AMERICAN COLLEGE OF ALLERGY, ASTHMA & IMMUNOLOGY

ADVOCACY COUNCIL

ADVOCATING FOR ALLERGISTS AND THEIR PATIENTS

End of COVID-19 Public Health Emergency—Impact on Allergists

On January 31, 2023, the Biden Administration indicated that the Public Health Emergency (PHE) related to the COVID-19 pandemic will end on May 11, 2023. This article provides a high-level overview of how the end of the PHE will impact direct supervision under Medicare, Medicare telehealth services, Medicaid enrollment, and COVID-19 testing/treatment. This article does not provide an exhaustive list of all changes that will occur after the PHE ends. The Advocacy Council will continue to provide updates as CMS publishes additional information regarding the conclusion of the PHE.

Direct Supervision

In general, Medicare pays for "incident to" services that are performed under the direct supervision of a physician. Prior to the PHE, "direct supervision" required the physician to be present in the office suite and immediately available to provide direction and assistance throughout the performance of the service. In response to the COVID-19 PHE, CMS *temporarily* relaxed this direct supervision requirement, allowing the supervising physician (or other supervising practitioner) to be immediately available through virtual presence via real-time audio and video technology. Accordingly, during this time period, the physician or other supervising practitioner does not need to be physically present at the location where procedures are performed (e.g., extracts are prepared), provided that the individual is immediately available through real-time audio and video technology. **This flexibility applies to both "incident-to" services (e.g., mixing extract) and diagnostic tests (e.g., allergy skin tests) and will remain in effect until the end of the calendar year in which the COVID-19 PHE ends.**

Because the PHE is anticipated to conclude on May 11, 2023, the "pre-PHE" direct supervision requirements will be reinstated on January 1, 2024. **Accordingly, for services rendered on or after January 1, 2024, the supervising physician (or other supervising practitioner) must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure.** However, the physician (or other supervising practitioner) is not required to be present in the room when the procedure is performed. **For services provided on or before December 31, 2023, the supervising physician (or other supervising practitioner) may still use real-time audio and video technology to satisfy the supervision requirement.**

Continuation of Certain Telehealth Policies

During the COVID-19 PHE, Medicare, private payers, and many states waived or otherwise modified certain telehealth requirements. Please refer to our article on telehealth for more details. Although some of these telehealth flexibilities are currently set to expire at the end of the PHE, many will remain in place longer.

Flexibilities Ending December 31, 2024. In the Consolidated Appropriations Act of 2023, Congress extended CMS's authority to continue many of the current telehealth flexibilities through December 31, 2024. Flexibilities extending through December 31, **2024**, include those related to geographic restrictions, originating site restrictions, qualifying providers, and audio-only services. CMS has also made clear that "Medicare patients can receive telehealth services authorized in the Calendar Year 2023 Medicare Physician Fee Schedule in their home" through December 31, 2024.

Flexibility Regarding Billing Rate for Telehealth Services. During the PHE, services rendered through telehealth have been – and continue to be – **subject to the same payment rate as in-person visits. This will continue through December 31, 2023,** with regular payment rates resuming on January 1, 2024.

Termination of Health Insurance Portability and Accountability Act (HIPAA) Flexibility. In response to the PHE, the U.S. Department of Health and Human Services' (HHS) Office of Civil Rights (OCR) determined that audio-only telehealth visits are permissible even though this would normally fail to comply with HIPAA requirements. OCR's enforcement discretion will remain in effect until the Secretary of HHS "declares that the COVID-19 PHE no longer exists, or upon the expiration date of the declared PHE, whichever occurs first." **Because we anticipate the PHE will end on May 11, 2023, this flexibility will also terminate on that day.** OCR previously issued guidance clarifying how providers may use remote communication technologies for audio-only telehealth after the conclusion of the PHE.

Medicare Remote Patient Monitoring (RPM) Services. Prior to the PHE, clinicians were required to establish a relationship with a patient prior to providing RPM services for that patient. During the PHE, these requirements were relaxed, allowing clinicians to bill for RPM services provided to both established and new patients, and to patients with both acute and chronic conditions.

After the PHE ends on May 11, 2023, clinicians must have an established relationship with the patient prior to providing RPM services. However, RPM services may be provided to patients with both acute and chronic conditions. **In addition, clinicians may only bill for services described by CPT codes 99453 and 99454 when at least 16 days of data have been collected.**

Special Enrollment

It is likely that millions of individuals will lose Medicaid coverage consequent to the unwinding of the PHE. To mitigate confusion for newly disenrolled Medicaid beneficiaries, **CMS announced a special enrollment period which will begin on March 31, 2023, and conclude on July 31, 2024.** To qualify under the special enrollment period, individuals must: (1) be eligible for coverage under the Affordable Care Act marketplace and (2) have lost their coverage under Medicaid, the Children's Health Insurance Program (CHIP), or the Basic Health Program (BHP).

COVID-19 Testing and Treatment

Finally, the end of the PHE will result in changes related to COVID-19 testing and treatment. For Medicare beneficiaries, CMS will continue to pay approximately $40 per dose for administering COVID-19 vaccines in outpatient settings through the end of the year in which the PHE ends (i.e., December 31, 2023). Effective January 1, 2024, the payment rate for administering COVID-19 vaccines will align with the payment rate for administering other Part B preventive vaccines.

Currently, individuals with private health insurance coverage or those covered by a group health plan who purchase an over-the-counter COVID-19 diagnostic test, will be able to have those test costs covered by their plan or insurance. Insurance companies and health plans are required to cover eight free over-the-counter at-home tests per covered individual per month. **Starting May 11, 2023, the government will no longer require this type of coverage.** Additionally, after the PHE concludes, Medicare will require all COVID-19 and related testing that is performed by a laboratory, to be ordered by a physician or other practitioner.

The COVID-19 pandemic altered the manner in which many healthcare providers, including allergists, provide services to patients. In response to the COVID-19 pandemic, the Centers for Medicare and Medicaid Services (CMS) implemented waivers and other regulatory flexibilities to help healthcare providers focus on caring for patients during the PHE. Although certain regulatory flexibilities will remain in place after the end of the PHE, many flexibilities will end on May 11, 2023. The Advocacy Council will continue to provide updates as CMS publishes additional information regarding the conclusion of the PHE.

For more detailed information regarding COVID-19 waivers and flexibilities, please refer to CMS's website.

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