

ALERTS

SUMMARY OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS) TEMPORARY REGULATORY WAIVERS AND NEW RULES AFFORDING ADDITIONAL FLEXIBILITIES TO THE U.S. HEALTHCARE SYSTEM DURING THE COVID-19 PANDEMIC

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On March 30, 2020, the Centers for Medicare & Medicaid Services (CMS) issued additional broad and unprecedented regulatory waivers and new rules to enable the U.S. healthcare system to have maximum flexibility to respond to the 2019 Novel Coronavirus (COVID-19) pandemic. These waivers and rules are intended to:

Increase hospital capacity by:

- permitting hospitals to use offsite locations (such as ambulatory surgery centers (ASCs), inpatient rehabilitation hospitals, hotels and dormitories) for services to urgent but not critical patients in order to make additional hospital beds available to treat COVID-19 patients and to bill for these services provided outside of the hospital's walls
- unless inconsistent with the relevant state's emergency preparedness or pandemic plan, permitting ASCs to enroll and bill as hospitals during the emergency declaration in order to provide essential services such as cancer procedures, trauma surgeries and other essential surgeries.
- permitting physician-owned hospitals to increase beds without incurring Stark sanctions.
- expanding permissible ambulance transfer destinations to include community mental health centers, federally qualified health centers, physician offices, urgent care facilities, ASCs, and dialysis centers when an End Stage Renal Disease (ESRD) facility is not available.
- issuing guidance to dialysis centers to establish separate facilities for dialysis of COVID-19 patients from those who are not infected, since patients with ESRD require regular treatments and are especially vulnerable in that they are immunocompromised.

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- permitting expansion of locations where COVID-19 testing may be performed by hospital emergency departments, including at drive-through locations and off-campus sites.
- permitting Medicare payment for mobile laboratory technicians to travel to a beneficiary's home to collect a specimen for COVID-19 testing in order to reduce the risk of infection for the testing facility and the beneficiary resulting from the beneficiary coming to the facility.

Expand and support the healthcare workforce by:

- permitting hospitals to remove barriers for physicians, nurses and other clinicians to be hired.
- permitting hospitals to provide additional benefits to medical staff while they are providing patient care, such as daily meals, laundry service, and childcare.
- easing Medicare enrollment requirements for providers.
- providing more flexibility to medical residents to provide services under the direction of a teaching physician and permitting teaching physicians to provide virtual supervision using audio/video communication.
- permitting wider use of verbal orders.

Eliminate certain paperwork requirements including:

- suspending additional information requests from providers, facilities, and Medicare Advantage and Part D prescription drug plans and reprioritizing audit activities.
- providing Medicare coverage for respiratory-related devices and equipment for any medical reason, rather than only under certain circumstances.

Expands telehealth services by:

- permitting more than 80 additional services to be furnished by telehealth, including emergency department visits, initial nursing facility and discharge visits and home visits, so long as provided by a clinician allowed to provide telehealth.
- permitting telehealth evaluation of beneficiaries who have audio-only phones.
- allowing telehealth to fulfill many face-to-face visit requirements for clinicians including for patients in inpatient rehabilitation facilities and hospice and home health settings using commonly available interactive applications with audio and video capabilities.
- permitting beneficiaries to qualify for the Medicare Home Health Benefit if the beneficiary's physician determines the patient should not leave the home due to suspected or confirmed COVID-19 and needs skilled services.
- permitting virtual and brief check in services using audio or video device for both new and established patients.
- permitting clinicians to provide remote monitoring (e.g., monitoring oxygen saturation levels using pulse oximetry) for both COVID-19 or a chronic condition.

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Additional Resources:

For the CMS Fact sheet regarding these flexibilities, please see <https://www.cms.gov/newsroom/fact-sheets/additional-backgroundsweeping-regulatory-changes-help-us-healthcare-system-address-covid-19-patient>

and for a graphic providing a brief summary of these flexibilities and others, please see:

<https://www.cms.gov/files/document/covid-flexibilities-overview-graphic.pdf>

Additional Information regarding the CMS COVID-19 Emergency Declaration Waivers & Flexibilities for Health Care Providers is linked here: <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

The foregoing is for your information only, is current as of March 30, 2020 and is not intended to constitute legal advice concerning any fact situation.

Please contact either Carol Ewald Bowen at carolbowen@mvalaw.com or 704-331-2462, Kimberly Short Kirk at kimberlykirk@mvalaw.com or 704-331-3524 or any other member of the MVA Health Care Team with any questions you may have about health care issues presented by the COVID-19 pandemic or for assistance in determining the application of any particular waivers, rules or guidance to your operations.