LIFE SCIENCES & HEALTHCARE

CLIENT ALERT

APRIL/2020

WITH PARTIAL VETO, LAW ENABLING TELEMEDICINE DURING CORONAVIRUS CRISIS COMES INTO FORCE

On this date, April 16, 2020, Law No. 13,989, of April 15, 2020 ("Law 13.989") was published in the Federal Official Gazette, which authorizes the use of telemedicine on an emergency basis for the duration of the crisis caused by the coronavirus. Law 13.989 defines telemedicine as "*among others, the practice of medicine by means of technologies for the purposes of assistance, research, disease and injury prevention and health promotion*". As guarantee the law provides that the physician must inform the patient of all limitations inherent to the use of telemedicine, taking into account the impossibility of performing a physical analysis during the consultation - and requires obedience to the same rules and ethical standards usually applicable to service in person.

By means of message 191, of April 15, 2020, the President vetoed certain provisions of previously approved by the National Congress that (a) dispensed the physical presentation of the medical prescription, authorizing its presentation in digital format, with an electronic or digitized signature of the doctor, and (b) which granted the Federal Medicine Council the competence to regulate telemedicine after overcoming the pandemic.

Before the publication of Law 13.989, the Federal Medicine Council had already issued, on March 19, 2020, Official Letter No. 1,756, by which it expressly authorized certain telemedicine practices in an exceptional manner, considering the situation related to the coronavirus. Subsequently, on March 20, 2020, the Ministry of Health issued Ordinance No. 467, - regulating "*in an exceptional and temporary manner, the actions of Telemedicine*" and subjecting them "*to the National Health Emergency situation*" deriving from Covid-19. In accordance with Ordinance 467, telemedicine actions may include pre-clinical care, assistance support, consultation, monitoring and diagnosis, both within the SUS and in supplementary and private health, allowing the issuance of certificates or prescriptions by electronic means.

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The presidential veto does not mean that Ordinance No. 467 or Official Letter No. 1,756 necessarily became illegal - although the arguments presented by the President of the Republic in his veto message may be used in future challenges against such acts. The remote issuing of prescriptions and medical certificates by means of electronic signature, with certificates and codes issued by the Brazilian Public Key Infrastructure - ICP Brasil, as provided in Ordinance No. 467, seems to be in accordance with the parameter considered ideal by the Presidency of the Republic to allow performing such medical acts remotely. The use of other mechanisms for signing and identifying the physician, however, could be challenged administratively or judicially.

For more information, please contact the signatories of this alert.

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