

Coronavirus Update – HHS & CMS Guidance, Directives and Waivers with Respect to Telemedicine, Provider Enrollment Regulations, Claim Appeals, the Suspension of Non-Emergency Survey Inspections, Nursing Homes, Home Health Agencies, Dialysis Facilities and DME Suppliers.



UPDATED (March 17, 2020): *CMS just announced a waiver of certain telehealth coverage requirements so that Medicare beneficiaries can receive a wider range of services from their doctors without having to travel to a healthcare facility. The article below has been updated to address these key takeaways.*

(March 16, 2020): On March 13, 2020, President Trump declared a National Emergency^[1] related to the current Coronavirus / COVID-19 outbreak. The declaration gives Secretary Alex Azar of the US Department of Health & Human Services (HHS) the power to waive certain Federal requirements in Medicare, Medicaid and CHIP in order to address the outbreak. The President's declaration was preceded by Secretary Azar's determination on January 31, 2020^[2] that a public health emergency exists. Since these pronouncements, Liles Parker attorneys have received numerous calls asking for clarification on these waivers and other guidance from HHS and the Centers for Medicare and Medicaid Services (CMS). Our clients have also asked that we provide a listing of useful links and other available resources.

As a result of President Trump's declaration of a national emergency, HHS now has broad authority to make temporary adjustments including:

- 1. Applying flexibilities that are already available under normal business rules;**
- 2. Waiver or modification of policy or procedural norms by the Administrator of the Center for Medicare and Medicaid Services (CMS) under his or her authority; and**
- 3. Waiver or modification of certain Medicare requirements pursuant to waiver authority under § 1135 of the Social Security Act.**

As of March 16, 2020, CMS has issued the following guidance, directives and waivers, specifically with regard to the coronavirus outbreak. We recommend providers carefully review the HHS, CMS and/or CDC guidance specific to each service, discipline or facility type for complete details.

I. Impact of the Coronavirus on Telehealth / Telemedicine Regulations:

The Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020^[3] signed by President Trump on March 6, 2020 included a specific provision addressing Medicare coverage and telehealth services. HB 6074 grants certain powers to the Secretary of Health and Human Services to waive some of the telehealth coverage requirements under the Medicare program. Unfortunately, **the new law requires Secretary Azar to issue a waiver addressing any temporary changes to current Medicare telehealth coverage requirements.** As of the publication of this article, a waiver has not been released, although CMS Administrator Seema Verma indicated during her remarks on March 13, 2020,^[4] that more information would be forthcoming very soon. H.B. 6074 permits Secretary Azar to relax telehealth coverage requirements for all services CMS has approved to be provided via telemedicine as follows:

- ***To relax the originating site requirements to include patient homes;***
- ***To waive the rural HPSA/non-MSA county geographic location requirement so that patients in any geographic location can receive covered telemedicine services; and,***
- ***To permit phone only telehealth services so long as the phone used has audio and video capabilities (i.e., most smartphones).***

The law imposes certain restrictions, even under a waiver from Secretary Azar. Importantly, the relaxed coverage requirements would only extend to services provided by a physician or practitioner (or another physician or practitioner in that provider's group practice) to an established patient, meaning an individual the provider has seen during the 3-year period before a telehealth service is furnished. We will update this article when a specific waiver is issued.

UPDATE (3/17/2020): *CMS just announced a waiver of certain telehealth coverage requirements so that Medicare beneficiaries can receive a wider range of services from their doctors without having to travel to a healthcare facility. Here are the key takeaways from this important announcement:*

- ***Effective for services starting March 6, 2020 and for the duration of the COVID-19 Public Health Emergency, Medicare will make payment for Medicare telehealth services furnished to patients in broader circumstances.***
- ***These visits are considered the same as in-person visits and are paid at the***

same rate as regular, in-person visits.

- ***Starting March 6, 2020 and for the duration of the COVID-19 Public Health Emergency, Medicare will make payment for professional services furnished to beneficiaries in all areas of the country in all settings.***
- ***While they must generally travel to or be located in certain types of originating sites such as a physician's office, skilled nursing facility or hospital for the visit, effective for services starting March 6, 2020 and for the duration of the COVID-19 Public Health Emergency, Medicare will make payment for Medicare telehealth services furnished to beneficiaries in any healthcare facility and in their home.***
- ***The Medicare coinsurance and deductible would generally apply to these services. However, the HHS Office of Inspector General (OIG) is providing flexibility for healthcare providers to reduce or waive cost-sharing for telehealth visits paid by federal healthcare programs.***
- ***To the extent the 1135 waiver requires an established relationship, HHS will not conduct audits to ensure that such a prior relationship existed for claims submitted during this public health emergency.***
- ***HHS' Office of Civil Rights will exercise enforcement discretion and waive penalties for HIPAA violations against health care providers that serve patients in good faith through everyday communications technologies, such as FaceTime or Skype, during the COVID-19 nationwide public health emergency.[18]***

Note that the waiver does not restrict coverage to patients with coronavirus or symptoms of coronavirus. Any service that a provider can safely deliver via telemedicine and is on CMS' list of approved telemedicine services[19] will be permitted under the new waiver. This waiver of Medicare program and HIPAA requirements will last for the duration of the COVID-19 Public Health Emergency. We do recommend that you check with your State licensing board to verify state requirements for telemedicine if you are unfamiliar with what is permitted in your state. Liles Parker has advised numerous clients with regard to telemedicine services.

In the meantime, CMS has reminded providers of the following options to provide covered non-face to face services to Medicare patients:

- ***Medicare pays for "virtual check-ins" for patients to connect with their doctors without going to the doctor's office. These brief, virtual check-in services are for patients with an established relationship with a physician or certain practitioners where the communication is not related to a medical visit within the previous 7 days and does not lead to a medical visit within the next***

24 hours (or soonest appointment available). The patient must verbally consent to using virtual check-ins and the consent must be documented in the medical record prior to the patient using the service. The Medicare coinsurance and deductible would apply to these services. Doctors and certain practitioners may bill for these virtual check-in services furnished through several communication technology modalities, such as telephone (HCPCS code G2012) or captured video or image (HCPCS code G2010).

- **Medicare also pays for patients to communicate with their doctors without going to the doctor's office using online patient portals. The individual communications, like the virtual check ins, must be initiated by the patient; however, practitioners may educate beneficiaries on the availability of this kind of service prior to patient initiation. The communications can occur over a 7-day period. The services may be billed using CPT codes 99421-99423 and HCPCS codes G2061-G206, as applicable. The Medicare coinsurance and deductible would apply to these services.**
- **In addition, Medicare beneficiaries living in rural areas may use telehealth technology to have full visits with their physicians. The patient must be present at an approved telehealth originating site and must receive services using a real-time audio and video communication system at the site to communicate with a remotely located doctor or certain other types of practitioners. Medicare pays for many medical visits through this telehealth benefit. The Medicare coinsurance and deductible would apply to these services. For additional information on this benefit, please see CMS's Telehealth resource page [\[5\]](#) for additional details and requirements.**
- **Medicare Advantage Plans were given the authority to expand their telehealth coverage through enhanced benefit packages last year, but coverage still varies from plan to plan. CMS also issued a waiver on March 10, 2020 permitting (but not requiring) Medicare Advantage Plans to expand access to certain telehealth services. We recommend checking with the plans with which you contract for specific details or contact Liles Parker for assistance.**
- **Many State Medicaid programs already cover telehealth/telemedicine services provided to patients in their homes. Liles Parker can assist in determining what your State Medicaid program covers.**

II. Impact of the Coronavirus on Medicare Provider Enrollment Regulations:

CMS has issued a blanket waiver related to provider enrollment requirements[\[6\]](#) to do the following:

- **Establish a toll-free hotline for non-certified Part B suppliers, physicians and nonphysician; practitioners to enroll and receive temporary Medicare billing**

privileges;

- ***Waive the following screening requirements:***
 - ***Application Fee - 42 C.F.R § 424.514***
 - ***Criminal background checks associated with FCBC - 42 C.F.R § 424.518***
 - ***Site visits - 42 C.F.R § 424.517***
- ***Postpone all revalidation actions;***
- ***Allow licensed providers to render services outside of their state of enrollment; and,***
- ***Expedite any pending or new applications from providers.***

Liles Parker provides assistance to all types of providers seeking to enroll in the Medicare program.

III. Impact of the Coronavirus on Medicare Claim Appeals:

CMS has issued a blanket waiver applicable to fee-for-service Medicare, Medicare Advantage and Medicare Part D claim appeals.[\[7\]](#) The blanket waiver provides for the following relief:

- ***Extensions to file an appeal***
- ***Waiving timeliness for requests for additional information to adjudicate the appeal;***
- ***Processing the appeal even with incomplete Appointment of Representation forms but communicating only to the beneficiary;***
- ***Processing requests for appeal that don't meet the required elements using information that is available.***
- ***Utilizing all flexibilities available in the appeal process as if good cause requirements are satisfied.***

IV. Suspension of Non-Emergency Survey Inspections Due to Coronavirus:

On March 4, 2020, CMS issued a Memorandum[\[8\]](#) advising that it is temporarily suspending non-emergency survey inspections, allowing providers to focus on the most current serious health and safety threats, like infectious diseases and abuse. Specifically, survey activity is limited to the following (in Priority Order):

- ***All immediate jeopardy complaints (cases that represents a situation in which***

entity noncompliance has placed the health and safety of recipients in its care at risk for serious injury, serious harm, serious impairment or death or harm) and allegations of abuse and neglect;

- ***Complaints alleging infection control concerns, including facilities with potential COVID-19 or other respiratory illnesses;***
- ***Statutorily required recertification surveys (Nursing Home, Home Health, Hospice, and ICF/IID facilities);***
- ***Any re-visits necessary to resolve current enforcement actions;***
- ***Initial certifications;***
- ***Surveys of facilities/hospitals that have a history of infection control deficiencies at the immediate jeopardy level in the last three years;***
- ***Surveys of facilities/hospitals/dialysis centers that have a history of infection control deficiencies at lower levels than immediate jeopardy.***

CMS is maintaining a website^[9] with consolidated guidance to surveyors related to coronavirus and infection control in hospitals, nursing homes, hospices, home health, and dialysis facilities.

V. Nursing Homes:

CMS issued a revised Memorandum^[10] on March 13, 2020 with specific guidance to nursing homes, including:

- ***Directing nursing homes to temporarily restrict all visitors and nonessential personnel with a few exceptions such as end-of-life situations, and to cancel all communal dining and group activities.***
- ***Screening their staff and outside healthcare providers using [CDC guidelines for restricting access to health care workers](#).***
- ***Notifying their local health department if a resident is suspected of having COVID-19. Facilities that can follow [the infection prevention and control practices recommended by CDC](#) may or may not need to transfer the patient, depending on the severity of the patient's symptoms. If a resident must be transferred to a hospital, careful coordination with EMS and the receiving facility must be performed, including placing a facemask on the patient during transfer.***
- ***Accepting patients diagnosed with COVID-19 and still under [Transmission-Based Precautions for COVID-19](#) as long as the facility can follow CDC guidance;***
- ***Accepting patients who are not diagnosed with COVID-19 from hospitals or other locations where a case of COVID-19 was/is present; and,***

- ***Obligations to maintain appropriate PPE and alcohol-based hand rub supply levels, while assuring facilities they will not be cited by surveyors so long as they can demonstrate they are having difficulty obtaining the supplies for reasons outside their control. Nursing homes are advised to contact with their local and state public health agency to notify them of any shortage, follow national guidelines for [optimizing their current supply](#), and identify the next best option to care for their residents.***

CMS also exercised its authority to waive certain coverage requirements for skilled nursing services on March 13, 2020, including the following:

- ***CMS is waiving the 3-day prior hospitalization for coverage of a skilled nursing facility (SNF) stay for those people who need to be transferred as a result of the coronavirus emergency. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes renewed SNF coverage without first having to start a new benefit period.***
- ***Second, CMS is waiving 42 CFR 483.20 to provide relief to SNFs on the timeframe requirements for Minimum Data Set assessments and transmission.***

VI. Home Health Agencies:

CMS has issued a blanket waiver^[11] to provide relief to home health agencies (HHAs) on the timeframes related to OASIS Transmission. The waiver also allows Medicare Administrative Contractors to extend the auto-cancellation date of Requests for Anticipated Payment (RAPs) during emergencies. Please consult with your home health MAC for specific guidance.

Additionally, on March 10, 2020, CMS issued guidance ^[12] on addressing potential and confirmed COVID-19 cases and mitigating transmission including screening, treatment, and transfer to higher level care (when appropriate).

- ***Importantly, agencies are instructed to continue caring for patients with known or suspected COVID-19 in their homes depending on the severity of their symptoms and as long as the individual with support of the HHA can follow the [infection prevention and control practices recommended by CDC](#).***
- ***Specific instruction is also included for agencies to follow [CDC Interim Guidance for Public Health Personnel Evaluating Persons Under Investigation](#)***

(PUIs) and Asymptomatic Close Contacts of Confirmed Cases at Their Home or Non-Home Residential Settings when visiting the home of a patient suspected of COVID-19 exposure or confirmed exposure.

- **HHAs are obligated to maintain appropriate PPE and alcohol-based hand rub supply levels, while assuring facilities they will not be cited by surveyors so long as they can demonstrate they are having difficulty obtaining the supplies for reasons outside their control. HHAs are advised to contact with their local and state public health agency to notify them of any shortage, follow national guidelines for optimizing their current supply, and identify the next best option to care for their residents.**

VII. Hospitals:

On March 4, 2020, CMS issued guidance^[13] regarding infection control and prevention related to COVID-19 cases. In addition, CMS has issued blanket waivers applicable to hospitals^[14] addressing a number of issues.^[17] Some of the most significant include:

- **CMS is waiving the requirements that Critical Access Hospitals limit the number of beds to 25, and that the length of stay be limited to 96 hours.**
- **CMS is waiving requirements to allow acute care hospitals to house acute care inpatients in excluded distinct part units, where the distinct part unit's beds are appropriate for acute care inpatient.**
- **CMS is waiving to allow acute care hospitals with excluded distinct part inpatient psychiatric units that, as a result of a disaster or emergency, need to relocate inpatients from the excluded distinct part psychiatric unit to an acute care bed and unit.**
- **CMS is waiving requirements to allow acute care hospitals with excluded distinct part inpatient Rehabilitation units that, as a result of a disaster or emergency, need to relocate inpatients from the excluded distinct part rehabilitation unit to an acute care bed and unit.**

VIII. Coronavirus Related Waivers Issued by CMS to DME Suppliers:

A blanket waiver^[15] has been issued by CMS as of March 13, 2020 to address lost, destroyed, irreparably damaged or otherwise unusable Durable Medical Equipment (DME). DME Medicare Administrative Contractors (MACs) will have the flexibility to waive replacement requirements such that the face-to-face requirement, a new physician's order, and new medical necessity

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documentation are not required. Suppliers must still include a narrative description on the claim explaining the reason why the equipment must be replaced and are reminded to maintain documentation indicating that the DMEPOS was lost, destroyed, irreparably damaged or otherwise rendered unusable or unavailable as a result of the emergency. **Please check your DME MAC website for more information or contact Liles Parker for assistance.**

IX. Dialysis Facilities:

On March 10, 2020, CMS issued guidance^[16] addressing potential and confirmed COVID-19 cases and mitigating transmission including screening, treatment, and transfer to higher level care (when appropriate).

X. Conclusion:

Liles Parker attorneys and staff are closely monitoring HHS, CMS and CDC guidance and will update this article as new information becomes available. Please contact us with questions or for assistance with your response to this unprecedented National Emergency.



Jennifer Papapanagiotou is a Partner at Liles Parker, Attorneys & Clients at Law. She has decades of experience representing health care providers and suppliers around the country in connection with a wide range of regulatory actions. Questions regarding the impact of recent coronavirus guidance on your organization? Call Jennifer for a free consultation. She can be reached at: 1 (800) 465-1906.

^[1] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, Issued on March 13, 2020. A link to the declaration can be found [here](#).

^[2] Determination that a Public Health Emergency Exists, issued by Secretary Azar on January 31, 2020. A link to the determination can be found [here](#).

^[3] **“Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020.” [H.B. 6074](#)**

^[4] Emergency Declaration Press Call Remarks by CMS Administrator Seema Verma, delivered

March 13, 2020. A link to the remarks can be found [here](#).

[1] Medicare Telemedicine Health Care Provider Fact Sheet, dated March 17, 2020, can be found [here](#). Frequently Asked Questions expanding on the fact sheet and giving more details on implementation can be found [here](#).

[2] HHS's Office of Civil Rights is maintaining a website with more information on this topic [here](#).

[3] You can find CMS' list of approved telemedicine services [here](#).

[5] CMS's telehealth resource page can be found [here](#).

[6] COVID-19 Emergency Declaration Health Care Providers Fact Sheet, dated March 13, 2020, can be found [here](#). Provider enrollment waivers of certain requirements are outlined in the guidance.

[7] Ibid. Waivers to the administrative claims appeals process are outlined on page 3 of the document.

[8] Memorandum titled "Suspension of Survet Activities," dated March 4, 2020. A copy of the Memorandum can be found [here](#).

[9] CMS guidance titled "Updates for State Surveyors and Accrediting Organizations" can be found [here](#).

[10] CMS Memorandum titled Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes (*REVISED*)," can be found [here](#).

[11] COVID-19 Emergency Declaration Health Care Providers Fact Sheet, dated March 13, 2020, can be found [here](#). Home health agency guidance is on page 3 of the Fact Sheet.

[12] CMS Memorandum titled Guidance for Infection Control and Prevention Concerning Coronavirus Disease 2019 (COVID-19) in Home Health Agencies (HHAs), was issued on March 10, 2020, and can be found [here](#).

[13] CMS Memorandum titled Guidance for Infection Control and Prevention Concerning Coronavirus Disease (COVID-19): FAQs and Considerations for Patient Triage, Placement and Hospital Discharge," dated March 4, 2020, can be found [here](#).

[14] COVID-19 Emergency Declaration Health Care Providers Fact Sheet, dated March 13, 2020, can be found [here](#). Hospital guidance is on pages 1-3 of the Fact Sheet.

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[15] COVID-19 Emergency Declaration Health Care Providers Fact Sheet, dated March 13, 2020, can be found [here](#). DME related guidance is on page 1 of the Fact Sheet.

[16] [CMS issued guidance on March 10, 2020](#)

[17] Medicare Telemedicine Health Care Provider Fact Sheet, dated March 17, 2020, can be found here. Frequently Asked Questions expanding on the fact sheet and giving more details on implementation can be found [here](#).

[18] HHS's Office of Civil Rights is maintaining a website with more information on this topic [here](#).

[19] You can find CMS' list of approved telemedicine services [here](#).

[20]