



Legislative and Regulatory Information – COVID-19

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This information is rapidly changing due to actions by Congress and the Administration to address the COVID-19 pandemic.

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COVID-19 legislation

- Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (March 6)
 - Expands telehealth by lifting Medicare restrictions and allowing use of smart phones
- Families First Coronavirus Response Act (March 18)
 - Eliminates cost-sharing for COVID-19 testing-related visits
- Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 27)
 - \$100 billion in economic relief grants for physicians, hospitals, and other providers
 - Expands Medicare accelerated/advance payment program
 - Suspends the 2% Medicare sequester from May 1 through December 31, 2020
 - Gives HHS Secretary authority to waive telehealth coverage requirements for new patients during a national emergency
 - Loans and financial assistance for small and mid-sized businesses

COVID-19 legislation

- AMA and 140 state medical and national specialty organizations urged Congress to take additional steps to protect patients' access to care and help physicians during the COVID-19 pandemic, including:
 - Improving the Medicare accelerated/advance payment program by allowing for a more gradual repayment period at zero percent interest
 - Implementing a positive payment update similar to those other providers received in 2020
 - Increasing Medicaid and TRICARE to assure parity with Medicare FFS payment
 - Waiving budget neutrality for E/M changes starting Jan. 1, 2021
 - Extending sequestration relief through 2021, and more

Executive branch COVID-19 actions

- HHS Secretary Azar declared a public health emergency on Jan. 31
- President Trump declared a national emergency on March 13
 - CMS immediately implements a number of nationwide regulatory waivers, including relaxing Medicare enrollment requirements
- CMS expands accelerated/advanced payment program on March 28
- CMS issues an interim final rule on March 30
 - Medicare telehealth service list expanded, telephone E/M visits covered, clarified pay-parity with in-office visits, MIPS hardship exception, and more
- HHS begins disbursing \$30 billion in emergency funding to physicians, hospitals, and providers on April 10

Medicare telehealth expansion

- Starting March 1 and throughout the national public health emergency, Medicare will pay physicians for telehealth services at the same rate as in-person visits for all diagnoses, not just services related to COVID-19.
- Many Medicare restrictions on telehealth, such as the location and modality, have been waived during the COVID-19 public health emergency
- Expanded list of Medicare covered telehealth services includes audio-only telephone calls and emergency department visits
- The Administration launched telehealth.hhs.gov to help physicians and patients with resources and best practices for telehealth and virtual care. AMA resources are also featured.

Medicare telehealth expansion

- Expanded access:
 - Medicare patients in all settings, including in their home, and across the entire country, not just in rural areas, can receive telehealth services.
 - Physicians can provide telehealth services to **new and established patients**.
 - Consent for telehealth services may be obtained by staff or the practitioner at any time, required only once on an annual basis.
 - Physicians licensed in one state can provide services to Medicare beneficiaries in another state. State licensure laws still apply.
 - Physicians can provide telehealth services from their home. Physicians **do not** have to add their home to their Medicare enrollment file.

Telehealth waivers and flexibilities

- Beneficiary cost-sharing
 - The HHS Office of Inspector General will exercise enforcement discretion regarding reduced or waived cost-sharing for telehealth or other non-face-to-face services (i.e., virtual visits or e-visits) the COVID-19 emergency.
- HIPAA
 - The HHS Office for Civil Rights will waive penalties under HIPAA against healthcare providers that serve patients in good faith through everyday communications technologies, such as FaceTime or Skype.
- EMTALA
 - Medical screening exams, a requirement under Emergency Medical Treatment and Labor Act (EMTALA), can be performed via telehealth.

Telehealth flexibilities from DEA & SAMHSA

- Physicians who prescribe controlled substances also have new telehealth flexibility during the COVID-19 emergency:
 - Controlled substance prescriptions may be based on a telehealth visit, including an audio-only telephone visit
 - Physicians with a waiver to prescribe buprenorphine for opioid use disorder can initiate or continue this treatment with telehealth or telephone visits
 - Opioid treatment programs (OTPs) can initiate **new** patients on buprenorphine using telehealth or telephone visits; **existing** patients on methadone or buprenorphine can be treated via telehealth or telephone visits
 - OTPs can provide stable patients with take-home medication
 - Alternate satellite locations do not need to apply for their own DEA number

Additional info available from [SAMHSA](#) [DEA](#) & [AMA](#) websites

Medicare telehealth expansion

- CMS expanded the list of services which may be performed via telehealth, including:
 - Emergency Department Visits (CPT® codes 99281-99285)
 - Observation Care (CPT codes 99217-99220, 99224-99226, 99234-99236)
 - Inpatient Hospital Visits (CPT codes 99221-99223, 99238, 99239)
 - Nursing Facility Visits (CPT codes 99304-99306, 99315, 99316)
 - Critical Care Services (CPT codes 99291, 99292)
 - Domiciliary, Rest Home or Custodial Care Services (CPT codes 99327, 99328, 99334-99337)
 - Home Visits (CPT codes 99341-99345, 99347-99350)
 - Inpatient Neonate and Pediatric Critical Care (CPT codes 99468, 99469, 99471-99480)

Medicare telehealth expansion

- CMS expanded the list of services which may be performed via telehealth, including:
 - Care Planning for Patients with Cognitive Impairment (CPT code 99483)
 - End-Stage Renal Disease Services (CPT codes 90952, 90953, 90959, 90962)
 - Psychological and Neuropsychological Testing (CPT codes 96130-96133, 96136-96139)
 - Therapy Services (CPT codes 97161-97168, 97110, 97112, 97116, 97535, 97750, 97755, 97760, 97761, 92521-92524, 92507)
 - Radiation Treatment Management Services (CPT code 77427)
- [Complete List of CPT and CMS Telehealth Services](#)

Medicare telehealth coding and payment

- Office-based physicians should use their usual place-of-service code (example 11 for Physician Office) to be paid at the non-facility rate for telehealth services.
- CPT Modifier 95 should be appended to all telehealth claims
- Telehealth services billed using POS code 02 (telehealth) will be paid at the facility rate.
- Telehealth E/M services (or in-person) that result in an order to test for COVID-19 should include the CS modifier, cost-sharing will be waived.
- CPT Coding Scenarios

Medicare telehealth coding and payment

- Office and other outpatient services (CPT codes 99201-99215) code selection and documentation – telehealth only
 - Physicians may select code and document based on medical decision making (MDM) or physician time on date of encounter
 - MDM – 2020 definitions
 - Time – [2020 Medicare Physician Total Time](#)

Telephone evaluation and management (E/M) services

- CMS changed the status of telephone E/M services from non-covered to active during the COVID-19 crisis. Use for new or established patients. Modifier 95 is not needed as CMS does not consider phone calls to be telehealth.
 - CPT code 99441 Phone E/M Physician/QHP; 5-10 minutes
 - CPT code 99442 11-20 minutes
 - CPT code 99443 21-30 minutes
 - CPT code 98966 Healthcare Professional Phone Call; 5-10 min.
 - CPT code 98967 11-20 minutes
 - CPT code 98968 21-30 minutes
- The AMA and other groups are advocating that Medicare increase the payments for telephone calls to pay the same as in-person or audio-visual telehealth visits during the public health emergency

Remote patient monitoring (RPM)

- Remote patient monitoring (CPT codes 99091, 99473-99474, 99453-99454, 99457-99458) may be reported for acute or chronic conditions. Patient is only required to have one condition.
- RPM may be reported for new or established patients
- CMS notes that RPM can be used for monitoring related to COVID-19. For example, remote patient monitoring can be used to monitor a patient's oxygen saturation levels using pulse oximetry
- Patient consent for remote monitoring can be obtained once annually, including at the time services are furnished, during the duration of the crisis

Other digital medicine services

- CMS will pay for the following services for new or established patients
 - G2010 Review of patient submitted video and/or images
 - G2012 Virtual check-in
 - CPT codes 99421-99423 Online Digital E/M service for Physicians and QHPs
 - CPT codes 98970-98972 Online Digital Assessments for Other Healthcare Professionals
 - G2061-G2063 Online Digital Assessments for Other Healthcare Professionals*

**recognized by CMS for 2020*

MIPS relief: 2019 performance/2021 payment

- The 2019 data submission deadline is extended until April 30, 2020.
- Clinicians who do not submit any MIPS data will qualify for an automatic extreme and uncontrollable circumstances exception and will receive a neutral payment adjustment in 2021.
 - Check the [QPP Participation Status Tool](#) to see if the policy has been automatically applied.
- CMS is accepting [Extreme and Uncontrollable Circumstances applications](#) until April 30, 2020 for physicians, groups, and virtual groups that started submitting data but are unable to complete their submission due to COVID-19.

Medicare accelerated/advance payments

- To assist with cash flow challenges during the COVID-19 pandemic, physicians can request an advance Medicare payment of up to three months' Medicare payments based on historical claims information
- These are loans that do need to be repaid.
- Recoupment begins 120 days after disbursement and is due 210 days from the date the MAC issues the payment.
- After 210 days, 10.25% interest accrues on the balance.

In a joint letter to Congress, the AMA and 140 medical societies called for an extended, interest-free repayment period to help physician practices.

On April 26, CMS paused this loan program for Part B suppliers, including physicians and other health professionals.

CARES Act Provider Relief Fund Payments

- On April 10, HHS began issuing direct deposits to Medicare-enrolled physicians, hospitals and other care providers based on their share of Medicare fee-for-service spending in 2019.
- These are grants, not loans, and don't have to be repaid.
- Funds may be used for health care expenses or for lost revenues attributed to COVID-19.
- This relief reflects the recommendations made to HHS Secretary Alex Azar by the AMA and 139 other medical societies, although it is not exactly what we proposed.
 - We proposed one month of all revenue, while HHS is providing roughly 1/16 of annual Medicare FFS revenue (~3.2 weeks)
 - In part, the difference stems from the administration's approach of first disbursing \$30 billion and later determining how the remaining \$70 billion will be allocated.

CARES Act Provider Relief Fund Payments

- HHS partnered with UnitedHealth Group (UHG) to deliver the payments
- Direct deposit will come to the organizations via Optum Bank with "HHSPAYMENT" as the payment description.
 - Note that the funds will go to each organization's TIN which normally receives Medicare payments, not to each individual physician.
- Contact UHG's Provider Relations at 866-569-3522 about eligibility, whether a payment has been issued, and where it was sent.
- Note, if a practice did not already set up direct deposit through CMS or UHG's Optum Pay, they will receive a check at a later date.
 - Practices that would like to set up direct deposit now can call the UHG Provider Relations number.

CARES Act Provider Relief Fund Payments

- Physicians who have been allocated a payment from the initial \$30 billion general distribution must attest to receipt of the funds and agree to the terms and conditions within 30 days of payment.
 - [CARES Act Provider Relief Fund Payment Attestation Portal](#)
- Terms and conditions include:
 - Numerous certifications, including that the funds will not overlap with expected reimbursement from other sources and that for COVID-19 care, providers will not collect more than in-network cost-sharing amounts
 - Numerous prohibitions on the use of funds, such as prohibiting their use for gun control advocacy or promoting legalization of controlled substances
- AMA has raised several questions and concerns about the terms and conditions with HHS.

CARES Act Provider Relief Fund Payments

- In particular, the AMA raised concerns with HHS about whether physicians were required to attest that they diagnose, treat, or test patients for COVID-19, especially as many are currently closed due to state emergency declarations.
- HHS updated the website to include this statement:
 - “If you ceased operation as a result of the COVID-19 pandemic, you are still eligible to receive funds so long as you provided diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. Care does not have to be specific to treating COVID-19. HHS broadly views every patient as a possible case of COVID-19.”

CARES Act Provider Relief Fund Payments

- On April 22, HHS provided additional information about allocation of the \$100 billion fund, including:
 - An additional \$20 billion for “general allocation” based on 2018 net patient revenue, not just Medicare fee-for-service
 - \$10 billion for targeted distribution to hospitals in areas that have been particularly impacted by the COVID-19 outbreak
 - \$10 billion to rural hospitals and rural health clinics
 - \$400 million to Indian Health Service facilities
 - Some portion of the remaining funds is being used to cover the costs of caring for uninsured patients with COVID-19 based on Medicare payment rates
 - An unspecified portion will be used for clinicians, including obstetricians-gynecologists, and facilities that rely more on Medicaid than Medicare revenues

Additional AMA resources

- [Telemedicine quick guide](#) has detailed information to support physicians and practices in expediting implementation of telemedicine.
- AMA and AHA [cybersecurity resource](#) to help physicians working from home during the COVID-19 pandemic
- Medicare advance payments [overview](#) and [FAQ](#)
- Summary of [Medicare payment policies and regulatory flexibilities](#)
- Operational and strategic [resources](#) for physician practices
- AMA's [COVID-19 resource center](#) centralizes the latest information from AMA leadership, *JAMA Network*™, CDC, FDA and more.

Disclaimer

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