



COVID-19 Public Health Emergency (PHE) ends on May 11, 2023

CMS waivers that will expire on May 11, 2023 (end of the PHE):

1. Telehealth platforms must be HIPAA compliant.
2. The Drug Enforcement Agency (DEA) will require prescribers to see a patient face-to-face before administering controlled substances.
3. Virtual supervision of residents will not be allowed in metropolitan statistical areas* (MSA), e.g., Lubbock, Amarillo, Midland, Odessa. This means TTUHSC will revert to pre-PHE standards for resident supervision, i.e., teaching physician (TP) billing E/M services must personally document:
 - The TP did the service or was physically present during critical or key resident-provided service and procedure portions. If the TP sees the patient separate from the resident, the TP must document that they saw and evaluated the patient, in addition to reviewing the resident's note and either agreement with the note/findings, or add additional information;
 - The TP participated in patient management.
5. The Primary Care Exception Rule will revert to pre-PHE guidance:
 - After the PHE, teaching physicians only in residency training sites located outside of a metropolitan statistical area may direct, manage, and review care furnished by residents through audio/video real-time communications technology;
 - After the PHE, teaching physicians can bill for levels 4-5 of an office/outpatient evaluation and management (E/M) visit furnished by residents in a primary care center only when the teaching physician is physically present for the key portion of the service.
6. Remote physiological monitoring services (RPM) to be furnished to established patients only.
7. RPM services (99453, 99454) must have minimum of 16 days monitoring to be reported.
8. If a practitioner is performing telehealth at home, they will be required to report their home address on the Medicare enrollment site.

*MSA is a geographic entity based on a county or a group of counties with at least one urbanized area with a population of at least 50,000 and adjacent counties with economic ties to the central area.

CMS waivers extended to December 31, 2023:

Virtual Supervision

Virtual presence may be used to meet direct supervision requirements until December 31, 2023. CMS also clarified that the temporary exception to allow immediate availability for direct supervision through virtual presence also facilitates the provision of telehealth services by clinical staff "incident to" the professional services of physicians and other practitioners.

CMS waivers through December 31, 2024:

- Federally Qualified Health Center (FQHC)/Rural Health Clinic (RHC) can continue to act as telehealth providers.
- Medicare patients can receive telehealth services in their home.
- Some services can be delivered using audio-only communication platforms.
- An in-person visit within six months of an initial behavioral/mental telehealth service, and annually thereafter, is not required.

CMS waivers that will remain in place permanently after end of the PHE

- [Federally Qualified Health Centers \(FQHCs\)](#) and [Rural Health Clinics](#) (RHCs) can serve as a distant site provider for behavioral/mental telehealth services.
- Medicare patients can receive telehealth services for behavioral/mental health care in their home.
- Opioid Treatment Programs may use audio-only to provide counseling and therapy services when live video not available and certain other requirements are met.
- Behavioral/mental telehealth services can be delivered using audio-only communication platforms.
- Rural hospital emergency departments are accepted as an originating site.
- Telehealth services can be provided by a physical therapist, occupational therapist, speech language pathologist, or audiologist.

AT-A-GLANCE CMS CHANGES POST-PHE



Other resources:

[CMS Waivers, Flexibilities, and the Transition Forward from the COVID-19 Public Health Emergency | CMS](#)

[Telehealth policy changes after the COVID-19 public health emergency | Telehealth.HHS.gov](#)

<https://www.cms.gov/files/document/teaching-hospitals-physicians-medical-residents-cms-flexibilities-fight-covid-19.pdf>

FAQs on end of the PHE:

1. Is our current zoom platform allowable to be continue for seeing patients, post-PHE, i.e., HIPAA Compliant?

Yes, Zoom is HIPAA compliant.

2. Seeing patients out of Texas without medical licenses in those state?

Catchment states to TTUHSC include New Mexico, Kansas and Oklahoma. These states have expired/rescinded states of emergency related to COVID-19, subsequently requiring some form of application to the respective state for authority to provide telemedicine to patients originating in each respective state, i.e., a telemedicine license, limited license, telemedicine waiver granted by the respective state.

New Mexico

- Status – Inactive. The NM medical board shall issue a licenses physician a telemedicine license to allow the practice of medicine across state lines. Further, the Board of Osteopathic medicine offers a limited telemedicine license that allows an osteopathic physician located outside New Mexico to practice osteopathic medicine on patients located in New Mexico.

Kansas

- Status – Inactive, the reinstated Kansas state of emergency expired January 20, 2023.
- Notwithstanding any other provision of law, a physician holding a license issued by the applicable licensing agency of another state or who otherwise meets the requirements of this section may practice telemedicine to treat patients located in the state of Kansas, if such physician receives a telemedicine waiver issued by the state board of healing arts

Oklahoma

- Interstate telehealth - Physician treating patients in OK through telemedicine must be fully licensed in OK. (OK Ad. Code § 435:10-7-13(a)). The State Board of Osteopathic Examiners has the authority to issue a telemedicine license. (OK Stat., Tit. 59, § 633)
- Status – Inactive, according to the emergency rules, the temporary, critical need licenses expired September 14, 2022.

For more information on specific states' licensure requirements, refer to the Federation of State Medical Boards (last update: March 13, 2023).

<https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf> [comparison-of-states-with-permanent-interstate-telemedicine.pdf](https://www.fsmb.org/siteassets/advocacy/pdf/comparison-of-states-with-permanent-interstate-telemedicine.pdf) (fsmb.org)

- 3. Controlled substance prescribing – current understanding is that if the patient was seen in person prior to the PHE or after, that certain controlled substances are OK; whereas if patient was established during PHE, they must be seen in person first.**

With the end of the COVID-19 public health emergency (PHE) on May 11, 2023, the Ryan Haight Act's restriction on telehealth prescribing of controlled substances will go back into effect immediately. This means that an in-person visit will be required in order to prescribe controlled substances.

The Ryan Haight Act does not limit a practitioner's ability to prescribe controlled medications for a patient after there has been at least one in-person medical evaluation.

[Federal Register: Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation](#)

- 4. Question about a statute ending that allowed TTUHSC physician to treat NM patient without fear of malpractice cases being brought in NM. Are TTUHSC physicians at risk?**

From TTUHSC General Counsel Office:

The statute was a legislative bridge until the New Mexico Supreme Court ruled on the issue. Because the NM Supreme Court ruled that New Mexico courts will follow Texas sovereign immunity laws, that statute was no longer needed. We still have New Mexico residents sign the form out of an abundance of caution and so that they are aware of the fact that lawsuits regarding care will be required to be filed in Texas.*

*[TTUHSC Health Care Provider-Patient Contract – Governing Law and Venue](#)

Questions? Contact the Compliance Office at your respective campus or John Geist, Managing Director, Billing Compliance (john.geist@ttuhsc.edu)