

CMS Regulatory Actions to Date Re: COVID-19

On January 31, 2020, Secretary of Health and Human Services (HHS) Alex Azar [declared a national Public Health Emergency \(PHE\)](#) as a result of confirmed cases of the 2019 Novel Coronavirus (2019-nCoV). This designation took effect retroactively to January 27, 2020. This PHE declaration allowed the Secretary to waive sections of the Social Security statute relating to Medicare and Medicaid. Henceforth, the Administrator Seema Verma of the Centers for Medicare and Medicaid Services (CMS) [announced](#) several actions aimed at providing regulatory relief to allow physicians additional flexibility to meet their professional obligations and provide access to care for patients in the midst of a pandemic, including:

- “Provider” Enrollment Flexibilities
- Additional Flexibilities
- Expanded Telehealth Offerings
- Emergency Declaration Blanket Waivers
- Flexibilities for State Medicaid Agencies

“Provider” Enrollment Flexibilities

CMS has relaxed certain regulations on physicians and other clinicians. CMS will provide flexibility to allow out-of-state physicians and other practitioners to practice across state borders. This means that the physicians and other clinicians can now temporarily provide services outside of the state in which they are licensed. Additionally, CMS is providing certain flexibilities in terms of “provider” enrollment. CMS has taken the following actions to ease provider enrollment requirements:

- Established a toll-free hotline for physicians and others to gain temporary enrollment privileges. This applies to both Medicare and Medicaid
- Waived the following screening requirements: application fees, criminal background checks, and site visits
- Postponed re-validation actions
- Expediting pending and new “provider” enrollment applications

Additional Flexibilities

CMS has also taken additional actions to provide regulatory relief as a result of the PHE declaration. In addition to the actions listed above, CMS has taken the following actions in Medicare Fee-for-Service plans, Medicare Advantage, and Medicare Part D:

- Extension to file an appeal for claim denials
- Waived the timelines for requesting additional information to adjudicate an appeal
- Processing claims appeals while waiting for any necessary additional information

Expanded Telehealth Offerings

Currently, CMS allows physicians to bill for telehealth services under certain circumstances. Given the PHE declaration, CMS announced an extension of these services to allow access by all patients, regardless of their geographic location. Under these revisions, physicians can bill for the following types of visits: (1) telehealth visits, (2) virtual check-ins, and (3) e-visits. While cost-sharing does apply for these visits, the HHS Office of Inspector General (OIG) will allow physicians to reduce or waive patient

cost-sharing for telehealth visits. Additionally, while these services are indicated for patients who have an existing relationship with their doctor, CMS will not conduct audits to ensure a prior relationship existed for claims submitted for telehealth visits during the PHE. For more information, please see the [CMS fact sheet](#), [FAQs](#), as well as additional ACP [resources](#) on the subject.

Emergency Declaration Blanket Waivers

Section 1135 of the Social Security Act allows the Secretary of HHS to waive portions of the Medicare and Medicaid statutes during national emergencies. Under these waivers, CMS has waived certain requirements for skilled nursing facilities (SNFs), critical access hospitals, acute care patients, durable medical equipment (DME), patients in inpatient psychiatric units, in addition to other waiver opportunities. Below is a list of the flexibilities allowed under these waivers:

- SKILLED NURSING HOMES: waives the requirement for 3-day prior hospitalization for coverage of a skilled nursing facility (SNF) stay
- CRITICAL ACCESS HOSPITALS: waives the requirement that Critical Access Hospitals limit the number of beds to 25, and that the length of stay be limited to 96 hours
- HOUSING ACUTE CARE PATIENTS IN EXCLUDED DISTINCT PART UNIT: CMS waived certain requirements for housing patients in acute care units and provided additional instructions to providers for billing for these services
- DURABLE MEDICAL EQUIPMENT (DME): allows contractors to waive replacement requirements for DME so that a physician's order is not required to replace DME that has been lost, destroyed, or rendered unusable. Suppliers should still include documentation in the replacement order as to why a replacement is necessary.
- INPATIENT PSYCHIATRIC AND REHABILITATION UNIT: waives certain requirements to allow patients in these units to be transferred to beds in acute care units as a result of a national emergency
- LONG-TERM ACUTE CARE HOSPITALS: allows these hospitals to exclude patient stays from the average 25 day stay requirement where the patient is admitted as a result of a public health emergency. This will allow these facilities to continue to bill as a Long-Term Acute Care Hospital.
- HOME HEALTH AGENICE: provide flexibilities to home health agencies regarding the Outcome and Assessment Information Set (OASIS) Transmission.

State Medicaid Agencies

CMS has made it clear that states can apply for Section 1135 waivers to provide them with certain flexibilities, including:

- Waiving prior authorization requirements in fee-for-service programs;
- Permitting providers located out of state/territory to provide care to another state's Medicaid enrollees impacted by the emergency;
- Temporarily suspending certain provider enrollment and revalidation requirements to increase access to care;
- Temporarily waiving requirements that physicians and other health care professionals be licensed in the state in which they are providing services, so long as they have an equivalent licensing in another state; and

- Temporarily suspending requirements for certain pre-admission and annual screenings for nursing home residents.

CMS requests that state agencies review the Medicaid and CHIP Disaster Response [Toolkit](#) for more information. Additional information regarding the Medicaid program can be found [here](#).

For additional information on these regulatory actions, as well as additional FAQs from CMS, please visit their [current emergencies](#) page.