

## Transition to a Post-PHE Era: Craft a Coding, Billing, and Compliance Plan

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A WEBINAR PRESENTED ON JUNE 28, 2023

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### Presented By



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# Breaking News!!!



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

January 30, 2023  
(House Rules)

## STATEMENT OF ADMINISTRATION POLICY

H.R. 382 – A bill to terminate the public health emergency declared with respect to COVID-19  
(Rep. Guthrie, R-KY, and 19 cosponsors)

H.J. Res. 7 – A joint resolution relating to a national emergency declared by the President on March 13, 2020  
(Rep. Gosar, R-AZ, and 51 cosponsors)

Continue looking for further updates from CMS and HHS.

This was applicable to all of the U.S.

The COVID-19 national emergency and public health emergency (PHE) were declared by the Trump Administration in 2020. They are currently set to expire on March 1 and April 11, respectively. At present, the Administration’s plan is to extend the emergency declarations to May 11, and then end both emergencies on that date. This wind-down would align with the Administration’s previous commitments to give at least 60 days’ notice prior to termination of the PHE.

To be clear, continuation of these emergency declarations until May 11 does not impose any restriction at all on individual conduct with regard to COVID-19. They do not impose mask mandates or vaccine mandates. They do not restrict school or business operations. They do not require the use of any medicines or tests in response to cases of COVID-19.

However, ending these emergency declarations in the manner contemplated by H.R. 382 and H.J. Res. 7 would have two highly significant impacts on our nation’s health system and government operations.

<https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>

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## We First Need To Understand a Few Things...

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## Resource Documents



*Frequently Asked Questions:*

**CMS Waivers, Flexibilities, and the End of the COVID-19 Public Health  
Emergency**

<https://www.cms.gov/files/document/what-do-i-need-know-cms-waivers-flexibilities-and-transition-forward-covid-19-public-health.pdf>

## Resource Documents

**CMS.gov** Centers for Medicare & Medicaid Services

About CMS Newsroom

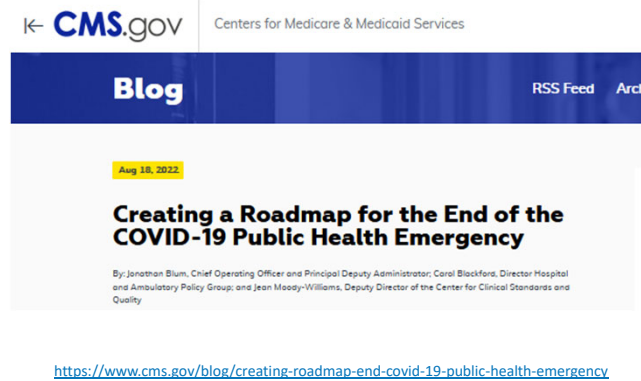
- Medicare
- Medicaid/CHIP
- Medicare-Medicaid Coordination
- Private Insurance
- Innovation Center
- Regulations & Guidance
- Research, Statistics, Data & Systems
- Outreach & Education



### Coronavirus waivers & flexibilities

<https://www.cms.gov/coronavirus-waivers>

## Resource Documents



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## FAQs from CMS Updated 5/19/2023 – Confusing?

### 1. When is the COVID-19 Public Health Emergency expected to end?

The Public Health Service (PHS) Act expires at the end of the day on May 11, 2023.

### 2. On **April 10, 2023**, the President signed H.J.Res.7. into law, which terminated the *national COVID-19 emergency immediately*. Did this end the COVID-19 PHE declared by the Secretary?

The PHE for COVID-19 declared by the Secretary under section 319 of the PHS Act is not the same as the COVID-19 National Emergency declared by President Trump in 2020, which ended when President Biden signed H.J.Res.7.

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## What Did That Mean?

- The end of the COVID-19 **National Emergency** generally does not impact current operations at HHS, and did not impact the May 11, 2023, expiration of the federal PHE for COVID-19 or any associated unwinding plans (ended 4/10/2023).
- Federal **PHE** for COVID-19 expired at the end of the day on 5/11/2023.
- Simply stated – the national emergency is not the same as the PHE.

## For Providers: An At-a-Glance Guide for PHE End on May 11

Audio-only telehealth services	✓
Designated telehealth services	✓
Billing in-home COVID-19 vaccinations	✓
Direct supervision through audio/visual connection	✓
Patient can be in any location for telehealth service	✓
Provider can perform telehealth at home and use office address	✓
Remote physiologic monitoring for new patients	<b>NO</b>
Remote physiologic monitoring for less than 16 days	<b>NO</b>
Telehealth systems that are not HIPAA compliant	✓
Telephone visits	✓
Virtual check-in for new patients	<b>NO</b>

Not so fast! We need to talk through a few things to understand the full picture!

## What *Is* Changing and When?

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## **What About Flexibilities and Waivers?**

- Some of the changes will be permanent or extended.
- Some waivers and flexibilities will expire but not on 5/11/2023.

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## Waivers, Waivers, Waivers

- [Physicians and Other Clinicians \(PDF\)](#)
  - [Hospitals and CAHs \(including Swing Beds, DPU\), ASCs and CMHCs \(PDF\)](#)
  - [Teaching Hospitals, Teaching Physicians and Medical Residents \(PDF\)](#)
  - [Long Term Care Facilities \(Skilled Nursing Facilities and/or Nursing Facilities\) \(PDF\)](#)
  - [Home Health Agencies \(PDF\)](#)
  - [Hospice \(PDF\)](#)
  - [Inpatient Rehabilitation Facilities \(PDF\)](#)
  - [Long Term Care Hospitals & Extended Neoplastic Disease Care Hospitals \(PDF\)](#)
  - [Rural Health Clinics \(RHCs\) and Federally Qualified Health Centers \(FQHCs\) \(PDF\)](#)
  - [Laboratories \(PDF\)](#)
  - [Medicare Shared Savings Program \(PDF\)](#)
  - [Durable Medical Equipment, Prosthetics, Orthotics and Supplies \(PDF\)](#)
  - [Medicare Advantage and Part D Plans \(PDF\)](#)
  - [Ambulances \(PDF\)](#)
  - [End Stage Renal Disease \(ESRD\) Facilities \(PDF\)](#)
  - [Participants in the Medicare Diabetes Prevention Program \(PDF\)](#)
  - [Intermediate Care Facility for Individuals with Intellectual Disabilities \(PDF\)](#)
- 
- [Waiver for Medicare Ground Ambulance Services Treatment in Place \(PDF\) \(5/5/21\)](#)
  - [COVID-19 Emergency Declaration Blanket Waivers & Flexibilities for Health Care Providers \(PDF\) UPDATED \(10/13/22\)](#)
  - [Blanket waivers of Section 1877\(g\) of the Social Security Act \(3/30/20\)](#)

<https://www.cms.gov/coronavirus-waivers>

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## PHE Waiver Expiration

PHE waiver/flexibility	Expires	Agency			
99211 for COVID specimen collection for new patients <sup>1</sup>	May 11, 2023	CMS	Audio-only assessments for opioid treatment programs <sup>1</sup>	Dec. 31, 2023	CMS
Anti-kickback statute waivers for COVID-19 purposes <sup>2</sup>	May 11, 2023	OIG	Direct supervision via audio/video connection <sup>1</sup>	Dec. 31, 2023	CMS
Blanket co-pay waivers/reductions for telehealth <sup>2</sup>	May 11, 2023	OIG	Payment for in-home COVID-19 vaccination <sup>1</sup>	Dec. 31, 2023	CMS
Certified registered nurse anesthetist supervision <sup>1</sup>	May 11, 2023	CMS	Telehealth from provider's home enrollment waiver <sup>1</sup>	Dec. 31, 2023	CMS
Expedited enrollment <sup>1</sup>	May 11, 2023	CMS			
Face-to-face visits for ESRD patients <sup>1</sup>	May 11, 2023	CMS	Audio-only exception for certain telehealth services <sup>1</sup>	Dec. 31, 2024	CMS
Face to face visits required by NCD/LCD <sup>1</sup>	May 11, 2023	CMS	No geographic restrictions for telehealth services <sup>1</sup>	Dec. 31, 2024	CMS
<b>HIPAA enforcement discretion<sup>3</sup> (Updated April 13)</b>	<b>Aug. 9, 2023</b>	<b>OCR</b>	Patients can receive telehealth at home <sup>1</sup>	Dec. 31, 2024	CMS
Remote physiologic monitoring for new patients <sup>1</sup>	May 11, 2023	CMS	Patients can receive telehealth at home <sup>1</sup>	Dec. 31, 2024	CMS
Stark self-referral enforcement waivers <sup>4</sup>	May 11, 2023	CMS	Pay for telephone visits equivalent to office visits <sup>1</sup>	Dec. 31, 2024	CMS
Two-day data minimum for 99453 and 99454 <sup>1</sup>	May 11, 2023	CMS	Telehealth by providers who can bill for their services <sup>1</sup>	Dec. 31, 2024	CMS
Virtual check ins for new patients (G codes) <sup>1</sup>	May 11, 2023	CMS	Telephone visits covered (99441-99443) <sup>1</sup>	Dec. 31, 2024	CMS
Visit frequency limit <sup>1</sup>	May 11, 2023	CMS			
			Sources:		
			1. <a href="https://www.cms.gov/files/document/physicians-and-other-clinicians-cms-flexibilities-fight-covid-19.pdf">www.cms.gov/files/document/physicians-and-other-clinicians-cms-flexibilities-fight-covid-19.pdf</a>		
			2. <a href="https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf">www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf</a>		
			3. <a href="https://www.hhs.gov/about/news/2023/04/11/hhs-office-for-civil-rights-announces-expiration-covid-19-public-health-emergency-hipaa-notifications-enforcement-discretion.html">www.hhs.gov/about/news/2023/04/11/hhs-office-for-civil-rights-announces-expiration-covid-19-public-health-emergency-hipaa-notifications-enforcement-discretion.html</a>		
			4. <a href="https://www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf">www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf</a>		
Locum tenens extension <sup>1</sup>	July 10, 2023	CMS			

<https://pbn.decisionhealth.com/Articles/Detail.aspx?id=546012>

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## Payment Parity Ends

- 20% payment increase ended.
  - Hospitals and hospital systems who treated COVID-19 positive patients, were reimbursed at a PHE 20% increase during the pandemic.
  - **Once the PHE ended, the increase to payments ended.**
  - **There is no extension on these payments.**

## Three-day Skilled Nursing Facility (SNF) Rule

- Three - day SNF rule extended care services coverage if a patient had a qualifying inpatient stay of at least 3 consecutive calendar days starting with the admission day but not counting the discharge day.
  - Had been relaxed during COVID but this expired with the end of the PHE.



## Removal of Frequency Limitations

- **Frequency limitations were removed during PHE for Telehealth Services:**
  - A subsequent inpatient visit could be furnished via Medicare telehealth, without the limitation that the telehealth visit is once every three days (CPT codes 99231-99233).
  - A subsequent skilled nursing facility visit could be furnished via Medicare telehealth, without the limitation that the telehealth visit is once every 14 days (CPT codes 99307- 99310).
  - Critical care consult codes could be furnished to a Medicare beneficiary by telehealth beyond the once per day limitation (CPT codes G0508-G0509).
- **As of 5/11/2023, all applicable rules for furnishing these services once again take effect.**

## Other Medicare Telemedicine and Remote Patient Care

- During PHE, the in-person requirement for an in-person, face-to-face visit for evaluations and assessments was waived so the services could be furnished via telehealth.
- This expired at the end of the COVID-19 PHE.

## Virtual Supervision

The PHE temporarily modified the regulatory definition of direct supervision, which requires the supervising physician or practitioner to be “immediately available” to furnish assistance and direction during the service, to include “virtual presence” of the supervising clinician through the use of real-time audio and video technology.

***The supervision waiver will end December 31, 2023 (incident to services).***

- Virtual supervision of residents will not be allowed in a metropolitan statistical areas.
- Virtual supervision of residents providing telehealth services will not be allowed in a metropolitan statistical area.

## Remote Physiologic Monitoring

- During the PHE, clinicians were permitted to bill for remote physiologic monitoring (RPM) services furnished to both new and established patients, and to patients with both acute and chronic conditions.
- When the PHE ended, clinicians must have an established relationship with the patient prior to providing RPM services.
  - CMS will continue to allow RPM services to be furnished to patients with both acute and chronic conditions.
- As of 5/11/2023, RPM services can only be billed when at least 16 days of data have been collected.
- FDA approval continues to be required.

## Remote Evaluations, Virtual Check-Ins, and E Visits

During the PHE, clinicians could provide remote evaluation of patient video/images and virtual check-in services (HCPCS codes G2010 and G2012 for physicians and G2251 and G2252 are for non-physician practitioners) to both new and established patients.

*Since the PHE ended, Virtual Check-Ins will only be covered and reimbursable for established patients.*

## Drug Enforcement Administration (DEA) Rules and the PHE (New but Temporary)



### DEA extends telehealth prescription waivers, puts proposed rules on hold

by: Julia Kyles, CPC

Effective May 18, 2023

Published May 22, 2023

Last Reviewed May 18, 2023

#### Telehealth

Advocacy groups, specialty societies and medical providers praised the extension of waivers that allow practices to prescribe controlled substances via telehealth. The extension will run until Nov. 11, 2024, if a patient establishes a telehealth relationship with a provider by Nov. 11, 2023.

Members of the public, including patients, medical providers and organizations who submitted more than 30,000 comments on the Drug Enforcement Administration's (DEA) proposed telehealth rules, can take credit for the new — but temporary — extensions that the DEA published in the Federal Register on May 9.

## Drug Enforcement Administration (DEA) Rules and the PHE (New but Temporary)

- The new rule effectively replaces the DEA's proposed rules for telehealth prescriptions for schedule III, IV or V non-narcotic controlled substances and the initiation of buprenorphine to treat opioid use disorder (OUD) via telehealth
- The two-tier deadline:
  - A practice cannot establish a telehealth relationship with a new patient after Nov. 11, 2023.
  - The waiver covers any patients the provider treats via telehealth before Nov. 12, 2023, until Nov. 11, 2024.
- Three goals for the temporary rule:
  - Ensure the availability of telemedicine and facilitate continuity of care for telehealth relationships that patients and providers established during the COVID-19 PHE.
  - Prevent potential backlogs in care that would have resulted from the in-person medical evaluation requirement in the proposed rules.
  - Address the urgent need for continued access to the initiation of buprenorphine as medication for OUD.
- The extension does not loosen well-established rules for prescribing controlled substances.
  - The prescription must be for a legitimate medical treatment and written by a provider licensed to prescribe the scheduled drug.
  - Telehealth is the rule, audio-only is the exception.

<https://pbn.decisionhealth.com/Articles/Detail.aspx?id=546261>

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## Hospital Waivers That Ended With PHE

- During PHE, Medicare patients in the hospital could be under the care of other practitioners, such as nurse practitioners and physician assistants.
- Staffing decisions could be made by Chief Medical Officer or equivalent authority.
- That meant MD/DO and NPPs are the supervising providers, not “clinical staff”.
- *This ended at the conclusion of the PHE.*

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## Locum Tenens Changes Post PHE

- CMS modified the 60-day limit to allow a physician or physical therapist to use the same substitute for the entire time he or she is unavailable to provide services during the COVID-19 emergency, plus an additional period of no more than 60 continuous days after the public health emergency expires.
- After the PHE, the regular physician or physical therapist *must use a different substitute or return to work in his or her practice for at least one day* in order to reset the 60-day clock.
- The modified timetable applies to both types of substitute billing arrangements under Medicare fee-for-service (i.e., reciprocal billing arrangements and fee-for-time compensation arrangements, formerly known as locum tenens).

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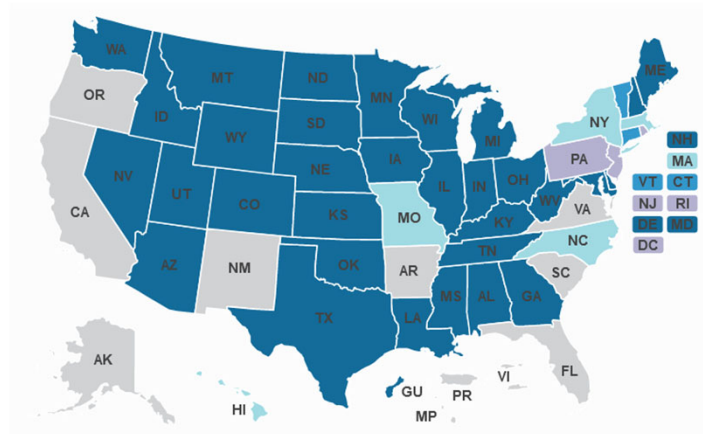
## State Licensure - Practicing Across State Lines

- During the PHE, CMS allowed licensed physicians and other practitioners to bill Medicare for services provided outside of their state of enrollment.
- CMS determined that, when the PHE ends, CMS regulations will continue to allow for a total deferral to state law. Thus, there is no CMS-based requirement that a provider must be licensed in its state of enrollment.
- Providers that cross state lines to deliver telehealth services **MUST** be licensed in the state where the patient is located or they will be considered practicing without a license.
- This applies to *all* states.

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Participating States



■ = Compact Legislation Introduced  
■ = IMLC Member State serving as SPL processing applications and issuing licenses\*  
■ = IMLC Member State non-SPL issuing licenses\*  
■ = IMLC Passed; Implementation In Process or Delayed\*

\* Questions regarding the current status and extent of these states' and boards' participation in the IMLC should be directed to the [respective state boards](https://www.imlcc.org/participating-states/).

<https://www.imlcc.org/participating-states/>

## Medicaid

- Patients may have loss of coverage even before 5/11/2023 as the continuous enrollment condition ended on 3/31/2023.
- Retention and reenrollment in marketplace plans will be easier for beneficiaries by offering earlier coverage effective dates than normally granted under Special Enrollment Period (SEP).
- Medicaid programs will continue to cover COVID-19 treatments without cost sharing through 9/30/2024.
  - After that date, coverage and cost-sharing may vary by state.

## Telehealth

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### Audio-only Telehealth Services

- People with Medicare can access telehealth services in any geographic area in the United States, rather than only those in rural areas.
- People with Medicare can stay in their homes for telehealth visits that Medicare pays for rather than traveling to a health care facility.
- *Certain telehealth visits can be delivered audio-only (such as a telephone) if someone is unable to use both audio and video, such as a smartphone or computer.*
- The patient's medical record will need to reflect why the patient was not able to get on an audio and video telehealth call and instead settled for an audio-only call (and not for convenience).
- Not for new or routine patients.
- *Medicare patients can continue to receive telehealth services in their home until 12/31/2024.*

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## List of Telehealth Services

### List of Telehealth Services

List of services payable under the Medicare Physician Fee Schedule when furnished via telehealth.

In the CY 2023 Final Rule, CMS finalized alignment of availability of services on the telehealth list with the extension timeframe enacted by the CAA, 2022. The CAA, 2023 further extended those flexibilities through CY 2024. We have updated and simplified the Medicare Telehealth Services List to clarify that these services will be available through the end of CY 2023, and we anticipate addressing updates to the Medicare Telehealth Services List for CY 2024 and beyond through our established processes as part of the CY 2024 Physician Fee Schedule proposed and final rules.

[List of Telehealth Services for Calendar Year 2023 \(ZIP\)](#) - Updated 05/09/2023

<https://www.cms.gov/medicare/medicare-general-information/telehealth/telehealth-codes>

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## Medicare Telehealth List

- Full list available at CMS: <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>.
- The list will remain on the Medicare Telehealth Services List and will be available through the end of CY 2023.
- Continue to watch for updates to the Medicare Telehealth Services List for CY 2024 and beyond as part of the CY 2024 Physician Fee Schedule proposed and final rules.
- MLN booklet currently unavailable



We're currently updating this product, and it will be available shortly.

For information about telehealth services, visit the [HHS Telehealth Policy webpage](#).

<https://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnproducts/downloads/telehealthsrvcfctsh.pdf>

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## Added to Medicare Telehealth Services List

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Emergency Department Visits, Levels 1-5	99281-99285
Initial and Subsequent Observation and Observation Discharge Day Management	99217-99220, 99224-99226, 99234-99236, 99218-99219
Initial Hospital Care and Discharge Day Management	99221-99223, 99238-99239
Initial Nursing Facility Visits, All Levels and Nursing Facility Discharge Day Management	99304-99306, 99315- 99316, G9685
Cardiac Care Services	93797-93798, 93750
Critical Care Services	99291-99292
Domiciliary, Rest Home, or Custodial Care Services	99354-99328, 99336-99337 <i>99334 and 99335 permanently added</i>
ESRD Services	90953, 90956, 90959, 90962
Eye Examinations	92002, 92004, 92012, 92014
Home Visits, New and Established Patient, All levels	99341-99345, 99349, 99350 <i>99347 and 99348 permanently added</i>
Inpatient Neonatal and Pediatric Critical Care, Initial and Subsequent	99468-99469, 99471-99473, 99475-99476, 99479-99480
Initial and Continuing Intensive Care Services	99477-99478

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## Added to the Medicare Telehealth Services List

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Care Planning for Patients with Cognitive Impairment	99483
Group and Individual Psychotherapy	90875, 90901, 96110-96121, 96125, 96127, 96036-96039, 96158, 96170-96171, 97129-97130, 97150-97158, 0362T, 0373T, G0410, G0422-G0423 <i>90853 permanently added</i>
Home Visits, New and Established Patient, All levels	99341-99345, 99349, 99350 <i>99347 and 99348 permanently added</i>
Inpatient Neonatal and Pediatric Critical Care, Initial and Subsequent	99468-99469, 99471-99473, 99475-99476, 99479-99480
Initial and Continuing Intensive Care Services	99477-99478
Care Planning for Patients with Cognitive Impairment	99483
Group and Individual Psychotherapy	90875, 90901, 96110-96121, 96125, 96127, 96036-96039, 96158, 96170-96171, 97129-97130, 97150-97158, 0362T, 0373T, G0410, G0422-G0423 <i>90853 permanently added</i>

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## Place of Service for Telehealth

- ***Per CMS –through 2024 via CAA extension, You must report the place of service (POS) where the visit would have taken place in person prior to the public health emergency***
- Will continue to be based on where the patient would have been had they been seen in person (example, POS 11, 21)
- May report the POS 2 or 10 although it will result in facility reimbursement (20% reduction)
  - POS 2 Patient not in their home when telehealth services rendered
  - POS 10 Patient in their home when telehealth services rendered
- Claims without appropriate POS or modifier 95 will be paid at facility rate.

## Modifiers for Telehealth Visits

- Modifier 93 for eligible mental health services using audio-only technology beginning 1/1/2023.
- Use modifier FQ for Medicare audio-only when the patient is unable to use audio and video communications.
- Modifier FR for behavioral health services audio and video – the physician presence needs to be documented.

## Originating Site (Where Patient Is Located)

- After the PHE, the patient must be located within a hospital and receives a Medicare telehealth service from an eligible distant site practitioner for the hospital to bill the facility fee (Q3014).

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## Distant Site (Where the Provider Is Located)

- *When the PHE ends, practitioners will be required to resume reporting their home address on the Medicare enrollment (on 2/24/2023 CMS extended this through 2023)*
- Providers performing telehealth services must use their physical location under the Medicare provider enrollment regulations (PECOS) by the end of 2023.
- They will have to list their home as a separate location. This means that their physical home address will be on every public website, showing patients and any person out there, where the physician lives.
- This is a safety concern not only for the physician but also for their families. Think of a pain management physician, where a patient now knows where they live, and they need drugs, thinking the physician may have them in their home. This is not a situation I would want to invite the risk.

Terry Fletcher, BS, CPC, CCC, CEMC, CCS, CCS-P, CMC, CMSCS, ACS-CA, SCP-CA, QMGC, QMCRC, QMPM  
<https://www.aapc.com/blog/88076-telehealth-services-after-the-phe-part-2/>

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## Telehealth Platforms

- MUST use HIPAA-secure platform 90 days after end of PHE.
- If a secure platform is purchased, ensure it is compatible with EHR.
- Beginning 8/9/2023 smart phone video options such as FaceTime and Skype will no longer be compliant.

## COVID-19 Vaccines, Antibodies and Tests

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## Patient's With COVID-19 After PHE

- No change in Medicare coverage of treatments.
- Cost sharing and deductibles will apply.
- Access to antivirals should not change (Paxlovid, Lagevrio)

## COVID-19 Vaccines Payments After End of PHE

- CMS will continue to pay approximately \$40 per dose for administering COVID-19 vaccines in most outpatient settings for Medicare beneficiaries through the end of the calendar year in which the Secretary ends the EUA declaration for drugs and biologicals with respect to COVID-19. The EUA declaration is distinct from, and not dependent on, the PHE for COVID-19.
- Effective January 1 of the year following the year in which the EUA declaration ends, CMS will set the payment rate for administering COVID-19 vaccines to align with the payment rate for administering other Medicare Part B preventive vaccines, that is, approximately \$30 per dose.
- People with Medicare will continue to have access to COVID-19 vaccinations without out-of-pocket costs after the end of the PHE.

## Additional Payment for Administering Vaccine in Patient's Home

- Total payment of approximately \$76 per dose to administer COVID-19 vaccines in the home for certain Medicare patients through calendar year 2023. The additional payment is not affected by the end of the PHE.
  - CMS will pay approximately \$36 in addition to the standard administration amount (approximately \$40 per dose) to administer COVID-19 vaccines in the home for certain Medicare patients.
  - For vaccines requiring multiple doses, payment applies for each dose in the series, including any additional or booster doses and will be geographically adjusted.

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## COVID-19 and Pharmacists

- Pharmacists:
  - Pharmacists and other health care professionals who are authorized to order lab tests under the state scope of practice and other relevant laws, to order (and be paid) COVID-19 tests for Medicare beneficiaries during the PHE.
  - *This flexibility returns to pre-PHE rules when the PHE ends.*
- Pharmacies with a CLIA certificate (including, for example, a certificate of waiver) can continue to conduct and bill for COVID-19 diagnostic laboratory tests as long as the test is ordered by a physician or QHP.

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## COVID-19 Tests

- Requirement for private insurance companies to cover COVID-19 tests without cost sharing ends.
  - Patient's can still get lab tests for COVID.
- Ordering COVID tests will require clear documentation for medical necessity.
- Price transparency for COVID-19 tests terminates with the end of PHE.
- Treatments may contain out-of-pocket expenses, based on individual health care coverage.

## COVID-19 Oral Antivirals and Monoclonal Antibodies

- Oral antivirals that are procured by the U.S. government (USG) and provided to pharmacies are provided to patients at no cost. This process will continue while oral antivirals are being procured by the USG.
- Remdesivir is approved for treatment of COVID-19. Medicare Part B provides payment.
  - In most cases the patient's yearly Part B deductible and 20% co-insurance apply.
- Over the counter free COVID-19 test program ended 5/11/2023.

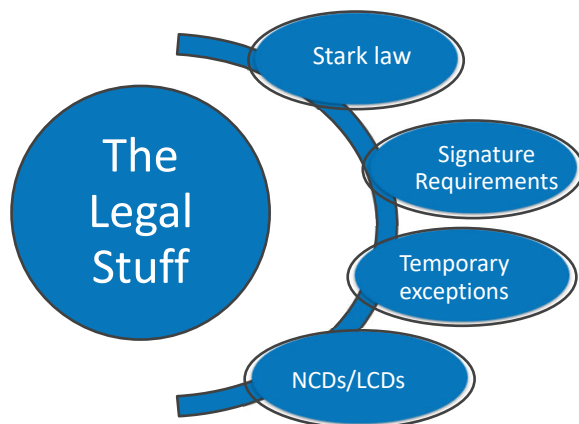
## Physician/Practitioner Order for COVID-19 Tests

- PCR and antigen tests will continue for people with Medicare with no cost-sharing when the test is ordered by a physician or QHP and performed by a laboratory.
- Medicare will require all COVID-19 and related testing that is performed by a laboratory to be ordered by a physician or non-physician practitioner.

## COVID-19 Diagnostic Testing

- During the PHE, CMS specified that level one E/M visit (CPT® code 99211), which can ordinarily be billed only when clinical staff perform services incident to the services of the billing physician or practitioner for an established patient, can be billed when clinical staff assess a patient and collect a specimen for a COVID-19 diagnostic test for both new and established patients.
- *After the PHE, the usual requirements for billing the level 1 E/M visit (CPT® code 99211) apply.*





Technical issues that were relaxed during PHE may be under increased scrutiny.

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## Stark Law Waivers

- “Stark Law” blanket waivers applied to financial relationships and referrals that were related to the COVID-19 emergency. The remuneration and referrals described in the blanket waivers must be solely related to COVID-19 purposes, as defined in the blanket waiver document.
- During the PHE, CMS permitted certain referrals and the submission of related claims that would otherwise violate the Stark Law, if all requirements of the waivers were met.
- When the COVID-19 PHE ended, the waivers terminated and physicians and entities had to immediately comply with all provisions of the Stark Law.

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## Certain NCDs and LCDs

- Clinicians have had more flexibility in determining patient needs for respiratory related devices, home infusion pumps and home anticoagulation therapy (and other services) and the flexibility for more patients to manage their treatments at home, but need to continue to document those decisions in the medical record.
- *The NCD enforcement discretion expired at the end of the COVID-19 public health emergency.*

## Signature Requirements

- CMS waived signature and proof of delivery requirements for Part B drugs and Durable Medical Equipment (DME) when a signature could not be obtained because of COVID-19.
- *After the PHE, signature and proof of delivery requirements are reinstated.*

## What Doesn't Change

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### Office and Other Outpatient Visits (99202 – 99215)

- Telehealth visits will continue to be covered for Medicare patients through the end of 2024.
- Audio AND video connection with patient is required and visit must be medically necessary.

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## Initial Hospital and Observation Services (99221 – 99223)

- Initial Hospital and Observation Services will remain on CMS' Telehealth Code List until no longer needed.

## Supervision Guidelines for Diagnostic Testing (Made Permanent Final Rule 2023)

- Medicare relaxed the supervision rule for diagnostic tests during the PHE to allow nurse practitioners (NPs), clinical nurse specialists (CNSs), certified nurse-midwives (CNMs), and physician assistants (PAs) *to supervise diagnostic tests as authorized under state law and licensure.*
- The waiver allowed certified nurse-midwives, clinical nurse specialists, nurse practitioners and physician assistants to personally perform diagnostic tests in compliance with applicable state requirements, including scope of practice laws. *Medicare added certified registered nurse anesthetists to the list of QHPs when it made the waiver permanent.*
- Medicare issued the Change Request March 16 to update and clarify Medicare Benefit Policy Manual, chapter 15, 80.
- The same update makes it clear that the new supervision policy *does not apply to incident-to services.*

## Online Visits by Qualified NPPs

- Licensed clinical social workers, clinical psychologists, physical therapists (PT), occupational therapists (OT) and speech language pathologists joined the list of NPPs who can report online assessment and management codes 98970-98972.
- Medicare made the addition permanent in the 2021 final rule but the services will be *limited to* established patients.
- *The waiver that allowed the services for new patients ended May 11.*

## Delegation of Maintenance Therapy

- Medicare allowed treating PTs and OTs to delegate maintenance therapy to a physical therapy assistant or occupational therapy assistant, when it was clinically appropriate. The delegating therapist must be the one who developed or is responsible for the patient's maintenance program.
- This flexibility has been made permanent via CY 2021 rulemaking, allowing physical and occupational therapists to delegate maintenance therapy services to their therapy assistants as clinically appropriate in the same manner that rehabilitation services are delegated.

## What Is Next?

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## Parting Thoughts

- Continue monitoring CMS and other websites for on-going changes.
- Monitor commercial payor websites for changes in their specific coverage.
- 2024 Physician Fee Schedule will contain changes.
- 2024 CPT® will contain new telehealth codes.
- We will see some permanent changes post-PHE but don't expect telehealth services to be as robust as they were during COVID-19.
- Will we begin to see audit activity in the post-COVID-19 PHE era?
- As always, Part B News is an excellent resource to keep you current!

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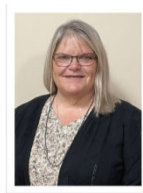
## Resources

- <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>
- <https://www.cms.gov/files/document/what-do-i-need-know-cms-waivers-flexibilities-and-transition-forward-covid-19-public-health.pdf>
- <https://www.cms.gov/coronavirus-waivers>
- <https://www.cms.gov/blog/creating-roadmap-end-covid-19-public-health-emergency>
- [www.cms.gov/files/document/physicians-and-other-clinicians-cms-flexibilities-fight-covid-19.pdf](http://www.cms.gov/files/document/physicians-and-other-clinicians-cms-flexibilities-fight-covid-19.pdf)
- [www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf](http://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf)
- [www.oig.hhs.gov/coronavirus/covid-flex-expiration.asp](http://www.oig.hhs.gov/coronavirus/covid-flex-expiration.asp)
- [www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf](http://www.cms.gov/files/document/covid-19-blanket-waivers-section-1877g.pdf)
- <https://pbn.decisionhealth.com/Articles/Detail.aspx?id=546012>
- <https://pbn.decisionhealth.com/Articles/Detail.aspx?id=546261>
- <https://www.imlcc.org/participating-states/>
- <https://pbn.decisionhealth.com/Articles/Detail.aspx?id=546195>
- <https://www.cms.gov/medicare/medicare-general-information/telehealth/telehealth-codes>
- <https://www.cms.gov/outreach-and-education/medicare-learning-network-mln/mlnproducts/downloads/telehealthsvcsfctsht.pdf>
- <https://www.aapc.com/blog/88076-telehealth-services-after-the-phe-part-2/>
- [www.cms.gov/files/document/laboratories-cms-flexibilities-fight-covid-19.pdf](http://www.cms.gov/files/document/laboratories-cms-flexibilities-fight-covid-19.pdf)
- [www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html](http://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html)
- <https://namas.co/the-phe-ends-may-11th-what-ends-what-was-extended-and-what-is-permanent/>

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## Questions & Answers



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