but if there are closures/disruptions or a personal health/safety issue with the provider, they can work from home or an alternate location;
3. Audio/video telehealth using everyday technology like FaceTime, Skype, when a secure HIPAA-compliant platform is not available;
4. Audio-only telehealth when a/v telehealth is not available and the provider feels the same standard of care can be met;
5. Tele-therapies: telehealth occupational therapy, physical therapy, and speech/language therapy for all;
6. Tele-applied behavioral analysis for kids with autism; and
7. Ensured that telehealth doesn't require any special authorization--if a service is otherwise covered then the provider can provide it via telehealth with no additional criteria or authorization needed.

Additionally LDH has provided the following resources to equip providers to address the coronavirus:

Private payor coverage: Louisiana Department of Insurance Commissioner Jim Donelon issued Emergency Rule 37 to address the statewide public health emergency declared to exist in the state of Louisiana as the result of the imminent threat posed to Louisiana citizens by COVID-19. In summary Emergency Rule 37:

- Expands access to telemedicine services so Louisiana residents can continue receiving necessary care without a visit to a hospital or clinic, including permitting telemedicine visits conducted through the patient's phone or personal device.
- Requires insurers to cover mental health services via telemedicine to the extent they would be covered in-person, except for treatments that are not appropriate for remote delivery.
- Broadens telehealth availability by waiving restrictions requiring patients to only conduct telemedicine visits with providers in the insurer's existing telemedicine network.
- Requires insurers to evaluate their out-of-network cost sharing to ensure patients are not unreasonably charged extra cost sharing amounts under their insurance policy if in-network access becomes limited during the event.

The full text of Emergency Rule 37 can be found [here](#). Additionally, other COVID-19 resources and FAQ's from LDI are available at www.ldi.la.gov.

Additional telehealth resources:

- AMA's Quick Guide for Telemedicine: <https://www.ama-assn.org/practice-management/digital/ama-quick-guide-telemedicine-practice>
- The Louisiana State Medical Society has put together a list of resources regarding Medicaid and private payor coverage for Louisiana providers: <https://lsms.site-ym.com/page/COVID19>

Easing Medical Supply Shortages:

- Clarifies that the Strategic National Stockpile can stockpile medical supplies, such as the swabs necessary for diagnostic testing for COVID-19.
- Provides permanent liability protection for manufacturers of personal respiratory protective equipment, such as masks and respirators, in the event of a public health emergency, to incentivize production and distribution.
- Requires the Food and Drug Administration (FDA) to prioritize and expedite the review of drug applications and inspections to prevent or mitigate a drug shortage.
- Requires drug manufacturers to submit more information when there is an interruption in supply, including information about active pharmaceutical ingredients, when active pharmaceutical ingredients are the cause of the interruption.
- Requires manufacturers to maintain contingency plans to ensure backup supply of products.
- Requires manufacturers to provide information about drug volume.
- Clarifies that during a public health emergency, a medical device manufacturer is required to submit information about a device shortage or device component shortage upon request of the FDA.

Small Business Provisions

Employers can utilize the Payroll Protection Program with Loan Forgiveness, or they can utilize the Employee Retention Refundable Payroll Tax Credit, but they cannot utilize both benefits. The eligibility criteria differ. Employers eligible for both are encouraged to explore which makes the most sense for their respective facts and circumstances.

The Payroll Protection Program (PPP) with Loan Forgiveness. The U.S. Small Business Administration is authorized to provide a new category of 7(a) loans to small businesses, self-employed individuals, and gig-workers. These loans of up to \$10 million are 100% federally guaranteed with zero-fees.

Forgiveness: Up to 8 weeks of average payroll and other costs are eligible for forgiveness if the business retains (or rehires) its employees and maintains their pay levels.

Loan Amount: The maximum size of these loans will be \$10 million; however, the size of these loans will be subject to a formula that is the equivalent of 250% of an employer's average monthly payroll.

Access to Loans: Loans will be available immediately through existing SBA-certified lenders. Many additional lenders will be brought into the program over the next few weeks.

Other Terms: Principal and interest is deferred for up to a year. Any loan amount not forgiven will have a loan term of not more than ten years, with a maximum interest rate of 4%.

See Section 1102 and Section 1106 of the CARES Act for more detail.

Employee Retention Credit – This is an optional refundable employer payroll tax credit of 50% of wages on the first \$10k of wages per employee. Eligible wages are those incurred March 13th through end of the year. Large businesses only qualify if they had to shut down, subject to a government order. Small businesses qualify if: 1) they had to close subject to a government shutdown order; or 2) their gross receipts dropped by 50% from the same period in 2019.

Intersection with paid leave. If the employer is paying sick or family leave under H.R. 6201, the employer doesn't get to take the same wages into account for the purposes of this credit

Health Coverage Plus-up. Employers can add a pro rata share of health expenses in addition to wages. Further guidance will be forthcoming from Treasury on how to make the calculation.

See Section 2301 of the CARES Act for more detail.

Economic Injury Disaster Loans (EIDLs). The CARES Act establishes an emergency grant to allow small business and nonprofits that apply for an EIDL loan to request an advance on that loan, of up to \$10,000, which the SBA must distribute within 3 days. These loans of up to \$2 million include principal and interest deferment for up to 4 years. See Section 1110 of the CARES Act for more detail.

Debt Relief for Existing and New SBA Borrowers. For small businesses with a standard SBA 7(a), 504, or microloan, SBA will cover all loan payments, including principal, interest, and fees, for six months. This relief

is likewise available for new borrowers who take out an SBA loan within six months after the President signs the CARES Act into law. These borrowers can apply for PPP loans, but the six months of relief may not be applied to payments for PPP loans.

Delays Payroll Tax Payments for Employers. Employers will be able to delay the payment of their 2020 payroll taxes until 2021 and 2022, leading to approximately \$300 billion of extra cash flow for businesses.

Restores Supports for Businesses Suffering Losses. The CARES Act also allows businesses to carry back losses from 2018, 2019, and 2020 to the previous 5 years, which will allow businesses access to immediate tax refunds.

Encourages Businesses to Invest in Improvements. The CARES Act fixes cost recovery for investments in Qualified Improvement Properties, which will allow businesses to immediately expense these investments.

Increases Allowable Amount of Business Interest Deduction. Increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30% limitation to 50% of the taxable income for 2019 and 2020.

Entrepreneurial Assistance. The CARES Act provides \$240 million in grants to SBA resource partners to enable them to offer counseling, training and related technical assistance to small businesses affected by COVID-19.