Overview: AASM COVID-10 Health Policy and Legislative Update

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Major Legislative and Regulatory Reforms

Congressional Legislation (4 Congressional bills to date)

- March 6: Coronavirus Preparedness and Response Supplemental Appropriations Act ($8.3b)
- March 18: Families First Coronavirus Response Act ($3.5b)
- March 27: Coronavirus Aid, Relief, and Economic Security Act (CARES) Act ($2.2t)
- April 24: Paycheck Protection Program and Health Care Enhancement Act ($484b)

Regulatory Reform (moreover CMS)

- Interim Final Rule: “Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency” (4/6/20)

COVID-19 Federal Bills Impacting Telehealth

Preparedness and Response Act

- Grants telehealth waiver authority for Medicare, Medicaid and CHIP

CARES Act

- Removes constraint requiring pre-existing patient relationship for afore-mentioned waiver authority
- Allows telehealth clinician to be at FQHCs & RHCs and patient to be at home and payment at Medicare PFS national-average rates
- Waives requirement for in-person home dialysis visits, hospice re-certifications
- Encourages telehealth including remote patient monitoring for home health services
- Reauthorizes HRSA telehealth grants
- Allows high-deductible health plans to cover telehealth prior to reaching deductible

Medicare Waivers for Telehealth Delivery

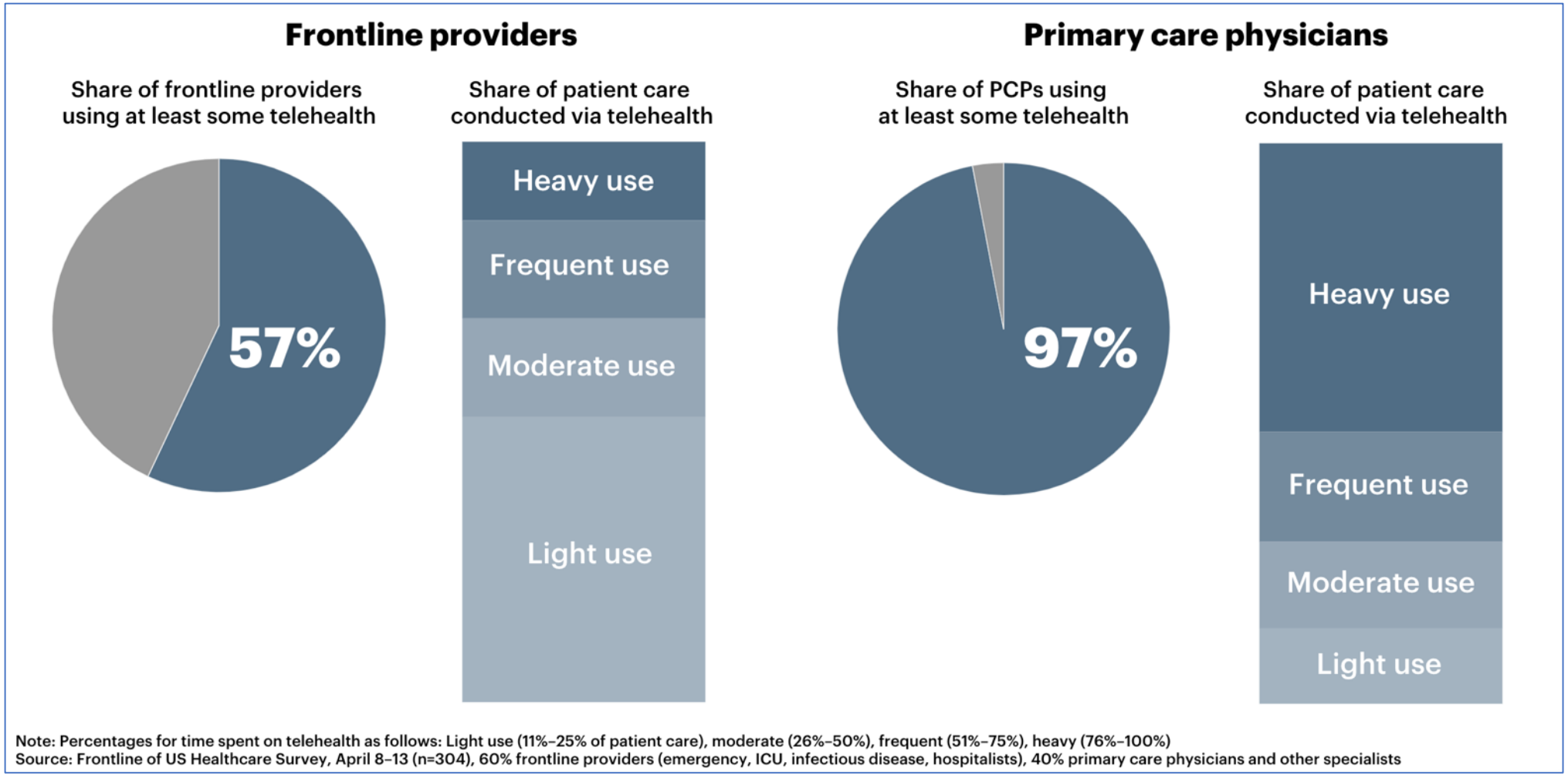
- Started March 6 for PHE duration
- Includes E&M visits, preventive health and mental health
- Allow same payment as a normal visit for that visit type (POS 02)
- Patients new to a clinician are eligible (not just established benes)
- Allows for a wider range of clinicians due to more allowed services: Nps, PT, OT, Speech, psychologists, social workers, etc
- Waives all originating site and rural restrictions (patient and provider anywhere)
- Non-HIPAA-compliant technologies allowed, e.g., FaceTime
- Allows use of audio only for E/M codes
- Waives cross-state licensure requirements
- Waive cost sharing for services related to COVID-19 (Modifier CS)

https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf

Specific to CPAP

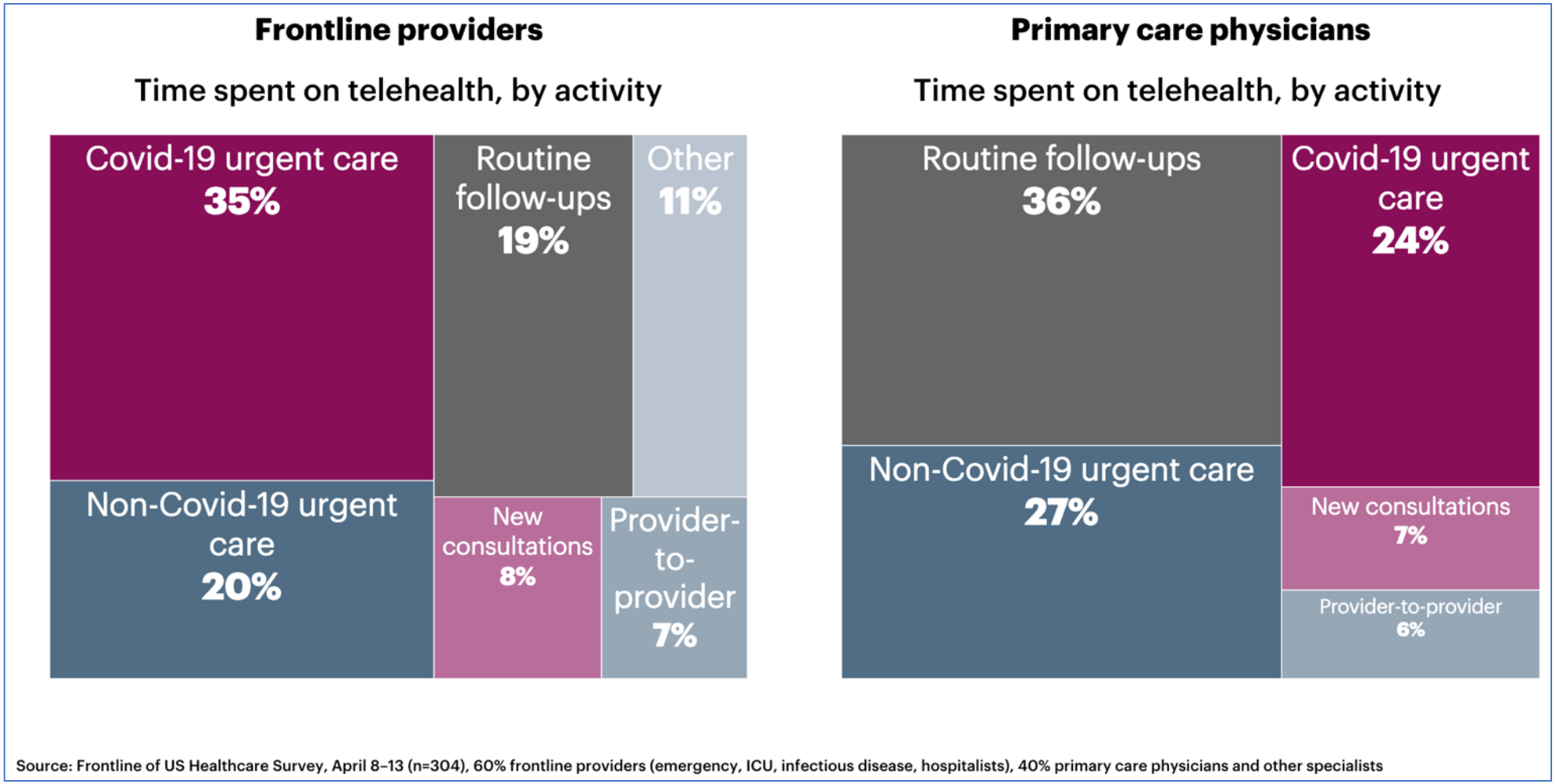
“CMS is finalizing on an interim basis that the agency will not enforce the clinical indications for coverage across respiratory, home anticoagulation management and infusion pump NCDs and LCDs (including articles) allowing for maximum flexibility for practitioners to care for their patients. This policy includes NCD 240.4 Continuous Positive Airway Pressure for Obstructive Sleep Apnea. During the COVID-19 emergency, Medicare will cover CPAP devices based on the clinician’s assessment of the patient. However, once the public health emergency is over, CMS will return to enforcement of the clinical indications for coverage.”

Telehealth Utilization – April 17, 2020



Note: Percentages for time spent on telehealth as follows: Light use (11%–25% of patient care), moderate (26%–50%), frequent (51%–75%), heavy (76%–100%)
Source: Frontline of US Healthcare Survey, April 8–13 (n=304), 60% frontline providers (emergency, ICU, infectious disease, hospitalists), 40% primary care physicians and other specialists

Telehealth Utilization (as of 4/17/20)



Source: Frontline of US Healthcare Survey, April 8–13 (n=304), 60% frontline providers (emergency, ICU, infectious disease, hospitalists), 40% primary care physicians and other specialists

Additional Medicare Waivers for Telehealth Delivery

Allowing providers home as a distant site without enrollment

Allow patients home is an eligible originating site

Category 2 Services – Expanded list of services eligible for telemedicine

Reimbursement for phone call visits without video (99441-99443)

Change APP direct supervision clause to allow supervision by telemedicine

COVID-19 Telehealth Services

85 new telehealth billing codes, e.g. critical care, home visits, speech therapy (an 80% increase)

Allowed communication methods	Phone, text, email, audio, video, portal; sync or async	Async portal	**Sync audio & video**
Visit duration	5 – 10 minutes	Up to 7 days	**Same as in-person**
Allowed patient originating sites	Any	Any	**Any**
Eligible clinicians beyond physicians?	**Yes**	Yes	**Yes**
Pre-existing patient relationship req'd?	Yes	Yes	**No**
Paid same as in-person equivalents?	N/A	N/A	**Yes**
Option to waive patient cost-sharing?	**Yes**	**Yes**	**Yes**

Refs: , p15-41 &

Selected Services Newly-Allowed During the COVID-19 PHE

	CPT	Long Descriptor
Psych	96130	Psychological testing evaluation services by physician or other qualified health care professional, including integration of patient data, interpretation of standardized test results and clinical data, clinical decision making, treatment planning and report, and
	92507	Treatment of speech, language, voice, communication, and/or auditory processing disorder; individual
PT	97163	Physical therapy evaluation: high complexity, requiring these components: A history of present problem with 3 or more personal factors and/or comorbidities that impact the plan of care; An examination of body systems using standardized tests and measures
	97110	Therapeutic procedure, 1 or more areas, each 15 minutes; therapeutic exercises to develop strength and endurance, range of motion and flexibility
SDOH/ Self Care	97535	Self-care/home management training (eg, activities of daily living (ADL) and compensatory training, meal preparation, safety procedures, and instructions in use of assistive technology devices/adaptive equipment) direct one-on-one contact,
fewer prior-visits required	90962	End-stage renal disease (ESRD) related services monthly, for patients 20 years of age and older; with 1 face-to-face visit by a physician or other qualified health care professional per month

"show me your bathroom medicine cabinet…"

Remote Patient Monitoring (RPM)

RPM not just for homebound

RPM Can be furnished to both new and existing patients

Consent required once annually and can be obtained during visit

RPM can be used for patients with both acute/ chronic conditions

99453: Initial device set up and one-time patient education

99454: Monthly device connection and transmission of data

99091: Monthly data collection and interpretation- Each 30 days

99457: Monthly clinical monitoring and support, 20 minutes or more

99458: Monthly clinical monitoring and support, Additional 20 minutes

Telemedicine Coverage By Payer

	Allow phone as an E/M	POS 2 Facility Pay	POS 11 Non-Facility	All Cost Share Waived	Waived Only For COVID
CMS			Yes		Yes
UHC	Yes		Yes	Yes	
Cigna	Yes		Yes		Yes
Aetna		Yes		Yes	
Humana	Yes		Yes	Yes	
Blues/48	37	36	10	30	10
MA	?	?	?	?	?

Medicare Advantage

- Eliminate plan network restrictions
- Cover all out of network care
- Allow same cost sharing for out of network facilities as in network
- Waive in full, requirements for gatekeeper referrals

Make changes that benefit the enrollee effective immediately without the 30-day notification requirement

MAOs **may** also provide enrollees access to Medicare Part B services via telehealth in any geographic area & from a variety of places including beneficiaries' homes.

In the event the Secretary issues a Section 1135 waiver, CMS may authorize Medicare Administrative Contractors *MACs to pay for Part C-covered services furnished to beneficiaries enrolled in MA plans & subsequently seek reimbursement from MAOs for those health care services retrospectively.*

CARES Act $100b to “Prevent, Prepare for, and Respond to Coronavirus”

$100b in grants made available to “eligible health care providers” in Medicare, Medicaid and in commercial plans

Moneys are for bldg temporary structures, leasing properties, medical equip including testing supplies, increased workforce, emergency operation centers, retrofitting and surge capacity

To be eligible providers “shall submit to the Secretary an application” that includes a stmt justifying need

W/in 60 days the Sec shall report to the Congress on obligated funds

Re: the initial tranche of $30b distributed:” KT rec'd $311k per COVID-19 case v. NY at $11.8k per COVID-19 case

Last Wed. HHS announced allocating another $20b, i.e., $10b would be e allocated for a targeted distribution to hospitals in areas that have been particularly impacted, $10 billion will be allocated for rural health clinics and hospitals & $400m to the IHS

Related Cares Act Grants to Providers

Per an April 22 HHS press release:

As announced in early April, a portion of the $100 billion Provider Relief Fund will be used to reimburse healthcare providers, at Medicare rates, for COVID-related treatment of the uninsured.

Every health care provider who has provided treatment for uninsured COVID-19 patients on or after February 4, 2020, can request claims reimbursement through the program and will be reimbursed at Medicare rates, subject to available funding.

Steps will involve: enrolling as a provider participant, checking patient eligibility and benefits, submitting patient information, submitting claims, and receiving payment via direct deposit.

Providers can register for the program on April 27, 2020, and begin submitting claims in early May 2020. For more information, visit coviduninsuredclaim.hrsa.gov.

https://www.hhs.gov/about/news/2020/04/22/hhs-announces-additional-allocations-of-cares-act-provider-relief-fund.html

Loans, Grants, Waivers & Related Guidance I

$75 b: Per Paycheck Protection, add'l moneys for providers to be distributed using CARES language

- Accelerated advanced payments: per CARES up to 100% of last 6 mos of pymts acute & post-acute (CAH's at 125%), repaid between 4-12 months at 10.25% (approx $100b in adv pymts), CMS on 4/27 noted it is reevaluating/suspending the program

Medicare sequestration: temp lifted between 5/1 and 12/31/20

- Increased hospital pymts: CARES increases pymts by 2% for admitted COVID-19 patients
- HRSA grants: Per Families First leg $100m to CHCs & per CARES $185m in grants via the Small Rural Hospial Improvement Program (SHIP)

SAMHSA grants: $110m in to help treat SUD and serious mental illness patients

- FCC grants: Per CARES, $200m in grants to purchase telecomm equip, broadband & telehealth devices
- Payroll tax delay: Per Cares, defer 6.2% FICA tax, 50% due 12/31/12 & 50% 12/31/22
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Loans, Grants, Waivers & Related Guidance II

- Hospital without walls waiver: via hotels, dorms, etc, broader transfer and ambulance auth, ED screening via drive through, lab techs test at homes
- Frontline staff waivers: includes cross state line care, telehealth, NP care in SNF, HH OT perform initial assessments, hospice nurse in-service train waived
- Elective surgeries: Most recently, 4/19 CMS issued guidance to restart based on whether state/region passed Gating Criteria announced 4/16
- ASC enrolling as hospitals: allows ASCs to provide hospital services
- Splitting ventilator waiver: Surgeon General issued lengthy guidance on co-venting
- Interoperability & Patient Access final rule: implementation delayed
- Medicare 2% sequestration: temporarily lifted between 5/1 and 12/31/20
- FMAP: Families First temporary increase of 6.2% effective 1/1/20 through last day of last PHE quarter

Loans, Grants Waivers & Related Guidance III

- Post acute: **SNF** 3-day rule waived; **IRF** 3 hr rule waived; **LTCH** 25 day avg LOS rule waived; and, LTCs allowed to transfer patients to cohort w/out approval
- EMTALA: 3/13 CMS guidance re: screening, testing sites & use of telehealth
- MACRA: CMS applying extreme and uncontrollable circumstances policy (loosens regulatory reporting & incents use of reporting COVID-19 data in re: MIPS improvement activities
- Surveys & Audits: CMS suspending non-emergency fed & st surveys and reprior auditing activity
- Medicaid 1135 waivers: as of yesterday CMS has approved more than 125 waiver requests

Insurance Specific Changes

- ACA marketplaces: nearly all state-run marketplaces created open enrollment periods, the federal marketplace (38 states participate) remains closed
- Medicare: no OOP costs, covers an inpatient stay for quarantining, Pt B script refills for more than 30 days, expanded ambulance services
- Medicare Advantage: allows plans to waive OOP and prior authorization related to COVID-19; MA can submit diagnoses via telehealth for risk adj calculation purposes
- Medicaid: Families First requires Medicaid plans to pay for COVID-19 testing incl lab fees, doctor office visits, urgent care clinic or ED where test is administered
- Private Plans: Families First requires COVID-19 testing coverage, includes urgent care, ED and telehealth

Stark/Physician Self-Referral Waivers

CMS has issued 18 waivers from Stark sanctions, all related blanket waivers must be solely related to COVID-19. (See CMS' interim final rule)

Defined in part as: diagnosis or medically necessary treatment of COVID-19 for any patient or individual whether or not the patient or individual is diagnosed with a confirmed case of COVID-19; securing the services of physicians and other health care practitioners and professionals to furnish medically necessary patient care services, including services not related to the diagnosis and treatment of COVID-19, in response to the COVID-19 outbreak in the United States;

Examples: A hospital provides meals, comfort items, e.g., clothing, or on-site child care w/a value greater than $36 per instance to medical staff; an entity provides non-monetary compensation to a physician or immediate family member in excess of the $423 per year such as CME related to COVID-19; or, supplies, food, or isolation-related needs,e.g., hotel rooms & meals, child care or transportation. Providers can pay above FMV to rent equipment or receive services; providers can support each other financially; phy-owned hospitals can increase # of licensed beds, OR & procedure rooms; furnish medically necessary care in a patient's home; &, can provide MRIs CT scans and labs in alternative locations.

Select Other Reforms

HR: the interim final allows hospitals to feed, provide laundry and child care services, residents given more flexibility to provide care, use of verbal (v. written) orders, etc.

Patient Consent: CARES allows broader sharing of SUD patient records

Limited Liability for Volunteers: CARES limits liability for volunteer HC profs

Defense Production Act: HHS auth to work w/manus to provide necessary PPE, etc.

Questions/Discussion