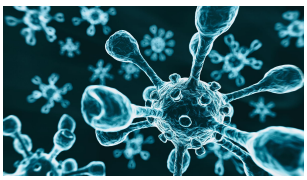

CMS Guidance re Programs of All-Inclusive Care for the Elderly

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Categories:

Coronavirus Response Team
Health Law Matters

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On March 24, 2020, the Centers for Medicare and Medicaid Services ("CMS") hosted a call for Programs of All-Inclusive Care for the Elderly ("PACE") organizations on issues related to COVID-19. Among the speakers were Tim Engelhardt, Director for the CMS Medicare-Medicaid Coordination Office, Kathryn Coleman, Director of the Medicare Drug and Health Plan Contract Administration Group, and Shari Ling, M.D., Acting CMS Chief Medical Officer.

Much of the discussion focused on a memo CMS issued to PACE organizations on March 17, 2020, regarding infection control and prevention of COVID-19. In that memo, CMS stated that PACE organizations ("POs") must establish, implement, and maintain a documented infection control plan. This includes procedures for preventing infections in PACE centers as well as in each participant's place of residence. At the same time, CMS used the memo as an opportunity to acknowledge that responding appropriately to COVID-19 may mean POs have to implement procedures that do not fully comply with CMS's standard requirements for the delivery of PACE services. "CMS will take those situations into consideration when conducting monitoring or oversight activities. For example, POs may use remote technology as appropriate, including for scheduled and unscheduled participant assessments, care planning, monitoring, communication, and other related activities that would normally occur on an in-person basis. CMS will notify PACE organizations through the Health Plan Management System when CMS is ending the enforcement discretion described herein."

Besides suggesting the use of remote technology, CMS does not yet seem to have determined precisely how it intends to take "into consideration" the unusual circumstances created by COVID-19. When, during the March 24 call, several POs asked about relaxing specific PACE requirements, such as the requirement to conduct background checks on employees and contractors, Ms. Coleman responded that CMS would work to issue more detailed guidance in

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the near future. She encouraged POs to exercise discretion, saying: "You are in the best position to determine the steps you need to take" to continue providing services in these unusual times while complying, as much as possible, with the standard CMS requirements.

One issue on which Ms. Coleman was clear and firm was that CMS' orders to skilled nursing facilities ("SNFs") to strictly limit visitors were not intended to prevent visits from providers with PACE organizations or other healthcare services. PACE officials from the states of Pennsylvania and Massachusetts said they had heard anecdotal reports of SNFs refusing entry to PACE providers. Ms. Coleman confirmed, on behalf of CMS, that the recent instructions to SNFs on visitation restrictions were intended to address "casual" visitors, not care providers, and care providers who have no reason to believe they are infected with COVID-19 should be admitted to SNFs. She directed POs to report to their state PACE officials any unwarranted denial of admission by a SNF.

Shari Ling, M.D., a geriatrician who noted that her first job was at a PACE site, concluded the call by thanking the POs for their work, stating that "this is the most vulnerable population you can think of" when it comes to COVID-19.

For more information please contact Rhonda Schechter or any attorney in Frost Brown Todd's Corporate Law practice group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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