COVID-19 Federal and State Regulatory Waivers

Compliance Considerations

May 8, 2020

Agenda

- Sources of Regulatory Waivers
- Key Federal Blanket Waivers under Section 1135 of the Social Security Act (SSA)
- Key New York Waivers
- Compliance Program Considerations
Sources of Authority for Regulatory Waivers

- SSA Section 1135
  - Waiver of Medicare, Medicaid and CHIP requirements in declared emergencies in statutorily prescribed areas of health care law (e.g., conditions of participation, Stark Law)
- SSA Section 1915(c), Appendix K
  - Relaxation of Medicaid home and community-based service requirements and creation of new funding streams
- SSA Section 1115
  - New Medicaid research and demonstration services or waiver of requirements under existing 1115 waivers
- Disaster Medicaid State Plan Amendments
  - Medicaid coverage and service expansions, including relaxation of certain documentation or other billing requirements

Key COVID-19 Section 1135 Blanket Waivers

- Telehealth/HIPAA
  - Originating site and existing relationship requirements
  - Expansion of eligible practitioners (e.g., PT/OT/ST)
  - OCR enforcement discretion
- Medical Recordkeeping
  - Relaxation of hospital condition of participation requirements pertaining to medical records
Key COVID-19 Section 1135 Blanket Waivers

- Stark Law
  - Waiver of writing and signature requirements
  - Waiver of FMV requirement for personal services exception
  - Below-FMV office/equipment leases allowed

New York Section 1135 Waiver – Key Elements

- Prior Authorization
  - Suspends fee-for-service (FFS) prior authorization requirements
  - Requires FFS providers to extend pre-existing authorizations

- Provider Enrollment
  - Waives certain screening requirements
  - Permits out-of-state providers with equivalent licensing
  - Postpones deadlines for revalidation of providers

- Medicaid Appeals and Fair Hearings – Modified Timelines
### New York Executive Order Highlights

- As of May 7, Governor Cuomo had issued 28 Executive Orders in response to COVID-19

- **Noteworthy Orders:**
  - Hospital, nursing facility and laboratory recordkeeping requirements to the extent necessary to respond to the outbreak
  - Various licensure and scope of practice requirements
  - Immunity from civil liability for certain licensed practitioners

### Noteworthy Department of Health Waivers

- Suspension of new Statements of Deficiency and Statements of Finding for MCOs
- Suspension of Medicaid managed care re-assessments and six-month in-person care management home visit requirements
- Elimination of most face-to-face billing requirements
- Voluntary Plan of Care Modifications for MCO members
- Billing for Telephonic Telehealth (FFS and MCO)
Compliance Programs

Key Questions:

- How should compliance programs adapt to relaxed regulatory requirements?
- As the public health emergency abates, how should providers think about auditing for compliance?

Relevant Compliance Program Elements

- Compliance Officer, working with in-house and outside counsel
- Policies and Procedures
- Training and Education
- Coordination with regulators
- Monitoring during, and auditing after, the public health emergency
Thank you

Brett R. Friedman
Director, Strategic Initiatives, New York State Department of Health, Office of Health Insurance Programs

Drew M. Clary
Ropes & Gray LLP