

PUBLICATION

Coronavirus: Expanded Coverage of Medicare Telehealth Services During Pandemic

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The Coronavirus Preparedness and Response Supplemental Appropriations Act, which was enacted on March 6, 2020, allows the Secretary of the United States Department of Health and Human Services (HHS) to waive certain restrictions on Medicare coverage for telehealth services. On March 17, 2020, the Secretary issued waivers that will apply retroactively from March 6, 2020 until the end of the COVID-19 public health emergency. The new expanded coverage allows beneficiaries to receive telehealth services without having to travel to a health care facility. Under the waivers:

- A range of health care providers, including, but not limited to, doctors, nurse practitioners, clinical psychologists, and licensed clinical social workers can offer telehealth, within their scope of practice, to Medicare beneficiaries.
- Medicare beneficiaries may receive telehealth services in their home or in any health care facility including a physician's office, hospital, nursing home, rural health clinic, etc.
- To the extent that the recently enacted law requires that patients be "established" patients of the physician, *HHS has decided to use its "enforcement discretion" and will not conduct audits to ensure that such a prior relationship existed for claims submitted during the public health emergency.*
- Telehealth services are available to Medicare beneficiaries regardless of their diagnosis; no relationship to diagnosis or treatment of COVID-19 is required.
- Medicare beneficiaries are permitted to access their providers using a wide range of communication tools that allow for two-way, real-time interactive communications including telephones with audio and video capabilities.
- Practitioners may bill for dates of service dating back to March 6, 2020.
- Telehealth services will be paid at the same rates as in-person services under the Medicare Physician Fee Schedule. The Medicare coinsurance and deductible still applies for these services.
- Practitioners should bill using Place of Service Code 02-Telehealth.
- Payment for "virtual check-ins" codes and e-visits, which were already covered by Medicare, though not considered telehealth services, remains unchanged.

Further, to facilitate the provision of telehealth services, the HHS Office of Civil Rights (OCR) issued guidance that health care providers "can use any non-public facing remote communication product that is available to communicate with patients" and that HIPAA sanctions and penalties will not be imposed for the lack of a business associate agreement with the vendor. OCR explained that it would be permissible in this context to use services like Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, but that public platforms like Facebook Live, Twitch, or TikTok may not be used. Health care providers

implementing these services should enable available encryption and privacy controls and notify patients that these applications may present privacy risks.

Additionally, the HHS Office of Inspector General (OIG) issued waivers of penalties and sanctions for telehealth cost sharing reductions and waivers due to the COVID-19 public health emergency. Generally, routine copayment reductions or waivers to beneficiaries of Federal health care programs may implicate the Federal antikickback statute, the civil monetary penalty and exclusion laws related to kickbacks, and the beneficiary inducement prohibitions of the civil monetary penalty law. However, given the ongoing outbreak of COVID-19, the OIG announced that physicians and practitioners who reduce or waive cost-sharing obligations for telehealth services will not be subject to OIG administrative sanctions. The OIG will not view the provision of free telehealth services alone to be an inducement for referrals even if patients receive subsequent care. The OIG guidance does require that each of the following conditions be met:

- The telehealth services are provided in a manner consistent within the then-applicable coverage and payment rules;
- The telehealth services are furnished during the public health emergency declaration period for COVID-19; and
- Other Federal and State laws continue to apply.

Alongside the Medicare Telehealth Guidance, CMS issued a Medicaid Telehealth Guidance document to address policy options for telehealth services under Medicaid state plans. In this guidance, CMS provided an overview of Medicaid fee-for-service options for telehealth services and sample state plan language for the fee-for-service payment methodologies. CMS encouraged states to consider telehealth options to combat COVID-19 and to increase patient access to care. According to the guidance:

- States do not have to submit a state plan amendment if the telehealth service is paid for in the same manner as when the service is furnished in a face-to-face setting;
- Payment methodologies for qualified practitioners may include the costs associated with the time and resources spent providing care at the originating site;
- States may pay for ancillary costs, such as transmission charges, technical support, and the equipment necessary to deliver the telehealth services; and
- Ancillary costs associated with the originating site may be incorporated into the fee-for-service rates or may be reimbursed as an administrative cost.

With the adoption of more expansive coverage of telehealth services, and additional flexibilities regarding available tools to provide such services, HHS is sending a clear signal that it wants to ensure beneficiary access to health care services from their homes and remote locations during the COVID-19 public health emergency. The expansion of these telehealth services is a key tool for physicians and other health care practitioners to use to diagnose and treat patients at this time and will possibly serve as a pilot for future permanent changes to the Medicare telehealth rules.

Resources

- [CMS Telehealth Expansion Fact Sheet](#)
- [CMS Telehealth Expansion FAQs](#)
- [OIG Policy Statement Regarding Waivers of Cost-Sharing for Telehealth During COVID-19 PHE](#)

