Red	Flexibility/Waiver Expires May 11, 2023 (End of the PHE)
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Association of American Medical Colleges
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COVID-19 Public Health Emergency (PHE) Waivers and Flexibilities: Status Update

The Biden Administration ended the COVID-19 national emergency and public health emergency (PHE) declarations on May 11, 2023. These emergency declarations have given the federal government the authority to waive or modify regulatory and other requirements during the PHE. The chart below provides an overview of some of the flexibilities and waivers impacting teaching hospitals and physicians during the PHE, and their status after the PHE ends. As noted, some of these waivers and flexibilities expired on May 11, 2023, some will be in effect through December 31, 2023, some will be in effect through December 31, 2024, and others were made permanent. The chart indicates whether legislative or regulatory action would be needed to change these policies. A comprehensive list of all the waivers and flexibilities is available on CMS's website.

For more information on COVID-19 Vaccines, Testing and Therapeutics visit: https://www.aamc.org/media/67736/download?attachment

New Updates: Virtual Supervision of Residents, Outpatient Hospital Billing for Remote Services Provided to the Patient in their Home, Prescribing Controlled Substances, and Frequency Limitations for Telehealth in SNFs and Inpatient Hospitals

Waivers/Flexibilities from PHE	Action Needed (Leg, Reg)	Status after PHE
Telehealth		
Patient Location: During the PHE, the rural and originating site requirements for telehealth services are waived. These waivers allow patients to receive telehealth in any geographic region and in their homes. Prior to the PHE telehealth would only be covered in rural locations and at originating sites- which were defined as facilities, such as hospitals, physician offices, SNFs. Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, P.L. 116-123 § 101 (Mar. 6, 2020	Leg	After December 31, 2024, originating site requirements and rural requirements for telehealth go back into effect (except for mental health and substance abuse services). Beginning Jan. 1, 2025, telehealth will only be covered in rural areas and the patient may not be in his/her home). Consolidated Appropriations. Act, 2023 (Section 4113(a))
		Mental health services can be provided in any geographic region and the patient's home permanently. Consolidated Appropriation Act, 2022 (section 123 (a))
		Treatment for substance use disorder and co-occurring mental health disorders can be provided in any geographic region and the patient's home permanently. The Support for Patients and Communities Act, 2019 (section 2001 (a))

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Waivers/Flexibilities from PHE	Action Needed (Leg, Reg)	Status after PHE
In-Person Visit Requirement for Mental Health Services: During PHE, no in-person visit requirement for telehealth.	Leg	Beginning Jan. 1, 2025, for mental health services, the patient must be seen in person within 6 months prior to telehealth visit. In person visit can be provided by physicians in same specialty and group practice. Consolidated Appropriations. Act, 2023 (section 4113(d))
	Reg	Beginning Jan. 1, 2025, a subsequent in-person visit each 12 months is required for mental health services; however, exceptions to the subsequent visit requirement are allowed. 2022 Physician Fee Schedule Final Rule; Consolidated Appropriations. Act, 2023 (section 4113(d))
Payment to FQHC and RHC for Telehealth Services: During the PHE, FQHCs and RHCs can receive payment for telehealth services CMS Interim Final Rule 1 (April 6, 2020)	Leg	After December 31, 2024, FQHCs and RHCs will no longer receive payment for providing telehealth services Consolidated Appropriations. Act, 2023 Section 4113(a))
Payment Rates: During the PHE, providers receive MPFS payment as if services had been provided in person (at the non-facility-based payment rate in offices) Prior to the PHE, providers received the facility-based payment rate under the physician fee schedule for telehealth services provided by office-based services.) CMS Interim Final Rule 1 (April 6, 2020)	Reg	Beginning Jan. 1, 2024, practitioner services will be paid at the facility rates for telehealth office-based services (this is approximately 25-30% less than the in-person office-based rates). 2023 Physician Fee Schedule Final Rule.
Originating Site Fee for Hospitals: During the PHE, hospitals are paid an originating site fee when the patient is located in their home or in a temporary hospital expansion site and receives services via telehealth from a practitioner who typically furnishes professional services in the hospital outpatient department. CMS Interim Final Rule 2 (May 8, 2020)	Leg	After the PHE ends May 11, 2023, hospitals may only receive payment for an Q3014 (originating site fee) if the patient is receiving telehealth services in the hospital. Hospitals may only receive payment for G0463 (hospital outpatient clinic visit for assessment and management of a patient) for patients receiving services in the hospital. CMS Waivers, Flexibilities, and the End of the COVID-19 Public Health: Frequently Asked Questions
Telephone E/M and Audio-Only: During the PHE, payment for audio-only services is allowed. Telephone-only E/M codes (99441-43), are paid at rates equivalent to E/M codes (99212-14). (increasing payment for these codes from a range of about $14-$41 to about $46-$110) CMS Interim Final Rule 1 (April 6, 2020)	Leg	After Dec. 31, 2024, CMS will not cover audio-only services (telephone E/M) except for mental health services. Consolidated Appropriations. Act, 2023 (section 4113 (e))
		Modifier must be used to indicate audio-only services. 2022 Physician Fee Schedule Rule

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Licensure: During the PHE, the Medicare requirements that as a condition of payment physicians and non-physician practitioners be licensed in the state where they are providing telehealth services are waived. State licensure requirements still apply and practitioners must still be Medicare providers. If a state does not allow practice across state lines, the practitioner would be unable to do so. CMS Interim Final Rule 1 (April 6, 2020)	Leg	After the PHE ends on May 11, 2023, CMS regulations will continue to allow for a total deferral to state law. There is no CMS-based requirement that a provider must be licensed in its state of enrollment. The states will determine whether or not a provider is allowed to provide services in the state. The state laws that apply are based on where the patient is located. Physicians and Other Clinicians: CMS Flexibilities to Fight COVID-19
Practitioners Eligible to Provide Telehealth: During the PHE, CMS expands the list of eligible telehealth practitioners to include physical therapists, occupational therapists, speech-language pathologists, and audiologists. Prior to the PHE**,** Medicare allowed only the following types of health care providers to furnish telehealth: physicians, nurse practitioners, physicians assistants, nurse mid-wives, clinical nurse specialists, certified registered nurse anesthetists, clinical psychologists, clinical social workers, registered dieticians. Emergency Declaration waivers**;** CMS Interim Final Rule 2 (May 8, 2020).	Leg	After Dec. 31, 2024, physical therapists, occupational therapists, speech-language pathologists, and audiologists enrolled in private practice who bill on the professional claim forms (1500/837P) will not receive Medicare payment for telehealth services. Consolidated Appropriations. Act, 2023 **NEW UPDATE**: Through December 31, 2023, CMS is exercising enforcement discretion to allow hospitals to receive payment for telehealth services provided by hospital employed physical therapists, occupational therapists, speech-language pathologists, clinical staff providing Diabetes Self-Management Training or Medical Nutrition Therapy services whose services are billed on the institutional claims form (UB-04). CMS anticipates considering this policy further in future rulemaking. (Under the OPPS, behavioral health services furnished remotely by clinical staff of hospital outpatient departments to patients in their homes will be paid permanently). CMS Waivers, Flexibilities, and the End of the COVID-19 Public Health Emergency: Frequently Asked Questions https://www.cms.gov/files/document/frequently-asked-questions-cms-waivers-flexibilities-and-end-covid-19-public-health-emergency.pdf

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Waivers/Flexibilities from PHE	Action Needed (Leg, Reg)	Status after PHE
Reporting Address of the Location of Provider: During the PHE, practitioners can render telehealth services from their home without reporting their home address on their Medicare enrollment. Physicians and Other Clinicians: CMS Flexibilities to Fight COVID-19 (CMS website)	Reg	Practitioners can render telehealth services from their home.
	Reg	Beginning January 1, 2024, practitioners will be required to report their home address on the Medicare enrollment. CMS anticipates considering this policy further in future rulemaking. Physicians and Other Clinicians: CMS Flexibilities to Fight COVID-19
Mental Health Services: During the PHE, mental health services could be provided via telehealth in any geographic location including the patient's home. Prior to the PHE, telehealth treatment for substance abuse disorders (and co-occurring mental health disorders) were exempt from Medicare originating site and geographic restrictions.	Leg	Mental health services can be provided in any geographic region and the patient's home permanently. Consolidated Appropriation Act, 2022 (section 123 (a))
	Leg	Beginning Jan. 1, 2025, for mental health services, the patient must be seen in person within 6 months prior to telehealth visit. In person visit can be provided by physicians in same specialty and group practice. Consolidated Appropriations. Act, 2023 (section 4113(d))
	Reg	Beginning Jan. 1, 2025, a subsequent in-person visit each 12 months is required for mental health services; however, exceptions to the subsequent visit requirement are allowed. 2022 Physician Fee Schedule Rule; Consolidated Appropriations. Act, 2023 (section 4113(d))

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Addition of Services to Telehealth List: During the PHE, CMS added many codes to the telehealth list, which are shown at the website below. **https://www.cms.gov/medicare/medicare-general-information/telehealth/telehealth-codes**	Reg	CMS expanded telehealth services by adding certain services to the Medicare telehealth list permanently, including newly established E/M visit complexity code and prolonged services code, among others. 2023 Physician Fee Schedule Final Rule. A current list of telehealth services and their effective dates is available: List of Telehealth Services | CMS
	Reg	CMS created a temporary category of services added to the Medicare telehealth list covering some of the services that CMS allowed during the PHE. These services would remain on the telehealth list through the end of calendar year 2023. (There is a possibility CMS could extend further to align with the 2-year extension of other telehealth waivers). 2022 Physician Fee Schedule Final Rule
	Leg	All services on the telehealth list will be available through the end of calendar year 2023.
HIPAA Compliance: During the PHE, HHS Office for Civil Rights will not enforce penalties for HIPAA noncompliance for providers that make good faith provisions of telehealth. This has allowed telehealth providers to use a broader range of remote communications products even if those products do not fully comply with HIPAA requirements. Notification of Enforcement Discretion for Telehealth Remote Communications; During the COVID–19 Nationwide Public Health Emergency	Reg/Leg	Beginning August 10, 2023, telehealth platforms must be HIPAA compliant. Until that date OCR will continue to exercise its enforcement discretion and will not impose penalties on covered health care providers that make good faith provisions of telehealth. HHS Office for Civil Rights Announces the Expiration of COVID-19 Public Health Emergency HIPAA Notifications of Enforcement Discretion | HHS.gov
Cost Sharing Obligations (e.g., Coinsurance and Deductible): During the PHE, OIG will not enforce cost sharing requirements for telehealth services provided to Medicare beneficiaries. OIG Policy Statement	Leg	After the PHE ends on May 11, 2023, cost sharing requirements (e.g., coinsurance and deductible will be enforced. https://oig.hhs.gov/coronavirus/covid-flex-expiration.asp

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Frequency Limitations for Telehealth in SNFs and Inpatient Hospitals: During the PHE, frequency limitations for some telehealth services (e.g., subsequent inpatient visits, SNF limitations, critical care consult codes) were removed. Specifically, the limit of once every 3 days for subsequent inpatient visits furnished by telehealth and once every 30 days for subsequent SNF visits furnished by telehealth were lifted. CMS Interim Final Rule 1 (April 6, 2020)	Reg	The frequency limitations in nursing facilities for services provided via telehealth were permanently changed from once every 30 days to once every fourteen days. 2021 Physician Fee Schedule Final Rule **NEW UPDATE:** Through December 31, 2023, CMS is exercising enforcement discretion to suspend the requirement that subsequent inpatient hospital visits (CPT codes 99231-99233) may only be furnished via Medicare telehealth once every 3 days, and the requirement that subsequent SNF visits (CPT codes 99307-99309) may only be furnished via Medicare telehealth once every 14 days. CMS anticipates considering this policy further in future rulemaking. CMS Waivers, Flexibilities, and the End of the COVID-19 Public Health Emergency: Frequently Asked Questions
Prescribing Controlled Substances: During the PHE, the DEA waived the in-person medical evaluation that is required before administering controlled substances. New patients can get a controlled substance prescription via telemedicine (without a prior in-person examination) if the telemedicine communication is through audio-visual, real-time, two-way interactive communication. DEA Policy: COVID-19 Prescribing Guidance	Reg/Leg Ryan Haight Act	**NEW UPDATE**: On May 9, the DEA and SAMHSA published the Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications in the *Federal Register*. The rule extends all telemedicine COVID-19 PHE flexibilities for prescribing controlled substances through November 11, 2023. For practitioner-patient relationships established on or before November 11, 2023, telemedicine COVID-19 flexibilities for prescribing controlled substances will be further extended for one year through November 11, 2024. These flexibilities will not be extended to those who established a new practitioner-patient relationship after November 11, 2023. This temporary extension of COVID-19 flexibilities for prescribing controlled substances was issued in response to comments the DEA received on the proposed rules, Telemedicine for Prescribing Controlled Substance Proposed Rule and Telemedicine for Prescribing Buprenorphine Proposed Rule. The DEA and SAMSHA expect to extend certain telemedicine flexibilities on a permanent basis in future rulemaking.

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Relationship with Patient: Telehealth can be provided for both new and established patients.	Reg	There is no restriction on new vs. established patients for telehealth.
	Workforce Issues	
Virtual Direct Supervision: During the PHE, for services requiring direct supervision, the physician supervision can be provided virtually using real-time audio/video technology. CMS Interim Final Rule 1 (April 6, 2020)	Reg	Through December 31, 2023, direct supervision may be provided using real-time, interactive audio/video technology (excluding audio-only), and subject to the clinical judgement of the supervising physician or other supervising practitioner. The requirement can be met by the supervising physician or other practitioner being immediately available to engage in audio/video technology and does not require real-time presence or observation of the service throughout the performance of the procedure. 2022 Physician Fee Schedule Final Rule
Virtual Supervision of Residents: During the PHE, presence of teaching physician during key portion of service involving resident may be met using audio/video real-time communications technology. Teaching physicians may remotely direct primary care furnished by residents, and remotely review resident-provided services during or after the visit, using audio/video real-time communications technology CMS Interim Final Rule 1 (April 6, 2020)	Reg	After the PHE ends on May 11, 2023, virtual supervision of residents will be allowed in rural areas (defined as non-metropolitan statistical areas (MSAs) permanently. 2021 Physician Fee Schedule Final Rule 2022 Physician Fee Schedule Final Rule **NEW UPDATE:** Through December 31, 2023, CMS is exercising enforcement discretion to allow teaching physicians in MSAs to be present virtually, through audio/video real-time communications technology, for purposes of billing under the PFS for services they furnish involving resident physicians. CMS anticipates considering this policy further in future rulemaking. CMS Waivers, Flexibilities, and the End of the COVID-19 Public Health Emergency: Frequently Asked Questions

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Waivers/Flexibilities from PHE	Action Needed (Leg, Reg)	Status after PHE
Residents Providing Telehealth: During PHE**,** residents can provide telehealth services. Supervision requirements may be met through either physical presence or virtual presence in certain circumstances. CMS Interim Final Rule 1 (April 6, 2020)	Reg	After the PHE ends on May 11, 2023, residents can permanently provide telehealth services when the supervision requirement is met through physical presence in all geographic locations. 2021 Physician Fee Schedule Final Rule
		After the PHE ends on May 11, 2023, residents can permanently provide telehealth visits under virtual supervision in rural areas (defined as non-metropolitan statistical areas (MSAs). 2021 Physician Fee Schedule Final Rule ;2022 Physician Fee Schedule Final Rule
		NEW UPDATE: Through December 31, 2023, CMS is exercising enforcement discretion to allow teaching physicians in MSAs to be present virtually, through audio/video real-time communications technology, for purposes of billing under the PFS for services they furnish involving resident physicians. CMS Waivers, Flexibilities, and the End of the COVID-19 Public Health Emergency: Frequently Asked Questions
Primary Care Exception: Under the Primary Care Exception, Medicare makes payment for lower level (1-3) E/M services furnished by a resident without the physical presence of a teaching physician. During the PHE, CMS added additional services to the primary care exception. (E/M level 4-5; 99495-96 (transitional care management); 99421-23 (online digital E/M services); 99452 (interprofessional internet consult) G2010, G2012 (virtual check-in)	Reg	After the PHE ends on May 11, 2023, the primary care exception includes level 1-3 E/M services, annual visits, interprofessional internet consults, and virtual check ins.2021 Physician Fee Schedule Final Rule 2022 Physician Fee Schedule Final Rule
		After the PHE ends on May 11, 2023, E/M levels 4-5 may not be provided by a resident under the primary care exception. 2021 Physician Fee Schedule Final Rule 2022 Physician Fee Schedule Final Rule

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Residents and Moonlighting: During the PHE, CMS enables residents to furnish and separately bill for inpatient physicians' services provided outside the scope of their approved GME program (i.e., moonlighting), provided that (i) the services are identifiable physicians services and meet the conditions for payment of physicians services to beneficiaries by providers, (ii) the resident is fully licensed to practice medicine, osteopathy, dentistry, or podiatry by the state in which the services are performed, and (iii) the services can be separately identified from those services that are required as part of the approved GME program. Prior the PHE, moonlighting was only allowed for services performed in the outpatient department or emergency department of a hospital. CMS Interim Final Rule 1 (April 6, 2020)	Reg	Moonlighting flexibilities established during the PHE were made permanent. Medicare considers services of residents that are not related to their approved GME programs and performed in the outpatient department or the emergency department of a hospital as the resident's separately billable services. In addition, Medicare considers the services of residents that are not related to their approved GME programs and furnished to inpatients of a hospital in which they have their training program as separately billable physicians' services. 2021 Physician Fee Schedule Final Rule
Graduate Medical Education (GME) Residents Training in Other Hospitals: During the PHE, a teaching hospital that sends residents to other hospitals has been able to continue to claim those residents in the teaching hospital's IME and DGME FTE resident counts, if certain requirements are met. Those requirements include that 1) the teaching hospital sends the resident to the other hospital in response to the COVID-19 pandemic; 2) the time spent by the resident training at the other hospital is in lieu of time that would have been spent training at the sending hospital; and 3) the time that the resident spent training immediately prior to and/or subsequent to the time frame that the COVID-19 PHE has been in effect has been included in the FTE count for the sending hospital. The presence of residents in non-teaching hospitals has not triggered establishment of IME and/or DGME FTE resident caps at those non-teaching hospitals. Specifically, for DGME, the presence of residents in non-teaching hospitals has not triggered establishment	Leg	After the PHE ends on May 11, 2023, a teaching hospital that sends residents to other hospitals cannot claim those residents in its IME and DGME resident counts. In addition, the presence of residents training in a new residency program at a non-teaching hospital may trigger establishment of IME and/or DGME FTE resident caps at those non-teaching hospitals and for DGME the presence of residents may trigger establishment of per resident amounts at those non-teaching hospitals. Teaching Hospitals, Teaching Physicians and Medical Residents: CMS Flexibilities to Fight COVID-19

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of PRAs at those non-teaching hospitals. CMS Interim Final Rule 2 (May 8, 2020).		
IME Payments Held Harmless for Temporary Increase in Beds: During the PHE, CMS held teaching hospitals harmless from a reduction in IME payments due to beds temporarily added during the Covid-19 PHE, by not considering these beds when determining IME payments. CMS Interim Final Rule 2 (May 8, 2020).	Reg	After the PHE ends on May 11, 2023, any beds added during the public health emergency will be included in determining the hospital's IME payments. Teaching Hospitals, Teaching Physicians and Medical Residents: CMS Flexibilities to Fight COVID-19
Under Care of a Physician: During the PHE, requirements under 482.12 which require that Medicare patients be under the care of a physician were waived; thereby allowing hospitals to use other practitioners, such as physician assistant and nurse practitioners to the full extent.	Reg	After the PHE ends on May 11, 2023, the requirement that patients be under the care of a physician goes back into effect. Hospitals and CAHS (including Swing Beds, DPUs), ASCs and CMHCs: CMS Flexibilities to Fight COVID-19
Home Dialysis: During the PHE, the CARES Act provided the Secretary with the authority to waive the statutory requirement that a face-to-face evaluation be conducted before a beneficiary can begin home dialysis (codified at 42 USC §1395rr(b)(3)(B)(iii)).	Leg	After the PHE ends on May 11, 2023, because face-to-face evaluations are a statutory requirement and the CARES Act only provides the Secretary with the authority to waive them during the PHE, Congress would have to pass additional legislation to make this change permanent.
Self-Referral (Stark Law): During the PHE, certain waivers of the self-referral law (Stark) are allowed (e.g., hospitals and other health care providers can pay above or below fair market value to rent equipment or receive services from physicians; health care providers can support each other financially to ensure continuity of health care operations; and others). Blanket Waivers of Section 1877 of Social Security Act (March 30, 2020); Explanatory Guidance (Issued April 21, 2020)	Leg	After the PHE ends on May 11, 2023, the Stark law waivers will terminate, and physicians and entities must immediately comply with all Stark provisions. Hospitals and CAHS (including Swing Beds, DPUs), ASCs and CMHCs: CMS Flexibilities to Fight COVID-19

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Anti-Kickback: During the PHE, OIG exercised its enforcement discretion not to impose administrative sanctions under the Federal anti-kickback statute for certain remuneration related to COVID-19. https://oig.hhs.gov/coronavirus/OIG-Policy-Statement-4.3.20.pdf. FAQs-Application of OIG's Administrative Enforcement Authorities to Arrangements Directly Connected to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (hhs.gov)	Leg	After the PHE ends on May 11, 2023, the Anti-kickback waivers will terminate, and physicians and entities must immediately comply with the Anti-Kickback statute provisions. https://oig.hhs.gov/coronavirus/covid-flex-expiration.asp
Communications Technology-Based Services		
Coinsurance: During the PHE, there is no enforcement of coinsurance requirement for interprofessional internet consults (99541-52) OIG Policy Statement	Leg	After the PHE ends on May 11, 2023, beneficiaries will be required to pay coinsurance.
Interprofessional Consults: During the PHE, there is no enforcement of patient consent requirement for interprofessional internet consults (99451-52)CMS Interim Final Rule 1 (April 6, 2020)	Reg	After the PHE ends on May 11, 2023, beneficiary consent for interprofessional consults will be required after the PHE ends.
Non-Physician Providers Billing E-Visits: LCSWs, clinical psychologists, physical therapists, occupational therapists, speech-language pathologists can provide e-visits (G2061-63) 2020 Physician Fee Schedule Final Rule	Reg	Non physician providers can bill e-visits permanently. 2020 Physician Fee Schedule Final Rule
Remote Patient Monitoring: During the PHE, clinicians can provide remote patient monitoring services to both new and established patients for acute and chronic conditions (99091, 99457-58, 99473-74, 99493-94). Consent may be obtained at the time the RPM service is furnished. For codes 99453 and 99454 a minimum of two days of data must be collected to meet the billing requirements (instead of the 16-day minimum). Codes 99453 and 99454 can be provided by auxiliary personnel under physician supervision. CMS Interim Final Rule 2 (May 8, 2020).	Reg	Two of the interim changes in response to the COVID-19 PHE were made permanent. Consent for RPM services may be obtained at the time the services are furnished. For CPT codes 99453 and 99454, CMS would allow auxiliary staff (which include clinical staff and other individuals who are employees or leased or contracted employees) to furnish services under the general supervision of the billing physician or practitioner.2021 Physician Fee Schedule Final Rule
		After the PHE ends on May 11, 2023, CMS will require that RPM services must be furnished only to an established patient and the remote monitoring must be for 16 or more days of data in a 30-day period for billing. 2021 Physician Fee Schedule Final Rule

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Virtual Check-In for New and Established Patients: During the PHE, clinicians can provide virtual check-in services (G2010 and G2012) to new and established patients. CMS added new virtual check in codes that can be reported by nonphysicians 2021 Physician Fee Schedule Final Rule	Reg	After the PHE ends on May 11, 2023, virtual check-in codes will be allowed for established patients only. 2021 Physician Fee Schedule Final Rule
	Reg	CMS permanently added a virtual check in code (G2252) for 11-20 minutes of time. 2021 Physician Fee Schedule Final Rule
	Reg	CMS added new virtual check in codes (G2251) that can be reported by nonphysicians. 2021 Physician Fee Schedule Final Rule
Hospitals		
Hospital Without Walls Initiative: During the PHE, waivers allow hospitals to treat patients in alternate care settings outside the hospital (including the patient's home). The waivers allow any non-hospital space to be used for patient care as long as the site is approved by the state and is consistent with the state's emergency preparedness and pandemic plan. CMS Interim Final Rule 1 (April 6, 2020)	Leg	After the PHE ends on May 11, 2023, hospitals and CAHs will be required to provide services to patients within their hospital departments pursuant to the hospital and CAH conditions of participation. Teaching Hospitals, Teaching Physicians and Medical Residents: CMS Flexibilities to Fight COVID-19
Off-Site Patient Screening: During the PHE**,** enforcement section of EMTALA was partially waived to allow hospitals, psychiatric hospitals, and critical access hospitals (CAHs) to screen patients at a location offsite from the hospital's campus.	Leg	After the PHE ends on May 11, 2023, hospitals will no longer be able to screen patients off-site under EMTALA. Teaching Hospitals, Teaching Physicians and Medical Residents: CMS Flexibilities to Fight COVID-19

Red	Flexibility/Waiver Expires May 11, 2023 (End of the PHE)
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Sky Blue	Flexibility/Waiver Expires End December 31, 2024 (End of CY 2024)
Yellow	Flexibility/Waiver Expires Other
Green	Permanent Policy

Leg=Legislation (Congress)
Reg=Regulation (HHS)

Association of American Medical Colleges
Updated 5/15/2023

Waivers/Flexibilities from PHE	Action Needed (Leg, Reg)	Status after PHE
Expanded Ability for Hospitals to Offer Swing Beds: During the PHE, requirements of 42 CFR 482.58 were waived to allow hospitals to establish SNF swing beds payable under the SNF prospective payment system to provide additional options for patients who no longer require acute care but are unable to find a placement in a SNF. Hospitals must meet specific criteria to qualify and must call the MAC enrollment hotline to add swing bed services. Announced in CMS News Alert (May 11, 2020)	Leg	After the PHE ends on May 11, 2023, the waiver that expanded the ability for hospitals to offer swing beds will terminate. Teaching Hospitals, Teaching Physicians and Medical Residents: CMS Flexibilities to Fight COVID-19
Outpatient Hospital Billing for Remote Services Provided to the Patient in their Home: During the PHE, hospital outpatient departments may provide services (not billed on 1500 claim form) virtually (via telemedicine) to a patient while the patient is a registered outpatient, and the home is considered an "expansion site" under hospitals without walls. CMS Interim Final Rule 2 (May 8, 2020).	Leg	**NEW UPDATE**: Through December 31, 2023, CMS is exercising enforcement discretion to allow hospitals to receive payment for telehealth services provided by hospital employed physical therapists, occupational therapists, speech-language pathologists, clinical staff providing Diabetes Self-Management Training or Medical Nutrition Therapy services whose services are billed on the institutional claims form (UB-04). CMS anticipates considering this policy further in future rulemaking. Other services provided remotely to patients in their home and billed on the institutional claim form may not be paid to hospitals (except mental health services). CMS Waivers, Flexibilities, and the End of the COVID-19 Public Health Emergency: Frequently Asked Questions
		After the PHE ends, there will be payment under the OPPS for behavioral health services furnished remotely by clinical staff of hospital outpatient departments to patients in their homes. CMS created OPPS specific codes to describe the services provided by hospital clinical staff to diagnose, evaluate, or treat a mental health disorder to beneficiaries in their homes. (CY 2023 OPPS Final Rule)

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Waivers/Flexibilities from PHE	Action Needed (Leg, Reg)	Status after PHE
Acute Hospital Care at Home Waiver (AHCAH): CMS launched the Hospital Without Walls program in March 2020 to allow hospitals to provide services beyond their existing walls to help address the need to expand care capacity and to develop sites dedicated to COVID-19 treatment. AHCAH is an expansion of this initiative that allows eligible hospitals to have regulatory flexibility to treat certain patients, who would otherwise be admitted to the hospital, in their homes and to allow such hospitals to receive Medicare payment under the inpatient Prospective Payment System. CMS Announces Comprehensive Strategy to Enhance Hospital Capacity Amid COVID-19 Surge (Nov. 25, 2020)	Leg	The Acute Hospital Care at Home waiver is extended through Dec. 31, 2024. Consolidated Appropriations. Act, 2023 (section 4140)
Other Medicare Payment and Coverage Flexibilities		
20% Increase in MS-DRG Relative Weight for COVID-19 Hospital Patients: During the PHE, for treatment of patients diagnosed with COVID-19, hospitals receive a 20% increase in the Medicare payment rate through the hospital inpatient prospective payment system. Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, P.L. 116-123 § 101 (Mar. 6, 2020 (section 3710)	Leg	After the PHE ends on May 11, 2023, the 20% increase in the MS-DRG relative weight for COVID-19 hospitalized patients will end.
Skilled Nursing Facility (SNF) 3-Day Hospital Stay Requirement: During the PHE, the requirement for a 3-day prior hospitalization for coverage of a SNF stay is waived. For certain beneficiaries who exhausted their SNF benefits, the waiver also authorizes renewed SNF coverage without first having to start and complete a 60-day "wellness period" (that is, the 60-day period of non-inpatient status that is normally required in order to end the current benefit period and renew SNF benefits). **Authorized on March 14, 2020, by HHS Secretary. (Issued in COVID-19 Emergency Declaration Health Care Providers Fact Sheet)**	Leg	After the PHE ends on May 11, 2023, the SNF 3-day rule and the requirements related to the 60-day non-inpatient status for renewed SNF coverage go back into effect. For any Medicare Part A-covered SNF stay which begins on or prior to May 11, 2023, without a qualified hospital stay, that stay can continue for as long as the beneficiary has Part A SNF benefit days available and for as long as the beneficiary continues to meet the SNF level of care criteria (e.g., requiring daily skilled care). For any new Medicare Part A-covered SNF stay which begins after May 11, 2023, (including stays which experience a break in Part A coverage that exceeds three consecutive calendar days before resuming SNF coverage), these stays will require a QHS. (There may be exceptions to the 3-day stay requirement for ACOs and patients enrolled

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Waivers/Flexibilities from PHE	Action Needed (Leg, Reg)	Status after PHE
		in MA plans) CMS Waivers, Flexibilities, and the End of the COVID-19 Public Health Emergency: Frequently Asked Questions