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CMS Issues Sweeping Regulatory Changes in Response to COVID-19 Patient Surge

On March 30, 2020, the Centers for Medicare and Medicaid Services ("CMS") issued an array of temporary regulatory waivers and new rules to provide health care providers maximum flexibility to respond to the COVID-19 public health emergency. These temporary changes are applicable as of March 1, 2020, and will apply across the entire United States for the duration of the public health emergency. Some highlights of the changes are:

- CMS is allowing health care systems to establish alternative treatment sites to increase hospital capacity. Examples include ambulatory surgery centers, inpatient rehab hospitals, hotels and dormitories, as well as drive-through COVID-19 testing sites.
- New rules allow hospitals to screen patients from a location not on its campus by using telehealth services, thereby freeing emergency space for those who need it most. Notably, these off-site locations are not subject to the Emergency Medical Labor and Treatment Act.
- In addition to its previous relaxation of telehealth requirements, CMS will now pay for 80 more services when furnished via telehealth. Also, if a physician determines that a Medicare beneficiary should not leave home because of a medical contraindication or due to a suspected or confirmed COVID-19 diagnosis, and the beneficiary needs skilled services, he or she will be considered homebound and will qualify for the Medicare Home Health Benefit—resulting in the beneficiary being able to receive services at home.
- CMS is issuing waivers so that hospitals can use non-physician practitioners, such as physician assistants and nurse practitioners, to the fullest extent possible, including permitting services that may previously have required a physician's order, such as ordering tests and medications.
- CMS is waiving the requirement that a certified registered nurse anesthetist ("CRNA") act under physician supervision, thereby freeing up additional provider resources.
- Medical residents will have more flexibility to provide services under the direction of the teaching physician. Teaching physicians can now provide resident supervision virtually using audio/video communication technology.
- As previously reported, CMS has issued blanket Stark Law waivers to allow hospitals to provide benefits and

support to their medical staff, such as daily meals, laundry service for personal clothing, or child care services while they provide patient care.

With these changes, CMS hopes to ensure that sufficient health care items and services are available to meet the needs of Medicare and Medicaid enrollees during the COVID-19 pandemic.

Additionally, on March 23, 2020, America's Health Insurance Plans ("AHIP") **pledged** to match CMS's waivers for Medicare beneficiaries in areas where in-patient capacity is under strain. That is, AHIP committed to following CMS's lead in suspending or relaxing policies as needed to enhance hospital capacity and access to care. AHIP also strongly encouraged all health insurers to adopt and implement the same approach during the current public health emergency.

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