

Eli's Hospice Insider

COVID-19: Docs, NPs Can Perform Hospice Face-To-Face Visits For Recerts Via Telehealth

Non-public-facing technologies like FaceTime, Skype are OK for visits.

Every day brings new developments in Medicare's handling of the COVID-19 pandemic.

At press time, industry observers were welcoming a host of new regulatory relief measures, including a change allowing physicians and nurse practitioners to perform face-to-face encounter visits for hospice recertifications.

On March 17, the **Centers for Medicare & Medicaid Services** first announced an expansion of telehealth benefits for physicians and their patients. The changes allow physicians to provide telehealth visits to patients anywhere, not just in rural areas, and in their homes rather than at a healthcare facility. "These changes allow seniors to communicate with their doctors without having to travel to a healthcare facility so that they can limit risk of exposure and spread of this virus," CMS Administrator **Seema Verma** said in a release. "Clinicians on the frontlines will now have greater flexibility to safely treat our beneficiaries."

The change was made possible by the 1135 waiver following **President Trump's** national emergency declaration on March 13 and **Department of Health and Human Services** Secretary **Alex Azar's** public health emergency declaration on Jan.31.

But while CMS quickly clarified that physician telehealth visits could count for home health face-to-face, the same was not true for hospice F2F visits. Industry representatives vowed to lobby CMS to apply telehealth to hospice F2F visits too.

Good news: On March 30, CMS announced a raft of regulatory relief provisions for COVID-19, including allowing physicians and NPs to provide F2F for hospice recertification periods. "Given that a face-to-face visit solely for the purpose of recertification for Medicare hospice services is considered an administrative requirement related to certifying the terminal illness ... we believe that such visit could be performed via telecommunications technology as a result of the PHE for the COVID-19 pandemic," CMS says in the 221-page interim final rule containing the regulatory changes. The rule doesn't yet have a scheduled Federal Register publication date.

The physician and NP visits won't be separately billable, CMS points out. "Encounters solely for the purpose of recertification would not be a separately billed service, but rather considered an administrative expense," the rule clarifies.

However: "If a hospice physician, or a hospice NP who is also the patient's designated attending physician, provides reasonable and necessary nonadministrative patient care during the face-to-face visit, that portion of the visit would be billable under the Medicare rules," CMS explains. In other words, "if a hospice physician or the hospice NP acting as the patient's designated attending physician provides direct patient care during the course of the face-to-face encounter, the physician or NP may bill for such direct care services for Medicare beneficiaries under the [physician fee schedule]," the rule says.

Don't forget: "There are additional requirements for billing physician services provided by NPs," CMS reminds in the rule.

New Telehealth Avenues Available

In addition to allowing reimbursed physician telehealth visits to patients in their homes, CMS is also loosening up on what

kind of devices those visits can be conducted on.

"Patients will now be able to access their doctors using a wider range of communication tools including telephones that have audio and video capabilities, making it easier for beneficiaries and doctors to connect," CMS says in its telehealth expansion release.

The feds have further clarified that non-public-facing technologies like FaceTime and Skype can be used for telehealth visits, but public-facing technologies like TikTok and Facebook Live can't.

"We are empowering medical providers to serve patients wherever they are during this national public health emergency," said **Roger Severino, HHS Office for Civil Rights** director. "We are especially concerned about reaching those most at risk, including older persons and persons with disabilities," Severino added.

Hand-in-hand with the telehealth expansion came an OCR announcement of HIPAA enforcement discretion. "OCR will ... not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency," OCR said.

And HHS also issued a waiver of certain sanctions for noncompliance with certain HIPAA requirements that day.

Further, the **HHS Office of Inspector General** announced it would not apply "administrative sanctions for reducing or waiving any cost-sharing obligations Federal health care program beneficiaries may owe for telehealth services," according to a March 17 announcement.

Remember: The telehealth visit doesn't have to be for COVID-19 reasons to qualify for the expansion and exemptions. "OCR emphasized the need to ensure remote access to care for patients, especially those most at risk, regardless of whether or not the service is related to COVID-19," note attorneys **Rebecca Schaeffer** and **Cheryl Choice** with law firm **K&L Gates** in online analysis. "Increasing access to telehealth will reduce the need for ... nonsymptomatic individuals to travel to facilities for health care, which in turn will help interpersonal interactions and further reduce transmission."

Watch out: Providers must also look to another authority, which may have stricter requirements, Schaeffer and Choice remind. "Telehealth is heavily regulated by state law, and providers should ensure that they are meeting all state requirements prior to initiating telehealth services."

Also, don't take the OCR statement as carte blanche to ignore HIPAA requirements. "While these OCR pronouncements give covered entities some additional flexibility, it is limited, and overall HIPAA requirements continue to apply," Schaeffer and Choice caution.

Do this: Point your physicians who are considering telemedicine to the **American Academy of Family Physicians'** website on the topic, which includes software recommendations and billing tips: [www.aafp.org/patient-care/emergency/2019-coronavirus/ COVID-19-daily/telehealth.html](http://www.aafp.org/patient-care/emergency/2019-coronavirus/COVID-19-daily/telehealth.html).

Note: The telehealth expansion announcement is at www.cms.gov/newsroom/press-releases/president-trump-expands-telehealth-benefits-medicare-beneficiaries-during-covid-19-outbreak and a related fact sheet is at www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet. OCR's notice of enforcement discretion is at www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html. HHS' HIPAA waiver announcement is at www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf and the OIG's copay waiver notice is at <https://oig.hhs.gov/fraud/docs/alertsandbulletins/2020/factsheet-telehealth-2020.pdf>. CMS' COVID-19 FAQs clarifying the home health face-to-face visit are at www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf and Medicaid FAQs are at www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf. The interim final rule is at www.cms.gov/files/document/covid-final-ifc.pdf.

