COVID-19 Resources for Hospice and Palliative Care

The following document compiles resources on the COVID-19 pandemic specific to hospice and palliative care.

Emergency Declaration

- On January 31, 2020, U.S. Department of Health and Human Services (HHS) Secretary Alex Azar determined that a public health emergency existed because of confirmed cases of the coronavirus disease (COVID-19) under the authority granted by section 319 of the Public Health Service Act (PHSA). The nationwide determination took effect January 27, 2020.
- On March 13, 2020, President Donald Trump declared the ongoing COVID-19 pandemic a national emergency under the Stafford Act.
- On March 13, 2020, Secretary Azar made the decision to retroactively waive numerous requirements for Medicare, Medicaid, CHIP, and the HIPAA privacy rule, under authority provided section 1135 of the Social Security Act, retroactive to March 1, 2020, including certain conditions of participation, requirements that physicians and other health care professionals hold licenses in the state in which they provide services if they have a license from another state, and more.
- For more information on public health emergencies and major disaster declarations, including what authorities may be exercised under each, as well as assistance available through the Federal Emergency Management Agency (FEMA) and the Small Business Association (SBA), Hart Health Strategies' primer can be found here.

Guidance Addressing Hospice and Physician Services on COVID-19 by the Centers for Medicare and Medicaid Services (CMS)

- On March 9, 2020, CMS issued guidance of hospice providers addressing Infection Control and Prevention by Hospice Agencies.
- On March 13, 2020, Secretary Azar made the decision to retroactively waive certain section 1135 requirements and regulations effective March 1, 2020.
- On March 13, 2020, CMS issued blanket waivers under section 1135 that are detailed in this Health Care Providers Fact Sheet and MLN Matters article. Among the topics addressed are:
    - Provider enrollment waivers
    - Waivers regarding Medicare appeals in fee-for-service, MA, and Part D
    - Durable medical equipment replacement
    - Replacement prescription fills of covered Part B drugs
- On March 15, 2020, CMS posted updated FAQs detailing emergency-related policies and procedures that may be implemented without section 1135 waivers. Included in the FAQs is a section specific to physician services and hospice services.
- On March 22, 2020, CMS issued a press release announcing relief for clinicians, providers, hospitals, and facilities participating in quality reporting programs – including the Merit-Based Inceptive Payment System (MIPS) and the Hospice Quality Reporting Program – through deadline extensions and elimination of data reporting for certain periods.

Telehealth Payments in Response to the COVID-19 Pandemic

See the Hart Health Strategies Telehealth Overview resource here for more information about telehealth payments in response to the COVID-19 pandemic, including information on key limitations and additional considerations.

Actions by HHS

Following the passage of legislation to expand waiver authority to increase access to telehealth services under declared emergencies (The *Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020*, Public Law No: 116-123, and *Family First Coronavirus First Response Act*, Public Law No: 116-127), HHS undertook several actions to expand providers' ability to use telehealth services, including:

- On March 17, 2020, CMS provided new information regarding the implementation of this new waiver authority for the Medicare program, including a press release, fact sheet and updated FAQ. Under the waiver, which is effective for services starting March 6, 2020 and for the duration of the COVID-19 Public Health Emergency, Medicare will make payment for Medicare telehealth services furnished to beneficiaries in all areas of the country and in all settings, including in beneficiaries' homes.
- For Medicaid, states can gain new authority to use their Medicaid programs to respond to the coronavirus pandemic under the national emergency declared by President Donald Trump under waivers that fall under section 1135 of the Social Security Act. For instance, States may be able to expand the use of telehealth services in their Medicaid programs to combat the coronavirus outbreak. On March 17, 2020, CMS issued additional Medicaid telehealth guidance and while also highlighting their main website for telehealth in Medicaid. Per the FAQs, "[n]o federal approval is needed for state Medicaid programs to reimburse providers for telehealth services in the same manner or at the same rate that states pay for face-to-face services."
- In addition, the Office of Inspector General (OIG) published its opinion that during the emergency period "[a] physician or other practitioner reduces or waives cost-sharing obligations (i.e., coinsurance and deductibles) that a beneficiary may owe for telehealth services furnished consistent with the then-applicable coverage and payment rules" under Federal Health care programs. The opinion further states that this does "not require physicians or other practitioners to reduce or waive any cost-sharing obligations Federal health care program beneficiaries may owe for telehealth services." For more information, visit the OIG fact sheet here.
- On March 17, 2020, the Office of Civil Rights (OCR) announced enforcement discretion for certain widely used communications. Specifically, the OCR press release states "effective immediately, that it will exercise its enforcement discretion and will waive potential penalties for HIPAA violations against health care providers that serve patients through everyday communications technologies during the COVID-19 nationwide public health emergency. This exercise of discretion applies to widely available communications apps, such as FaceTime or Skype, when used in good faith for any telehealth treatment or diagnostic purpose, regardless of whether the telehealth service is directly related to COVID-19." For more information, see the statement, fact sheet, and Bulletin.
- On March 20, 2020, the Food and Drug Administration (FDA) issued a final guidance document that allows manufacturers of certain FDA-cleared non-invasive, vital sign-measuring devices to expand their use so that health care providers can use them to monitor patients remotely. The devices include those that measure body temperature, respiratory rate, heart rate and blood pressure.
- On March 20, 2020, OCR further announced enforcement discretion regarding HIPAA security, privacy, and breach requirements, while clarifying that this discretion does not apply to the confidentiality of substance use disorder records, given the Substance Abuse and Mental Health Services Administration (SAMHSA) has announced separate enforcement discretion regarding those rules. OCR continues to

discourage the use of certain "public facing" platforms such as Facebook Live, Twitch, and TikTok. For additional OCR FAQs, visit here.

VA and Telehealth

To bypass state licensure, the Veterans Administration (VA) had previously issued a final rule in May 2018 *"that ensures that VA health care providers can offer the same level of care to all beneficiaries, irrespective of the State or location in a State of the VA health care provider or the beneficiary"* and *"achieves important Federal interests by increasing the availability of mental health, specialty, and general clinical care for all beneficiaries."*

American Medical Association Resources

In response to the Medicare changes, the American Medical Association (AMA) shared the Quick Guide to Telemedicine in Practice, a new resource to help mobilize remote care with implementation tips, as well as a reference to Current Procedural Terminology (CPT®) codes for reporting telemedicine and remote care services. The AMA also offers an education module in the AMA's STEPS Forward™ that can help physicians use telemedicine in practice, and the Digital Health Implementation Playbook with a 12-steps process for adopting remote monitoring of patients outside the traditional clinical environment.

Application to hospice care

One key concern is whether certain activities (e.g., required face-to-face encounters) could be administered via telehealth under a section 1135 waiver. In its March 15, 2020 FAQ, CMS directly addresses the face-to-face requirement (copied below).[1]

> *Question: Are the hospice requirements for a face-to-face encounter waived under Section 1135 of the Act?*
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> *Answer: No. The required timeframe for the occurrence of a hospice face-to-face encounter is typically flexible enough to allow hospices to meet this requirement, even in emergency situations. A face-to-face encounter can occur up to 30 days prior to the start of the third benefit period and 30 days prior to any subsequent benefit periods thereafter (see section 20.1 in chapter 9 of the Medicare Benefit Policy Manual (Pub. 100- 02)).* ***However, if conditions related to the emergency cause a provider to expect to be unable to meet these timeframes, that provider should contact the CMS RO to allow for tracking and completion of this encounter as soon as conditions allow.*** **(emphasis added)**

Given that the new telehealth waiver authority is separate and distinct from the section 1135 waiver, to understand the full impact under that authority, it is necessary to review the new FAQs. Unfortunately, the recent announcement regarding telehealth expansion is limited to certain providers, not tied to facilities. The relevant FAQ (copied below) does not mention hospice providers.[2]

> *Q: Who are the Qualified Providers who are permitted to furnish these telehealth services under the new law?*

[1] Section 3706 of the *Coronavirus Aid, Relief, and Economic Security Act (CARES)* (H.R. 748) would allow for the face-to-face encounter to be via telehealth during a public health emergency. At this time, it is unclear how that bill will proceed.

[2] Section 3703 of the *Coronavirus Aid, Relief, and Economic Security Act (CARES)* (H.R. 748) dramatically modified the provision to address outstanding provider concerns. At this time, it is unclear how that bill will proceed.

A: Qualified providers who are permitted to furnish Medicare telehealth services during the Public Health Emergency include physicians and certain non-physician practitioners such as nurse practitioners, physician assistants and certified nurse midwives. Other practitioners, such as certified nurse anesthetists, licensed clinical social workers, clinical psychologists, and registered dietitians or nutrition professionals may also furnish services within their scope of practice and consistent with Medicare benefit rules that apply to all services. This is not changed by the waiver.

Select Stakeholder Actions

Several organizations have taken action to address care delivered by hospice and palliative care providers.

- On March 12, 2020, the National Hospice and Palliative Care Organization (NHPCO) submitted a letter to CMS addressing several aspects of hospice care, including use of telephonic and telehealth-based encounters to meet face-to-face encounter requirement for hospice recertification and other care delivery requirements; timeframes for submitting completing certain actions; staffing flexibilities; personal protective equipment (PPE) and testing; and more.
- On March 16, 2020, the National Coalition for Hospice and Palliative Care submitted a letter to support Senate passage of the *Family First Coronavirus First Response Act*, H.R. 6201, specifically focusing on COVID-19 testing without cost-sharing, availability of personal protective equipment, and expanded coverage of telehealth.
- On March 17, 2020, four hospice stakeholder organizations - the NHPCO, the National Association for Home Care and Hospice, the National Partnership for Hospice Innovation, and Leading Age/Visiting Nurse Associations of America/Elevating Home – submitted a combined letter to request funding and regulatory relief. The letter addresses additional funding for hospices – including funding to access PPE and additional staffing; pauses of audit activity; expanded use of telehealth; and additional regulatory flexibility.
- As the Phase III package is being developed, NHPCO requested a statutory change to allow telehealth to be used for hospice face-to-face encounters during the COVID-19 national emergency.
- On March 20, 2020, AAHPM submitted a letter to Senate leadership requested a temporary waiver or increased telehealth flexibilities for hospice face-to-face visit recertification requirements.
- The Senate republican Phase III draft released on March 22, 2020 includes temporary authority to use telehealth for hospice face-to-face encounters during the current public health emergency.