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End of COVID-19 Public Health Emergency

Status of CMS Waivers and Flexibilities

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- COVID-19 public health emergency was declared January 2020 and extended multiple times

- PHE allowed waivers and flexibilities of rules/policies to enable access to care

- COVID-19 Public Health Emergency (PHE) Ends

May 11, 2023

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Resident Supervision

After the PHE ends on **May 11, 2023**, virtual supervision* of residents will only be allowed in rural areas (defined as non-metropolitan statistical areas (MSAs)^.

*physician supervision provided virtually using real-time audio/video technology

^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, e.g., Lubbock, Amarillo, Midland, Odessa.

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Resident Supervision (cont.)

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.

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Primary Care Exception (PCE)

The Primary Care Exception Rule will revert to pre-PHE guidance:

- After the PHE ends on **May 11th**, 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.

- The primary care exception includes level 1-3 E/M services, annual visits, interprofessional internet consults and virtual check in's.

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Residents Providing Telehealth

- After the PHE ends on **May 11, 2023**, residents will only be allowed to provide telehealth visits under virtual supervision in rural areas (defined as non- metropolitan statistical areas (MSAs).

- The resident and patient must be in rural location; however, the teaching physician does not have to be in rural location.

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Cost Sharing Obligations (coinsurance and deductibles)

- During the PHE, OIG did not enforce cost sharing requirements for telehealth services provided to Medicare beneficiaries, i.e., had the option of waiving coinsurance and deductible payments by Medicare beneficiaries.

- After **May 11, 2023**, cost sharing requirements (e.g., coinsurance and deductible is enforced.

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Remote Patient Monitoring

After the PHE ended on **May 11, 2023**, CMS requires that RPM services are furnished only to established patients and the remote monitoring must be for 16 or more days of data in a 30-day period for billing.

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Virtual Check-In's

After the PHE ended on **May 11, 2023**, virtual check-in codes are allowed for established patients only.

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Interprofessional Consults

After **May 11, 2023**, beneficiary consent for interprofessional consults is required.

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HIPAA Compliance

Beginning **August 10, 2023**, telehealth platforms must be HIPAA compliant. Until that date OCR will continue to exercise its enforcement discretion and will not impose penalties on covered health care providers that make good faith provisions of telehealth.

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Virtual Direct Supervision

Until **December 31, 2023**, direct supervision may be provided using real time, interactive audio/video technology (excluding audio-only), and subject to the clinical judgement of the supervising physician or other supervising practitioner.

The requirement can be met by the supervising physician or other practitioner being immediately available to engage in audio/video technology and does not require real-time presence or observation of the service throughout the performance of the procedure.

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Place of Service - Telemedicine

Until **December 31, 2023**, use the place of service (POS) that would have been used if the patient was seen n person.

Starting **January 1, 2024**, use POS 2 (telehealth provided other than in the patient's home) or POS 10 (telehealth provided in the patient's home)

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Reporting Address of the Location of Provider

Beginning **January 1, 2024**, Practitioners who render telehealth services from their home will be required to report their home address on the Medicare enrollment.

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Patient Location for Telehealth Services

Beginning **January 1, 2025**, telehealth will only be covered in rural areas (non-metropolitan statistical areas^) and the patient may not be in his/hers home.

^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, e.g., Lubbock, Amarillo, Midland, Odessa.

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In-Person Visit Requirement for Mental Health Services

Beginning **January 1, 2025**, for mental health services, the patient must be seen in person with 6 months prior to telehealth visit. The in-person visit can be provided by physicians in the same specialty and group practice.

A subsequent in-person visit each 12 months is required for mental health services, however, exceptions to the subsequent visit requirements are allowed.

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Telephone E/M and Audio-Only

Beginning **January 1, 2025**, CMS will not cover audio-only services (telephone E/M) except for mental health services.

Medicare is requiring use of modifier 93 for audio-only services in 2023.

FQHCs and RHCs should use modifier 93, replacing modifier FQ.

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Patient Location for Telehealth Services - Mental Health Services and Substance Use Disorder

Treatment for substance use disorder and mental health services can be provided in any geographic region and in the patient's home **permanently**.

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Who Can Provide Telehealth?

After the PHE ends on **May 11, 2023 and permanently thereafter**, the states will determine whether or not a provider is allowed to provide services in the state.

The state laws that apply are based on where the patient is located.

Licensure

Permanent:

• Physicians, nurse practitioners, physician's assistants, nurse midwives, certified nurse anesthetists, clinical psychologists, social workers, registered dieticians, and nutrition professionals (bill on 1500/837P)

May Provide Telehealth Services Until December 31, 2024:

• Physical therapists, occupational therapists, audiologists, and speech language pathologists

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Licensure

New Mexico

- The NM medical board shall issue a licenses physician a telemedicine license to allow the practice of medicine across state lines.

Kansas

- 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

- Physician treating patients in OK through telemedicine must be fully licensed in OK.

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

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State Governance

Treating New Mexico patients – malpractice case brought in NM.

- *The New Mexico Supreme Court ruled that New Mexico courts will follow Texas sovereign immunity laws, that statute was no longer needed.*
- *New Mexico residents should continue to sign the TTUHSC Health Care Provider-Patient Contract-Governing Law and Venue so that they are aware of the fact that lawsuits regarding care will be required to be filed in Texas.*

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Controlled Substance Prescribing

- 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 went back into effect. 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

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References:

AAMC: COVID-19 PHE Waivers and Flexibilities: Status Update April 11, 2023

AAMC: End of the COVID-19 PHE April 28, 2023

Center for Connected Health Policy: Medicare Telehealth / Connected health Waivers Post-PHE March 2, 2023

CodingIntel: Coding for Telehealth May 1, 2023

Consolidated Appropriations Act, 2023

CMS: Physicians and Other Clinicians: CMS Flexibilities to Fight COVID-19

February 24, 2023

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This slide presentation and other resource information on the end of the COVID-19 Public Health Emergency (PHE) are available on TTUHSC Institutional Compliance webpage: Compliance COVID-19 Updates; End of the PHE

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