

# Policy Update

---

## COVID-19 Telehealth: Where Things Stand on April 2, 2020

---



### Summary

Health and Human Services Secretary Alex Azar declared a public health emergency (PHE) on January 27, 2020. Subsequently, Congress passed and the president signed three bills that provide varying degrees of regulatory and financial relief for healthcare providers during the Coronavirus (COVID-19) PHE. These have triggered a cascade of actions from the Centers for Medicare and Medicaid Services (CMS) designed to increase access to and use of telehealth services, and provide flexibilities for providers to complete certain administrative requirements virtually. Greater reliance on virtual care and administration may limit patient travel and exposure to COVID-19 and reduce the spread of the virus, in adherence to other federal guidelines. At the same time, telehealth gives providers an opportunity to provide some healthcare services to their patients without a face-to-face encounter, preserving revenue during the crisis.

### **Key Takeaways:**

- Congress and the Administration have substantially loosened Medicare restrictions on, and expanded the use of, telehealth services, but only for the duration of the COVID-19 PHE.
- Congressional and CMS action has expanded reimbursable Medicare telemedicine services, changed the payment rate for certain telehealth services, and waived specific requirements and restrictions related to the use of telemedicine.
- Misunderstandings and confusion persist due to regulatory complexity and past messaging inconsistencies.
- States continue to individually evolve their licensing and reimbursement policies.

## Telehealth Changes Broadly Applicable Across Provider Types

Telehealth		
Pre-Emergency Policy	Policy During Emergency	Sources
Medicare requires that a beneficiary receive telehealth services at a designated healthcare facility or rural site (originating site).	The originating site requirement is waived. The patient can be anywhere, including her home.	<a href="#">FAQ Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Sec. 102)</a>
Medicare provides a list of services payable under the Medicare Physician Fee Schedule (PFS), which is updated annually.	CMS temporarily expanded the list of telehealth codes eligible for reimbursement. <sup>1</sup>	<a href="#">List of Telehealth Services</a>
For services that have different rates in non-facility and facility services, Medicare uses the facility (lower) payment rate when services are furnished via telehealth.	CMS clarified that the telehealth payment to the furnishing physician or practitioner will be the same as payment for in-person services. CMS will assign the payment rate that ordinarily would have been paid under the PFS if the services were furnished in-person. This means that physicians who normally would have seen the patient in the office would receive the facility (higher) rate.	<a href="#">CMS Interim Final Rule</a>
Medicare requires the use of an interactive audio and video telecommunications system that permits real-time communication between the patient at the originating site and the provider at the distant site. Telephones are excluded from the definition of audio and video telecommunications system.	Providers are allowed to use audio-visual functionality on mobile phones. The HHS Office for Civil Rights (OCR) will exercise enforcement discretion allowing the good faith use of popular video-chat applications, including FaceTime, Zoom and Skype.  Note: CMS's argument for this modification does not rely on PHE-specific concerns, but the change is still limited to the duration of the PHE.	<a href="#">Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Sec. 102)</a> <a href="#">OCR Guidance</a> <a href="#">CMS Interim Final Rule</a>

<sup>1</sup> The additions include certain emergency department visits; initial and subsequent observation; initial hospital care and hospital discharge day management; initial nursing facility visits and nursing facility discharge day management; critical care; domiciliary, rest home or custodial care; home visits; inpatient neonatal and pediatric critical care; initial and continuing intensive care; care planning for patients with cognitive impairment; group psychotherapy; End Stage Renal Disease (ESRD); psychological and neuropsychological testing; radiation treatment management; and therapy services (including licensed clinical social worker services, clinical psychologist services, physical therapy services, occupational therapist services and speech language pathology services).

## COVID-19 Telehealth Guidance: What you need to know

Pre-Emergency Policy	Policy During Emergency	Sources
<p>Medicare requires that providers be licensed in the state in which the patient is located. Medicaid requirements vary by state.</p>	<p>CMS will waive Medicare and Medicaid's requirements that physicians and non-physician practitioners be licensed in the state where they are providing services when the following four conditions are met:</p> <ol style="list-style-type: none"> <li>1. The provider is enrolled as such in the Medicare program.</li> <li>2. The provider possesses a valid license to practice in the state that relates to his Medicare enrollment.</li> <li>3. The provider furnishes services—whether in person or via telehealth—in a state in which the emergency is occurring in order to contribute to relief efforts in her professional capacity.</li> <li>4. The provider is not affirmatively excluded from practice in the state or in any other state that is part of the 1135 emergency area.</li> </ol> <p>Note: Practitioners must continue to comply with state licensure requirements.</p>	<p><a href="#">1135 Waiver</a>  <a href="#">CMS Interim Final Rule</a></p>
<p>Under the relationship requirement, the patient must have seen the doctor (or someone in the practice) before the telehealth visit.</p>	<p>CMS announced that it will not enforce the relationship requirement during the emergency period, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act subsequently codified that policy.<sup>2</sup></p>	<p><a href="#">1135 Waiver</a>  <a href="#">CARES Act (Sec. 3703)</a></p>
<p>A prescription for a controlled substance issued via the internet must generally be predicated on an in-person medical evaluation.</p>	<p>US Drug Enforcement Administration-registered practitioners may issue prescriptions for schedule II-V controlled substances without meeting the relationship requirement, provided that:</p> <ol style="list-style-type: none"> <li>1. The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice.</li> <li>2. The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system.</li> <li>3. The practitioner is acting in accordance with applicable federal and state laws.</li> </ol> <p>Note: Practitioners must continue to comply with state laws and regulations, many of which have also changed during the emergency.</p>	<p><a href="#">DEA Guidance</a></p>

<sup>2</sup> The Coronavirus Preparedness and Response Supplemental Appropriations Act 2020 (sec 102) required a previous relationship. In subsequent guidance, CMS announced that it will not enforce this requirement. The Families First Coronavirus Response Act (sec 6010) removed this requirement.

## COVID-19 Telehealth Guidance: What you need to know

Pre-Emergency Policy	Policy During Emergency	Sources
<p>Provider enrollment is a formal process, including criminal background checks, application fees and site visits.</p>	<p>CMS will waive certain screening requirements, including the provision of a home address if services are provided at home, and will set up toll-free hotlines at each of the Medicare Administrative Contractors to initiate temporary Medicare billing privileges.</p> <p>Note: Practitioners are not required to update their enrollment with their home address.</p>	<p><a href="#">FAQ</a></p>
<p>The frequency of telehealth services is limited for certain Medicare services.</p>	<p>Certain services no longer have limitations on the number of times they can be provided by Medicare telehealth:</p> <ol style="list-style-type: none"> <li>1. A subsequent inpatient visit can be furnished via Medicare telehealth, with no frequency limits.</li> <li>2. A subsequent skilled nursing facility visit can be furnished via Medicare telehealth, with no frequency limits.</li> <li>3. Critical care consult codes may be furnished to a Medicare beneficiary by telehealth beyond the once-per-day limitation.</li> </ol>	<p><a href="#">CMS Interim Final Rule</a></p>
<p>Medicare does not cover certain services provided via telephone (audio-only).</p>	<p>CMS will allow reimbursement for certain audio-only E/M telephone codes to new <i>and</i> established Medicare patients.</p> <p>Opioid Treatment Programs may also conduct therapy and counseling sessions through audio-only telephone calls.</p>	<p><a href="#">CMS Interim Final Rule</a></p>
<p>Co-payments are generally applicable for telehealth services.</p>	<p>The HHS Office of Inspector General announced flexibility for healthcare providers to reduce or waive cost-sharing for telehealth visits paid by federal healthcare programs.</p>	<p><a href="#">Policy Statement</a> <a href="#">Guidance</a></p>
<p>Medicare Advantage plans and coverage vary.</p>	<p>CMS issued a memo to Medicare Advantage plans that clarified the types of flexibilities available during a public health emergency and state-level declarations of emergency.</p>	<p><a href="#">March 10, 2020 HPMS Memo</a></p>
<p>Coverage of telehealth services under Medicaid varies by state.</p>	<p>CMS issued an FAQ encouraging Medicaid programs to use existing flexibilities to increase access to telehealth.</p>	<p><a href="#">Medicaid FAQ</a></p>

## Other Telemedicine Guidance: Regulatory Changes Providing Increased Flexibility to Use Telemedicine in Place of In-Person Requirements

Other Telemedicine Guidance		
Pre-Emergency Policy	Policy During Emergency	Sources
Direct supervision requires that a physician be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. The physician does not have to be present in the room when the procedure is performed.	<p>CMS modified the definition of direct supervision to state that necessary physician presence for direct supervision includes virtual presence through audio/video real-time communications technology when use of such technology is indicated to reduce exposure risks for the beneficiary or healthcare provider. This interim change has broad application across a variety of settings.</p> <p>Note: CMS is seeking information from commentators on whether CMS should develop guardrails.</p>	<a href="#">CMS Interim Final Rule</a>
With some exceptions, if a resident participates in a service furnished in a teaching setting, PFS payment is made only if the teaching physician is present during the key portion of any service or procedure for which payment is sought.	The requirement for the presence of a teaching physician can be met, at a minimum, through direct supervision by interactive telecommunications technology. This includes both in-person and telehealth visits.	<a href="#">CMS Interim Final Rule</a>
Review and interpretation of diagnostic testing is limited to established patients and specific providers.	<p>Although some of the code descriptors refer to “established patient,” CMS will relax enforcement of this aspect of the code descriptors. Specifically, CMS will not conduct review to consider whether those services were furnished to established patients.</p> <p>CMS also expanded the list of providers that may use these specific codes to include licensed clinical social workers, clinical psychologists, physical therapists, occupational therapists and speech-language pathologists.</p>	<a href="#">CMS Interim Final Rule</a>
Remote Patient Monitoring (RPM) is limited to established patients who have more than one disease.	RPM can be provided to new <i>and</i> established patients, patients with both acute and chronic conditions, and patients with only one disease.	<a href="#">CMS Interim Final Rule</a>

**COVID-19 Telehealth Guidance: What you need to know**

<b>Pre-Emergency Policy</b>	<b>Policy During Emergency</b>	<b>Sources</b>
CMS relies on local coverage determinations (LCDs) and national coverage determinations (NCDs) to set requirements for face-to-face visits around evaluation and assessments.	To the extent that an NCD or LCD would otherwise require a face-to-face visit for evaluations and assessments, clinicians do not have to meet those requirements during the PHE.	<a href="#">CMS Interim Final Rule</a>

**Guidance by Provider Type: Specific Policy Changes for Certain Medicare Providers**

Guidance by Provider Type		
Pre-Emergency Policy	Policy During Emergency	Sources
Rural Health Centers (RHCs) and Federally Qualified Health Centers (FQHCs) are prohibited from serving as distant site telehealth providers and therefore cannot qualify for the distant site payment. Reimbursable codes are limited in scope.	RHCs and FQHCs can be a distant site and can be reimbursed at an amount comparable to the PFS amount.  CMS also expanded telehealth codes that RHCs and FQHCs may use for reimbursement, and will allow these to be applied to new <i>and</i> established patients.	<a href="#">CARES Act</a> (Sec. 3704)  <a href="#">CMS Interim Final Rule</a>
CMS requires a variety of in-person visits and limits the frequency of telehealth services for Medicare patients with certain conditions that need specific follow-up visits.	CMS removed the frequency restrictions for certain codes related subsequent inpatient visits, subsequent nursing facility visits and critical care consultation services.  CMS will allow a telehealth service to substitute for the face-to-face requirement for the clinical examination of the vascular access site for End State Renal Disease.	<a href="#">CMS Interim Final Rule</a>
Home dialysis requires face-to-face visits.	The CARES Act waives the face-to-face requirement.	<a href="#">CARES Act</a> (Sec. 3705)
Hospice physicians and nurse practitioners cannot conduct recertification encounters using telehealth.	The CARES Act allows qualified providers to use telehealth technologies to fulfill the hospice face-to-face recertification requirement.  CMS further clarified this in its Interim Final Rule.	<a href="#">CARES Act</a> (Sec. 3706)  <a href="#">CMS Interim Final Rule</a>
Hospice services are generally required to be in-person for the purposes of reimbursement.	When a patient is receiving routine home care, hospices may provide services via a telecommunications system, if it is feasible and appropriate to do so, to ensure that Medicare patients continue receiving reasonable and necessary services for the palliation and management of terminal illness and related conditions without jeopardizing the patients' health or the health of those providing such services.	<a href="#">CMS Interim Final Rule</a>
Physician and non-physician practitioners are required to perform in-person visits for nursing home residents.	CMS will waive this in-person requirement and allow visits to be conducted, as appropriate, via telehealth options.	<a href="#">CMS Interim Final Rule</a>



## COVID-19 Telehealth Guidance: What you need to know

Pre-Emergency Policy	Policy During Emergency	Sources
Medicare requires rehabilitation physicians to conduct face-to-face visits with the patient at least three days per week throughout the patient’s stay in the inpatient rehabilitations facility.	CMS will allow the face-to-face requirements to be conducted via telehealth.	<a href="#">CMS Interim Final Rule</a>
Provision of home health services via telehealth are limited, depending on the beneficiary’s care plan.	<p>The CARES Act requires the Secretary to issue guidance encouraging the use of telecommunications systems, including remote monitoring consistent with the plan of care.</p> <p>CMS provided detailed information on how to adjust a plan of care to include remote patient monitoring or other telemedicine services.</p>	<p><a href="#">CARES Act</a> (Sec. 3707)</p> <p><a href="#">CMS Interim Final Rule</a></p>

### Special Note on State Licensing, Prescribing and Standard of Care Regulation

The telehealth waivers provided through CMS and other agencies have given providers and beneficiaries significant flexibilities, but the challenges of existing state licensure and other regulatory requirements remain. While CMS announced that it will waive reimbursement restrictions on practicing across state lines, it has not waived or modified state licensing, prescribing and other practice requirements.

As states experience the strain of COVID-19 on their health systems, governors, health departments and professional boards have started to ease state licensure and other requirements through state-level actions, such as declarations of emergency. Secretary Azar applauded these actions in a [letter to the governors](#), but he also called on them to do more. Without an enforceable national policy, however, even the most liberalizing state policy changes will perpetuate the existing dynamic of widely varying state-specific laws, regulations and requirements. Accordingly, providers should continue to monitor and comply with relevant state laws, regulations and orders—even as they change on an almost daily basis. Stakeholders also have an opportunity to communicate with CMS regarding the complications and barriers that state-based regulation presents for national policy, as demonstrated by the current pandemic.



## Funding Opportunities

The CARES Act includes several funding opportunities focused on expanding access to telehealth services.

*Health Resource Services Administration (HRSA) Grants:* The CARES Act reauthorizes and provides \$29 million per year for four years for two HRSA grant programs: Telehealth Network and Telehealth Resource Centers. These support the use of telehealth technologies for services relating to mental health, at-home care, and preventive care in rural and underserved communities.

- **Telehealth Network Grant Program:** The current funding opportunity aims to promote rural tele-emergency services with an emphasis on tele-stroke, tele-behavioral health and tele-emergency medical services. Eligible applicants include rural or urban nonprofit entities that will provide direct clinical services through a telehealth network. Information on the Telehealth Network Grant Program is available [here](#).
- **Telehealth Resource Centers Grant Program:** Telehealth Resource Centers provide assistance, education and information to organizations and individuals who actively provide or are interested in providing healthcare at a distance. For more information, visit [The National Consortium of Telehealth Resource Centers website](#).

*Federal Communication Commission (FCC) Grants:* The CARES Act provides \$200 million for the FCC to support healthcare providers addressing COVID-19 by providing telecommunications services, information services and devices necessary to enable the use of telehealth services during the PHE.

On March 30, 2020, the FCC chairman [presented](#) his plan for the \$200 million. The plan would immediately support healthcare providers responding to the pandemic by allowing them to purchase telecommunications services, information services and devices necessary to enable the provision of telehealth services during this emergency period. The FCC would provide selected applicants with full funding for these eligible telehealth services and devices. In order to receive funding, eligible healthcare providers would submit a streamlined application to the FCC for this program, and the FCC would award funds to selected applicants on a rolling basis until the funds are exhausted or until the current pandemic ends. The program awaits approval by the full Commission.

## COVID-19 Telehealth Guidance: What you need to know

The FCC also made several regulatory announcements on existing telehealth support:

- **Supporting Telehealth and Remote Learning by Waiving Gift Rules:** The FCC waived gift rules in the Rural Health Care and E-Rate Programs to make it easier for broadband providers to support telehealth and remote learning efforts during the pandemic. The waiver will allow healthcare providers, schools and libraries to accept improved capacity, Wi-Fi hotspots, networking gear, or other equipment or services to support doctors and patients, teachers and students, and librarians and patrons during the COVID-19 outbreak. More information is available [here](#).
- **Increasing Rural Health Care Funding:** The FCC announced that it will fully fund all eligible Rural Health Care Program services for the current funding year with an additional \$42.19 million. This action will help ensure that healthcare providers have the resources they need to promote telehealth solutions for patients during this outbreak. In addition, a March 26, 2020, [order](#) took several actions to assist program participants, including extending the application window until June 30, 2020, among other administrative deadlines. More information is available [here](#).

*Department of Agriculture Rural Development:* The CARES Act provides \$25 million for the Distance Learning, Telemedicine, and Broadband Program, which supports telemedicine and distant learning services in rural areas. A current funding opportunity is open [here](#).

For more information, contact [Rachel Stauffer](#), [Mara McDermott](#), [Sheila Madhani](#), [Jessica Roth](#), [Dale Van Demark](#), [Lisa Schmitz Mazur](#), [Marshall Jackson, Jr.](#), or [Amanda Enyeart](#).