

TELEHEALTH POLICIES IN RESPONSE TO THE COVID-19 OUTBREAK

INTRODUCTION

Since the beginning of the COVID-19 outbreak, Congress and the Trump administration have issued a number of policies and waivers designed to lower restrictions on and encourage telehealth services. These policies address opioid treatment services, doctor visits, Health Insurance Portability and Accountability Act (HIPAA) regulations, Medicare conditions for telehealth services, and more. Under each heading below, policies are arranged in order of announcement. Additionally, a list of actions by states is available [here](#).

CONGRESS

- **Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 (link, TRP Note)** — Authorizes the HHS Secretary to waive telehealth restrictions in the Medicare program during the COVID-19 outbreak. Medicare providers may furnish telehealth services to beneficiaries regardless of geography for the duration of the outbreak. *Signed into law March 6, 2020*
- **Families First Coronavirus Response Act (link, TRP Note)** — Makes a technical correction the Coronavirus Preparedness and Response Supplemental Appropriations Act to clarify that, for the purposes of establishing a relationship with a provider to waive current prohibitions surrounding the furnishing of telehealth services in the Medicare program, during the current public health emergency, furnishing a service allowable under the Medicare program, even if the program did not pay for such service, is a qualifying relationship. *Signed into law March 18, 2020*
- **Coronavirus Aid, Relief, and Economic Security Act (link, TRP Note)** — Reauthorizes and provides \$180 million for HRSA rural health and telehealth initiatives, including funding for HRSA telehealth resource centers grant programs. It also provides \$200 million for the Federal Communications Commission's Connected Care Pilot Program, which supports providers rendering care through telehealth. The bill further relaxes Medicare telehealth requirements, removing any need for a telehealth provider to have seen the patient in the past three years. It also allows federally qualified health centers (FQHC) and rural health centers (RHC) to furnish telehealth to Medicare beneficiaries in their home and allow for many check-ups to be done via telehealth.

HHS

- **Suspension of Licensing Requirements** — Vice President Pence announced that HHS would promulgate a regulation allowing physicians to practice across state lines without additional licensing. It is unclear under what authority the federal government may authorize such a change. No regulation is available yet. *Announced March 18, 2020*

CMS

- **Medicare Advantage and Part D Guidance ([link](#))** — CMS announced that it would permit MA plans to waive cost-sharing for telehealth services. It also announced that MA plans could expand the scope of services that they currently offer via telehealth. *Published March 10, 2020*
- **Waiver or Modification of Requirements Under Section 1135 of the Social Security Act ([link](#))** — Secretary Azar waived requirements for physicians or other health care professionals to hold licenses in the state in which they provide services with respect to Medicare and Medicaid services for the duration of the public health emergency. This does not pre-empt state-specific requirements. Medicaid programs may request 1135 waivers but do not get blanket waivers. *Signed March 13, 2020*
- **1135 Waiver Authority and New Congressional Authority ([fact sheet](#))** — CMS implemented the telehealth provisions of the Coronavirus Preparedness and Response Supplemental Appropriations Act and expanded telehealth with an 1135 waiver. Under the waiver, Medicare can pay for office, hospital, and other visits furnished via telehealth regardless of geography. Providers may reduce or waive cost-sharing for telehealth visits paid by federal health care programs. Visits provided by telehealth are considered office visits and are reimbursed at the same rate as regular, in-person visits. First visits may be provided through telehealth for the duration of the public health emergency. CMS emphasizes that no federal approval is needed for state Medicaid programs to reimburse providers for telehealth services in the same manner or at the same rate that states pay for face-to-face services. *Published March 17, 2020, but effective March 6, 2020*
- **FAQ for Medicaid and CHIP State Agencies ([link](#))** — CMS notes that federal financial participation (FFP) is available for “telephonic services” provided by FQHCs and RHCs, subject to limitations of the state plan. In addition, FQHC and RHC services may be provided offsite, also subject to limitations of the state plan. CMS also encourages states to adopt the same telehealth flexibilities they offer in fee-for-service in their managed care contracts and clarifies that states may retroactively adjust capitation rates based on such a change. *Published March 18, 2020*
- **Telehealth Toolkits for General Providers and ESRD Providers ([General](#), [ESRD](#))** — CMS released a pair of telehealth toolkits to assist general practitioners and those working with patients with end-stage renal disease. These toolkits do not contain new policy but do provide

a list of resources for providers to use. It also reiterates CMS' intention to not enforce policy on the use of consumer video conferencing technologies for telehealth services for the duration of the crisis and provides information about other CMS telehealth policies to providers that may use such flexibilities. *Published March 20, 2020*

- **Interim Final Rule: Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency ([link](#), [TRP Summary](#))** — CMS identified over 80 additional services that may be provided via telehealth, including nursing facility initial and discharge visits, home visits, and evaluation services. A complete list of newly payable telehealth services can be found in the IFR. Additionally, CMS is temporarily eliminating frequency limitations and other requirements associated with particular services furnished via telehealth and clarifying several payment rules that apply to other services that are furnished using telecommunications technologies that can reduce exposure risks. Providers will be allowed to evaluate beneficiaries who have audio phones only, and CMS is allowing telehealth to fulfill many face-to-face visit requirements for clinicians to see their patients in inpatient rehabilitation facilities, hospice and home health. During the pandemic, individuals can use commonly available interactive apps with audio and video capabilities (such as Skype or FaceTime) to visit with their clinician. Home Health Agencies will be able to provide more services to beneficiaries using telehealth, so long as it is part of the patient's plan of care and does not replace needed in-person visits as ordered on the plan of care. The rule also implements CARES Act provisions permitting federally qualified health centers (FQHC) and Rural Health Centers (RHC) \ to provide telehealth services to beneficiaries in their homes. Virtual Check-In services, or brief check-ins between a patient and their doctor by audio or video device, will be offered to patients that had an established relationship with their doctor and new patients. Clinicians can provide remote patient monitoring services for patients during the crisis, regardless of if it is for the COVID-19 disease or a chronic condition. *Published March 30, 2020*
- **Guidance on Medicaid Telehealth access for substance abuse disorders ([link](#))** – CMS guidance identifies opportunities for telehealth delivery methods to increase access to Medicaid services and federal reimbursement for services and treatment for substance use disorders under Medicaid using services delivered via telehealth, including in school-based health centers. The guidance provides state Medicaid agencies and other interested stakeholders information about options to facilitate access to services through the use of telehealth delivery methods as specifically outlined in 1009(b) of the SUPPORT Act, but these telehealth delivery methods could also be used in other circumstances, for example, to help respond to the COVID-19 public health emergency, as applicable. *Published April 2, 2020*

DEA

- **Guidance on State Reciprocity ([link](#))** — DEA released a guidance stating that DEA-registered practitioners are not required to obtain additional DEA registrations for additional states where they prescribe for the duration of the public health emergency. DEA-registered

practitioners therefore can prescribe in any state if they are registered with DEA in at least one state and have permission *under state law* to prescribe controlled substances in the state where dispensing occurs. This applies to the prescription of controlled substances via telemedicine. *Published March 25, 2020*

FCC

- **COVID-19 Telehealth Program ([press release](#), [Report and Order](#))** — In accordance with the CARES Act, FCC announced a plan for a \$200 million fund appropriated by the Act to bolster telehealth services. The program will assist eligible health care providers in purchasing telecommunications services, information services, and devices necessary to enable telehealth services.

FDA

- **Guidance on Devices for Remote Patient Monitoring ([link](#))** — FDA released guidance noting that it would not object to proposed limited modifications to the indications, claims, functionality, or hardware or software of FDA-cleared non-invasive remote monitoring devices that are used to support patient monitoring during the declared public health emergency. *Published March 20, 2020*

HRSA

- **FAQ Document ([link](#))** — HRSA notes that due to the public health emergency, health centers may provide in-scope telehealth services to patients that were not previously patients of the health center. HRSA encourages health centers to focus on individuals within their service areas. Health center providers may also generally provide telehealth services from a location that is not an in-scope service site of the health center. *Published March 19, 2020*

OCR

- **Notification of Enforcement Discretion ([link](#))** — OCR announced that it will exercise enforcement discretion and will not impose penalties for HIPAA noncompliance against covered health care providers in connection with the good-faith provision of telehealth services during the COVID-19 nationwide public health emergency. Covered health care providers may use consumer video chat applications such as FaceTime, Google Hangouts, or Skype for telehealth services. Public-facing applications such as Facebook Live, Twitch, and TikTok may not be used. *Published March 17, 2020*

SAMHSA

- **Telemedicine Prescribing of Controlled Substances ([SAMHSA site](#), [DEA site](#))** — With the Drug Enforcement Agency (DEA), SAMHSA released guidance that, following Secretary Azar's

declaration of a public health emergency, DEA-registered practitioners may prescribe controlled substances without an in-person medical evaluation. *Effective January 27, 2020*

- **Opioid Treatment Program (OTP) Guidance ([link](#))** — Provides that states with declared states of emergency may request blanket exemptions for all stable patients in an OTP to receive a 28-day supply of take-home doses. This is reduced to 14 days for less stable patients. For states without a declared state of emergency, individual OTPs may request blanket exemptions to provide 28-day supplies to stable patients and 14-day supplies to less stable patients. *Published March 16, 2020*
- **Part 2 Privacy Guidance ([link](#))** — Under an emergency exception to Part 2 privacy rules for individuals with a substance use disorder, due to the difficulty of obtaining written consent to release substance use disorders in the current environment, providers may disclose patient records in the event of a bona fide health emergency. Disclosures must be documented. *Published March 19, 2020*