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## Duration of COVID-19 Telehealth Waivers

By law, Medicare limits access to telehealth services to Medicare patients who are established patients of the provider. Only certain provider categories are allowed to furnish telehealth services. Additionally, the patient must live in a rural area as defined by statute and receive the telehealth services in statutorily defined locations from providers located in statutorily defined sites. Telehealth service providers must be licensed in the state where the recipient of the services is located. Non-physician practitioners furnishing telehealth services must meet certain supervision requirements. Medicare also requires the use of two-way video communications devices that meet specified requirements of the Health Insurance Portability and Accountability Act (HIPAA). It does not pay for audio-only services. Telehealth providers must collect co-payments from Medicare beneficiaries for their services. Critical Access Hospitals (CAHs) must meet additional requirements regarding written agreements with distant-site providers of telehealth services.

Because of concerns related to the novel coronavirus (COVID-19), Congress and the administration took steps to increase the availability of telehealth services. On Jan. 31, 2020, Health and Human Services (HHS) Secretary Alex Azar [declared](#) the existence of a public health emergency (PHE) under Sec. 319 of the Public Health Service (PHS) Act, retroactive to Jan. 27, 2020. President Trump [declared](#) the existence of a national emergency under both the National Emergencies and Stafford Acts on March 13, 2020. In doing so, he triggered the availability of certain waiver authorities, including Sec. 1135 of the Social Security Act (SSA). Sec 1135 allows the HHS secretary to waive a number of Medicare and Medicaid requirements. The duration of the waivers varies based on the specific requirements waived and the authority under which the waiver was granted. Generally, the government can also opt not to enforce certain statutory requirements when conditions warrant it. For example, the Office for Civil Rights has opted to exercise enforcement discretion with respect to requirements pertaining to telehealth communications devices where providers are acting in good faith. The administration has flexibility to set the length of time for which it will exercise such discretion.

Congress has also passed three laws addressing COVID-19: [the Coronavirus Preparedness and Response Supplemental Appropriations Act](#); [the Families First Coronavirus Response Act](#); and [the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#). These laws expanded coverage for telehealth services, dramatically increasing access to telehealth services at the discretion of the HHS secretary under Sec. 1135 waiver authority.

Below is a table that outlines the ways in which the Congress and the administration have increased the availability of telehealth services because of COVID-19 and the duration of such actions.

Affected requirement	Relevant Citations	Waiver Authority	National Emergencies Act/ Stafford Act	PHE	Additional resources
Established Medicare patient	<a href="#">42 USC 1395m(m)</a>	<ol style="list-style-type: none"> <li><a href="#">Families First Coronavirus Response Act</a></li> <li><a href="#">CARES Act</a></li> <li><a href="#">Sec. 1135 Waiver</a></li> </ol>		X	<p>Typically, Sec. 1135 waivers require BOTH an emergency declaration under:</p> <ul style="list-style-type: none"> <li>The Stafford Act or the National Emergencies Act (“National Emergency”)</li> <li>PHS Act (PHE)</li> </ul> <p>Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, the Secretary is authorized to waive certain restrictions on the provision of telehealth services in the event of Public Health Emergency declaration <u>only</u>. <a href="#">42 USC §1320b-5(g)</a>. <a href="#">CARES Act §3703</a>.</p>
Geographic restrictions	<a href="#">42 USC 1395m(m)</a>	<ol style="list-style-type: none"> <li><a href="#">Coronavirus Preparedness and Response Supplemental Appropriations Act</a></li> <li><a href="#">CARES Act</a></li> <li><a href="#">Sec. 1135 Waiver</a></li> </ol>		X	See note above.
Originating/Destination site requirements	<a href="#">42 USC 1395m(m)</a>	<ol style="list-style-type: none"> <li><a href="#">Coronavirus Preparedness and Response Supplemental Appropriations Act</a></li> <li><a href="#">CARES Act</a></li> <li><a href="#">Sec. 1135 Waiver</a></li> </ol>		X	See note above.

<b>Two-way video conferencing requirement for E/M and behavioral health services</b>	<a href="#">42 CFR 410.78(a)(3)</a>	1. <a href="#">Coronavirus Preparedness and Response Supplemental Appropriations Act</a> 2. <a href="#">CARES Act</a> 3. <a href="#">Sec. 1135 Waiver</a>		X	See note above.
<b>Expanded telehealth provider categories</b>	<a href="#">42 USC 1395m(m)</a> <a href="#">42 CFR 410.78(b)(2)</a>	1. <a href="#">Coronavirus Preparedness and Response Supplemental Appropriations Act</a> 2. <a href="#">CARES Act</a> 3. <a href="#">Sec. 1135 Waiver</a>		X	See note above.
<b>Supervision requirements</b>	<a href="#">42 CFR 410.32(b)(3)</a> <a href="#">42 CFR 482.12(c)</a>	<a href="#">Sec. 1135 Waiver</a>	X	X	
<b>HIPAA-compliant communications system</b>	<a href="#">HIPAA Regulations</a>	<a href="#">OCR Enforcement Discretion</a>			The notice is not a waiver of HIPAA requirements. Rather, it is a notice issued by the Office for Civil Rights (OCR) notifying covered entities that it will exercise discretion with respect to the enforcement of specific provisions of HIPAA where covered entities are acting in good faith. <a href="#">FAQs</a> issued to further explain the notice and OCR's telehealth-related COVID-19 actions specify that the notice has no specific expiration date at this time. Instead, OCR will issue another notice announcing its expiration date at a future time.
<b>CAHs: Written telehealth agreements with distant-site hospitals</b>	<a href="#">42 CFR 482.12(a)(8)</a>	<a href="#">Sec. 1135 Waiver</a>	X	X	
<b>CAHs: Written telehealth agreements with distant-site telemedicine entity</b>	<a href="#">42 CFR 482.12(a)(9)</a>	<a href="#">Sec. 1135 Waiver</a>	X	X	

<b>CAHs: Credentialing and privileges for distant-site telemedicine providers</b>	<a href="#">42 CFR 485.616(c)</a>	<a href="#">Sec. 1135 Waiver</a>	X	X	
<b>Mandatory cost sharing for telehealth services</b>	Multiple federal fraud & abuse statutes	<a href="#">OIG Policy Statement</a>		X	Additional <a href="#">FAQs</a> available.
<b>Payment rate differentials for telehealth/audio- only/in-person visits</b>	<a href="#">COVID-19 Interim Final Rule</a>	None		X	Decisions regarding coverage and payment made annually via regulation, not statute, as part of the Physician Fee Schedule process. CMS has the authority to cover all medically necessary and reasonable services that are not explicitly excluded by statute. CMS has elected, based on stakeholder input, to act outside of the normal Physician Fee Schedule process, to make a determination regarding coverage and payment for audio-only services.
<b>Medicare state licensure requirements for telehealth services *</b>	<a href="#">42 USC 1395x(r)</a>	<a href="#">Sec. 1135 Waiver</a>	X	X	*Only waives Medicare state licensure requirements for the provision of telehealth services; States still have to issue waivers of licensure requirements to be effective
<b>Select provisions of the physician self-referral (Stark) law</b>	<a href="#">42 USC 1395nn</a> Regulations available at 42 CFR 411.350- 389	<a href="#">Sec. 1135 Waiver</a>	X	X	See also <a href="#">Explanatory Guidance</a> Specific examples of relationships permitted under the COVID-19 Stark waivers include: - the provision of free telehealth equipment by an entity to a physician practice to facilitate telehealth visits for patients who are observing social distancing or in isolation or quarantine - the lending of money by a hospital to cover a physician's 15% contribution for electronic health records (EHR) items and services in order to continue the physician's access to patient records and ongoing EHR technology support services.