

Telehealth Regulatory Flexibilities and Waivers Summary

In response to the COVID-19 Public Health Emergency (PHE), CMS issued regulatory waivers on March 13, March 17, and April 30, 2020 pursuant to Section 1135 of the SSA, and Interim Final Rules on March 30 (IFC1) and April 30, 2020 (IFC2), related to the provision of Medicare telehealth services. The temporary regulatory changes are effective for the duration of the COVID-19 PHE issued by the Secretary of HHS, and the Section 1135 waivers are likely effective only while both the PHE and Presidential emergency declaration remain in effect. This document does not include every telehealth flexibility, but summarizes key changes to the federal telehealth regulatory landscape pursuant to the PHE (**red** denotes COVID-19 PHE-related change).

MEDICARE TELEHEALTH REIMBURSEMENT ELEMENTS

1. Qualifying Distant Site Practitioner:
 - **Waived** on [4/30](#) effective as of 3/1/2020.
 - Any health care professional who can bill Medicare may now furnish Medicare telehealth services (incl. PT/OT/SLP).
2. Qualifying Originating Site Type:
 - **Waived** on [3/17](#) effective as of 3/6/2020.
 - Telehealth services can now be provided to patients in all settings, including at a patient's home.
 - Only the listed eligible originating sites may bill for the originating site facility fee (HCPCS Q3014).
3. Geographic Location:
 - **Waived** on [3/17](#) effective as of 3/6/2020.
 - Medicare will reimburse for telehealth services anywhere in the PHE area, which currently encompasses the entire US.
 - Currently no pre-existing patient relationship required.
4. Qualifying Technology:
 - Live, synchronous, audio-video connection allowing for "real time" communication generally required.
 - Smartphones are permitted, per [IFC1](#), as of 3/6/2020.
 - **Video requirement waived for certain telehealth services** (currently 89 of 238) on [4/30](#), effective 3/1/2020.
5. Qualifying Service:
 - CMS has **expanded** the [list of reimbursable Medicare telehealth services](#) from 101 pre-PHE to currently 238, effective 3/1/2020 for the duration of the PHE.
 - Medicare telehealth services will be added to the list on a subregulatory basis during the PHE, per [IFC2](#).

OTHER CMS WAIVERS & REGULATORY FLEXIBILITIES

State Licensure

- **Waived** on [3/13/2020](#) such that practitioners do not need to be licensed in the state where they furnish services, provided they hold a valid license in another state where they are enrolled in Medicare, are contributing to relief efforts, and are not affirmatively excluded in any state.
- Practitioners must still be authorized to provide services pursuant to state requirements, though most state licensing boards have waived/relaxed licensure requirements, which are being [tracked by the FSMB](#).

Facility Fee & Place of Service Code

- CMS will reimburse telehealth at the non-facility rate if provided in a non-facility location, per [IFC1](#), **increasing reimbursement for office or home telehealth visits**.
- Use the Place of Service code that would have been reported if the service had been furnished in person (instead of "02" for "telemedicine location"), and use "95" modifier to indicate the service was provided via telehealth.

Virtual Direct Supervision

- Direct supervision (typically required for "incident to" services) and supervision of medical residents performing procedures **may occur through the supervising physician's virtual presence** with real-time audio-video communication technology, when clinically appropriate, per [IFC1](#).
- Does not need to be a continuous presence (an open line), but supervising physician should be immediately available.

Time Used for E/M Services Delivered via Telehealth

- Office or outpatient E/M level selection when furnished via telehealth can now be based on medical decision making (MDM) or time (defined as "all of the time associated with the E/M on the day of the encounter").
- The typical times for purposes of level selection are the times listed in the CPT code descriptor, instead of the times listed in CMS's public use file, per [IFC2](#).

FACILITY-SPECIFIC TELEHEALTH FLEXIBILITIES

Hospital Outpatient Services

- Hospitals can bill for and receive payment for the **originating site facility fee** when a practitioner that ordinarily practices in the hospital's outpatient department provides a telehealth service to a **patient located at their home**, per [IFC2](#).
- The home must be considered provider-based to the hospital as a temporary expansion location per the [waiver announced on 3/17/2020](#).

FQHCs and RHCs

- Federally qualified health centers (FQHC) and rural health clinics (RHC) **may be reimbursed for distant site telehealth services** furnished by any health care practitioner working for the FQHC or RHC, effective 3/6/2020.
- FQHC and RHC telehealth billing guidance [provided here](#).
- FQHCs and RHCs may bill Medicare for visiting nurse services under a written plan of care where there is a shortage of home health agencies.

Home Health, Hospice, Inpatient Rehab, and LCD/NCD Req's

- Telehealth **may be used in place of certain face-to-face encounter requirements** for home health, hospice, and inpatient rehabilitation facilities, and under other national coverage determination (NCD) and local coverage determination (LCD) guidance, per [IFC1](#).

Frequency Limitations

- Telehealth frequency limitations for inpatient hospital visits, nursing facility visits, critical care consultation services, and hands-on end-stage renal disease visits have been **removed during the PHE**, per [IFC1](#).

COMMUNICATION TECHNOLOGY-BASED SERVICES (CTBS)

Virtual Check-Ins (available notwithstanding the PHE)

- Allow established Medicare patients in their home to have brief communications with their physicians/NPPs via a number of communication technology modalities including synchronous discussion over a telephone or exchange of information through video or image.
- Available only to physicians/NPPs who may independently bill for evaluation and management (E/M) services under HCPCS codes G2010 and G2012.

E-Visits (available notwithstanding the PHE)

- Allow established Medicare patients to have non-face-to-face patient-initiated communications with their physicians/NPPs without going to the physician's or NPP's office by using online patient portals.
- Can be provided by health care professionals such as physicians/NPPs who may independently bill for E/M services under CPT codes 99421–99423, as well as health care professionals who may not (including physical therapists, occupational therapists, and speech language pathologists) under HCPCS codes G2061–G2063.

Telephone E/M

- These services (normally not covered by Medicare) allow any practitioner who can independently bill Medicare to provide non-face-to-face, audio-only consultations, and are **now reimbursable** per [IFC1](#).
- CPT codes 98966-98968 (“assessment and management” services, available for physical therapists, occupational therapists, or speech language pathologists) and 99441-99443 (“evaluation and management” services only available for physicians/NPPs who can normally bill for E/M; not available for physical therapists, occupational therapists, or speech language pathologists).
- 99441-99443 are **now considered telehealth services** per [IFC2](#), increasing reimbursement during the PHE.

Remote Patient Monitoring (available notwithstanding the PHE)

- Remote Physiologic Monitoring (RPM) and Chronic Care Management (CCM) permit practitioners to be reimbursed for remotely monitoring and/or managing a patient's medical conditions.
- Available CPT codes are 99091, 99453, 99454, 99457, and 99458 (RPM) and 99487, 99489, 99490 and 99491 (CCM).
- **16-day minimum for RPM has been reduced** to 2 days for COVID-19 patients, for the duration of the PHE, per [IFC2](#); RPM can now be reported to Medicare for periods of time that are fewer than 16 of 30 days, but no less than 2 days, as long as other requirements are met, and is for patients that have a suspected or confirmed COVID-19 diagnosis.
- CMS is not altering payment rates for these codes.

Established Patient Requirement

- Most CTBS requires a preexisting relationship between the practitioner and patient, but CMS **waived enforcement** of this requirement for CTBS on [3/17/2020](#) during the PHE.

OTHER FEDERAL AGENCY TELEHEALTH FLEXIBILITIES

HIPAA

- OCR [announced on 3/17/2020](#) that it **will not enforce the HIPAA Privacy, Security, and Breach Notification Rules** against health care providers using telehealth in good faith, for the duration of the PHE.
- Enforcement discretion permits the use of consumer-friendly videoconferencing applications like Facebook Messenger, Google Hangouts, and Skype (without Business Associate Agreements), so long as the applications are not “public-facing.”
- Providers should still use all available security and encryption features, and could still be subject to private lawsuits or state enforcement action.

Patient Cost-Sharing Obligations

- OIG [announced on 3/17/2020](#) that it will **allow providers to waive patient cost-sharing requirements** for telehealth and, [per a subsequent FAQ](#), for other remote, technology-based services (*i.e.*, CTBS), for the duration of the PHE.
- Telehealth services are usually subject to the same copay or deductible requirements as most other services reimbursed by Medicare, and routinely waiving that patient's cost-sharing obligation can normally subject the provider to regulatory scrutiny under the federal Ant-Kickback Statute and beneficiary inducement law.

Prescribing Controlled Substances

- The DEA [announced](#) that the **PHE constitutes an exception to the Ryan Haight Act**, permitting practitioners to prescribe controlled substances solely via a telemedicine encounter, as of 3/16/2020 and for the duration of the PHE.

RELEVANT HHS PRESS RELEASES AND GUIDANCE

- [Telehealth.HHS.gov](#)
- [Trump Administration Issues Second Round of Sweeping Changes to Support U.S. Healthcare System During COVID-19 Pandemic](#) (4/30/2020)
- [Trump Administration Makes Sweeping Regulatory Changes to Help U.S. Healthcare System Address COVID-19 Patient Surge](#) (3/30/2020)
- [Medicare Telemedicine Health Care Provider Fact Sheet](#) (3/17/2020)
- [Published Interim Final Rule with Comment Period 55431](#), 85 Fed. Reg. 27550 (5/8/2020)
- [Published Interim Final Rule with Comment Period 1744](#), 85 Fed. Reg. 19230 (4/6/2020)
- [COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers](#) (5/11/2020)
- [CMS List of Telehealth Services](#) (4/30/2020)
- [New and Expanded Flexibilities for Rural Health Clinics \(RHCs\) and Federally Qualified Health Centers \(FQHCs\) During the COVID-19 Public Health Emergency \(PHE\)](#) (4/30/2020)
- [COVID-19 Frequently Asked Questions \(FAQs\) on Medicare Fee-for-Service \(FFS\) Billing](#) (5/1/2020)