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[Coronavirus Response](#)

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Medicare and Medicaid Programs: Interim Final Rule Issued in Response to the COVID-19 Public Health Emergency

On March 31, 2020, the Centers for Medicare and Medicaid Services (“CMS”) released an Interim Final Rule (“Rule”) with numerous [policy and regulatory revisions](#) in response to COVID-19. The Rule is aimed at providing guidance and flexibility to health care providers in their ongoing battle against the pandemic. Among other items, CMS increased the number of telehealth services that will be reimbursed through the Medicare program, expanded the number of locations in which COVID-19 treatment may be provided, and broadened the definition of “homebound” so that patients who are forced into quarantine will still receive necessary treatments.

Increasing the Use of Telehealth

On [March 17](#), CMS announced the expansion of telehealth services on a temporary and emergency basis. This allowed for Medicare to pay for telehealth services, including office, hospital, and other visits furnished by physicians and other practitioners, to patients located across the United States. Now, to continue to facilitate the use of telehealth as a safe alternative to normal doctor visits, CMS is adding a number of services to the list of eligible Medicare telehealth services. Additionally, frequency limitations and other requirements associated with certain telehealth services will be eliminated.

CMS will now pay the same amount as in-person visits for more than [80 different additional services via telehealth](#). This includes:

- emergency department visits;
- initial nursing facility and discharge visits; and
- home health visits.

Perhaps the most important service added to the list of permissible telehealth services is emergency department visits. By allowing telehealth services to be performed by doctors in the emergency department, patients can be quickly and safely assessed on whether they are infected by COVID-19. This will help keep doctors and other patients safe, while freeing up emergency room space for those that have the greatest need.

Another change is the interpretation of “interactive telecommunications systems.” Going forward, this term will include applications such as FaceTime and Skype. This will allow patients to take advantage of easily understandable and familiar platforms when engaging in telehealth services. Additionally, audio-only telephone calls may be utilized if all other applicable telehealth requirements are met.

Allows Flexibility for Hospitals to Provide Services in a Variety of Locations

According to the Rule, CMS is modifying its “under arrangements” policy during the pandemic so that hospitals are allowed broader flexibility to furnish in-patient services, including routine services performed outside the hospital building itself. This will allow for additional capacity to treat and care for patients who are diagnosed with COVID-19. Typically, hospitals are required to provide services within their own buildings in order to receive payment from Medicare. Under these revised rules, hospitals can now move patients to other facilities located outside the hospital. The location will still need to be approved by the state, but this should allow for a greater number of hospital beds to become available at a variety of locations. This includes:

- Ambulatory surgery centers
- Inpatient rehab facilities
- Hotels
- Dormitories

Hospitals will still receive all applicable reimbursements from Medicare for treatments at these locations. Additionally, in the

event other medical transportation isn't available, ambulances will now be able to transport patients from any origin to all destinations, as long as that destination is equipped to treat the condition of the patient consistent with emergency medical services protocols.

Expand Workforce Capacity

CMS has acknowledged the need for an expansion in the current health care workforce. In response to this need, the agency has amended certain regulations to allow licensed practitioners such as nurse practitioners to order home health services. This will free up the availability of physicians and allow them to focus on COVID-19 patients. Additionally, certain supervision requirements for teaching physicians have been relaxed. Now, supervision can be provided using audio or video technology instead of requiring the physician to be physically present. By allowing for this relaxed supervision, physicians can concentrate on providing other, more serious matters related to COVID-19.

Broaden the interpretation of "homebound"

The Rule clarifies that patients who are instructed to remain in their homes or are under a "self-quarantine" are considered to be "confined to the home" or "homebound" for purposes of the Medicare home health benefit. Currently, payment for home health services can only be made when a physician certifies the services are required because the individual is confined to his or her home and needs skilled nursing care on a recurrent basis. CMS was asked to revisit this requirement in light of individuals who are "self-quarantined" or required to stay home due to COVID-19. Now, the definition of "homebound" applies to patients who have been told by a physician that it is medically contraindicated for the patient to leave the home due to suspected or confirmed diagnosis of COVID-19, or where a patient has been told by a physician that it is medically contraindicated for the patient to leave the home due to a condition that may make the patient more susceptible to contracting COVID-19.

This definition would NOT apply to patients confined to their homes without being certified by a physician, or who are simply self-

quarantining on their own. Further, to meet the definition of “homebound,” patients must still meet other Medicare home health eligibility requirements. These are:

- Being under the care of a physician
- Receiving services under a plan of care established and periodically reviewed by a physician
- Be in need of skilled nursing care on an intermittent basis or physical therapy or speech-language pathology
- Have a continuing need for occupational therapy

In addition to now being able to receive home health services for being homebound due to COVID-19, Medicare also will pay for laboratory technicians to make home visits to collect tests for COVID-19. This will help those who are homebound or non-hospital inpatients receive necessary testing without having to be taken to a hospital where additional possible infections could occur.

These changes will help health care providers continue to battle the ongoing pandemic through the expansion of telehealth reimbursement and increased health care locations. For more information on how these changes may affect you or how to properly take advantage of these new updates, please contact [Matt R. Wagner](#), [Bill Williams](#), [Jim Dietz](#), or any member of Frost Brown Todd’s [Health Care Innovation](#) Industry Team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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