

Coronavirus Update – New FAQs and Toolkits for Telehealth, Telemedicine & Medicare Provider Enrollment

(March 27, 2020): Liles Parker published an article covering CMS' blanket waiver of certain telehealth requirements on March 16, 2020, with an updated version posted March 17, 2020.^[1] This article covers developments since March 17, 2020 related to CMS telehealth requirements and provider enrollment activities in response to the COVID-19 public health emergency, as well as the Drug Enforcement Administration's recent waiver permitting practitioners to prescribe controlled substances via telemedicine.

We recommend providers carefully review the CMS and DEA guidance specific for each service or activity for complete details or contact a Liles Parker attorney for more information.

I. Medicare Telehealth Waiver:

On March 17, 2020, CMS 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.^[2] Since then, the agency has published toolkits for general and ESRD providers that answer a number of key questions.^[3]

The initial announcement regarding the blanket waiver published March 17, 2020 included the following key takeaways:

- ***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 all areas of the country in all settings.***
- ***During this period, 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.^[4]***

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 telehealth and is on CMS' list of approved telehealth services^[5] 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.

II. Medicare Telehealth FAQs

CMS updated its COVID-19 FAQs after publishing the March 17, 2020 telehealth waiver notice.^[6] The FAQs answer several key questions we have received from clients in the last several days, including the following:

- ***Question: For purposes of the statutory requirement that a patient have a face-to-face encounter with a physician or an allowed non-physician practitioner in order to qualify for Medicare home health care, can this encounter occur via telehealth during a pandemic outbreak of an infectious disease?***

Answer: The face-to-face encounter, as described at 1814(a)(2)(C) and 1835(a)(2)(A) of the Social Security Act, can be performed via telehealth in accordance with the requirements under 1834(m)(4)(C) of the Social Security Act. Under the expansion of telehealth under the 1135 waiver, beneficiaries are able to use telehealth technologies with their doctors and practitioners from home (or other originating site) for the face-to-face encounter to qualify for Medicare home health care.

- ***Question: Can the distant site practitioner furnish Medicare telehealth services from their home? Or do they have to be in a medical facility?***

Answer: There are no payment restrictions on distant site practitioners furnishing Medicare telehealth services from their home. Individual providers may use their MAC hotline number to verbally update their practice location over the phone and would be effective immediately so practitioners could continue providing care without a disruption.

Liles Parker recommends that if a distant site practitioner intends to provide telehealth services and does not have their home listed on the enrollment file as a practice location, he or she should call their Medicare Administrative Contractor (MAC) to add it. Please also see the additional information

below on CMS provider enrollment waivers.

We note that CMS' telehealth waiver does not relax or remove incident to supervision requirements. We recently reviewed whether a distant site practitioner (for example, a clinical psychologist), and someone under their supervision who is not enrolled in the Medicare program (for example, a licensed counselor), could collaborate via telemedicine to care for a Medicare patient. The scenario would involve the licensed counselor providing individual therapy services via telemedicine technology. The patient would be an established patient with a plan of care established by the clinical psychologist. The psychologist and licensed counselor would not be in the same location. As of the publication of this update, CMS has not relaxed or waived the supervision requirements for incident to services; therefore, this telehealth service would not be covered unless the supervising psychologist and licensed counselor are in the same location. We will continue to monitor CMS' FAQs and other guidance for any changes.

III. State Medical Board Telehealth and Other Waivers:

We 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 and the State in which you wish to provide telehealth services. The Federation of State Medical Boards (FSMB) is maintaining a list of state actions that include waivers of licensure requirements, license renewal requirements, and other state medical board actions in response to the COVID-19 public health emergency.^[7] Many of these waivers address physicians from out-of-state rendering telehealth and/or telemedicine services in states where they are not licensed. Keep in mind that a physician must meet the licensing requirements both in the state where he or she is licensed and in the state where the patient being seen via telemedicine is located.

Liles Parker has advised numerous clients with regard to telemedicine services and is ready to assist you in understanding both Medicare and relevant state law during this unprecedented public health emergency.

IV. DEA Waiver to Regarding Controlled Substance Prescribing via Telemedicine

DEA is doing its part to support enhanced telemedicine services during the COVID-19 public health emergency as well. In a recently posted FAQ,^[8] DEA informed the healthcare community that while a prescription for a controlled substance issued by means of the Internet (including telemedicine) must generally be predicated on an in-person medical evaluation (21 U.S.C. 829(e)), the Controlled Substances Act contains certain exceptions to this requirement. One such exception occurs when the Secretary of Health and Human Services has declared a public health emergency, as Secretary Azar did on January 31, 2020.

On March 16, 2020, the Secretary of HHS, with the concurrence of the Acting DEA Administrator,

designated that the telemedicine allowance under section 802(54)(D) applies to all schedule II-V controlled substances in all areas of the United States. Accordingly, as of March 16, 2020, and continuing for as long as the Secretary's designation of a public health emergency remains in effect, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:

- ***The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;***
- ***The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and***
- ***The practitioner is acting in accordance with applicable Federal and State laws.***

Provided the practitioner satisfies the above requirements, the practitioner may issue the prescription using any of the methods of prescribing currently permitted, including electronically (for schedules II-V) or by calling in an emergency schedule II prescription to the pharmacy, or by calling in a schedule III-V prescription to the pharmacy.

DEA clarified that the term "practitioner" includes a physician, dentist, veterinarian, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he or she practices, to prescribe controlled substances in the course of his/her professional practice.

V. Additional Details on Medicare Provider Enrollment Waivers:

CMS issued a blanket waiver related to provider enrollment requirements^[9] on March 13, 2020. That waiver included the following, as further explained the new FAQs published by CMS as of March 22, 2020:^[10]

- **For Physicians and Non-Physician Practitioners:**
 - ***Establishes toll-free hotlines for non-certified Part B suppliers, physicians and nonphysician practitioners to enroll and receive temporary Medicare billing privileges***
 - ***Waives the following screening requirements:***
 - ***Application Fee - 42 C.F.R § 424.514***
 - ***Criminal background checks associated with fingerprint-based criminal background checks - 42 C.F.R § 424.518***

- **Site visits - 42 C.F.R § 424.517**
- **Postpones all revalidation actions**
- **For All other providers and suppliers (including DMEPOS):**
 - **Expedites any pending or new applications from providers**
 - **All clean web applications will be processed within 7 business days and all clean paper applications in 14 business days.**
 - **Waives the following screening requirements for all applications received after March 1, 2020:**
 - **Application Fee - 42 C.F.R § 424.514**
 - **Criminal background checks associated with fingerprint-based criminal background checks - 42 C.F.R § 424.518**
 - **Site visits - 42 C.F.R § 424.517**
 - **Postpones all revalidation actions;**

CMS' new FAQs include a list of the toll-free hotline numbers for each Medicare Administrative Contractor where physicians and non-physician practitioners[\[11\]](#) can call to receive immediate, temporary billing privileges in a jurisdiction where they are not already enrolled, or to add new practice locations to an existing enrollment. Callers should be prepared to provide the Legal Name of the enrolling practitioner, National Provider Identifier (NPI), Social Security Number, a valid in-state or out-of-state license, address information and contact information (telephone number). If basic screening criteria are met, the MAC will advise the physician or non-physician practitioner during the call that provisional billing privileges have been granted and will follow-up with a letter. If you need a retroactive effective date, the MACs may backdate your provisional enrollment as far as March 1, 2020. Individuals who receive these provisional privileges will be asked to file initial enrollment applications after the public health emergency declaration is lifted.

Note that for physicians enrolling in a MAC jurisdiction where they are not currently licensed, CMS is permitting this under its waiver authority so long as the following conditions are met:

1. The physician or non-physician practitioner must be enrolled as such in the Medicare program.
2. The physician or non-physician practitioner must possess a valid license to practice in the State which relates to his or her Medicare enrollment.
3. The physician or non-physician practitioner is furnishing services – whether in person or via telehealth – in a State in which the emergency is occurring in order to contribute to relief efforts in his or her professional capacity.
4. The physician or non-physician practitioner is not affirmatively excluded from practice in the State or any other State that is part of the 1135 emergency area.

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CMS' provider enrollment waiver does not supersede State or local licensing requirements. As we mentioned above, many States are waiving out-of-state licensing requirements or streamlining their process to get a temporary license. As stated above, we recommend that you check with your State licensing board to verify state requirements both in the state where the physician or non-physician practitioner is licensed and in the State where he or she wishes to render services either in-person, or via telehealth or telemedicine.[\[12\]](#)

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

V. Conclusion:

Liles Parker attorneys and staff are closely monitoring HHS, CMS and CDC guidance and will update 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.

[\[1\]](#) See the March 16, 2020 article (updated March 17, 2020) [here](#).

[\[2\]](#) 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](#).

[\[3\]](#) The CMS General Provider Telehealth and Telemedicine Tool Kit can be found [here](#). The ESRD Provider Telehealth and Telemedicine Tool Kit can be found [here](#).

[\[4\]](#) HHS's Office of Civil Rights is maintaining a website with more information on this topic [here](#).

[\[5\]](#) You can find CMS' list of approved telemedicine services [here](#).

[\[6\]](#) The updated FAQs from CMS last updated on March 23, 2020 can be accessed [here](#).

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[7] The FSMB list of state licensing board actions related to the COVID-19 public health emergency can be found [here](#).

[8] DEA's FAQ can be found [here](#).

[9] 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.

[10] The CMS 2019-Novel Coronavirus (COVID-19) Medicare Provider Enrollment Relief Frequently Asked Questions (FAQs) can be accessed [here](#).

[11] Other provider types will need to file an enrollment application via PECOS or a paper application with the appropriate Medicare Administrative Contractor; however, the MACs will be expediting processing of all applications as indicated in the FAQs.

[12] The Federation of State Medical Boards list of state licensing board actions related to the COVID-19 public health emergency can be found [here](#).