

# CORONAVIRUS INFORMATION & UPDATES

June 1, 2020 [REVISED]

## Latest CMS Rule Impacts Wide Range of Health Care Stakeholders with Changes for COVID-19 Emergency and Beyond

On May 8, 2020, the Centers for Medicare & Medicaid Services (“CMS”) published an interim final rule with comment (“IFC”) in the Federal Register.<sup>1</sup> The rule includes a wide range of modifications to CMS regulations governing payment rates, coverage of telehealth services, conditions of participation, scope of practice, calculation of medical education payments, and value-based payment programs – to name a few. We have prepared a table below describing changes implemented by the IFC **by affected provider and program**, including cites to the pertinent Federal Register pages. Comments on the rule are due by 5 p.m. on July 7, 2020.<sup>2</sup> If you have questions, please don’t hesitate to contact one of the authors or your usual Ropes & Gray advisor.

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Affected Providers and Programs	Category of Activity	Description of IFC Provision	Duration (Temporary for the Public Health Emergency, or Permanent)
Hospitals and AMCs	Outpatient billing flexibility and telehealth expansion and reimbursement protection	<p>A. Provider-based departments: PBDs can be expanded temporarily to <b>multiple locations, even patient homes, and still be paid under the Outpatient Prospective Payment System (OPPS)</b>, under the “extraordinary circumstances policy.”<sup>3</sup></p> <p>B. <b>Hospitals may bill the originating site fee to support telehealth</b> services furnished by providers who ordinarily practice in outpatient departments that are providing services to patients in their homes.<sup>4</sup></p> <p>C. Revised <b>time increments used for level selection of evaluation and management services to align with CPT code times.</b><sup>5</sup></p> <p>D. <b>Teaching hospitals (as well as teaching IRFs and IPFs) can increase the number of temporary beds</b> without facing reduced payments for indirect medical education.<sup>6</sup></p> <p>E. <b>No reduction in GME payments for teaching hospitals that shift residents to high-need facilities.</b><sup>7</sup></p>	Temporary

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		F. Clarifies a prior IFC by stating that <b>payment for teaching physician services</b> under the PFS may be made when a teaching physician <b>reviews</b> (in addition to <b>directs or manages</b> ) a resident's service via <b>audio/video real-time communications technology</b> and expands the list of primary care services that can be provided by a resident, including via telehealth. <sup>8</sup>	
Physicians and Non-Physician Practitioners	Scope of practice, payment and coverage expansions	<p>A. <b>Increases payment rates for telephone E/M visits</b> to match payment rates under the Physician Fee Schedule (PFS) for office/outpatient visits with established patients.<sup>9</sup></p> <p>B. Expands ability of physicians to provide <b>outpatient services from various locations</b> away from the hospital. <i>See Hospitals–Provider-based departments, above.</i></p> <p>C. Part B payment for <b>COVID-19 specimen collection by non-physician practitioners</b> (NPPs) including nurse practitioners (NPs), clinical nurse specialists (CNSs), physician assistants (PAs), and certified nurse midwives (CNMs).<sup>10</sup></p> <p>D. <b>OT and PT assistants</b> can now perform maintenance therapy.<sup>11</sup></p> <p>E. <b>Pharmacists</b> can provide services incident to the professional services of a physician or NPP. Can now provide COVID-19 testing.<sup>12</sup></p> <p>F. Additional licensed providers can order <b>DME</b> in accordance with state law, which will be reimbursed at a high rate for the duration of the PHE.<sup>13</sup></p>	Temporary
Clinical Labs	Coverage and ordering authority expansion	<p>A. Physician orders no longer required for <b>COVID-19 tests – any clinician</b> authorized by state law can order testing for both new and established patients.<sup>14</sup></p> <p>B. Expands categories of practitioners that can <b>supervise others furnishing diagnostic tests</b>.<sup>15</sup></p> <p>C. Adds flexibility to provide <b>Medicaid coverage for laboratory tests</b> that may not meet certain requirements.<sup>16</sup></p>	Temporary
Other Providers	Data reporting delay	Delay in compliance date of certain reporting requirements for <b>SNFs</b> (October 1st of the year that is at least two full fiscal years after the end of the PHE), <b>LTCHs</b> (October 1st of the year that is at least one full fiscal year after the end of the PHE), <b>IRFs</b> (October 1st of the year that is at least one full fiscal year after	Temporary

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		the end of the PHE), and <b>HHAs</b> (January 1st of the year that is at least one full calendar year after the end of the PHE). <sup>17</sup>	
SNFs	New COVID-19 reporting requirement	<b>New requirement that facilities report resident and staff infections, potential infections and deaths related to COVID-19.</b> <sup>18</sup>	Temporary
IRFs and IPFs	Coverage expansion	<p>A. Allows IRFs/IPs to <b>accept patients from acute-care hospitals experiencing a surge</b>, even if the patients do not require rehabilitation care, without facing reduced teaching status payments.<sup>19</sup></p> <p>B. Implements <b>waiver of the “3-hour rule”</b> that requires three hours of rehabilitative services for IRFs, in accordance with the CARES Act.<sup>20</sup></p>	Temporary
HHAs	Scope of practice expansion	<b>Non-physician practitioners</b> can now independently conduct face-to-face encounters to certify the need for home health care and order home health services in accordance with state law. <sup>21</sup>	<b>Permanent</b>
ACOs and Value-Based Payment Participants	MSSP-Reimbursement protection and facilitation of renewal	<p>A. <b>Removes spending associated with COVID-19 from ACO performance</b> calculations and adjusts program calculations to mitigate impact of COVID-19 on ACOs.<sup>22</sup></p> <p>B. Expands definition of <b>primary care services to include telehealth codes</b> for virtual check-ins and evaluation and management services.<sup>23</sup></p> <p>C. Allows certain <b>ACOs to temporarily freeze their position along the BASIC track’s</b> glide path in order to avoid transitioning to a higher level of performance-based risk.<sup>24</sup></p> <p>D. <b>Abandons annual application process</b> and allows ACOs whose participation is set to end this year the option to extend for another year.<sup>25</sup></p>	Temporary
	MIPS - Data reporting delay	<b>Delays implementation of the Qualified Clinical Data Registry</b> by one year to the 2022 performance period. <sup>26</sup>	Temporary
	Hospital VBP - New process to grant exemptions from program requirements	Updates the Extraordinary Circumstance Exception (ECE) Policy to <b>allow CMS to grant exceptions to program requirements for entire regions</b> , eliminating the need for hospitals to submit individual ECE forms. <sup>27</sup>	<b>Permanent</b>
Serology Tests for COVID immunity	Coverage expansion	Finalizes on an interim basis that FDA-authorized COVID-19 serology tests fall under the <b>Medicare benefit category of diagnostic laboratory test.</b> <sup>28</sup>	Temporary

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Rural Health Clinics	Reimbursement protection	Rural health clinics <b>can increase their bed capacity</b> without affecting the rural health clinic's payments. <sup>29</sup>	Temporary
Opioid Treatment Programs (OTPs)	Telehealth expansion	OTPs may now provide <b>periodic assessments via telehealth</b> . <sup>30</sup>	Temporary

<sup>1</sup> 85 Fed. Reg. 27550, 27560 (May 8, 2020), available at <https://www.federalregister.gov/documents/2020/05/08/2020-09608/medicare-and-medicaid-programs-basic-health-program-and-exchanges-additional-policy-and-regulatory> (hereinafter "CMS IFC").

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 27560.

<sup>4</sup> *Id.* at 27565.

<sup>5</sup> *Id.* at 27602.

<sup>6</sup> CMS IFC at 27567.

<sup>7</sup> *Id.* at 27568.

<sup>8</sup> *Id.* at 27586-89.

<sup>9</sup> *Id.* at 27589.

<sup>10</sup> *Id.* at 27602.

<sup>11</sup> *Id.* at 27556.

<sup>12</sup> *Id.* at 27557.

<sup>13</sup> *Id.* at 27592.

<sup>14</sup> *Id.* at 27602.

<sup>15</sup> *Id.* at 27555.

<sup>16</sup> *Id.* at 27591.

<sup>17</sup> *Id.* at 27595.

<sup>18</sup> *Id.* at 27601.

<sup>19</sup> *Id.* at 27567.

<sup>20</sup> *Id.* at 27572.

<sup>21</sup> *Id.* at 27571.

<sup>22</sup> *Id.* at 27578.

<sup>23</sup> *Id.* at 27583.

<sup>24</sup> *Id.* at 27576.

<sup>25</sup> *Id.* at 27574.

<sup>26</sup> *Id.* at 27594.

<sup>27</sup> *Id.* at 27597.

<sup>28</sup> *Id.* at 27598.

<sup>29</sup> *Id.* at 27569.

<sup>30</sup> *Id.* at 27558.