



Telehealth Policy Developments COVID-19 and Beyond

AGENDA



**Brief Intro of
Alliance for
Connected Care**



**Pre-COVID-19
Landscape**

All Markets



**Developments
Resulting from Virus**



Questions

ALLIANCE FOR CONNECTED CARE

Members



ALLIANCE ADVISORY BOARD

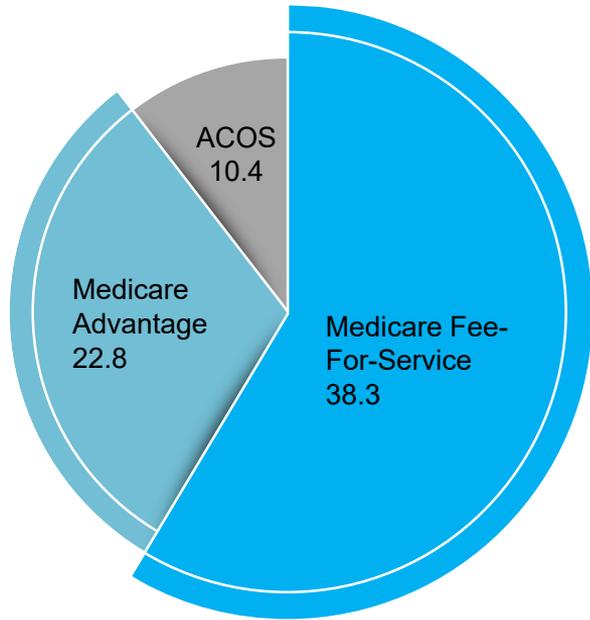
- Alliance for Aging Research
- Alzheimer's Foundation of America
- American Academy of Family Physicians
- American Nurses Association
- American Academy of Physician Assistants
- American Heart Association
- American Language-Speech-Hearing Association
- American Osteopathic Association
- Association for Behavioral Health and Wellness
- Children's Mercy Hospitals and Clinics
- Digestive Disease National Coalition
- Evangelical Lutheran Good Samaritan Society
- Infectious Diseases Society of America
- HealthCare Chaplaincy Network
- Indiana University Health
- Mental Health America
- National Alliance on Mental Illness
- National Association of ACOs
- National Association of Chain Drug Stores
- National Association of Homecare & Hospice
- National Council for Behavioral Health
- National Council of State Boards of Nursing
- National Health IT Collaborative for the Underserved
- National Multiple Sclerosis Society
- National Organization for Rare Disorders
- Parkinson's Action Network
- Population Health Alliance
- The ALS Association
- United Spinal Association
- Visiting Nurse Associations of America



STATE OF PLAY BEFORE COVID-19

MEDICARE

Medicare Beneficiaries, 2019 (millions)



71 Million beneficiaries

22.8 Million in MA

10,000 seniors newly eligible per day

25% of new members join Medicare Advantage

STATUTORY & REGULATORY BARRIERS IN MEDICARE



Section 1834(m) of Social Security Act limits telehealth reimbursement to **rural areas**, and can only be conducted from approved “**originating sites**” to “**distant sites**” with a physician present.



Telemedicine defined as “interactive 2-way telecommunications system (with real-time audio and video).”



Annual process for securing telehealth modifiers on Part B Codes.

LIMITED MEDICARE PART B MODIFIERS

This table provides the CY 2017 list of Medicare telehealth services
CY 2017 Medicare Telehealth Services.

Services	HCPCS/CPT code
Telehealth consultations, emergency department or initial inpatient	HCPCS codes G0425—G0427
Follow-up inpatient telehealth consultations furnished to beneficiaries in hospitals or SNFs	HCPCS codes G0406—G0408
Office or other outpatient visits	CPT codes 99201-99215
Subsequent hospital care services, with the limitation of 1 telehealth visit every 3 days	CPT codes 99231-99233
Subsequent nursing facility care services, with the limitation of 1 telehealth visit every 30-days	CPT codes 99307-99310
Individual and group kidney disease education services	HCPCS codes G0420 and G0421
Individual and group diabetes self-management training services, with a minimum of 1 hour of in-person instruction to be furnished in the initial year training period to ensure effective injection training	HCPCS codes G0108 and G0109
Individual and group health and behavior assessment and intervention	CPT codes 96150-96154
Individual psychotherapy	CPT codes 90832-90834 and 90836-90838
Telehealth Pharmacologic Management	HCPCS code G0459
Psychiatric diagnostic interview examination	CPT codes 90791 and 90792
End-Stage Renal Disease (ESRD)-related services included in the monthly capitation payment	CPT codes 90951,90952, 90954,90955,90957,90958, 90960, and 90961
End-Stage Renal Disease (ESRD)-related services for home dialysis per full month, for patients younger than 2 years of age to include monitoring for the adequacy of nutrition, assessment of growth and development, and counseling of parents	CPT code 90963
End-Stage Renal Disease (ESRD)-related services for home dialysis per full month, for patients 2-11 years of age to include monitoring for the adequacy of nutrition, assessment of growth and development, and counseling of parents	CPT code 90964
End-Stage Renal Disease (ESRD)-related services for home dialysis per full month, for patients 12-19 years of age to include monitoring for the adequacy of nutrition, assessment of growth and development, and counseling of parents	CPT code 90965

Bipartisan Budget Act of 2018



Allowing telehealth to be in the basic benefit of a Medicare Advantage plan



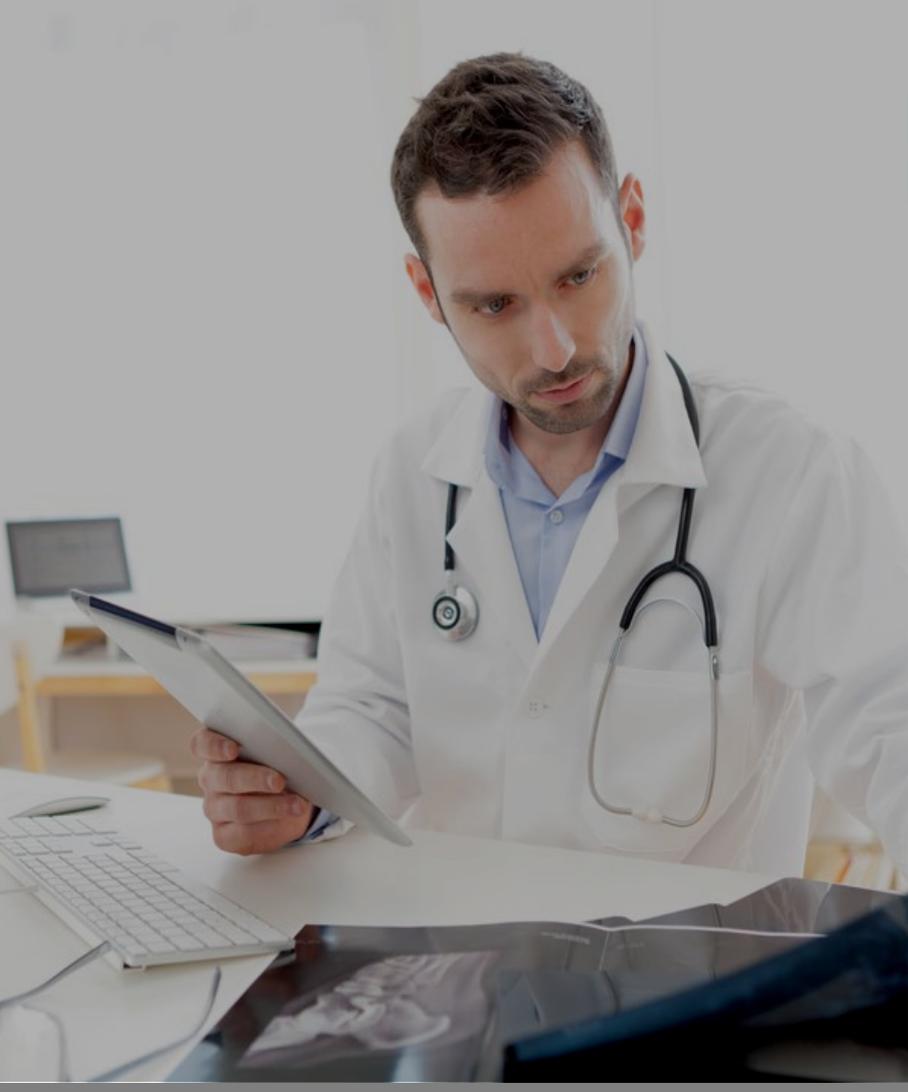
Paying for telestroke



Allowing dialysis patients to consult their physicians through telehealth, either at home or in a dialysis center.



Payment for substance abuse treatment



2019 MEDICARE PFS VIRTUAL CHECK-INS

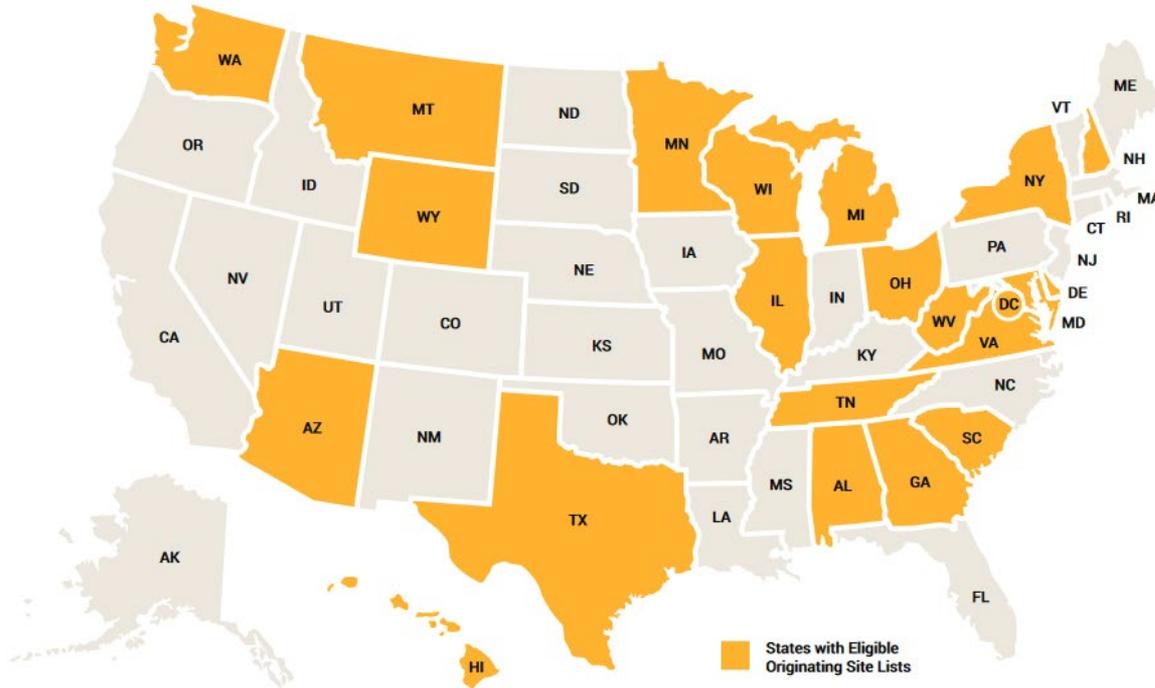
- **Virtual check-ins** are 5 to 10 minutes of medical discussion conducted by a provider via communications technology-based services, which include real-time phone and video chat conversations.
- Check-ins may only be provided to **established patients** who have seen the provider they are checking in with at least once over the preceding three years.
- Virtual check-ins **may not** be related to a service provided within the **past seven days** nor lead to a service or procedure within the **next 24 hours** or soonest available appointment. Store and forward services also have this restriction.

MEDICARE ADVANTAGE TELEHEALTH RULE

- **Additional telehealth benefits** are defined as telehealth services that are currently restricted under section 1834(m).
- **Allowable modalities** include, but are not limited to: secure messaging, store and forward, telephone, videoconferencing, and “other evolving technologies as appropriate for non-face-to-face communication.”
- **1:1 ratio** – An MA plan may not offer basic benefits exclusively via telehealth; the service must also be available in person.
- **Asynchronous Care:** Requires established relationship which can be done through video.



MEDICAID TELEHEALTH LANDSCAPE

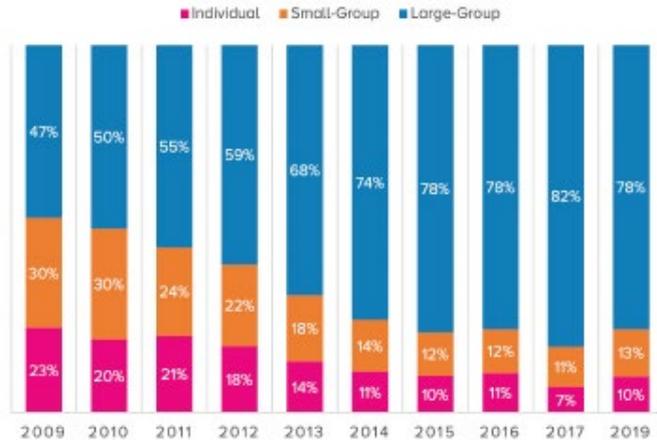


Source: Center of Connected Health Policy

COMMERCIAL MARKET – HEALTH SAVINGS ACCOUNTS

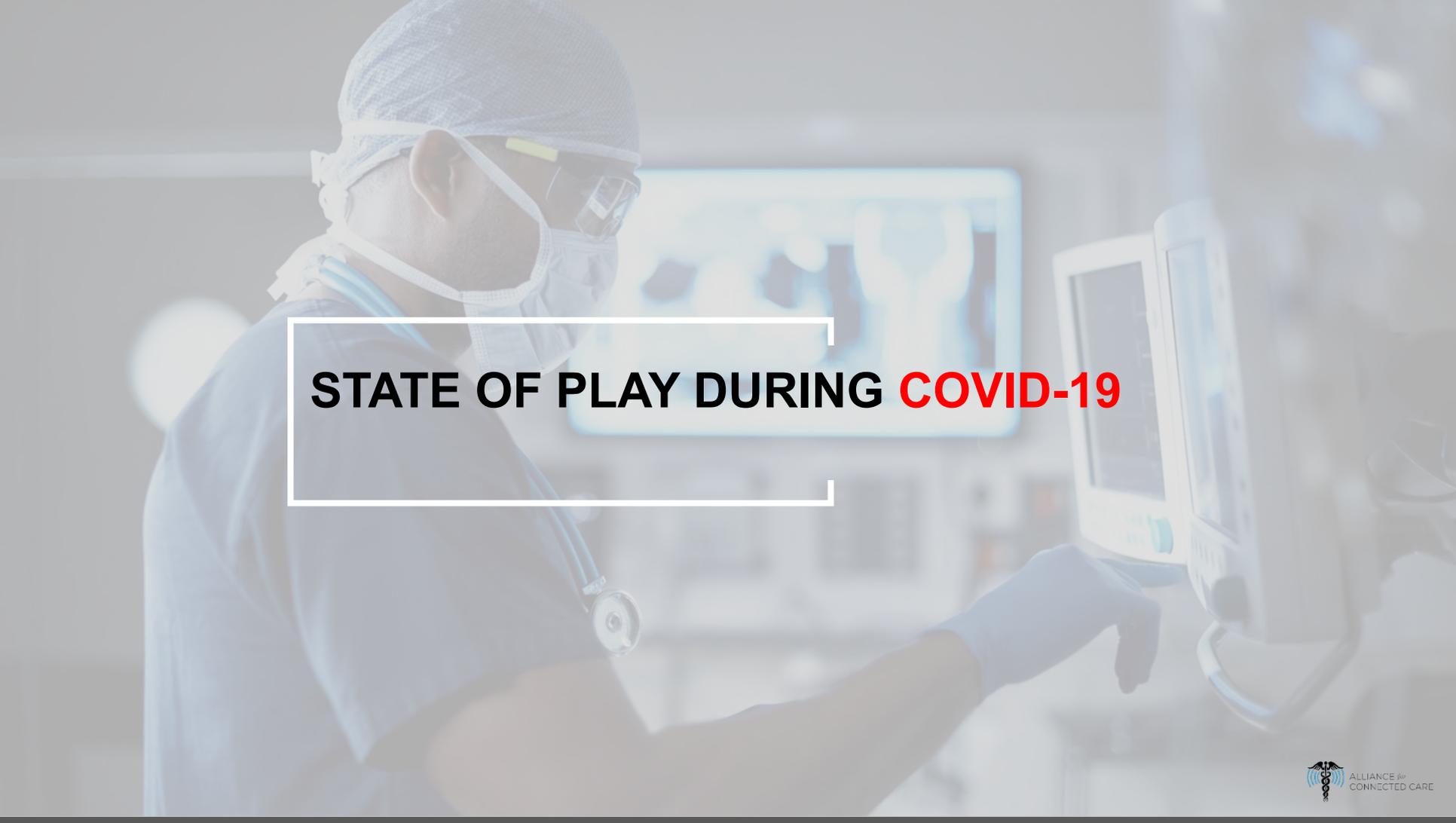
As of January 1, 2019, **32.1 million people** were enrolled in CDHPs.
They accounted for **15% of the total commercial enrollment**,

Figure 1. CHDP Enrollment by Market Type, 2009-2019.



Note: AHP did not conduct a survey in 2018. % may not equal 100% due to rounding.

- For 2020, the IRS defines a **high deductible health plan** as any plan with a **deductible** of at least **\$1,400** for an individual or **\$2,800** for a family.
- Telehealth benefit is considered “other coverage” by IRS.
- Full deductible must be met before beneficiaries can access telehealth benefit at discounted cost.



STATE OF PLAY DURING COVID-19

CONGRESSIONAL ACTION: FIRST PACKAGE

Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 March 6, 2020

- The first COVID-19 supplemental funding bill allowed the Secretary of HHS to temporarily waive telehealth restrictions in Medicare.
- Adds “telehealth service”- meaning professional consultations, office visits, and office psychiatry services– to the list of items that the Secretary of HHS is authorized to temporarily waive or modify.
- Applies to rural and originating site restrictions.
- Authority only exists during COVID-19 public health emergency as declared by Secretary Azar.
- The first bill limited applicability of this expansion to “qualified providers” who have a previous relationship:*
 - ~~Furnished services to the individual in the three years prior to the telehealth service.~~
 - ~~Are in the same TIN as someone who has~~
 - ~~Established relationship through Medicare~~



** The second COVID package modified this language before the third package removed it.*

- Medicare will pay for office, hospital, and other visits furnished via telehealth across the country and including in patient's home starting **March 6, 2020**.
- The telehealth waiver applies to treatment of **all diagnosis** during the Public Health Emergency, not just COVID-19 visits.
- Health care providers already in 1834(m) get paid for furnishing telemedicine, including **NPs, MDs, PAs, etc.**
- Interactive **audio-visual** telecommunications system that *permits* real-time communication. Not clear if "permits" means that doesn't have to be real time.
- The waiver **allows** the use of **telephones** that have audio and visual capabilities. Therefore, smart phones are permissible. HHS is waiving enforcement of HIPAA for provision of services in good faith via FaceTime and Skype.
- CMS will **NOT enforce** the Established Relationship language in the statute meaning you can treat new patients with no existing relationship.
- The HHS Office of Inspector General grants flexibility to providers on **waiver of co-pays**.
- Did not change e-visit codes.
- DEA prescribing regs are waived

In response to the coronavirus pandemic, CMS outlined flexibility that Medicare Advantage plans have to help prevent the spread of COVID-19.

→ May waive or **reduce enrollee cost-sharing** for COVID-19 laboratory tests, telehealth benefits or other services to address the outbreak provided that it's uniformly waived for all enrollees.

→ May provide enrollees access to Medicare Part B services via telehealth in any geographic area and from a variety of places, including **beneficiaries' homes**.

→ Medicare Advantage Organizations may also choose to waive plan prior authorization requirements that otherwise would apply to tests or services related to COVID-19 at any time.

CMS issued guidance for states seeking to expand telehealth for Medicaid, reminding states about the flexibility that exists in the Medicaid program.

- Several states have requested flexibility to incent greater use of telehealth through Medicaid Section 1135 Waivers including CA, IL, LA, MD, NC, SD, and WA.
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- IL, LA, NC, and WA requested CMS to allow providers to use non-HIPAA compliant telehealth modes from platforms like Facetime, WhatsApp, and Skype to facilitate visits
.....
- CA requested flexibility to make it easier for providers to care for people in their own homes. They requested:
 - To allow telehealth and virtual/telephonic communications for covered State plan benefits
 - Waiver of face-to-face encounters for FQHCs and Rural Health Clinics
 - Reimbursement of virtual communication and e-consults for certain providers
.....
- MD requested flexibility so that Medicaid and Managed care enrollees could use telephones to receive care if they did not have an appropriate device.
.....
- SD requested flexibility to allow Medicaid to pay for the same telehealth services that Medicare has been granted authority to pay for, including services furnished while a patient is at home.
.....

CONGRESSIONAL ACTION: THIRD PACKAGE

Coronavirus Aid, Relief, and Economic Security Act

March 27, 2020

- **Sec. 3212.** This section would amend the current Telehealth Network and Telehealth Resource Centers grant program to specify that it will support evidence-based projects, to extend grant period funding to five years, rather than four, and assuring that 50 percent of funds shall be for projects in rural areas. Provides \$29M for each of FY21-25.
- **Sec. 3701.** This section would allow a health plan or employer to provide pre-deductible coverage of telehealth and other remote care for individuals with **health savings account (HSA) eligible high-deductible health plans (HDHP)** for plan years beginning on or before December 31, 2021. This could be either discounted or fully covered care. Amends Safe Harbor language and Disregard list.
- **Sec. 3703.** This section would eliminate the requirement in Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 (Public Law 116-123) that limits Medicare telehealth expansion authority during the COVID-19 emergency to situations where the physician or other professional has treated the patient in the past three years.



CONGRESSIONAL ACTION: THIRD PACKAGE

Coronavirus Aid, Relief, and Economic Security Act

March 27, 2020

- **Sec. 3704.** Allow, during the COVID-19 emergency, **Federally Qualified Health Centers and Rural Health Clinics** to furnish telehealth services to beneficiaries in their home or other setting. Medicare would reimburse for these services at a composite rate similar to payment provided for comparable telehealth services under the Medicare Physician Fee Schedule.
- **Sec. 3705.** Eliminate a requirement during the COVID-19 emergency that a nephrologist conduct some of the required periodic evaluations of a patient on **home dialysis** face-to-face., allowing these vulnerable beneficiaries to get more care in the safety of their home.
- **Sec. 3706.** Use of telehealth for **hospice providers** to conduct a face-to-face encounter required for recertification of eligibility via telehealth.
- **Sec. 3707.** Provides the HHS Secretary the flexibility to consider ways to encourage **home health services** to use of telecommunications systems and other communications or monitoring services, consistent with the care plan for the individual, as appropriate.



CMS INTERIM FINAL RULE

Effective TODAY



- Expands upon previous Medicare rules by adding significantly more services and permissions.
- Implements provisions from the first two COVID laws but **does not reflect third package**.
- This is the most comprehensive document from CMS and references many of the special guidances and announcements previously addressed. *(Your compliance officers should start here.)*

Top Changes:

- Adds **80 additional services** that can be furnished via telehealth. Should be billed using the place of service code that would have been reported if the service was in person.
- Adds payment codes for **prolonged audio-only evaluation** and management services between the practitioner and patient
- **New providers**. Some additional codes can be billed by licensed clinical social worker services, clinical psychologist services, physical therapy services, occupational therapist services, and speech language pathology services
- **Physician supervision requirements to be provided virtually**, using real-time audio/video technology. Other changes to supervision requirements as well.

NEW MEDICARE TELEHEALTH CODES

Effective TODAY – April 6, 2020



Services	HCPCS/CPT code
Emergency Department Visits, Levels 1-5	CPT codes 99281-99285
Initial and Subsequent Observation and Observation Discharge Day Management	CPT codes 99217- 99220; CPT codes 99224- 99226; CPT codes 99234-99236
Initial hospital care and hospital discharge day management	CPT codes 99221-99223; CPT codes 99238- 99239
Initial nursing facility visits, All levels (Low, Moderate, and High Complexity) and nursing facility discharge day management	(CPT codes 99304-99306; CPT codes 99315-99316)
Critical Care Services	(CPT codes 99291-99292)
Domiciliary, Rest Home, or Custodial Care services, New and Established patients	CPT codes 99327- 99328; CPT codes 99334-99337)
Home Visits, New and Established Patient, All levels	(CPT codes 99341- 99345; CPT codes 99347- 99350)
Inpatient Neonatal and Pediatric Critical Care, Initial and Subsequent	(CPT codes 99468- 99473; CPT codes 99475- 99476)
Initial and Continuing Intensive Care Services	(CPT code 99477- 99478)
Care Planning for Patients with Cognitive Impairment	(CPT code 99483)
Psychological and Neuropsychological Testing	(CPT codes 96130- 96133; CPT codes 96136- 96139)
Therapy Services, Physical and Occupational Therapy, All levels	(CPT codes 97161- 97168; CPT codes 97110, 97112, 97116, 97535, 97750, 97755, 97760, 97761, 92521- 92524, 92507)
Radiation Treatment Management Services	(CPT codes 77427)

CMS INTERIM FINAL RULE

Remote Patient Monitoring and Diagnostic Testing



- Consent can be documented by auxiliary staff, can be obtained annually, and it may be obtained at the same time that a service is furnished.
- CMS is exercising enforcement discretion on an interim basis to **relax enforcement of “established patient,”** during the PHE for CY2020 Part B Payment Final code descriptors
- Clarifying that RPM codes can be used for physiologic monitoring of patients with acute and/or chronic conditions, but a patient does not have to have a chronic condition.

CMS INTERIM FINAL RULE

Supervision Requirements



- CMS is revising the definition of direct supervision to allow, for the duration of the PHE for the COVID-19 pandemic, **direct supervision to be provided using real-time interactive audio and video technology**
- Teaching Physician/Moonlighting -- All levels of an office/outpatient E/M service provided in primary care centers may be provided under direct supervision of the teaching physician by interactive telecommunications technology. Also includes interpretation of diagnostic radiology and other diagnostic tests and psychiatric service.
- Medicare may make payments for services **billed by a resident** who uses telehealth to deliver primary care under the direct supervision of the teaching physician by interactive telecommunications technology. This is consistent with the primary care exception of GME.

CMS INTERIM FINAL RULE

Telephone Evaluation and Management (E/M) Services



Expanded Capability for E-Visits

- Separate payment for CPT codes 98966-98968 and CPT codes 99441-99443 for prolonged, audio-only communication between the practitioner and the patient.
 - Will not review to consider whether those services were furnished to established patients.
 - May be furnished by, among others, LCSWs, clinical psychologists, and physical therapists, occupational therapists, and speech language pathologists when the visit pertains to a service that falls within the benefit category of those practitioners. “Sometimes therapy” services would require the corresponding GO, GP, or GN therapy modifier on claims for these services.

Virtual Check-ins

- Removal of Preexisting Relationship Requirement on Virtual Check-In (G2010 and G2012) makes them a more viable phone option.

Opioid Treatment Programs

- CMS is revising § 410.67(b)(3) and (4) to allow the therapy and counseling portions of the weekly bundles, as well as the add-on code for additional counseling or therapy, to be furnished using audio-only telephone calls if two-way interactive audio-video communication technology not available and all other applicable requirements are met.



CMS INTERIM FINAL RULE

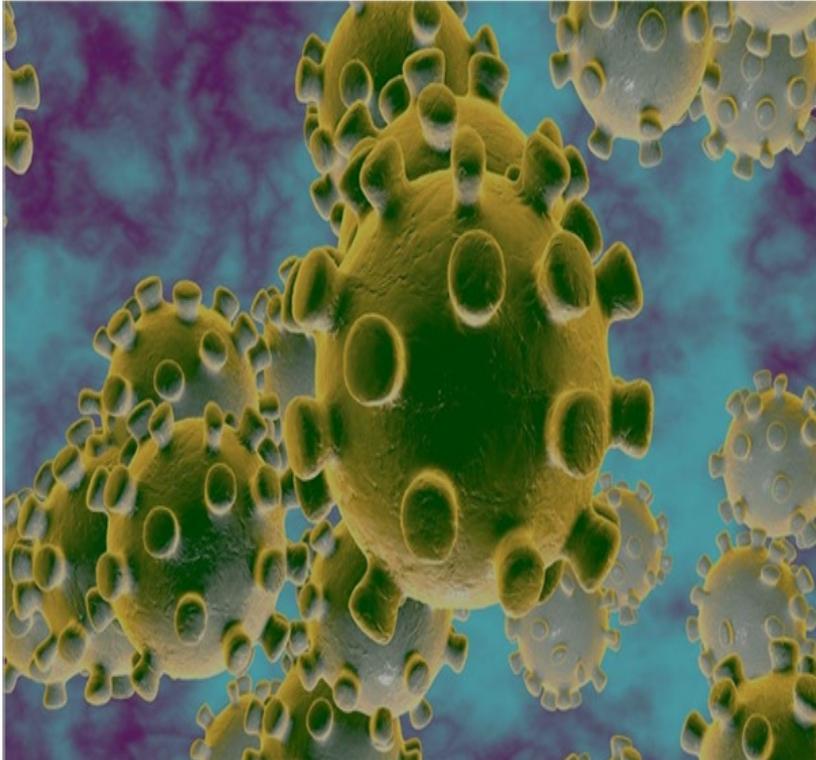
Other Provisions



- Medicare Hospice Face-to-Face Encounter Requirement waived for hospice recertification
- Rehabilitation physicians may use telehealth services to conduct the required 3 physician visits per week
- Rural Health Clinics and Federally Qualified Health Centers can provide expanded services that can be included in the payment for HCPCS code G0071, and updates the payment rate to reflect the addition of these services.
 - Remains unclear at this time how these provisions will implement, given related changes in CARES Legislation.
- Medicare Diabetes Prevention Program (MDPP) is expanded model to permit certain beneficiaries to obtain the set of MDPP services more than once per lifetime, increase the number of virtual make-up sessions, and allow certain MDPP suppliers to deliver **virtual** MDPP sessions on a temporary basis.
- Revises CMS policy to specify that the office/outpatient E/M level selection for services furnished via telehealth can be based on Medical Decision Making or time, with time defined as all of the time associated with the E/M on the day of the encounter;
 - remove any requirements regarding documentation of history and/or physical exam in the medical record

OTHER FEDERAL AGENCIES

Telemedicine Prescribing of Controlled Substances (DEA)



Drug Enforcement Administration (DEA)-registered practitioners may issue prescriptions **for controlled substances** to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met (as defined under Section 802(54)(D):

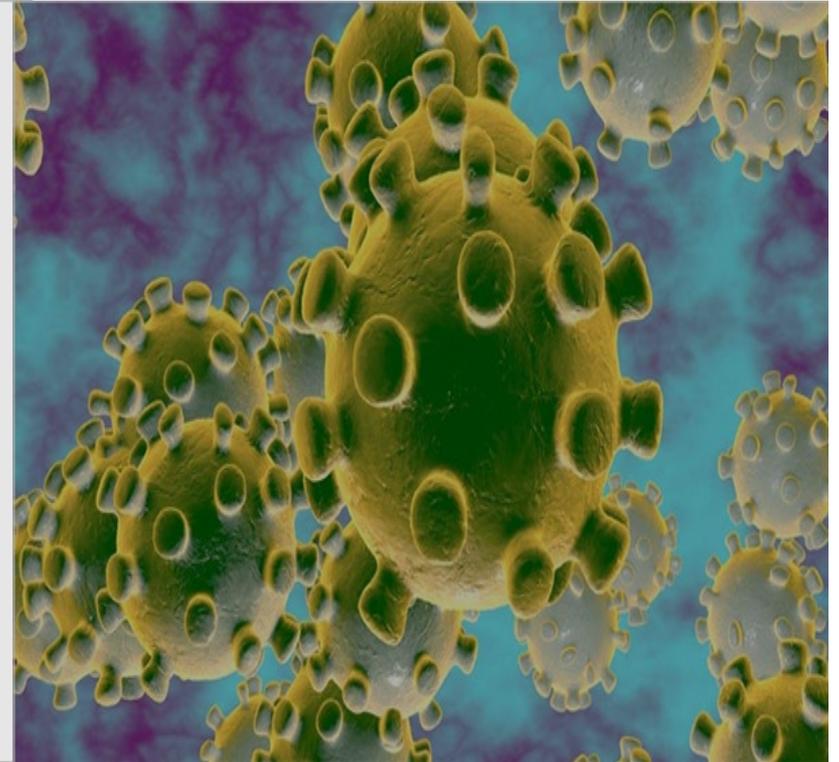
- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system.
- The practitioner is acting in accordance with applicable Federal and State law.

OTHER FEDERAL AGENCIES

Non-invasive Remote Monitoring Devices (FDA)

The Food and Drug Administration issued guidance to expand the availability and capability of non-invasive remote monitoring devices (RPM) to facilitate patient monitoring while reducing patient and healthcare provider contact and exposure to COVID-19 during this pandemic.

- Flexibility for modifications to FDA-cleared indications, claims or functionality in response to COVID-19 emergency.
- Flexibility for FDA-cleared hardware or software to increase RPM monitoring availability or capability.
- Flexibility for clinical decision support software for monitoring related to COVID-19 and co-existing conditions.



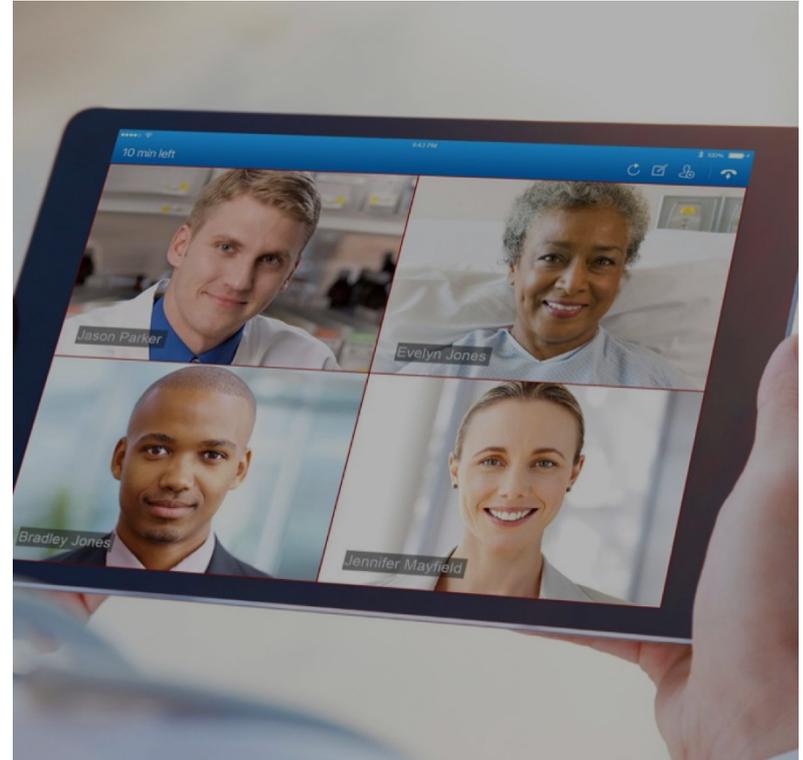
OTHER FEDERAL AGENCIES

Protection of Patient Health Information (OCR)

In response to concerns about the rapid expansion of telehealth to those less equipped to handle a telehealth visit, OCR issued a “Notification of Enforcement Discretion” for telehealth remote communications during the public health emergency.

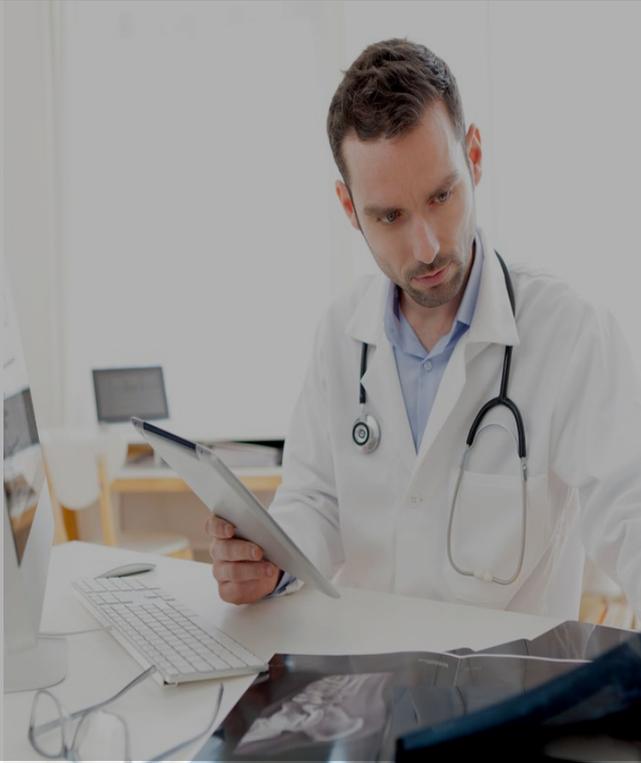
It clarifies **the ability of telehealth to be delivered through platforms such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, without risk that OCR might seek to raise HIPAA compliance concerns.**

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.



OTHER FEDERAL AGENCIES

Incenting Telehealth During the Emergency (OIG)



HHS Office of the Inspector General (OIG) issued a policy statement assuring providers that they could **waive co-pays or provide some telehealth services at no cost without a risk of triggering the Federal anti-kickback statute**, the civil monetary penalty and exclusion laws related to kickbacks, or the civil monetary penalty law prohibition on inducements to beneficiaries.

HHS has since used its expanded 1135 waiver authority to address anti-kickback more broadly.

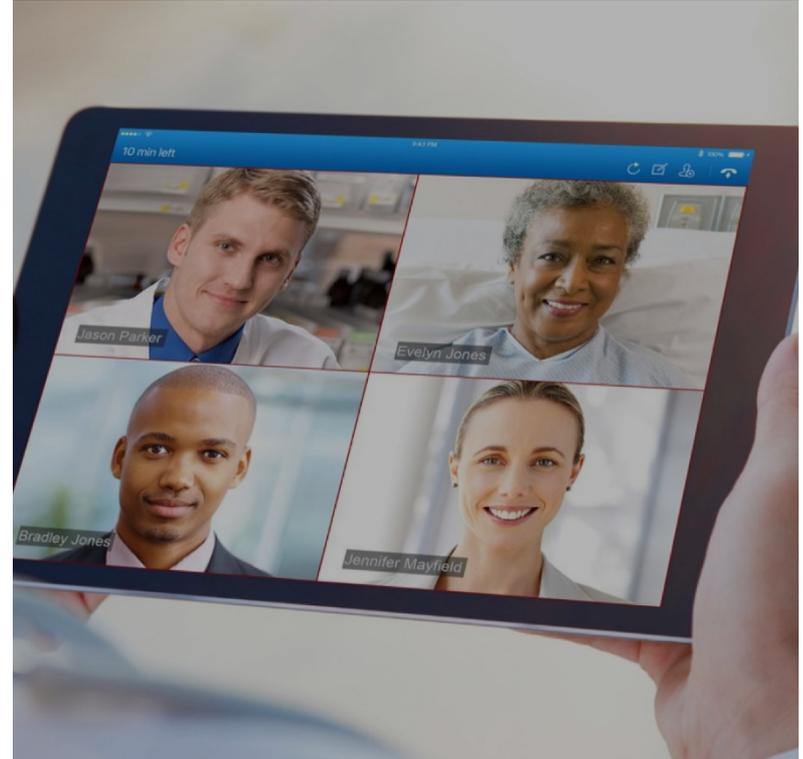
OTHER FEDERAL AGENCIES

Federal Communications Commission (FCC)

COVID-19 Telehealth Program

\$200 million to be used immediately

- Eligible health care providers support to purchase of necessary connected care devices for Coronavirus pandemic.
- The Pilot Program will provide funding for selected pilot projects to cover 85% of the eligible costs of broadband connectivity, network equipment, and information services necessary to provide connected care services to the intended patient population.
- Will only fund monitoring devices (e.g., pulse-ox, BP monitoring devices), that are themselves connected.
- FCC does not anticipate awarding more than \$1 million to any single applicant.



STATES WAIVING LICENSURE



To date, 40 states have temporarily waived state licensure laws in some way to allow out-of-state providers to provide care and assist those impacted during COVID-19.

→ **DC** waived licensure laws for health care practitioners appointed as temporary agents. The waiver is limited only to providing services to a licensed facility, via telehealth, or through an existing relationship.

→ **South Carolina** is issuing emergency nursing and medical licenses for out-of-state physicians, physician assistants and respiratory care practitioners within 24 hours.

→ **Florida** waives licensure requirements for out-of-state health care professionals who render services in Florida related to COVID-19 as long as they do so for the American Red Cross or the Department of Health.

40 STATES THAT HAVE WAIVED LICENSURE

PHYSICIANS

Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington D.C., West Virginia, Wisconsin, Wyoming

NURSES

Alabama, Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington D.C., West Virginia

PHYSICIAN ASSISTANTS

Alabama, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Missouri, New Hampshire, New Jersey, New York, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington D.C., West Virginia, Wyoming

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

- The Emergency Management Assistance Compact (EMAC) is an all hazards - all disciplines mutual aid compact that serves as the cornerstone of the nation's mutual aid system. It has been signed into law in all 50 states.
- EMAC offers assistance during governor-declared states of emergency or disaster through a responsive, straightforward system that allows states to send personnel, equipment, and commodities to assist with response and recovery efforts in other states.
- Once the conditions for providing assistance to a requesting state have been set, the terms constitute a legally binding agreement that allows for credentials, licenses, and certifications to be honored across state lines.
- On April 1, The National Emergency Management Association (which houses EMAC) sent all 50 state governors **a template executive order on telehealth** meant to facilitate the use of EMAC to solve the issue of license, permit reciprocity between states and indemnity for providers.
 - *“For the pendency of the emergency period: (i) a health provider licensed, registered, or certified in good standing in another United States jurisdiction (or reinstated pursuant to emergency action) may deliver services in INSERT STATE, including through any remote telecommunications technologies (telehealth), provided those services are within the provider’s authorized scope of practice in such other jurisdiction; (ii) notwithstanding any INSERT STATE requirement, health services may be delivered utilizing any remote telecommunications technologies (telehealth).”*





QUESTIONS

KRISTA DROBAC

Executive Director

Alliance for Connected Care

Krista.drobac@connectwithcare.org