HEALTHCARE REGULATORY ROUND-UP - Episode #45

Preparing for the End: PHE Waivers & Flexibilities Checklist

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WE ARE AN INDEPENDENT MEMBER OF HLB—THE GLOBAL ADVISORY AND ACCOUNTING NETWORK

Introductions

Martie Ross, JD
mross@pyapc.com

Kathy Reep, MBA
kreep@pyapc.com

pyapc.com
800.270.9629

After 1,196 days, COVID-19 PHE will end May 11

PYA

- March 13, 2020, CMS Section 1135 blanket waivers and flexibilities
- March 16, 2020, DEA Controlled Substances Act telehealth waiver
- March 30, 2020, CMS waiver of sanctions under the Stark Law
- March 30, April 30, August 26, and October 28, 2020, CMS interim final rules
- November 25, 2020, Acute Hospital Care At Home waiver
- May 5, 2021, Medicare ground ambulance services treatment in place waiver
- November 4, 2021, interim final rule on vaccinations for health care workers
- COVID-19-related provisions included in regular annual rulemaking processes
- OCR and OIG notices of enforcement discretion
- FAQs and other guidance documents

Source of truth: https://www.cms.gov/coronavirus-waivers

The Great Unwind

- CMS Blog: *Creating a Roadmap for the End of the COVID-19 Public Health Emergency* (8/18/22)
- HHS Fact Sheet: *COVID-19 Public Health Emergency Transition Roadmap* (2/9/23)
- CMS provider-specific Fact Sheets (updated 02/23/23)
- CMS Fact Sheet: *What Do I Need to Know? CMS Waivers, Flexibilities, and the Transition Forward from the COVID-19 Public Health Emergency* (2/27/23)
  - "In the coming weeks, CMS will be hosting stakeholder calls and office hours to provide additional information. Please visit the CMS Emergencies Page for continuous updates regarding PHE sunsetting guidance as information becomes available to the public."
  - Example: CMS' 3/2/32 Skilled Nursing Facilities/Long-Term Care Open Door Forum addressed SNF-specific waivers
- OIG Notice: *OIG's COVID-19 PHE Flexibilities End on May 11, 2023, Upon Expiration of the COVID-19 PHE* (3/10/23)

What the End of PHE Does NOT Impact

- 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

PYA End of the PHE Compliance Checklist

PYA

- Organized by provider type
- States the requirement in effect as of May 12, 2023 (as opposed to re-stating the specific waiver and flexibility)
- Does **not** address
  - Waivers and flexibilities made permanent or terminated prior to 1/1/2022
  - 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
- Not intended as an instruction manual; instead, identifies specific items to test for compliance
  - Does not constitute and cannot be relied upon as any form of professional or other advice

1. Multiple Provider Types

PYA

- Medicare provider enrollment
  - Effective 1/1/24, practitioners who render telehealth services from their home must report home address on Medicare enrollment
- Medicare appeals flexibilities
- COVID-19 diagnostic testing and reporting (providers no longer required to post prices)
- State licensure requirements
- Fraud and abuse

2. Telehealth

PYA

- Reimbursement under Medicare Physician Fee Schedule
  - Everything remains the same until 1/1/25 except -
    - List of telehealth services
    - Payment parity
    - Waiver of co-insurance
    - Use of HIPAA-compliant telehealth vendors
- Telehealth as substitute for in-person encounter to prescribe controlled substances
  - DEA's 3/1/23 proposed rule

2. Telehealth - Flexibilities Ending May 11

PYA

- Re-certification of eligibility for hospice and required face-to-face assessments for home health may be performed via telehealth through 12/31/24
- For subsequent inpatient visits, use of telehealth will be limited to once every 3 days (CPT 99231-99233)
- For subsequent SNF visits, use of telehealth will be limited to once every 14 days (CPT 99307-99310)
- For critical care consults, use of telehealth will be limited to once per day (HCPCS G0508-G0509)
- Discontinue use of telehealth for required face-to-face visits for home dialysis patients
- Discontinue use of telehealth for required face-to-face visits for inpatient rehabilitation facility patients
- To the extent NCD or LCD requires face-to-face visit for evaluations and assessments, these visits no longer can be performed via telehealth
- 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)
- 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)
- Opioid treatment programs may perform periodic assessments by telephone through 12/31/23; thereafter, assessments performed using two-way interactive audio-video communication will be permitted

3. Physicians and Other Practitioners

PYA

- Direct supervision performed virtually through 12/31/23
- Substitute billing arrangements (locum tenens) 60-day limitation
- Virtual services – established patients only
- NCD/LCD clinical indications

4. Hospitals

PYA

A. Expand physical capacity

- Expanding locations for delivery of inpatient services
- Providing offsite EMTALA screenings
- Creating new or relocating existing HOPDs
  - Patient home as HOPD
- SNF qualifying 3-day hospital stay
- Acute hospital care at home waiver

B. Expand workforce capacity

- Medical staff credentialing and privileging
- All patients under care of physician
- CRNA supervision

C. Reduce administrative burden

- QAPI and utilization review CoPs
- Discharge notices
- Verbal orders

5. Teaching Hospitals and Teaching Physicians

PYA

- Discontinue counting resident's time for activities at his/her home or patient's home for purposes of Medicare DGME or IME payments
- Discontinue claiming residents sent to other hospitals in IME and DGME FTE resident counts
- Residents' presence at non-teaching hospitals will trigger establishment of IME and/or DGME FTE resident caps at those non-teaching hospitals

6. Critical Access Hospitals

PYA

- Discontinue use of more than 25 beds
- Adhere to 96-hour length of stay requirements
- Discontinue use of any off-site locations established to provide surge capacity that do not meet requirements for rural location and location relative to other hospitals and CAHs
- MD/DO must be physically present at the facility for sufficient periods of time to provide medical direction, consultation, and supervision
- Comply with minimum personnel qualifications for nurse practitioners, physician assistants, and clinical nurse specialists

7. Long-Term Care Facilities (SNF/NF)

- Qualifying three-day prior hospitalization to qualify for SNF coverage
- Medicare beneficiary must start and complete 60-day “wellness period” to renew SNF benefits
- Discontinue COVID-19 testing for residents and staff required under 42 CFR 483.80(h)E
- Ensure patients’ right to share a room with roommate of choice when practicable and right to refuse transfer to another room at the facility for specified purposes

8. Home Health Agencies

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- Comply with all requirements for supervision of home health aides (including on-site visits) specified in 42 CFR 484.80(h)
- Complete by 9/30/23 any postponed annual on-site visit by an RN to location where patient is receiving care and required twelve-hour annual in-service training for home health aides
- Comply with all requirements regarding quality assessment and performance improvement program
- Comply with limitations on PTs and SLPs performing initial and comprehensive patient assessments

9. Hospice

PYA

- Complete by 9/30/23 any postponed annual on-site visit by an RN to the location where a patient is receiving care and annual training required by 42 CFR 418.100(g)(3)
- Comply with all requirements regarding quality assessment and performance improvement program
- By 12/31/23, resume use of volunteers for at least 5% of patient care hours
- Comprehensive assessments must be updated by the hospice interdisciplinary team every 15 days
- Make available PT, OT, and SLT services and provide such services in a manner consistent with accepted standards of practice

10. RHCs and FQHCs

PYA

- Non-physician practitioner must be available to furnish patient care services at least 50% of the time RHC/FQHC operates
- Nurse practitioners must be supervised by RHC/FQHC medical director
- Continued use of any location established during the PHE for surge capacity will be dependent on satisfying all regulatory requirements applicable to such location (e.g., location restrictions, survey and certification requirements)
- Payment for virtual communication services (G0071) limited to established patients
- Payment under G0071 for online digital evaluation and management services (CPT 99421-99423) will no longer be available; G0071 can only be used for G2012 and G2010 (virtual check-ins)

11. Other Providers

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- End-stage renal disease facilities
- Inpatient rehabilitation facilities
- Long-term care hospitals
- Extended neoplastic disease care hospitals
- Intermediate Care Facilities for Individuals with Intellectual Disabilities
- Ambulatory surgery centers
- Community mental health centers
- Ambulance services
- Durable Medical Equipment, Prosthetics, Orthotics and Supplies
- Laboratories

PYA

Questions (and hopefully answers)

Timely, Tough, or Tricky – Physician Compensation and Fair Market Value Topics

THE END TO PUBLIC HEALTH EMERGENCY & ITS IMPACT ON PHYSICIAN COMPENSATION

- WHAT WAS WAIVED AND WHY
- WHAT HAS CHANGED BETWEEN MARCH 20, 2020, AND MAY 11, 2023
- WHAT YOU SHOULD YOU DO TO PREPARE
- PRACTICAL TIPS

Tuesday, March 28, 2023 – 11am ET

Our Next Healthcare Regulatory Round-Up:

Reading the Medicare Tea Leaves

April 12, 2023