

Eli's Hospice Insider

Covid-19: Telehealth Face-To-Face Gets Some Breathing Room Post PHE

PHE flexibility fact sheets now incorporate accurate end dates.

If you worried that some new fact sheets about COVID-19 regulatory flexibilities meant face-to-face rules were tightening up sooner than expected, you can relax.

Medicare officials have told providers to begin planning for the end of the COVID-19 public health emergency and many of its related flexibilities. For hospices, one of the biggest pain points will be losing face-to-face encounters via telehealth.

"Throughout the COVID-19 public health emergency (PHE), [the Centers for Medicare & Medicaid Services] has used a combination of emergency authority waivers, regulations, enforcement discretion, and sub-regulatory guidance to ensure access to care and give health care providers the flexibilities needed to respond to COVID-19 and help keep people safer," three top CMS officials said in a blog entry posted Aug. 18. "Many of these waivers and broad flexibilities will terminate at the eventual end of the PHE, as they were intended to address the acute and extraordinary circumstances of a rapidly evolving pandemic and not replace existing requirements," said **Jonathan Blum** (CMS Chief Operating Officer and Principal Deputy Administrator), **Carol Blackford** (Director, Hospital and Ambulatory Policy Group) and **Jean Moody-Williams** (Deputy Director of the Center for Clinical Standards and Quality).

Then: On March 17, 2020, CMS announced an expansion of telehealth benefits for physicians and their patients under the PHE, and on March 30, 2020, CMS confirmed in an interim final rule that under the expansion of telehealth under the 1135 waiver, beneficiaries could use telehealth technologies with their doctors and practitioners for the face-to-face encounter for hospice. In a number of different guidance documents, CMS made clear early on that F2F encounters with physicians or other qualified non-physician practitioners must include both an audio and visual component.



Now: Those flexibilities will continue until the PHE ends, and the CMS officials reiterate that Health and Human Services

Secretary **Xavier Becerra** "has committed to giving states and the health care community writ large 60 days' notice before ending the PHE."

Ahead: But when the PHE ends, so will that specific flexibility. In conjunction with the blog post, CMS released provider type-specific fact sheets, including a hospice one that specified the F2F waiver "will expire at the end of the PHE."

The problem is that the Consolidated Appropriations Act of 2022 actually extends the waiver allowing use of telehealth to perform the hospice face-to-face encounter (Section 306) for 151 days following the end of the PHE, the National Association for Home Care & Hospice pointed out.

Now, CMS has corrected the hospice fact sheet to note that the F2F flexibilities will actually end at that mark. The F2F waiver "will expire the first day after the 151st day following the end of the PHE," the updated hospice fact sheet now reads.

Keep in mind that there is pending legislation that would further extend the telehealth flexibilities, so stay tuned, NAHC says.

Note: The sheet is at www.cms.gov/files/document/hospice-cms-flexibilities-fight-covid-19.pdf.