



CMS COVID-19 Second Interim Final Rule Summary

On 4/30/20 CMS released an interim final rule (IFR) announcing additional flexibilities during the duration of the Public Health Emergency (PHE). The IFR has an effective date of 5/8/20 when it is scheduled to be published in the Federal Register and is retroactive to 3/1/20, the beginning of the Public Health Emergency. Below are highlights of some relevant policy changes.

Scope of Practice: Supervision of Diagnostic Tests by Certain Nonphysician Practitioners

CMS makes a few changes in the scope of practice realm, but importantly notes that the changes are still governed by state scope of practice laws. In particular, CMS allows for Non-Physician Practitioners (NPPS) to supervise diagnostic testing services and makes additional changes in the therapy realm.

- CMS has amended 42 CFR 410.32 to also allow, during the public health emergency, such supervision to be conducted by a NP, CNS, PA, or CNM in Offices and Outpatient Departments.
- The change does not impact IDTFs.

Payment for Audio-Only Telephone E/M Services

- CMS is increasing payment for audio-only telephone E/M services (CPT 99441-99443) by cross-walking the work RVUs and direct practice expense inputs for CPT codes 99212-99214 to the audio-only codes, on an interim basis for the duration of the COVID-19 PHE;
- So that they are paid at the same rate as similar office and outpatient E/M visits, **resulting in increased payments from \$14-\$41 to \$46-\$110** (e.g., to be consistent with payment rates for level 2-4 established office/outpatient E/M visits).
- CMS is also adding these codes to the Medicare telehealth services list, but also separately issuing a waiver of the requirement that telehealth services must be furnished using video technology for these codes.

Medicare Telehealth List

- CMS issued [two waivers](#) related to telehealth:
 - CMS is waiving the requirements that specify the types of practitioners that may bill for their services when furnished as Medicare telehealth services, to include health professionals including physical therapists, occupational therapists, speech language pathologists, and others.
 - CMS is waiving the requirements for use of interactive telecommunications systems to furnish telehealth services for certain specified codes (CPT 99441-99443 and 98966-98968) retroactive to 3/1/20, as identified on the [Medicare Telehealth Services List](#).
- CMS also added codes to the Medicare Telehealth Services List, which are retroactively effective to March 1, 2020.

Time Used for Level Selection for Office/Outpatient E/M Services Furnished via Telehealth

CMS is finalizing on an interim basis that the typical times for purposes of level selection for an office/outpatient E/M are the times listed in the CPT code descriptor.



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- CMS has restated that the OIG had previously announced that if the clinicians engaged in the waiver of patient cost sharing, that OIG would not impose sanctions either in the telehealth context or other face-to-face services.
- Also, they reiterated that the HIPAA waiver of penalties was applicable to the good faith use of person-to-person platforms such as Facetime, Zoom, or Skype and not for public facing platforms such as Facebook Live or Tick Tock.

Teaching Physician Regulations

CMS implements a series of policies building off the teaching physician flexibilities provided in the last IFC. Namely, CMS expands the list of service to which the Primary Care Exception applies (that allows residents to provide services without the physical presence of a teaching physician) to include the telephone E/M codes, transitional care management codes, and communications technology based services codes.

- CMS has also modified the teaching physician rules regarding supervision of physicians in training interpreting radiology and other diagnostic tests. Here is the new regulatory language:
 - General rule: Physician fee schedule payment is made for the interpretation of diagnostic radiology and other diagnostic tests if the interpretation is performed or reviewed by a physician other than a resident.
 - During the Public Health Emergency, physician fee schedule payment may also be made for the interpretation of diagnostic radiology and other diagnostic tests if the interpretation is performed by a resident when the teaching physician is present through audio/video real-time communications technology.

Medicare Shared Savings Program (MSSP)

CMS made several updates to MSSP policies to address the impact of the COVID-19 pandemic, including:

- Allowing ACOs whose current agreement periods expire on 12/31/20, the option to extend their existing agreement period by 1-year, and allowing ACOs in the BASIC track's glide path the option to elect to maintain their current level of participation for PY 2021;
- Clarifying the applicability of the program's extreme and uncontrollable circumstances policy to mitigate shared losses for the period of the COVID-19 PHE;
- Adjusting program calculations to mitigate the impact of COVID-19 on ACOs; and
- Expanding the definition of primary care services for purposes of determining beneficiary assignment to include telehealth codes for virtual check-ins, e-visits, and telephonic communication.