COVID-19 Update: CMS and Ohio Board of Pharmacy issue new and updated regulatory waivers

April 17, 2020

During the week of April 13, 2020, several new regulatory waivers were issued. Updates were also made to a variety of previously issued waivers addressing the COVID-19 (coronavirus) public health emergency.

CMS blanket waivers

On April 15, CMS updated its blanket waivers to include two new waivers:

- *Long-term care hospitals – Site neutral payment rate provisions.* As required by the CARES Act, during the COVID-19 public health emergency, both of the following site neutral payment rate provisions for LTCHs are waived:
  - the payment adjustment under section 1886(m)(6)(C)(ii) of the Social Security Act for LTCHs that do not have a discharge payment percentage (DPP) for the period that is at least 50 percent during the COVID-19 public health emergency period
  - the application of the site neutral payment rate under section 1886(m)(6)(A)(i) of the Social Security Act for those LTCH admissions that are in response to the public health emergency and occur during the COVID-19 public health emergency period
- *Inpatient rehabilitation facility – Intensity of therapy requirement ("3-Hour Rule").* Also required by the CARES Act, during the COVID-19 public health emergency, 42 CFR § 412.622(a)(3)(ii), which provides that payment generally requires patients of an inpatient rehabilitation facility to receive at least 15 hours of therapy per week, is waived.

Ohio Board of Pharmacy

On April 14, 2020, the Ohio Board of Pharmacy issued updated COVID-19 resources, including several waivers and guidance documents:

- *Waivers for pharmacy technician trainee supervision.* The board announced a process for waiver of the pharmacy technician trainee ratio of three to one established in OAC 4729:3-3-01. Waiver would allow a pharmacist to supervise up to five pharmacy technician trainees at one time (ratio of five to one). Note, this waiver is not automatic – a pharmacy must submit a waiver request and must wait to receive approval from the board to operate under a five to one ratio. Also note that even if a waiver is granted, it does not apply to supervision of sterile or non-sterile compounding; this activity will continue to have a maximum ratio of three to one.
- *Reuse of personal protective equipment (PPE) for compounding activities.* The board adopted guidance superseding previously issued guidance (issued on March 14) regarding PPE compounding. The board adopted the FDA guidance for the reuse of PPE for compounding activities. Note that the FDA guidance does not permit reuse of PPE used to compound hazardous drugs (as listed in the NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings).
- *Guidance on nurses personally furnishing non-controlled drugs.* The board updated the previously issued resolution on nurses personally furnishing non-controlled drugs. Pursuant to the updated resolution, a prescriber at a location licensed as a terminal distributor of dangerous drugs may delegate the act of personally furnishing non-controlled drugs to a licensed nurse (RN or LPN). The nurse must have a documented order by a prescriber and must document the act of personally furnishing using positive identification. The nurse must also ensure the drug is properly labeled and that an offer of counseling is provided to the patient/caregiver in accordance with OAC 4729:5-19-02. Note that this new resolution authorizes prescribers to delegate personally furnishing of all non-controlled drugs as opposed to drug samples. This guidance shall remain in effect until rescinded by the board.

Authors