



# TELEHEALTH COVID-19 FOLLOW-UP BRIEFING

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# AGENDA

- CMS Reimbursement Updates and Areas of Confusion
- State Licensure and Other Telemedicine Considerations
- Anti-Kickback / Beneficiary Inducement Waiver
- DEA Remote Prescribing Update
- Privacy and Security Considerations

# CMS UPDATES – RECENT KEY TAKEAWAYS

- Originating site and geographic telehealth restrictions are removed for the time being.
- Medicare beneficiaries outside of rural areas and beneficiaries in their homes are eligible for telehealth services as of March 6, 2020.
- Qualified providers who are permitted to furnish Medicare telehealth services during the Public Health Emergency include:
  - Physicians
  - Nurse practitioners
  - Physician assistants
  - Certified nurse midwives
  - Certified nurse anesthetists
  - Certified clinical social workers
  - Clinical psychologists
  - Registered dietitians and nutritionists

# CMS UPDATES - KEY TAKEAWAYS

- Modality: Telehealth services may be provided via telephone with audio-video capability.
- Relationship Requirement: CMS will not enforce an established relationship requirement:  
*“To the extent the waiver (section 1135(g)(3)) requires that the patient have a prior established relationship with a particular practitioner, HHS will not conduct audits to ensure that such a prior relationship existed for claims submitted during this public health emergency.”*

# CMS UPDATES - KEY TAKEAWAYS

- Covered Services: Telehealth services are not limited to patients with COVID-19. The statutory provision broadens telehealth flexibility without regard to the diagnosis of the patient.
- Billing Guidance: Telehealth service continue to be billed under the current CPT/HCPCS code – CMS is not requiring additional or different modifiers associated with telehealth services furnished under these waivers.
- Reimbursement Rates: Medicare covered telehealth services continue to be reimbursed as if in-person, which is at the facility rate not the non-facility rate where there is a differential.
- End Date: The telehealth waiver will be effective until the Public Health Emergency declared by the Secretary of HHS ends.

# CMS UPDATE- AREAS OF CONFUSION

- Telehealth waivers do not waive Medicare enrollment requirements
  - Location of practitioner at the time of the service must be an enrolled
    - This includes practitioner home address if working from home
  - MACs have established toll-free hotlines for emergency enrollment
- Telehealth waivers do not permit RHCs or FQHCs to serve as telehealth distant sites
  - Practitioners furnishing services in RHCs and FQHCs cannot bill Medicare
- Requirement to provide notice of use of waiver to CMS and MAC is unclear
  - Provider should maintain documentation to support use of waiver

# STATE LICENSURE: THE STATE OF AFFAIRS, GENERALLY

Approach	Note
“Broad” Waivers in Place	Delaware, Florida, Idaho, Indiana, Mississippi, Nebraska, New York, North Dakota, Oregon
Limited Waivers / Licenses in Place	California (license - sponsor requirement), District of Columbia (waiver - existing patient; DC facility), Maine (license - site specific), Maryland (license - site specific), Michigan (waiver - cannot prescribe controlled substances), Texas (license – must be associated with hospital or have a Texas practitioner sponsor)
Expedited / Special Licensing	Alaska, Alabama (considering), Arizona (action this week, possibly), California, Colorado (considering), Georgia, Kentucky, Louisiana, Massachusetts, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont (considering), Virginia, Washington
Emergency Responder / Gratuitous Service Limitation / Other Limitation	Hawaii, Minnesota, New Hampshire, Ohio (if the need arises)
No Meaningful Action to Specifically Accommodate	Arkansas, Connecticut, Illinois, Iowa, Kansas, Missouri, Montana, Nevada, South Dakota, Utah, West Virginia, Wisconsin, Wyoming

# OTHER TELEMEDICINE CONSIDERATIONS

## Reimbursement

- Relaxation of Medicaid reimbursement requirements for telemedicine
- Coverage and payment mandates for commercial

## Modifications to Telemedicine Requirements

- Expanded modalities
- Expansion of provider-types specifically permitted
- Waiver of certain operating requirements

## Malpractice

- Existing coverage
- Impact of waivers, enforcement discretion, special licenses on coverage

# STATE LICENSURE: THE STATE OF AFFAIRS, GENERALLY

- Expect more guidance
  - States are still reacting to events
  - Situation is fluid
- “Also, with regard to medical personnel, at the President’s direction, HHS is issuing a regulation today that will allow all doctors and medical professionals to practice across state lines to meet the needs of hospitals that may arise in adjoining areas.” - Vice President Pence, March 18, 2020
  - No regulation seems to have been issued
  - What does it mean?

# ANTI-KICKBACK / BENEFICIARY INDUCEMENT OIG WAIVER

- OIG announced that it will not subject physicians and other practitioners to OIG administrative sanctions during the COVID-19 emergency declaration where a physician or other practitioner reduces or waives cost-sharing obligations (i.e., coinsurance and deductibles) that a beneficiary may owe for telehealth services furnished consistent with the then-applicable coverage and payment rules
- We are expecting guidance that clarifies the waiver is applicable to all telehealth services and not only Medicare-covered “telehealth” codes

# DEA UPDATE ON REMOTE PRESCRIBING AND RYAN HEIGHT ACT OF 2008

- The DEA has released guidance allowing DEA-registered practitioners to issue prescriptions for controlled substances without an in-person medical evaluation for the duration of the public health emergency.
- The following conditions must be met:
  - The prescription must be issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.
  - The telemedicine communication must be conducted using an audio-visual, real-time, two-way interactive communication system.
  - The practitioner must be acting in accordance with applicable Federal and State law.

# DELIVERY OF NOTICE OF PRIVACY PRACTICES

- **HIPAA requirement: provide notice upon first service delivery**
- Requirement waived for hospitals under Section 1135, ***but only for 72 hours following the hospital's activation of its disaster plan***
- Electronic delivery by e-mail permissible:
  - Individual must agree to electronic notice
  - If e-mail transmission fails, provider must provide paper notice.
  - If first service delivery is a telehealth visit, must provide electronic notice automatically and contemporaneously
- Individuals who receive notice electronically retain the right to request a paper notice

# OCR ENFORCEMENT DISCRETION

- Announced on March 17, 2020
- Permits Covered Entity health care providers to use “audio or video communication technologies” that are **not** compliant with HIPAA as long as the technology:
  - Is used by health care provider in good faith for provision of telehealth
  - Is “non-public facing” (e.g., the telehealth service would not be broadcast publicly via social media)
- Applies to telehealth visits with *all* patients – not just COVID-19 patients

# OCR CLARIFYING FAQs

- Issued on March 20, 2020
- Clarified that “audio or video communication technologies” includes text messaging
- Health care providers will not be subject to penalties for violations of HIPAA for:
  - Lack of Business Associate Agreement
  - Non-Compliance with HIPAA Security Rule Requirements
- Enforcement discretion will last until HHS announces expiration
- **Does not expand or limit guidance on reimbursement requirements**

# TELEHEALTH SECURITY CONSIDERATIONS

- Despite enforcement discretion, important to consider when deploying telehealth solutions:
  - Access controls/password complexity
  - Storage of telehealth visit information/video/audio
  - Security of connection and transmission
  - Security of surrounding physical area

# CORONAVIRUS RESOURCE CENTER

[mwe.com/coronavirus](https://mwe.com/coronavirus)

In our global economy, Coronavirus (COVID-19) raises serious concerns for healthcare providers and employers in all industries. Workers who are on the front lines caring for patients and developing diagnostics and vaccines, travelling for business, or in close contact with individuals who travel or may have been affected. Preparedness and prevention are crucial.

McDermott's Coronavirus Resource Center, brought to you by a multi-disciplinary team, will keep you informed of the latest developments and provide comprehensive insight to help you navigate this crisis.

- [Subscribe to Updates](#)
- [Request a Meeting](#)

## Upcoming Webinars:

- Digital Health and COVID-19: Roadmap for Meaningful Implementation
  - March 24, 2020 from 12:30 – 1:30pm EDT [Register here](#)

# CONTACT INFORMATION



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# THANK YOU / QUESTIONS?

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