

Trump and CMS Issue Second Round of Changes to Healthcare Regulations

Category: Policy Blog

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On April 30, 2020, at President Trump's direction, the Centers for Medicare & Medicaid Services (CMS) issued a second round of regulatory waivers and rule changes "to deliver expanded care to the nation's seniors and provide flexibility to the healthcare system as America reopens. These changes include making it easier for Medicare and Medicaid beneficiaries to get tested for COVID-19 and continuing CMS's efforts to further expand beneficiaries' access to telehealth services."

Many of CMS's temporary changes will apply immediately for the duration of the Public Health Emergency declaration. The changes build on an array of temporary regulatory waivers and new rules CMS announced on March 30 and April 10. Providers and states do not need to apply for the blanket waivers and can begin using the flexibilities immediately. CMS also is requiring nursing homes to inform residents, their families, and representatives of COVID-19 outbreaks in their facilities. Below are the blanket waivers issued separated into categories:

- **New rules to support and expand COVID-19 diagnostic testing for Medicare and Medicaid beneficiaries:**

- Under the new waivers and rule changes, Medicare will no longer require an order from the treating physician or other practitioner for beneficiaries to get COVID-19 tests and certain laboratory tests required as part of a COVID-19 diagnosis. During the Public Health Emergency, COVID-19 tests may be covered when ordered by any healthcare professional authorized to do so under state law. A written practitioner's order is no longer required for the COVID-19 test for Medicare payment purposes.
- Pharmacists can work with a physician or other practitioner to provide assessment and specimen collection services, and the physician or other practitioner can bill Medicare for the services. Pharmacists also can perform certain COVID-19 tests if they are enrolled in Medicare as a laboratory, in accordance with a pharmacist's scope of practice and state law. With these changes, beneficiaries can get tested at "parking lot" test sites operated by pharmacies and other entities consistent with state requirements.
- CMS will pay hospitals and practitioners to assess beneficiaries and collect laboratory samples for COVID-19 testing, and make separate payment when that is the only service the patient receives.
- CMS is announcing that Medicare and Medicaid are covering certain serology (antibody) tests. Medicare and Medicaid will cover laboratory processing of certain FDA-authorized tests that beneficiaries self-collect at home.

- **Additional highlights of the waivers and rule changes announced today:**

- CMS is giving providers flexibility during the pandemic to increase the number of beds for COVID-19 patients while receiving stable, predictable Medicare payments. For example, teaching hospitals can increase the number of temporary beds without facing reduced payments for indirect medical education. Inpatient psychiatric facilities and inpatient rehabilitation facilities can admit more patients to alleviate pressure on acute-care hospital bed capacity without facing reduced teaching status payments. Similarly,

hospital systems that include rural health clinics can increase their bed capacity without affecting the rural health clinic's payments.

- Under current law, most provider-based hospital outpatient departments that relocate off-campus are paid at lower rates under the Physician Fee Schedule, rather than the Outpatient Prospective Payment System (OPPS). CMS will allow certain provider-based hospital outpatient departments that relocate off-campus to obtain a temporary exception and continue to be paid under the OPPS.
- Long-term acute-care hospitals can now accept any acute-care hospital patients and be paid at a higher Medicare payment rate, as mandated by the CARES Act.

- **Healthcare Workforce Augmentation:**

- Beneficiaries may need in-home services during the COVID-19 pandemic, nurse practitioners, clinical nurse specialists, and physician assistants can now provide home health services, as mandated by the CARES Act. These practitioners can now (1) order home health services; (2) establish and periodically review a plan of care for home health patients; and (3) certify and re-certify that the patient is eligible for home health services
- CMS is allowing physical and occupational therapists to delegate maintenance therapy services to physical and occupational therapy assistants in outpatient settings.
- CMS is waiving a requirement for ambulatory surgery centers to periodically reappraise medical staff privileges during the COVID-19 emergency declaration

- **Prioritizing Hospitalization Services:**

- CMS is allowing payment for certain partial hospitalization services - that is, individual psychotherapy, patient education, and group psychotherapy - that are delivered in temporary expansion locations, including patients' homes.
- CMS is temporarily allowing Community Mental Health Centers to offer partial hospitalization and other mental health services to clients in the safety of their homes. Previously, clients had to travel to a clinic to get these intensive services.

- **Expansion of Telehealth in Medicare:**

- CMS is waiving limitations on the types of clinical practitioners that can furnish Medicare telehealth services. Prior to this change, only doctors, nurse practitioners, physician assistants, and certain others could deliver telehealth services. Now, other practitioners are able to provide telehealth services, including physical therapists, occupational therapists, and speech language pathologists.
- Hospitals may bill for services furnished remotely by hospital-based practitioners to Medicare patients registered as hospital outpatients, including when the patient is at home when the home is serving as a temporary provider based department of the hospital.
- Hospitals may bill as the originating site for telehealth services furnished by hospital-based practitioners to Medicare patients registered as hospital outpatients, including when the patient is located at home.
- CMS previously announced that Medicare would pay for certain services conducted by audio-only telephone between beneficiaries and their doctors and other clinicians. CMS is broadening that list to include many behavioral health and patient education services. CMS is also increasing payments for these telephone visits to match payments for similar office and outpatient visits. This would increase payments for these services from a range of \$14-\$41 to \$46-\$110. The payments are retroactive to March 1, 2020.

- As mandated by the CARES Act, CMS is paying for Medicare telehealth services provided by rural health clinics and federally qualified health clinics.
 - CMS is waiving the video requirement for certain telephone evaluation and management services, and adding them to the list of Medicare telehealth services. As a result, Medicare beneficiaries will be able to use an audio-only telephone to get these services.
- **In addition, CMS is making changes to the Medicare Shared Savings Program to give the 517 accountable care organizations (ACOs):**
 - ACOs are groups of doctors, hospitals, and other healthcare providers, that come together voluntarily to give coordinated high-quality care to their Medicare patients. CMS is making adjustments to the financial methodology to account for COVID-19 costs so that ACOs will be treated equitably regardless of the extent to which their patient populations are affected by the pandemic. CMS is also forgoing the annual application cycle for 2021 and giving ACOs whose participation is set to end this year the option to extend for another year. ACOs that are required to increase their financial risk over the course of their current agreement period in the program will have the option to maintain their current risk level for next year, instead of being advanced automatically to the next risk level.
 - CMS is permitting states operating a Basic Health Program (BHP) to submit revised BHP Blueprints for temporary changes tied to the COVID-19 public health emergency that are not restrictive and could be effective retroactive to the first day of the COVID-19 public health emergency declaration.

In response to these changes Seema Verma, CMS Administrator, stated that “CMS’s changes will make getting tested easier” and the health care system “more accessible for Medicare and Medicaid beneficiaries.”

<https://www.cms.gov/newsroom/press-releases/trump-administration-issues-second-round-sweeping-changes-support-us-healthcare-system-during-covid>