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Report on Medicare Compliance Volume 32, Number 19. May 15, 2023 Updated Compliance Checklist for the End of the COVID-19 Public Health Emergency

This is an excerpt of a checklist, developed by PYA, which was originally posted in March. It is being continually revised to capture the latest developments on the end of the COVID-19 public health emergency (PHE), including announcements on vaccination requirements, emergency preparedness testing requirements, the Medicare Diabetes Prevention Program, extension of telehealth visits for the prescription of controlled substances and clarifications on the 340B drug-discount program and other areas during CMS's April 25 office hours. The full checklist is available at https://bit.ly/3li7rpW. Contact Martie Ross, a consulting principal with PYA, at mross@pyapc.com and Kathy Reep, a senior manager with PYA, at kreep@pyapc.com.

End of the PHE Compliance Checklist

READ ME: The end of the COVID-19 public health emergency means the end of federal regulatory waivers and flexibilities. Providers must now roll back policies and practices implemented in reliance on those waivers and flexibilities. Unless stated otherwise, return to normal operations must be completed before May 12, 2023. PYA has prepared this checklist to help providers identify the work to be done by that date. Rather than summarizing each waiver and flexibility (e.g., "CMS changed the timeline from five to 21 days"), the checklist states the rule that will be in effect following the end of the PHE (e.g., "The timeline is five days"). For each item, we cite the relevant regulation, as applicable.

This checklist focuses primarily on waivers and flexibilities relating to the Medicare program. It does not address the following:

- Waivers and flexibilities made permanent or terminated prior to Jan. 1, 2023
- Reimbursement for COVID-19 vaccinations, testing and treatment
- Modifications to Medicare value-based purchasing programs
- CMS-approved state Medicaid program waivers and flexibilities
- State and local waivers and flexibilities

Note the following are not impacted by the end of the PHE. Any changes to or discontinuation of these requirements will be the subject of separate regulatory action:

- FDA emergency use authorization for COVID-19 vaccines, tests and treatments
- Hospital and long-term care facility COVID-19-related reporting requirements
- Health care provider vaccine mandates
- OSHA's Healthcare Emergency Temporary Standard
- Duties and obligations relating to Provider Relief Fund payments

We have categorized the waivers and flexibilities by the type of provider most directly impacted. Because a waiver or flexibility may impact more than one provider type, one should review each section to identify all relevant post-PHE changes.

This checklist is current as of May 10, 2023. PYA will update the checklist as additional guidance becomes available. This checklist does not constitute and cannot be relied upon as legal, tax, accounting, banking, financial or any other form of professional or other advice. We have made a reasonable effort to address all waivers and flexibilities, but we do not and cannot warrant the completeness of this checklist.

2. Medicare Telehealth Flexibilities

A. Reimbursement for telehealth services under the Medicare Physician Fee Schedule

1. Geographic and location restrictions will be waived through Dec. 31, 2024
2. Waiver is permanent for tele-behavioral health services subject to certain restrictions effective Jan. 1, 2025
3. Reimbursement for PT, OT, S/L pathologist and audiologist telehealth services will continue through Dec. 31, 2024
4. Reimbursement for audio-only services (audio-only E/M (CPT 99441-43) and specified behavioral health and education services) will continue through Dec. 31, 2024. Reimbursement for all other services added to the telehealth list during the PHE will continue through at least Dec. 31, 2023 (regardless of category). CMS has announced it will address reimbursement beyond that date as part of the 2024 Medicare Physician Fee Schedule rulemaking process.
5. Reimbursement for RHCs and FQHCs for medical telehealth services under G2025 will continue through Dec. 31, 2024 (reimbursement for tele-behavioral health services as RHC/FQHC services are now permanently covered)
6. Discontinue any waiver of beneficiary co-payment or deductible associated with telehealth and virtual services (due to expiration of HHS Office of Inspector General notice of enforcement discretion)
7. By Sept. 9, 2023, comply with HIPAA Rules in provision of telehealth services including, but not limited to, entering into business associate agreement with telehealth technology vendor
8. Through Dec. 31, 2023, continue use of -95 modifier and continue to identify location at which practitioner would perform face-to-face services as place of service for telehealth services
9. Medicare Diabetes Prevention Program (MDPP) suppliers may continue to offer MDPP services virtually through Dec. 31, 2023, as long as they maintain an in-person CDC organization code, including ability to (i) collect weight measurements for Medicare patients either through virtual technology, self-reported weight measurements, or both; and (ii) provide all services virtually with no limit to virtual sessions provided

B. Reimbursement for telehealth services under the Hospital Outpatient Prospective Payment System

1. Discontinue billing originating site fee (HCPCS Q3014) for telehealth services furnished to a beneficiary in his or her home
2. Discontinue billing HCPCS G0463 for telehealth services
3. Discontinue billing for education and management services (e.g., DSMT) furnished by hospital staff via telehealth
4. Discontinue billing for PT, OT, and S/L pathologist services furnished by hospital staff via telehealth
5. Hospital may bill HCPCS C7900-C7902 for behavioral health services furnished by hospital staff via telehealth to a beneficiary in his or her home (subject to specific requirements)

C. Use of telehealth to perform required face-to-face visits/frequency limitations

1. Re-certification of eligibility for hospice and required face-to-face assessments for home health may be performed via telehealth through Dec. 31, 2024
2. For subsequent inpatient visits, use of telehealth will be limited to once every three days (CPT 99231-99233)
3. For subsequent SNF visits, use of telehealth will be limited to once every 14 days (CPT 99307-99310)
4. For critical care consults, use of telehealth will be limited to once per day (HCPCS G0508-G0509)
5. Discontinue use of telehealth for required face-to-face visits for home dialysis patients
6. Discontinue use of telehealth for required face-to-face visits for inpatient rehabilitation facility patients
7. To the extent NCD or LCD requires face-to-face visit for evaluations and assessments, these visits no longer can be performed via telehealth
8. Only teaching physicians in residency training settings located outside an MSA will be able to meet presence for key portions requirement via telehealth (but not for complex procedures, endoscopy and anesthesia services)
9. Only teaching physicians in residency training settings located outside an MSA can direct, manage and review via telehealth care furnished by residents at certain primary care centers (but cannot bill level 4 or 5 office/outpatient E/M visit furnished by resident unless physically present for key portion of the service)
10. Opioid treatment programs may perform periodic assessments by telephone through Dec. 31, 2023; thereafter, assessments performed using two-way interactive audio-video communication will be permitted

D. Use of telehealth to prescribe controlled substances

1. PHE telehealth flexibilities regarding prescriptions of controlled substances remain in place through Nov. 11, 2023. For any practitioner-patient telehealth relationship established on or before Nov. 11, 2023, the same telehealth flexibilities that have governed the relationship to that point will be permitted through Nov. 11, 2024.