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Changes in Waiver Fact Sheets, Rules May Have Big Implications

By Nina Youngstrom

Although the fate of the COVID-19 waivers and flexibilities is somewhat of a moving target, with CMS and other federal agencies tweaking them over time, many will be gone May 12 now that the Biden administration announced an end to the public health emergency (PHE) May 11. But there are some surprises in the pages of CMS's provider-specific waiver fact sheets and proposed regulations and perhaps more to come in forthcoming rules, experts say.

Case in point: the Feb. 1 version of the fact sheet on waivers for hospitals and critical access hospitals had different information about billing for telehealth services provided to patients who are at home but treated as hospital outpatients (i.e., patients at provider-based departments) than the Feb. 24 fact sheet.^[1] The earlier fact sheet stated that "After the PHE ends, this flexibility, to bill the telehealth service provided in the patient's home as if it was provided at the hospital, will end." That statement is gone now, said Martie Ross, a consulting principal with PYA, and its absence may speak volumes. It implies hospitals will be able to continue billing Medicare an originating site facility fee for telehealth services delivered to patients in their homes by a physician or practitioner with code Q3014, which pays \$28.64, after the PHE is over, she said.

But it's not something hospitals can take to the bank yet. "Let's hope CMS clarifies that," Ross said at a March 1 webinar sponsored by PYA. A definitive answer may come during the open-door forums CMS said it will be holding to answer questions about the expiration of waivers.

The end of the PHE doesn't mean saying goodbye to all the waivers and flexibilities. As CMS noted in a Feb. 27 press release, "There are significant flexibilities and actions that will not be affected as we transition from the current phase of our response."^[2] Congress made changes in the 2022 and 2023 Consolidated Appropriations Act (CAA) and CMS did the same in regulations, with an emphasis on telehealth services.

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