

CORONAVIRUS INFORMATION & UPDATES

June 11, 2020

HHS Highlights Federal Telehealth Initiatives in Response to COVID-19

On June 5, 2020, the U.S. Department of Health and Human Services (“HHS”) released a [fact sheet](#) regarding its efforts to address COVID-19’s disparate impact on racial minorities.ⁱ Although the fact sheet did not announce any new policies or initiatives, it highlighted various actions the agency has taken in response to the pandemic, including efforts to promote and expand telehealth services. The fact sheet comes amid recent comments by administration officials that HHS is considering extending certain telehealth initiatives beyond the expiration of the COVID-19 emergency.ⁱⁱ

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We have summarized below the telehealth initiatives noted by HHS and have provided links to related Ropes & Gray Alerts for additional information on those initiatives. If you have any questions, please contact your usual Ropes & Gray advisor.

Expanded Medicare Telehealth Coverage

In March, the Centers for Medicare and Medicaid Services (“CMS”) announced various waivers and new policies to expand Medicare coverage of telehealth services. Among other changes, CMS waived “originating site” limitations to permit beneficiaries to receive telehealth services in their homes, gave providers flexibility to reduce or waive patient cost-sharing for telehealth services, and expanded the types of applications that providers may use to provide covered telehealth services.ⁱⁱⁱ

In May, CMS published an interim final rule that made various modifications to Medicare telehealth regulations. For example, the rule temporarily authorizes opioid treatment programs to provide periodic assessments via telehealth and temporarily expands the list of primary care services that can be provided by a resident, including via telehealth.^{iv}

For additional information, please see the following Ropes & Gray alerts:

- [Latest CMS Rule Impacts Wide Range of Health Care Stakeholders with Changes for COVID-19 Emergency and Beyond](#) (6/1/2020)
- [HHS Announces Expanded Medicare Telehealth Coverage](#) (3/19/2020)
- [COVID-19 Related Reimbursement Developments](#) (3/18/2020)

HIPAA Enforcement Discretion

In March, the Office for Civil Rights (“OCR”) announced that it will exercise enforcement discretion and not impose penalties against covered health care providers for noncompliance with HIPAA rules in connection with the good faith provision of telehealth services. Enforcement discretion applies to all telehealth services that providers, in their

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professional judgment, believe can be provided through telehealth during the current emergency, whether or not related to COVID-19.^v

For additional information about telehealth services and HIPAA, please see the following Ropes & Gray alert: [OCR Releases FAQs Clarifying Telehealth Enforcement Discretion During COVID-19](#) (3/24/2020).

Rural Health Clinics and Federally Qualified Health Centers

To support the provision of telehealth services by Rural Health Clinics (“RHCs”) and Federally Qualified Health Centers (“FQHCs”), CMS has published guidance on a range of topics, including new telehealth flexibilities for RHCs and FQHCs, as well as billing requirements for new telehealth payment opportunities.^{vi}

Telehealth Grants

The Health Resources and Services Administration (“HRSA”) has awarded grants to various entities to expand telehealth infrastructure and access. Recent grants include more than \$11.5 million to Telehealth Resource Centers to provide telehealth technical assistance in rural and underserved areas, as well as \$15 million to four organizations focused on maternal and child health.^{vii}

Medicaid Substance Use Disorder Services

Although not related to the COVID-19 pandemic, CMS released an Informational Bulletin in April regarding opportunities under the SUPPORT Act to expand Medicaid beneficiaries’ access to substance use disorder services via telehealth.^{viii}

Other Ropes & Gray Telehealth Resources

In addition to the resources noted above, the following Ropes & Gray COVID-19 alerts have discussed federal and state telehealth developments:

- [COVID-19 Issues and Considerations for AMCs](#) (5/7/2020)
- [Dealing with Health Care Staffing Shortages in the Face of COVID-19](#) (4/7/2020)
- [COVID-19 Stark Law Waiver](#) (4/2/2020)
- **Congressional Activity:**
 - [Bipartisan Proposal for Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\) – Summary of Key Provisions](#) (3/26/2020)
 - [HR 6201 – Families First Coronavirus Response Act, as Amended by House of Representatives March 16, 2020](#) (3/17/2020)
- **State Activity:**
 - [Massachusetts COVID-19 FAQs](#) (4/15/2020)

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- [California Authorities Issue a Wide Range of Rules and Guidance on COVID-19](#) (4/10/2020)
- [Illinois's Expansion of Access to Health Care via Telehealth Executive Order 2020-09 & Medicaid Emergency Rulemaking](#) (4/6/2020)

ⁱ HHS, HHS Initiatives to Address the Disparate Impact of COVID-19 on African Americans and Other Racial and Ethnic Minorities, posted June 5, 2020, available at <https://www.hhs.gov/sites/default/files/hhs-fact-sheet-addressing-disparities-in-covid-19-impact-on-minorities.pdf>.

ⁱⁱ See White House, On-the-Record Press Call on the President's Action to Protect Seniors with Diabetes, May 26, 2020, available at <https://www.whitehouse.gov/briefings-statements/record-press-call-presidents-action-protect-seniors-diabetes/>; Casey Ross, 'I can't imagine going back': Medicare leader calls for expanded telehealth access after Covid-19, STAT, June 9, 2020, available at <https://www.statnews.com/2020/06/09/seema-verma-telehealth-access-covid19/>.

ⁱⁱⁱ CMS, Medicare Telemedicine Health Care Provider Fact Sheet, dated March 17, 2020, available at <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>.

^{iv} 85 Fed. Reg. 27550 (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>.

^v OCR, Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency, dated March 17, 2020, available at <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>; OCR, FAQs on Telehealth and HIPAA during the COVID-19 nationwide public health emergency, dated March 20, 2020, available at <https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf>.

^{vi} CMS, New and Expanded Flexibilities for Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs) During the COVID-19 Public Health Emergency (PHE), dated April 30, 2020, available at <https://www.cms.gov/files/document/se20016.pdf>.

^{vii} HHS, HHS Awards Nearly \$165 Million to Combat the COVID-19 Pandemic in Rural Communities, April 22, 2020, available at <https://www.hhs.gov/about/news/2020/04/22/hhs-awards-nearly-165-million-to-combat-covid19-pandemic-in-rural-communities.html>; HHS, HHS Awards \$20 Million to Combat COVID-19 Pandemic through Telehealth, dated April 30, 2020, available at <https://www.hhs.gov/about/news/2020/04/30/hhs-awards-20-million-to-combat-covid19-pandemic-through-telehealth.html>.

^{viii} CMS, CMCS Information Bulletin: Rural Health Care and Medicaid Telehealth Flexibilities, and Guidance Regarding Section 1009 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act (Pub. L. 115-271), entitled Medicaid Substance Use Disorder Treatment via Telehealth, dated April 2, 2020, available at <https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/cib040220.pdf>.