

# CMS is Here to Help with Temporary Expansions

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“We’re from the government and we’re here to help.” Really? Really.

Titles like “CARES Act” and “Patients Over Paperwork” may inspire warm, fuzzy feelings, cautious optimism, or outright cynicism amongst healthcare providers. However, the recent August 20, 2020, announcement from CMS regarding the temporary expansion of telehealth and other flexibilities for the duration of the 2019 Novel Coronavirus (COVID-19) public health emergency declaration should be cause for universal celebration. This article will briefly highlight some of the temporary changes that will have an obvious and immediate impact on healthcare providers.

The broad expansions address removal of scope of practice barriers, remedies for physical site limitations, additional home-based treatments, additional testing, and a reduction of paperwork for practitioners.[1] More specifically, CMS stated the goals of the temporary changes that immediately applied across the entire United States healthcare system are to:

- Expand the healthcare system workforce by removing barriers for physicians, nurses, and other clinicians to be readily hired from the community or from other states;
- Ensure that local hospitals and health systems have the capacity to handle a potential surge of COVID-19 patients through temporary expansion sites (also known as CMS Hospital Without Walls);
- Increase access to telehealth in Medicare to ensure patients have access to physicians and other clinicians while keeping patients safe at home;
- Expand in-place testing to allow for more testing at home or in a community based setting; and
- Put Patients Over Paperwork to give temporary relief from many paperwork, reporting and audit requirements so providers, health care facilities, Medicare Advantage and Part D plans, and States can focus on providing needed care to Medicare and Medicaid beneficiaries affected by COVID-19.

Telehealth is the tool in the clinician’s COVID-19 arsenal that strikes the delicate balance between delivery of quality patient care and risk mitigation. The current expansion authorizes Medicare telehealth and other communications technology-based services to be delivered to either new or established patients wherever they are located. Additionally, this powerful tool can enhance cost-saving strategies for both patients and clinicians. Health care providers can waive Medicare co-payments for telehealth and non-face-to-face services for Original Medicare beneficiaries.

Under the CARES Act, CMS is waiving the requirements of §1834(m)(1) of the Act and 42 CFR § 410.78(a)(3) to the extent they require the use of video technology for certain services. This waiver allows the use of audio-only equipment to furnish services described by the codes for audio-only telephone evaluation and management services, as well as behavioral health counseling and educational services.

Additionally, CMS is waiving the requirements of § 1834(m)(4)(E) of the Act and 42 CFR § 410.78(b)(2), which specify the types of practitioners who may bill for Medicare telehealth services provided from a distant site. **All** health care professionals eligible to bill Medicare for their services can now furnish distant site telehealth services, including physical therapists, occupational therapists, and speech language pathologists.

For services requiring direct supervision, either by a physician or other practitioner, supervision can be provided virtually using real-time audio/video technology. In further modification of supervisory requirements, a general level of supervision, rather than direct supervision, is required at the initiation of non-surgical extended duration therapeutic services provided in hospital outpatient departments and critical access hospitals.

APRNs, including nurse practitioners, clinical nurse specialists, and certified nurse- midwives, and physician assistants can supervise diagnostic tests as authorized under state law and in accordance with their licensure. These advanced practitioners must comply with the statutory requirements for either a collaborative or supervisory clinical relationship with physicians as required by state law.

CMS is temporarily waiving Medicare and Medicaid's requirements that physicians and non-physician practitioners be licensed in the state where they are providing services, although state requirements still apply. CMS waives the Medicare requirement for licensure in the State in which practice occurs for individuals satisfying the following conditions:

- The individual is enrolled in the Medicare program;
- The individual possesses a valid license to practice in the State which relates to his or her Medicare enrollment;
- The individual is furnishing services, via telehealth or in person, in a State in which the emergency is occurring in order to contribute to relief efforts in his or her professional capacity; and
- The individual is not affirmatively excluded from practice in the State or any other State that is part of the 1135 emergency area.

An 1135-based license waiver does **not** have the effect of waiving state or local licensure requirements.

Another significant waiver is that Medicare patients in a hospital need **not** be under the care of a physician during the public health emergency. Pursuant to the waiver of 482.12(c) (1-2) and (4), non-physician practitioners may be utilized to provide care in accordance with a state's emergency preparedness or pandemic plan. The expansion of advanced care practitioners' roles during the pandemic for reimbursement purposes must still comport with state law from a scope of practice perspective.

CMS is modifying its process to add approved services to the Medicare telehealth services list. CMS will now consider the addition of appropriate services as they are requested on a sub-regulatory basis. A complete list of all Medicare telehealth services is available here.

Notably, CMS has authorized payment for practitioners for assessment and specimen collection for COVID-19 testing using the level 1 evaluation and management code CPT code 99211. Medicare will recognize this code for all patients, not just established patients. A Medicare beneficiary's first COVID-19 test will be covered without a physician's order. However, subsequent tests will require a physician or other practitioner's order. Pharmacists, as well as other auxiliary personnel who are able to order lab tests under state scope of practice and other relevant laws, may order COVID-19 tests for Medicare beneficiaries during the public health emergency.

While these are just a few of the recent waivers CMS announced impacting the delivery of telehealth services and scope of practice for physicians and non-physician practitioners, it is clear access to care is a priority for both providers and government payers. A question remains whether these temporary measures will remain in effect once the public health emergency declaration expires. If positive patient outcomes, enhanced provider efficiency and cost savings result from these temporary adjustments, permanent implementation could be likely.

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[1] The complete reference for physicians and other clinicians is available here: <https://www.cms.gov/files/document/covid-19-physicians-and-practitioners.pdf>