

# PANDEMIC RELIEF DOLLARS: TO WHOM MUCH IS GIVEN, MUCH IS EXPECTED

32<sup>nd</sup> Annual Health Law Conference

Susan Feigin Harris, Partner  
Morgan Lewis & Bockius, LLP

Kenya S. Woodruff, Partner  
Katten Muchin Rosenman, LLP

April 7, 2021

1

## Today's Agenda

- **Public Health Emergency Declarations**
  - Regulatory Flexibilities and Waivers
- **Congressional Action**
  - Federal Legislative Response
- **Principal Funding Mechanisms**
  - Medicare / Medicaid Payment Changes
  - Provider Relief Fund (PRF)
  - Provider Stimulus Beyond the PRF
  - Paycheck Protection Program
  - Economic Injury Disaster Loans
- **Enforcement Initiatives**
- **Scenarios and Questions**



2

2

# Public Health Emergency (PHE) Declarations

## • Timeline

- **Jan. 27, 2021 – HHS Secretary Determines a PHE Exists**
  - HHS declares a PHE exists under § 319 of the Public Health Service Act which provides the legal authority for HHS to respond to public health emergencies
- **Mar. 11, 2020 – WHO Declares COVID-19 a Pandemic**
  - World Health Organization (WHO) Director-General Tedros Adhanom: “We have rung the alarm bell loud and clear”
- **Mar. 13, 2020 – President Trump Declares a National Emergency**
  - President Trump’s proclamation coupled with the HHS determination permits activation of Social Security Act § 1135 waiver authorities

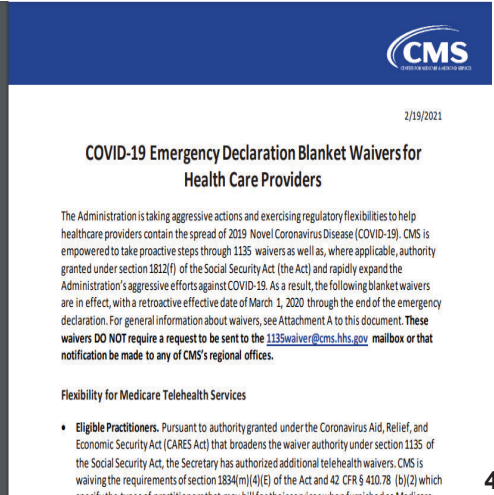
3


3

# PHE Regulatory Flexibilities and Waivers

## • SSA § 1135 Waiver Authority

- Permits HHS to temporarily waive or modify the following Medicare, Medicaid, CHIP and HIPAA requirements for duration of the PHE:
  - Conditions of Participation (CoPs)
  - Certification and similar requirements
  - Licensure (including out-of-state licensure requirements)
  - Emergency Medical Treatment and Active Labor Act (EMTALA)
  - Physician self-referral (Stark Law) prohibitions
- Authorizes emergency blanket waivers for healthcare providers
  - Includes flexibility for telehealth services





2/19/2021

**COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers**

The Administration is taking aggressive actions and exercising regulatory flexibilities to help healthcare providers contain the spread of 2019 Novel Coronavirus Disease (COVID-19). CMS is empowered to take proactive steps through 1135 waivers as well as, where applicable, authority granted under section 1812(f) of the Social Security Act (the Act) and rapidly expand the Administration's aggressive efforts against COVID-19. As a result, the following blanket waivers are in effect, with a retroactive effective date of March 1, 2020 through the end of the emergency declaration. For general information about waivers, see Attachment A to this document. **These waivers DO NOT require a request to be sent to the [1135waiver@cms.hhs.gov](mailto:1135waiver@cms.hhs.gov) mailbox or that notification be made to any of CMS's regional offices.**

**Flexibility for Medicare Telehealth Services**

- **Eligible Practitioners.** Pursuant to authority granted under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that broadens the waiver authority under section 1135 of the Social Security Act, the Secretary has authorized additional telehealth waivers. CMS is waiving the requirements of section 1834(m)(4)(E) of the Act and 42 CFR § 410.78 (b)(2) which specify the types of practitioners that may bill for their services when furnished as Medicare

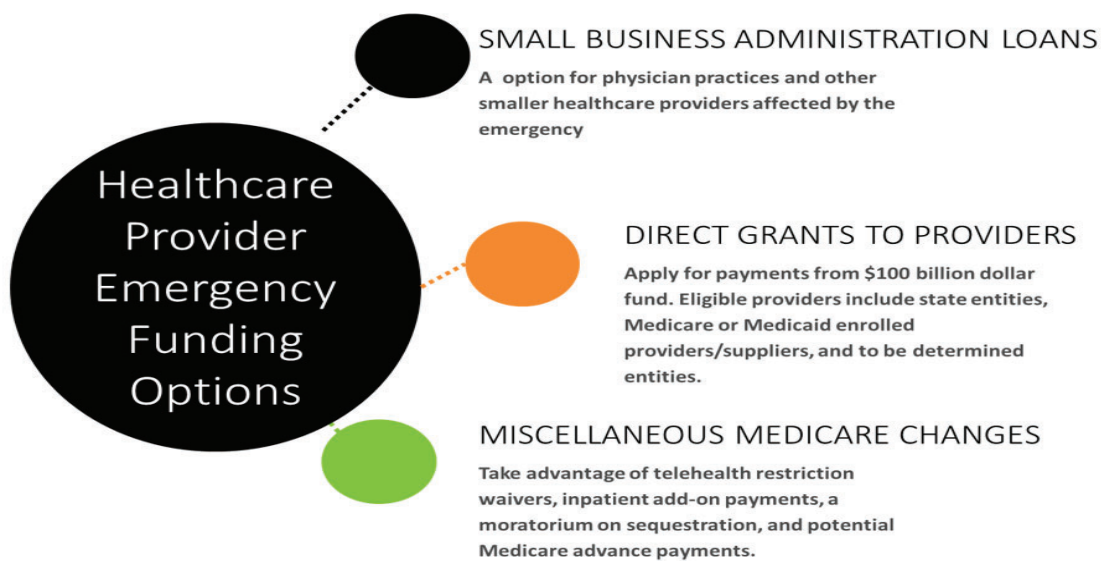
4

4

# Congressional Actions – One Year In

- 3/6/20 ● **PL 116-123 / HR 6074 — Coronavirus Preparedness and Response Supplemental Appropriations Act**
  - Initial support and vaccine development
- 3/18/20 ● **PL 116-127 / HR 6201 — Families First Coronavirus Response Act (FFCRA)**
  - Paid leave, PREP Act liability protections, COVID-19 testing/treatment coverage for Medicaid and uninsured
- 3/27/20 ● **PL 116-136 / HR 748 — Coronavirus Aid, Relief and Economic Security Act (CARES Act)**
  - Paycheck Protection Program (PPP), SBA loans, Provider Relief Fund (PRF), direct grants
- 4/24/20 ● **PL 116-139 / HR 266 — Paycheck Protection Program and Health Care Enhancement Act**
  - Additional funding for PPP, PRF, small businesses, COVID-19 research, vaccines and testing
- 7/24/20 ● **PL 116-147 / S 4116 — A bill to extend the authority for commitments for the PPP...**
  - Extends application period for the PPP
- 12/27/20 ● **PL 116-260 / HR 748 — COVID-19 Relief and Consolidated Appropriations Act**
  - Additional funding for vaccine effort, PRF and PPP; extends moratorium on Medicare sequester
- 3/11/21 ● **PL 117-7 / HR 1319 — American Rescue Plan Act (ARPA)**
  - Funds rural health, public health, mental health/SUD, Medicaid coverage, COVID-19 vaccines and testing

# How Providers Obtained Relief



Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Pandemic Relief Dollars: To Whom Much is Given,  
Much is Expected

Also available as part of the eCourse

[2021 Health Law eConference](#)

First appeared as part of the conference materials for the  
32<sup>nd</sup> Annual Health Law Conference session

"Pandemic Relief Dollars: To Whom Much is Given, Much is Expected"