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COVID-19 and Waivers of Federal Requirements

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As a further update to the quickly evolving response by the federal government to COVID-19 pandemic, this *Legal Update* will highlight the waivers of program rules issued by the federal government and impacting health care providers.

Section 1135 Waivers. In response to the President's declaration of a national emergency on March 13, 2020, the Secretary of the Department of Health and Human Services has now issued waivers pursuant to section 1135 of several provisions of the Social Security Act. Among those waivers is the following related to the Emergency Medical Treatment and Labor Act (EMTALA):

Sanctions under section 1867 of the Act (the Emergency Medical Treatment and Labor Act, or EMTALA) for the direction or relocation of an individual to another location to receive medical screening *pursuant to an appropriate state emergency preparedness plan* or for the transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared Federal public health emergency for the COVID-19 pandemic (emphasis added).

The Secretary's declaration further includes a waiver for certain provisions of HIPAA for "hospitals in the designated geographic area that have hospital disaster protocols in operation."

The Secretary's waiver additionally states that it is "not effective with respect to any action taken thereunder that discriminates among individuals on the basis of their source of payment or their ability to pay."

The waivers from HHS are retroactive to March 1, 2020. The Secretary's waiver can be found here.

Waiver of Telehealth Cost-Sharing. In addition, on March 17, the Office of the Inspector General issued a policy statement indicating that providers would not be subject to sanctions if they reduce or waive cost-sharing obligations Federal health care program beneficiaries may owe for telehealth services furnished consistent with applicable coverage and payment rules. This temporary waiver is in effect during the time period covered by the Secretary's determination that a public health emergency exists. The OIG's policy statement can be found here.

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