

Working through an 1135 Waiver - The Impact on Hospice & Palliative Care

Hospice Fundamentals

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Special Subscriber Webinar



GLAD
YOU'RE
HERE!

HOSPICE FUNDAMENTALS

"We are committed to stripping away any red tape that gets in the way of states or providers effectively managing this

public health emergency).
CMS Administrator Seema Verma



Agenda

- What do we know now?
 - Rule changes, CMS guidance, flexibilities published by CMS, OCR and CDC- Annette Lee
 - What are we unsure of?
 - The “real-life” scenarios not specifically addressed by CMS and how to handle- Barbara Ivanko
 - What does this mean for physician visit billing for hospice and palliative care?
 - Chris Acevedo

Tale of Two Months

- January 31st- HHS declares a Public Health Emergency
- February 6th, CMS issues first guidance for all healthcare providers on emergency preparedness and infection control <https://www.cms.gov/files/document/qso-20-09-all.pdf>
- This started the orchestra of government agencies' work
 - OCR released guidance on flexibilities and mandates share COVID patient information for public health purposes
 - CDC updates daily www.cdc.gov

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CMS Directs Hospice 3/9/20

- CMS issues first memo specifically to hospice agencies
- <https://www.cms.gov/files/document/qso-20-16-hospice.pdf>
 - Directs need to assess emergency plan
 - Directs need to screen staff and volunteers
 - Directs need to screen patients
 - Discusses PPE

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National Emergency Declared 3/13/20

- CMS issued its first COVID guidance to state surveyors on infection control in facilities and restriction of visitors
 - HOSPICE noted in guidance as **exempt** from this restriction
 - <https://www.cms.gov/files/document/3-13-2020-nursing-home-guidance-covid-19.pdf>
- Under a national emergency, CMS has authority to provide additional guidance, and additional **flexibilities** under the “1135 waivers”

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1135 Waivers- 3/13/20

- HOSPICE was absent in the blanket waivers
 - These are applicable to all. Examples include:
 - Expansion of telehealth to facilitate a visit between a patient and physician, and not be put at risk by going to a physician's clinic during an emergency
 - Triage of survey activities to focus on immediate jeopardy and infection control
 - <https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fact-sheet.pdf>
 - States, associations or organizations may also request in writing a waiver for other specific “asks”
 - See your state’s waivers (13 as of 3/26) at: <https://www.cms.gov/About-CMS/Agency-Information/EPRO/Current-Emergencies/Current-Emergencies-page>



HIPAA Flexibilities 3/17/20

- Regarding telehealth visits the OCR published guidance relaxing strict guidelines re: security (**emphasis added**)
 - “Effective immediately, the Office of Civil Rights (OCR) will exercise its enforcement discretion and **will not** impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers **in connection with the good faith provision of telehealth** during the COVID-19 nationwide public health emergency”
 - A covered health care provider can use any nonpublic facing remote communication product that is available to communicate with patients
 - Applications **allowed**: Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype However, public facing communication should not be used in the provision of telehealth.
 - Applications **not allowed**: Facebook Live, Twitch, TikTok, and similar video communication applications that allow public interfacing



Shared Decision Making Tool 3/19/20

- In attempt to ensure fully informed decisions were made by hospice patients with COVID-19, NHPCO provided a tool to assist with this conversation for all hospices
 - <https://www.nhpco.org/wp-content/uploads/COVID-19-Shared-Decision-Making-Tool.pdf>
 - FEMA now involved with support for PPE distribution
 - Find your state office: <https://www.fema.gov/emergency-management-agencies>



What is my, or my loved ones, likelihood of surviving COVID-19?

The most important predictors of survival are age and pre-existing conditions.

AGE	DEATH RATE Confirmed Cases	DEATH RATE All Cases
80+ years old	21.9%	14.8%
70-79 years old	8.0%	
60-69 years old	3.6%	

PRE-EXISTING CONDITIONS*

PRE-EXISTING CONDITION	DEATH RATE Confirmed Cases	DEATH RATE All Cases
Heart disease	19.2%	10.3%
Diabetes	9.2%	7.3%
Chronic lung disease	9.0%	4.3%
High Blood Pressure	8.4%	6.0%
Cancer	7.0%	5.4%
no pre-existing conditions	3.9%	2.9%

Relief for Hospice Quality Reporting 3/23/20

- CMS announced relief from quality reporting timeframes
- Extension for quality reporting of HIS and CAHPS
- No penalty for delayed submissions during emergency
 - HIS exception through June 30th, 2020
 - Hospice CAHPS exception through September 30th, 2020
- <https://www.cms.gov/newsroom/press-releases/cms-announces-relief-clinicians-providers-hospitals-and-facilities-participating-quality-reporting>

CARES Act 3/27/2020 ??

- Coronavirus Aid Relief and Economic Security Act
 - <https://www.congress.gov/116/crec/2020/03/25/CREC-2020-03-25-pt1-PgS2063-3.pdf>
- Two Trillion dollars relief package, passed by Senate- and to House (and President) today
- Two major provisions for hospice

Hospice Provisions

- 1. The draft legislation allows face-to-face encounters for recertification for hospice care to be completed by NP or physician using telehealth **during the emergency period**
 - 2. The draft legislation also includes the temporary suspension of the 2 percent sequestration cut to hospice, beginning on May 1, 2020 and ending on December 31, 2020

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Ethics

1. **Beneficence** tells you about 'doing good' for your patients
 2. **Nonmaleficence** tells you to 'do no harm' either intentionally or unintentionally to your patients

Hint, Hint....

*CMS has communicated that:

- Flexibilities are already included in the COPs
 - The hospice COPs don't specify how or how often a visit must be made
 - Hospices are required to provide services that meet the needs of the patient based on the plan of care that is person-centered and individualized
 - Hospices must address issues on a case by case basis and document how the hospice is meeting the goals of care safely

* NHPCO 3/25/2020



Not enough nurses

- Your hospice is located in an area with a very high number of Covid-19 cases. 4 out of your 10 nurses have tested positive, but most are asymptomatic. How do you meet each patient and family's needs?
 - Or you have no more protective equipment left for the hospice staff



Options

- Have the infected nurses do telehealth visits on all patients, and deploy the healthy nurses to any patients with in-person care needs
 - Contract for nurses
 - Increase non-nursing visits within their scope of practice if there is a clinical need
 - Increase physician tele-visits to help families feel more assured
 - Adjust frequencies and document the reasons for variance from the regulations



Document! Document! Document!

- Necessary variance from regulations and your policy and procedure must be well-reasoned and systematically executed.
 - If visit frequencies are reduced because of the pandemic, change those frequencies in the plan of care.
 - If the plan of care changes in practice, change it in the medical record as well.

ANSWER

Documentation

- Telehealth visit for this patient to protect patient and caregivers from illness, due to global pandemic, national state of emergency, and shortage of uninfected nurses. I spoke with this patient and his wife via HIPAA compliant telehealth platform xxx. Inspection of wound and information from family shows that there has been a decrease in redness on the heels, pain maintained at 2/10 with current regimen.....no in-person visit required at this time, will check in via telehealth in 48 hours, family has instructions for crisis contact 24/7.

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Documentation

- Telehealth visit for this patient to protect patient and caregivers from illness, due to global pandemic, national state of emergency, and shortage of uninfected nurses. I spoke with this patient and his wife via Facetime since family has no computer. Patient is no longer responsive, grimacing evident via video feed. Patient unable to swallow pain medicine. Dispatched RN, Selma Jenkins, scheduled to arrive at the home at 2pm to instruct in sublingual administration of XXXXXX.

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IDT Seems Risky....

The Hospice Regulations do not say that the IDT must meet in person!

418.56(d)

The hospice IDT must review, revise and document the individualized plan as frequently as the patient's condition requires, but no less than every 15 days



Options

- Tele-meeting conducted in the usual format
 - Each member of the team makes their revisions to the plan of care independently, in collaborating with key members. The entire revised plan is reviewed in a brief conference call, after which members sign off on the changes
 - Mini-team meetings on each patient with the core team members involved—tele, e mail or in person



Unable to reach healthcare proxy...

- That out of town healthcare proxy is sheltering at home without a fax machine or e mail. Kinkos is closed. You need a consent, an election statement and other forms signed.



Options

- Check the living will for a back-up or follow the state hierarchy to find a more local person
 - If they have e mail, send them the form in word format, have them type their name in, and e mail it back to you with a message that the typed name serves as their signature in this time of emergency. Save the e mail.
 - If no computer, record a conversation in which the proxy gives approval for each form verbally



The ALF/Family won't let anyone in.....

- Fears of contamination and misinformation have caused the owner of an ALF to ban all hospice employees from their facility. You have no access to the patient.



Options

- Listen to and validate the fears, and provide facts that support the importance of visits, and safety precautions you can work with to help them feel more safe
 - While helping them understand the importance of visits, continue to work with the family by telephone and telehealth, send supplies, medication and so on
 - Document barriers to accessing the patient and steps to resolve them



Sample Language

- Due to the Covid-19 pandemic and fragile condition of patient, this visit was conducted telephonically to reduce risk of infection for the patient and caregivers...add your visit note
 - In an effort to contain the spread of the covid 19 virus, the owners of this ALF are refusing access to the patient. I have had discussions with them to educate them on precautions we are taking and the necessity of nursing visits. Currently coordinating care via telephone and video conferencing with the patient and the RN at the facility. Maintaining supply, medication and DME delivery...add your visit note

Sample Language

- This face-to-face encounter was completed without the benefit of an in-person visit due to the deployment of the nurse practitioner with the Army Reserves to manage the pandemic... Add information here on the evidence that supports recertification, and the source
 - Healthcare proxy is hospitalized with Covid-19. Per the State of Ohio healthcare proxy statute, we have obtained election of hospice benefit and consents from the patient's daughter via verbal e mail consent after sending and explaining the forms...document the whole process; copies of e mails, description of process etc.

The Pandemic is Not:

- A regulatory vacation
 - A waiver of excellent, individualized care
 - An opportunity to bend a lot of rules because scrutiny is relaxed
 - A pathway to less expensive operations because you can use fewer resources when regs are loosened

Waivers

When faced with a regulation with which the hospice cannot reasonably and safely comply, hospices must inform CMS about which requirements they wish to waive under the 1135 waiver. Hospices are encouraged to share examples with CMS by emailing a summary to 1135waiver@cms.hhs.gov.

The email should include:

- Provider Name
 - Full Address and Medicare provider number
 - Contact person and contact information for follow-up questions
 - Brief summary of why the waiver is needed;

Waiting for individual approvals case by case may not be feasible or humane



How does this affect our physician billing, FTF, etc.?



Palliative Care



Palliative Care- Medically Necessary Billable Visits

- Part B Visits **can** be billed using telehealth*
 - Place of service code -02 needs to be used on the 1500 claims form
 - Use the Office/Other Outpatient CPT Codes
 - 99201-99205 (New Pt)
 - 99211-99215 (Est Pt)
 - These codes set crosswalk well with the Home visit codes when using complexity based billing

**Effective immediately, the HHS Office for Civil Rights (OCR) 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."

For more information: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html>



Palliative Care- Medically Necessary Billable Visits

- For either new or established patient E/M visits
 - The only exam components that can be rendered (counted) are those that don't take physical touch.
 - The clinician **cannot** auscultate the lungs or palpate a liver/spleen
 - (S)he **can** do an exam based on observational findings, e.g., scleral icterus, oral thrush, the appearance of distress, mood/affect and/or orientation.
 - If you are not able to conduct a physical exam at all, then you cannot bill a new patient E&M visit code unless you qualify to use time (> 50% of the time in C/CC).**
 - For established patients you only need 2 out of the three E&M components (history, exam or MDM). You **can** take a patient's history via video conference, as these are subjective question and answers. In these cases your providers can use the history and medical decision making to substantiate the code(s). **So the level of service depends on the documentation, just like a normal visit.**



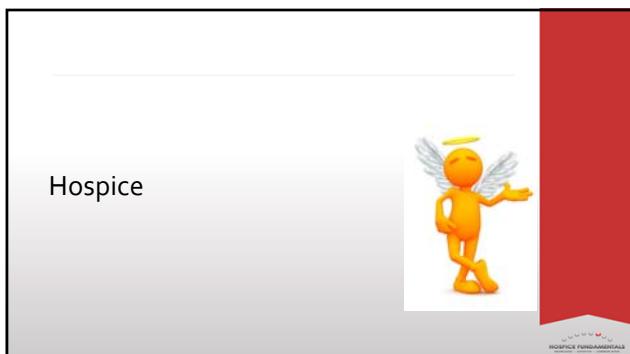
Palliative Care- Medically Necessary Billable Visits (con't)

- Part B Visits **can** be billed using telehealth*
 - Advanced Care Planning Codes are telehealth approved
 - Prolonged Service Codes Codes are telehealth approved

**Effective immediately, the HHS Office for Civil Rights (OCR) 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."

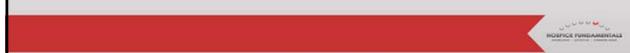
For more information: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html>





FTF – Cert/ReCert Visits

- We should know today!
 - Draft legislation allows face-to-face encounters for recertification for hospice care to be completed by NP or physician using telehealth during the emergency period
 - What about FTF already complete?
 - Documentation is key
 - Reference the emergency/barrier to complete in-person



Hospice - Medically Necessary Billable Visits

- Up for debate
 - How is the telehealth service disclosed to Medicare?
 - No place of service UB04 line item
- CMS has been very accommodating in breaking down barriers to access during the emergency, but has NOT provided guidance in this regard.
- All guidance to date on billable telehealth visits have come in a Part B context – albeit they have also not said these can't be done...

Billable Visits

From: Jean Acevedo <jacevedo@acevedoconsulting.com>
Sent: Friday, March 20, 2020 11:41 AM
To: CMS 1135Waiver <1135Waiver@cms.hhs.gov>
Cc: Jean Acevedo <jacevedo@acevedoconsulting.com>
Subject: Hospice physician visits

First, thank you for today's industry call and a special thank you to Mr. Bennett for his thoughtful answers to callers' questions.

I understand the statutory challenge that prevents CMS from easily allowing the hospice face-to-face visit to be performed via telehealth. I am curious if there is any guidance on how to bill a hospice physician/nurse practitioner visit, if that visit can be provided via telehealth. Physician professional services provided by a hospice physician or nurse practitioner functioning as the hospice attending are billed in addition to the per diem on a hospice claim pursuant to Part B fee schedule rules. So, in conjunction with the 1135 waiver, can a hospice physician/nurse practitioner provide medically necessary visit via telehealth? If so, since many of these visits take place in the patient's home, what CPT® Evaluation and Management code would be reported – office/other outpatient visits (99201-99215)? I ask this latter question as the home care visit codes are not on the 2020 list of approved telehealth codes...

Billable Visits

From: CMS OPOLE IFM ATL Inquiries <OPOLE_IFM_ATL_Ing@cms.hhs.gov>
Sent: Wednesday, March 25, 2020 1:09 PM
To: Jean Acevedo <jacevedo@acevedoconsulting.com>
Subject: FW: Hospice physician visits

Thank you for your correspondence.

Your inquiry has been assigned to a Medicare analyst from our Innovation & Financial Management Group (IFM) for processing. Your reference number is 575923.

Best regards,
Ann Marie Bouffard
CMS Analyst
Office of Program Operations and Local Engagement (OPOLE)
Philadelphia and Atlanta Innovation & Financial Management Group (IFM)
Atlanta Division of Innovation and Operations



We will share the answer in realtime!



Actions of the Prudent Hospice

- Do what is best for your patients and families
 - Stay current daily at CDC, NHCPO and state health department websites
 - Identify barriers to care, and figure out ways to deliver good care without putting anyone at risk
 - Document those new systems, and e mail 1135waiver@cms.hhs.gov, with summaries
 - Save official documents that you are referring to for direction
 - Document variances from regulation in each note
 - Ensure providers and appropriate billing staff are aware of the office visit guidelines for telehealth rendered medically necessary visits



Resources

- CDC: <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
 - CMS: <https://www.cms.gov/newsroom/press-releases/cms-issues-clear-actionable-guidance-providers-about-covid-19-virus>
 - NHPCO, for everyone: nhpco.org/coronavirus
 - 1135 Waiver-at-a-Glance:
<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/1135-Waivers-At-A-Glance.pdf>



Questions????

To Contact Us
