



Summary of Policies in the Calendar Year (CY) 2020 Medicare Physician Fee Schedule (MPFS) Public Health Emergency (PHE) Interim Final Rules

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PROVIDER TYPES AFFECTED

This MLN Matters Article is for physicians and providers, including home health and hospice providers, who bill Medicare Administrative Contractors (MACs) for services provided to Medicare beneficiaries.

PROVIDER ACTION NEEDED

This article provides a summary of policies in the Calendar Year (CY) 2020 Medicare Physician Fee Schedule (MPFS) Public Health Emergency (PHE) Interim Final Rule With Comment (IFC) entitled, "Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency (CMS-1744-IFC) and Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program (CMS-5531-IFC)."

Please make sure your billing staffs are aware of these changes.

BACKGROUND

In the event of a declared PHE, the Secretary of the Department of Health & Human Services (HHS) (the Secretary) has the authority to temporarily waive or modify application of certain Medicare requirements during the emergency period. The Secretary declared a PHE on January 31, 2020, for the 2019 Novel Coronavirus (COVID-19). In addition, the President declared a national emergency concerning COVID-19 on March 13, 2020.

CR 11805's purpose is to provide a summary of the recent policy changes to the MPFS during the PHE. The Centers for Medicare & Medicaid Services (CMS) recently issued two Interim Final Rules with Comment (IFC) that revised payment policies and Medicare payment rates for services provided by physicians and nonphysician practitioners (NPPs) who are paid under the MPFS during the PHE.

These IFCs are:

- Regulation number CMS-1744-IFC, titled, “*Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency,*” and posted on the CMS website on March 31, 2020.
- Regulation number CMS-5531-IFC, titled, “*Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program,*” and was posted on the CMS website on April 30, 2020.

These changes are applicable to services provided during the PHE.

Medicare Telehealth Services

Payment for Medicare Telehealth Services Under Section 1834(m) of the Social Security Act (the Act)

Pursuant to the waiver authority added under Section 1135(b)(8) of the Act by the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, to ease the use of telecommunications technology as a safe substitute for in-person services, CMS has added, on an interim basis, many services to the list of eligible Medicare telehealth services.

This list of added services includes:

- Initial inpatient and nursing facility visits
- Emergency department visits
- Initial and subsequent observation services
- Inpatient nursing facility and observation discharge day management home visits
- A number of physical therapy, occupational therapy, and speech language pathology services.

On an interim basis, CMS eliminated several requirements associated with particular services provided via telehealth. CMS clarified several payment rules that apply to other services that are provided using telecommunications technologies that can reduce exposure risks. Specifically, CMS eliminated frequency limitations for subsequent inpatient and nursing facility visits and critical care consults, and instructed practitioners to identify the place of service normally used had the service occurred in person, and to append the 95 modifier to the claim to identify it as Medicare telehealth. This is to assure that the payment rate would be equal to that which ordinarily would have been paid under the MPFS were the services furnished in-person.

NOTE: Critical Access Hospitals (CAH) method II should continue to report Distant Site services with modifier GT.

Frequency Limitations on Subsequent Care Services in Inpatient and Nursing Facility Settings, and Critical Care Consultations and Required “Hands-on” Visits for End Stage Renal Disease (ESRD) Monthly Capitation Payments

For ESRD Monthly Capitation Payments, CMS exercised enforcement discretion regarding the statutory requirement that for ESRD services furnished via telehealth there be a monthly "hands on," evaluation of the vascular access site for the first 3 months of home dialysis and once every 3 months thereafter. Instead, CMS is permitting the required clinical examination to be furnished as a Medicare telehealth service during the PHE for the COVID-19 pandemic.

Telehealth Modalities

Physician community feedback convinced CMS to clarify that for the COVID-19 pandemic PHE, interactive telecommunications system means multimedia communications equipment. The multimedia communications equipment includes (at a minimum) audio and video equipment permitting two-way, real-time, interactive communication between the patient and distant site physician or practitioner. CMS informed practitioners that they will not be subject to administrative sanctions for reducing or waiving any cost-sharing obligations during the COVID-19 pandemic PHE.

Communication Technology-Based Services (CTBS)

For Communication Technology Based Services (CTBS) for the duration of the PHE for the COVID-19 pandemic, CMS established that these services, which may only be reported if they do not result in a visit, including a telehealth visit, can be furnished to both new and established patients. This allows such services to be available to as many Medicare beneficiaries as possible, given the need for an in-person visit could represent an exposure risk for vulnerable patients during the COVID-19 pandemic.

CMS also finalized that during the COVID-19 pandemic PHE, while consent to receive these services must be obtained annually, it may be obtained at the same time that a service is provided.

CMS expanded the range of practitioners eligible to bill for certain online assessment and management services to include practitioners who could not ordinarily bill for Evaluation and Management (E/M) services so that, for example, licensed clinical social workers, clinical psychologists, physical therapists, occupational therapists, and speech language pathologists may bill for these services when applicable.

On an interim basis, during the PHE for the COVID-19 pandemic, CMS broadened the availability of HCPCS codes G2010 and G2012 that describe remote evaluation of patient images/video and virtual check-ins to recognize that in the context of the PHE for the COVID-19 pandemic, practitioners such as licensed clinical social workers, clinical psychologists, physical therapists, occupational therapists, and speech-language pathologists might also use virtual check-ins and remote evaluations instead of other, in-person services within the relevant Medicare benefit to facilitate the best available appropriate care while mitigating exposure risks.

Direct Supervision by Interactive Telecommunications Technology

For the duration of the COVID-19 pandemic PHE, CMS revised the definition of direct supervision to allow direct supervision to be provided using real-time interactive audio and video

technology. CMS recognizes that given the risks of exposure, in some cases, technology would allow appropriate supervision without the physical presence of a physician.

CMS notes that in specifying that direct supervision includes virtual presence through audio/video real-time communications technology, and can include instances in which the physician enters into a contractual arrangement for auxiliary personnel as defined in the Federal regulations at 42 CFR 410.26(a)(1), to leverage additional staff and technology necessary to provide care that would ordinarily be provided incident to a physicians' service (including services that are allowed to be performed via telehealth).

CMS also notes that this change is limited to only the manner in which the supervision requirement can be met and does not change the underlying payment or coverage policies related to the scope of Medicare benefits, including Part B drugs.

Telephone E/M Services (CPT codes 99441-3 and 98966-8)

For the duration of the COVID-19 pandemic PHE, CMS finalized separate payment for CPT codes 99441 through 99443 and 98966 through 98968; which describe E/M and assessment and management services provided via telephone. While the code descriptors for these services refer to an "established patient," during the COVID-19 PHE, CMS is exercising enforcement discretion to relax enforcement of this aspect of the code descriptors.

As these audio-only services are being provided primarily as a replacement for care that would otherwise be reported as an in-person or telehealth visit using the office/outpatient E/M codes, CMS is cross-walking the values for CPT codes 99441, 99442, and 99443 to 99212, 99213, and 99214, respectively.

Also, given the understanding that these audio-only services are being provided as substitutes for office/outpatient E/M services, CMS recognizes that they should be considered as telehealth services, and is adding them to the list of Medicare telehealth services for the duration of the PHE.

Level Selection for Office/Outpatient E/M Visits When Furnished Via Medicare Telehealth

CMS revised its policy to specify that the following changes, which are scheduled to become effective on January 1, 2021, under policies finalized in the CY 2020 MPFS Final Rule; will be effective throughout the COVID-19 pandemic PHE:

- The office/outpatient E/M level selection for office/outpatient E/M services when provided via telehealth can be based on medical decision making (MDM) or time, with time defined as all of the time associated with the E/M on the day of the encounter.
- CMS finalized on an interim basis for the duration of the PHE for the COVID-19 pandemic, that the typical times for purposes of level selection for an office/outpatient E/M are the times listed in the CPT code descriptor.

Updating the Medicare Telehealth List

CMS finalized that for the duration of the COVID-19 PHE, updates to the Medicare Telehealth List would be done on an ongoing, sub-regulatory basis.

Remote Physiologic Monitoring (RPM) Services (CPT codes 99453, 99454, 99457, 99458)

CMS made several changes to RPM policies in response to the COVID-19 PHE, including:

1. Removed the requirement that there be an established patient-practitioner relationship. Both new and established patients can receive RPM services.
2. Modified the requirement that consent must be obtained prior to providing the RPM service. Instead, consent can be obtained at the time services are provided and by individuals providing RPM services under contract to the ordering physician or qualified healthcare professional.
3. Clarified that RPM services can be used for physiologic monitoring of patients with acute and/or chronic conditions.
4. Confirmed that RPM services can be furnished under general supervision.
5. For CPT codes 99453 and 99454, modified the number of days that data must be collected from the required 16 days to fewer than 16 days in a 30-day period as long as the other code requirements are met.

Supervision of Diagnostic Tests by Certain Nonphysician Practitioners

Throughout the COVID-19 PHE, CMS finalized changes to regulations governing diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests. These changes allow nurse practitioners, clinical nurse specialists, physician assistants, and certified nurse-midwives to provide the appropriate level of supervision required for the performance of diagnostic tests paid under the MPFS. Furthermore, these interim changes will continue to ensure that these nonphysician practitioners may order, provide directly, and now supervise the performance of diagnostic tests, subject to applicable State law, during the COVID-19 PHE.

Application of Teaching Physician Regulations

Under current rules, Medicare payment is made for services furnished by a teaching physician involving residents only if the physician is physically present for the key portion of the service or procedure or the entire procedure, where applicable. During the COVID-19 PHE, CMS finalized on an interim basis that teaching physicians may use audio/video, real-time communications technology to interact with the resident through virtual means, which would meet the requirement that they be present for the key portion of the service, including when the teaching physician involves the resident in providing Medicare telehealth services.

Teaching physicians involving residents in providing care at primary care centers can provide the necessary direction, management and review for the resident's services using audio/video, real-time communications technology. Residents furnishing services at primary care centers may provide an expanded set of services to beneficiaries, including levels 4-5 of an office/outpatient E/M visit, telephone E/M, care management, and CTBS.

These flexibilities do not apply in the case of surgical, high-risk, interventional, or other complex procedures, services performed through an endoscope, and anesthesia services. This allows teaching hospitals to maximize their workforce to safely take care of patients.

Resident Moonlighting

Under current rules, Medicare considers the services of residents that are not related to their approved graduate medical education (GME) programs and performed in the outpatient department or the emergency department of a hospital as separately billable physicians' services. During the COVID-19 PHE, CMS finalized that Medicare also considers the services of residents that are not related to their approved GME programs and provided to inpatients of a hospital in which they have their training program as separately billable physicians' services.

Outpatient Physical and Occupational Therapy Services: Expanded Use of Therapy Assistants Allowed for Maintenance Therapy Services

Current CMS policy for outpatient Part B physical therapy and occupational therapy services requires the physical therapist (PT) or occupational therapist (OT) to personally carry out the services of a maintenance program (more commonly known as maintenance therapy) when these services are needed to maintain, prevent, or slow the deterioration of a patient's functional status as part of the maintenance program's plan.

For the duration of the COVID-19 PHE, CMS finalized on an interim basis, that PTs and OTs are permitted to delegate to therapy assistants, when clinically appropriate, the responsibilities to furnish maintenance therapy services. CMS believes this is consistent with feedback from therapists and therapy providers on scope of practice issues and better aligns with maintenance therapy services furnished in the Part A-paid skilled nursing facility and home health settings. This flexibility will free-up PTs and OTs to furnish other services requiring their assessment skills to COVID-19 related services including CTBS that were made available for PTs, OTs, and speech-language pathologists during the PHE.

Therapy Services-Student Documentation

In the CY 2020 PFS final rule, CMS simplified medical record documentation requirements and finalized a general principle to allow the physician, physician assistant, or the advanced practice registered nurses (who furnish and bill for their professional services) to review and verify, rather than re-document, information included in the medical record by physicians, residents, nurses, students or other members of the medical team.

For the duration of the COVID-19 PHE, CMS finalized on an interim basis, that any individual who has a separately enumerated benefit under Medicare law that authorizes them to furnish and bill for their professional services, whether or not they are acting in a teaching role, may review and verify (sign and date), rather than re-document, notes in the medical record made by physicians, residents, nurses, and students (including students in therapy or other clinical disciplines), or other members of the medical team.

Opioid Treatment Programs (OTPs)

In light the COVID-19 pandemic PHE, in CMS-1744-IFC, CMS revised regulations at 42 CFR 410.67(b)(3) and (4) to allow therapy and counseling portions of weekly bundles of services provided by OTPs, as well as the add-on code for additional counseling or therapy, to be provided using audio-only telephone calls rather than via two-way interactive audio-video communication technology during this PHE if beneficiaries do not have access to two-way audio/video communications technology, provided all other applicable requirements are met.

In addition to the flexibilities described above, in CMS-5531-IFC, CMS revised regulations at 42 CFR 410.67(b)(7) on an interim final basis to allow periodic assessments to be furnished during the PHE for the COVID-19 pandemic via two-way interactive audio-video communication technology. Also, in cases where beneficiaries do not have access to two-way audio-video communications technology, the periodic assessments may be furnished using audio-only telephone calls rather than via two-way interactive audio-video communication technology, provided all other applicable requirements are met. This change is necessary to ensure that beneficiaries with opioid use disorders are able to continue to receive these important services during the PHE for the COVID-19 pandemic.

Ordering COVID-19 Diagnostic Laboratory Tests

Having recognized the critical importance of expanding COVID-19 testing during the COVID-19 pandemic PHE, CMS has removed the requirement that certain diagnostic tests are covered only under the order of a treating physician or NPP. This will allow any healthcare professional, authorized to do so under State law, to order COVID-19 diagnostic laboratory tests (including serological and antibody tests). Because the symptoms for coronavirus, influenza, and respiratory syncytial virus (RSV) are often the same, such that concurrent testing for all three viruses is warranted, this provision will also apply to influenza and RSV tests only when they are furnished in conjunction with a medically necessary COVID-19 diagnostic laboratory test to establish or rule out a COVID-19 diagnosis or identify an adaptive immune response to SARS-COV-2.

CMS has made conforming changes to the documentation and record-keeping requirements for lab tests that would not be relevant in the absence of a treating physician's or NPP's order. When an order is written for the test, CMS expects the ordering or referring National Provider Identifier information on the claim form under current requirements.

When provided without a physician's or NPP's order, the laboratory conducting the test(s) is required to directly notify the patient of the results and meet other applicable test result-reporting requirements.

CMS has finalized new specimen collection fees for COVID-19 testing under the MPFS. Physicians and NPPs must use CPT code 99211 to bill for a COVID-19 symptom and exposure assessment and specimen collection provided by clinical staff (such as pharmacists) incident to the physician's or NPP's services. This applies to all patients, not just established patients. The direct supervision requirement may be met through virtual presence of the supervising physician or practitioner using interactive audio and video technology. Cost sharing will not apply.

Pharmacists Providing Services Incident to Physician/NPP Services

CMS clarified explicitly the existing policy that pharmacists may provide services incident to, and under the appropriate level of supervision of, the billing physician or NPP, if payment for the services is not made under Medicare Part D. This includes providing the services in accordance with the pharmacist's state scope of practice and applicable state law.

ADDITIONAL INFORMATION

The official instruction, CR 11805, issued to your MAC regarding this change is available at <https://www.cms.gov/files/document/r10160otn.pdf>.

If you have questions, your MACs may have more information. Find their website at <http://go.cms.gov/MAC-website-list>.

DOCUMENT HISTORY

Date of Change	Description
May 22, 2020	Initial article released.

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