

National Association for Behavioral Healthcare

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Recent Changes to Medicare Coverage of Telehealth, Waivers of EMTALA, and Flexibilities for Hospitals

I. CMS Interim Final Rule - effective March 31st, 2020.

The rule temporarily adds many additional services Medicare will cover when provided via telehealth.

- The full list of services provided via telehealth covered by Medicare is on the [CMS website](#) including the following:
 - Group Psychotherapy: CPT code 90853 (Group psychotherapy (other than of a multiple-family group)) (p. 33)
 - Codes for Psychological and Neuropsychological Testing (p. 34)
 - HCPCS codes to enable licensed clinical social workers and clinical psychologists (among other practitioners) to provide virtual check-ins and remote evaluations (p.54)
 - CMS also asked for “input on other kinds of practitioners who might be furnishing these kinds of services as part of the Medicare services they furnish in the context of the PHE for the COVID-19 pandemic.”
- The rule temporarily eliminates frequency limitations (p.12) and assigns payment rates for telehealth services as the same as if the service was furnished in person (p.15).
- The rule also temporarily removes frequency restrictions for codes addressing services provided via telehealth subsequent to inpatient visits. (p.43)
- CMS also clarifies that during the public health emergency, Medicare will cover telehealth evaluation and management services provided by additional professionals including licensed clinical social workers and clinical psychologists. (p. 56)
- During the public health emergency, CMS is waiving the limitation of telehealth services to established patients. (p. 56)
- The rule also allows physician supervision of care and diagnostic services by nonphysician professionals to take place via real-time interactive audio and video technology. (p.59)
- Similarly, supervision of residents providing psychiatric services can take place via interactive technology by the teaching physician during the public health emergency. (p. 108)
- The rule includes a section on requirements for Opioid Treatment Programs allowing the therapy and counseling portions of the weekly bundled payment in Medicare, as well as the add-on code for additional counseling or therapy, to be furnished using audio-only telephone calls. (p. 104)

- This rule includes a section on “Special Requirements for Psychiatric Hospitals (§ 482.61(d))” to allow “non physician practitioners” and “advanced practice providers” practicing in a psychiatric hospital to document progress notes of patients receiving services in psychiatric hospitals for whom they are responsible. (p. 114)
- The rule also allows Medicare coverage of evaluation and management services by telephone-only including new rates for these services and allowing other practitioners including LCSWs, clinical psychologists, and occupational therapists to bill for these services by phone. (p. 129)

II. **Updated guidance on EMTALA**

CMS issued revised guidance on EMTALA including the following (with new language underlined):

“Hospitals with capacity and the specialized capabilities needed for stabilizing treatment are required to accept appropriate transfers from hospitals without the necessary capabilities. However, the receiving hospital may refuse the transfer if they do not have the capacity to provide the necessary care and services.”

As well as the following (new language underlined):

“Hospitals and community officials may encourage the public to go to off-campus sites to be screened for COVID-19 instead of the hospital. Normally, a hospital may not tell individuals who have already entered an ED to go to the off-site location for the MSE— such a redirection usually only occurs to an on-campus alternative site.”

There is also information on individual hospital waivers of EMTALA on p. 10.

III. **CMS Guidance on Blanket 1135 Waivers Providing New Flexibilities for Hospitals**

(no request or notification of CMS regional offices is required, but in general actions still have to be consistent with state’s emergency preparedness or pandemic plan):

- Waiving certain provisions in the EMTALA to allow hospitals, psychiatric hospitals, and critical access hospitals (CAHs) to screen patients at a location offsite from the hospital’s campus to prevent the spread of COVID-19
- Additional flexibility regarding use of verbal orders
- In states impacted by a widespread outbreak according to the CDC, flexibility regarding medical records, visitation, and seclusion
- Waiving certain requirements regarding detailed discharge planning information
- Allowing physicians whose privileges will expire to continue practicing at the hospital and for new physicians to be able to practice before full medical staff/governing body review and approval
- Waiving certain medical record requirements

- Waiving requirements that hospitals and CAHs provide information about their advance directive policies to patients.
- Waiving Conditions of Participation to allow “during hospital, psychiatric hospital, and CAH surges . . . non-hospital buildings/space to be used for patient care and quarantine sites, provided that the location is approved by the state”
- Waiving certain rules to enable telemedicine services to be furnished to a hospital’s patients through an agreement with an off-site hospital to allow for increased access to care including specialty care.
- Waiving requirements that Medicare patients be under the care of a physician to allow hospitals to use other practitioners to the fullest extent possible.
- Waiving requirements for hospitals regarding utilization review plans and committees
- Waiving emergency preparedness policies and procedures and food/dietetic services requirements at surge sites
- Waiver of requirements that nursing staff develop and keep current a nursing care plan for each patient and requirements that hospitals have policies for which outpatient departments are not required to have a registered nurse present
- Waiving requirement that hospitals designate in writing the personnel qualified to perform specific respiratory care procedures and the amount of supervision required
- **Details on Claims Submission for Blanket Waivers:** CMS specifies that when submitting claims covered by the blanket waivers, the “DR” (disaster-related) condition code should be used for institutional billing (i.e., claims submitted using the ASC X12 837 institutional claims format or paper Form CMS-1450). The “CR” (catastrophe/disaster-related) modifier should be used for Part B billing, both institutional and non-institutional (i.e., claims submitted using the ASC X12 837 professional claim format or paper Form CMS-1500 or, for pharmacies, in the NCPDP format).

IV. Additional EMTALA Waivers

CMS provided additional guidance on additional waivers of EMTALA that are to be decided on a case-by-case basis (not blanket waivers). This CMS guidance states that only two aspects of the EMTALA requirements can be waived under 1135 Waiver Authority:

- 1) Transfer of an individual who has not been stabilized, if the transfer arises out of an emergency; or
 - 2) 2) Redirection to another location (offsite alternate screening location) to receive a medical screening exam under a state emergency preparedness or pandemic plan.
- Actions under the waiver must not discriminate as to source of payment or ability to pay.
 - Waivers to provide Medical Screening Examinations at an offsite alternate screening location not owned or operated by the hospital will be reviewed on a case by case basis during the public health emergency.

V. [Press Release](#) summarizing some of these changes by CMS also refers to the following flexibility:

CMS also is issuing a blanket waiver to allow hospitals to provide benefits and support to their medical staffs, such as multiple daily meals, laundry service for personal clothing, or child care services while the physicians and other staff are at the hospital and engaging in activities that benefit the hospital and its patients.

VI. CMS provided an [infographic](#) summarizing the new flexibilities under Covid-19 emergency authorities.