



ADDITIONAL COVID-19 EMERGENCY BLANKET WAIVERS AND FLEXIBILITIES

March 31, 2020

On March 30, 2020, the Centers for Medicare and Medicaid Services (CMS) issued unprecedented and sweeping regulatory changes including blanket waivers with a retroactive date of March 1, 2020, through the end of the National Emergency Declaration. These blanket waivers DO NOT require a request to CMS or notification to any of CMS's regional offices and impact a wide range of health care providers. CMS has also announced flexibilities designed to address COVID-19 patient surge concerns. The following is a brief summary of those waivers and flexibilities, as well as links to the CMS documents for additional detail.

HOSPITALS

Waivers for hospitals relate to a wide range of regulations including EMTALA, verbal orders, patient rights, compounding, discharge planning, medical staff, medical records, advance directives, physical environment, telemedicine, physician services, anesthesia services, emergency preparedness, quality assessment and performance improvement programs, nursing services, respiratory care services, and inpatient psychiatric care.

CMS is also allowing healthcare systems and hospitals to provide services in locations beyond their existing walls to help expand care capacity and develop sites dedicated to COVID-19 treatment. Under these new temporary rules, hospitals can transfer patients to outside facilities such as ambulatory surgery centers, inpatient rehabilitation hospitals, hotels, and dormitories, while still receiving hospital payments under Medicare. Ambulatory surgery centers can contract with local healthcare systems to provide hospital services or they can enroll and bill as hospitals during the emergency declaration. CMS waivers will permit doctor-owned hospitals to increase their number of beds without incurring sanctions. Ambulances can transport patients to a wider range of locations when other transportation is not medically appropriate. The CMS guidelines allow healthcare systems, hospitals, and communities to set up testing and screening sites exclusively for the purpose of identifying COVID-19 positive patients in a safe environment. Medicare will pay laboratory technicians to travel to a beneficiary's home to collect a specimen for COVID-19 testing, eliminating the need for the beneficiary to travel to a healthcare facility.

LONG TERM CARE

For long-term care facilities and skilled nursing facilities, waivers relate to the 3-day prior hospitalization coverage, reporting minimum data set, staffing data submission, physical environment, physician visits, and resident transfer and discharge.

HOME HEALTH AND HOSPICE

Home Health Agencies have been granted waivers related to reporting, initial assessments, and on-site visits of HHA Aide Supervision. Waivers relate to the use of volunteers, the timeframe for updating and completing comprehensive assessments, non-core services, and onsite visits for hospice aide supervision.

CMS is allowing telehealth to fulfill many face-to-face requirements for clinicians to see their patients in inpatient rehabilitation facilities, hospice, and home health. During the pandemic, individuals can use commonly available interactive apps with audio and video capabilities to visit with their clinician.

Home Health Agencies can provide services to a Medicare patient receiving routine home care through telehealth, if it is appropriate and feasible to do so.

If a physician determines a Medicare beneficiary should not leave home because of a medical contraindication or due to suspected or confirmed COVID-19 and the beneficiary needs skilled services, he or she will be considered “homebound” and qualify for the Medicare Home Health Benefit and a beneficiary can receive services at home.

END-STAGE RENAL DIALYSIS (ESRD) FACILITIES

Waivers have been granted to ESRD facilities in areas related to training/periodic audits, maintenance and fire safety inspections, emergency preparedness, delay of some patient assessments, the time period for initiation of care planning and monthly physician visits, dialysis home visits, expanding ESRD to nursing home residents, and clarification to billing procedures.

DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHODICS AND SUPPLIES (DMEPOS)

When DMEPOS is lost, destroyed, or irreparably damaged, CMS is allowing DME Medicare Administrative Contractors (MACs) to have the flexibility to waive replacement requirements including the face-to-face requirement, a new physician’s order, and new medical necessity documentation.

PRACTITIONER LOCATIONS

CMS is temporarily waiving requirements that out-of-state practitioners be licensed in the state in which they are providing services when they are licensed in another state, if certain conditions are met.

PROVIDER ENROLLMENT

CMS has a toll-free hotline to enroll and receive temporary Medicare billing privileges. Certain screening requirements are waived and physicians are permitted to render telehealth services from their home without reporting their home address on their Medicare enrollment while continuing to bill from their currently enrolled location.

MEDICAID AND CHIP (AS OF 3/13/20)

States and territories can request approval that certain statutes and implementing regulations be waived by CMS. To assist, CMS released an 1135 Waiver Checklist to make it easier for states to receive federal waivers and implement flexibilities in their Medicaid and CHIP programs.

PHYSICIAN SELF-REFERRAL LAW (STARK LAW)

CMS has issued blanket waivers of sanctions under 1877(g) of the Act. The blanket waivers may be used without notifying CMS. Individual waivers of sanctions may be granted upon request. For more information and details on these sweeping regulatory changes, please see:

<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

<https://www.cms.gov/newsroom/press-releases/trump-administration-makes-sweeping-regulatory-changes-help-us-healthcare-system-address-covid-19>

<https://www.cms.gov/newsroom/fact-sheets/additional-backgroundsweeping-regulatory-changes-help-us-healthcare-system-address-covid-19-patient>

For assistance or questions concerning Section 1135 waivers or other regulatory actions taken in response to the COVID-19 pandemic, please contact a member of Hancock Daniel's [COVID-19 Task Force](#).

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