

FREQUENTLY ASKED MEMBER QUESTIONS

Q: When furnishing telehealth services during the public health emergency, must we ensure all of our communications systems are HIPAA compliant? What tools can we use?

A: OCR, which is the HHS entity responsible for enforcing regulations under HIPAA, stated, effective immediately, it will exercise enforcement discretion and will not impose penalties for HIPAA violations against covered healthcare providers if patients are served on a good faith basis during the COVID-19 nationwide public health emergency. OCR guidance states “covered healthcare providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules.” Providers should however ensure communication products are non-public facing.

Q: Can we waive patient cost-sharing obligations that beneficiaries might owe for telehealth services?

A: Yes. Ordinarily, routine reductions or waivers of costs owed by Medicare beneficiaries, including co-insurance and deductibles, potentially implicate the Federal Anti-Kickback Statute and the civil monetary penalty and exclusion laws. Nonetheless, recognizing the unique circumstances resulting from the COVID-19 outbreak, the Office of Inspector General (OIG) will not subject physicians and other practitioners to OIG administrative sanctions for arrangements regarding telehealth services during the COVID-19 public health emergency.

Other resources:

[CMS telehealth services booklet](#)

[CMS FAQ on Medicare telehealth waivers](#)

[CMS current emergencies site](#)

Waived Medicare Telehealth Restrictions

On March 6, 2020, President Trump signed into law the “*Coronavirus Preparedness and Response Supplement Appropriations Act of 2020*,” (H.R. 6074) which provided \$8.3 billion in emergency funding for federal agencies to respond to the COVID-19 outbreak and gave Department of Health & Human Services’ (HHS) Secretary Alex Azar authority to waive certain Medicare telehealth restrictions. Effective March 6, 2020 and for the duration of the COVID-19 public health emergency, healthcare providers may offer expanded telehealth services under the waivers.

The following requirements for billing Medicare telehealth services are waived during the COVID-19 public health emergency:



Geographic restrictions, permitting clinicians to furnish telehealth services to patients located in any geographic area (e.g., both non-rural and non-health professional shortage areas (HPSAs)).



Originating site restrictions, permitting clinicians to furnish services to patients in their homes.



Telephone restrictions, meaning that telehealth services can be furnished via telephone or other qualifying device so long as the device has both audio and video capabilities. In addition, effective immediately, the HHS Office for Civil Rights (OCR) will exercise enforcement discretion and **waive** penalties for HIPAA violations against healthcare providers that serve patients in good faith through everyday communications technologies, such as FaceTime or Skype.



The Centers for Medicare and Medicaid Services (CMS) released [guidance](#) to assist healthcare providers in implementing these new waivers. In addition to the above lifted restrictions, medical group practices should also note:

- CMS will not enforce the established relationship requirement codified in [H.R. 6074](#). H.R. 6074 implemented an “established patient” requirement for telehealth services furnished pursuant to any new waivers. This would have required that patients be seen by the provider furnishing telehealth services, or provider in the same group practice, within 3 years and had services billed under Medicare. CMS guidance clarifies that it will not enforce this requirement, meaning that patients need not be billed under Medicare in the past three years by the provider or practice.
- Reimbursement is allowed for any telehealth covered [code](#), even if unrelated to COVID-19 diagnosis, screening or treatment.
- In order to deliver telehealth services, a clinician must still be a Medicare “qualified provider.”
- OIG is providing flexibility for healthcare providers to reduce or waive cost-sharing for telehealth visits paid by federal healthcare programs.
- CMS has temporarily [waived](#) the requirements that physicians or other healthcare professionals hold licenses in the state in which they provide services if they have an equivalent license from another state.

- Medicare telehealth services are generally billed as if the service has been furnished in-person. Meaning, the claim should reflect the designated Place of Service (POS) code 02-Telehealth, to indicate the billed service was furnished as a professional telehealth service from a distant site. However, for distant site practitioners billing under the CAH Optional Payment Method II on institutional claims, the GT modifier will be required. If you are performing telehealth services “through an asynchronous telecommunications system” you must use the GQ modifier.

In addition to the expanded telehealth services under the waivers, healthcare providers can still provide other telemedicine services:



Virtual Check-ins (G2012) – For established patients, providers may bill for virtual check-ins, which allow for a 5-10 minute conversation with a patient via telephone or other telecommunications device to evaluate whether an in-office visit is necessary. Virtual check-ins are not limited to rural settings or certain locations.



Store and Forward Technology (G2010) – For established patients, providers may bill G2010, the remote evaluation of recorded video and/or images submitted by a patient.

**For billing requirements, please see MGMA’s Medicare Communication-based-Technology Codes [resource](#).*

For more information on Medicare telehealth services, please contact MGMA Government Affairs at govaff@mgma.org or 202.293.3450. For the latest COVID-19 developments impacting medical practices, visit the [MGMA COVID-19 Action Center](#).

Disclaimer: The information in this resource is as current as March 17, 2020 and should not constitute as legal advice.