Vermont Association of Hospitals and Health Systems

Issue Brief: COVID-19 Emergency Powers at Federal and State Level- March 22, 2020

Federal State of Emergency

Status: IN EFFECT retroactive to March 1, 2020.
A federal state of emergency was declared on March 13, 2020. Waivers that pertain to all hospitals, called blanket waivers under Section 1135(b) address the following:

REGULATORY FLEXIBILITY

Critical Access Hospitals: waives requirement that number of beds be limited to 25 and the average length of stay be limited to 96 hours

- Note: CAH 96-hour condition of payment is still in effect. AHA and VAHHS are looking to have this waived.

Skilled Nursing Facilities: waives three-day prior hospitalization requirement
DME: contractors can waive face-to-face requirement, new physician's order and/or new medical necessity documentation
Housing Acute Care Patients in Excluded Distinct Parts Unit: Prospective Payment System (PPS) hospitals should bill for care and indicate that patients are in other units because of capacity issues related to COVID-19

Care for Inpatient Psych Patients: inpatient psych patients can be relocated to acute care. Hospital should bill for inpatient psych services and indicate patient is in another unit because of capacity issues related to COVID-19
Care for Inpatient Rehab Patients: inpatient rehab patients can be relocated to acute care. Hospital should bill for inpatient rehab services and indicate patient is in another unit because of capacity issues related to COVID-19
Emergency Medical Treatment and Labor Act (EMTALA): waiver for relocation of an individual to another location for medical screening pursuant to a state emergency preparedness plan

EMTALA: waiver for transfer of an individual who has not been stabilized if necessary under COVID-19 pandemic
Stark law/physician self-referral
Medicare Advantage plan networks waived
HIPAA: for hospitals with disaster protocols in effect:

- Requirement to obtain patient consent to speak with family members or friends waived
- Patients right to request privacy restrictions or confidential communications waived

Medicare Appeals: CMS will utilize all flexibilities
Certain Conditions of Participation COPs waived
340B audits—not flexible right now - HRSA is conducting 340B Program audits remotely (virtually). If a covered entity has specific questions regarding an audit once they have been engaged, please contact the Bizzell Group (the 340B audit contractor) at *340baudit@thebizzellgroup.com* who will coordinate with HRSA based on the specifics of the request.

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TELEHEALTH

Announced 3/17 and applies to Medicare and Medicaid Reimbursable services as of 3/6. Applies to all services, not just COVID-19 related services. More information here.

Rural and Facility Requirement Lifted: This restriction is already lifted under the all-payer model (APM), but for those who are not in the APM, patients can receive telehealth in their homes or location other than health care facility.

Established Relationship Requirement Waived: HHS will not conduct audits to ensure there was a prior relationship for telehealth visits, but will require it for virtual check-ins and e-visits.

Use of FaceTime, Skype or other "Everyday" Technologies is Acceptable: Effective immediately, the HHS Office for Civil Rights (OCR) will exercise enforcement discretion and waive penalties for HIPAA violations against health care providers that serve patients in good faith through everyday communications technologies, such as FaceTime or Skype, during the COVID-19 nationwide public health emergency.

TYPE OF SERVICE	WHAT IS THE SERVICE?	HCPCS/CPT CODE	Patient Relationship with Provider
MEDICARE TELEHEALTH VISITS	A visit with a provider that uses telecommunication systems between a provider and a patient.	Common telehealth services include: • 99201-99215 (Office or other outpatient visits) • G0425–G0427 (Telehealth consultations, emergency department or initial inpatient) • G0406–G0408 (Follow-up inpatient telehealth consultations furnished to beneficiaries in hospitals or SNFs) For a complete list: https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes	For new* or established patients. *To the extent the 1135 waiver requires an established relationship, HHS will not conduct audits to ensure that such a prior relationship existed for claims submitted during this public health emergency
VIRTUAL CHECK-IN	A brief (5-10 minutes) check in with your practitioner via telephone or other telecommunications device to decide whether an office visit or other service is needed. A remote evaluation of recorded video and/or images submitted by an established patient.	• HCPCS code G2012 • HCPCS code G2010	For established patients.
E-VISITS	A communication between a patient and their provider through an online patient portal.	• 99431 • 99422 • 99423 • G2061 • G2062 • G2063	For established patients.

Controlled substance: DEA worked in consultation with HHS to allow DEA-registered practitioners to begin issuing prescriptions for controlled substances to patients for whom they have not conducted an in-person medical evaluation. DEA-registered practitioners may continue this telemedicine practice for as long as the designation is in effect, if all required conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system.
- The practitioner is acting in accordance with applicable Federal and State law.

Provided the practitioner satisfies these requirements, the practitioner may issue the prescription using any of the methods of prescribing currently available adhering to DEA regulations, including issuing a prescription electronically or by calling in a prescription to the pharmacy.

WORKFORCE FLEXIBILITY

Out-of-State Providers: providers licensed in other states and in good standing can get reimbursed for their practice in Vermont under Medicare and Medicaid.

- Note: we are working with the legislature and the administration for licensure flexibility—this does not allow for licensure, just reimbursement

Provider Enrollment Flexibility:

- Hotline for temporary Medicare billing privileges
- Waive application fee, criminal background check and site visits
- Expedite new or pending applications
- **OSHA instituted a new policy regarding N95 fit testing.** They are temporarily lifting the annual requirement. Fit testing will be required for the first time. The guidance can be found here: https://www.osha.gov/memos/2020-03-14/temporary-enforcement-guidance-healthcare-respiratory-protection-annual-fit

INDIVIDUAL WAIVERS

Individual hospitals can obtain further flexibility by applying for an 1135 waiver. Instructions can be found here. VAHHS is working on a statewide waiver for all hospitals. If you have provisions you need in the waiver, please contact devon@vahhs.org.

Vermont State of Emergency

Status: IN EFFECT. Governor Scott's Executive Orders can be found here.

Limiting visitors to patients: hospitals shall develop policies limiting people visiting patients. Nursing homes, Vermont Psychiatric Care Hospital, and the Middlesex Therapeutic Community Residence will prohibit visitor access except for those receiving end-of-life care.

State personnel and equipment shall be deployed for the State Emergency Management Plan through direction of the Vermont Department of Health (VDH) and Department of Public Safety/Vermont Emergency Management.

National Guard may be activated

Rules governing medical and nursing services shall be suspended as necessary to provide medical care, including:

- Paramedicine
- Transportation to hospitals and other health care facilities
- Telemedicine for patients in place
- Administration of medicine
- Prescribing of medication

Childcare: Governor's office is working on setting up childcare for essential employees, which includes health care workers. More to come. Go to http://bit.ly/essentialworkers and fill out the webform there if you are an essential worker who needs childcare.

Suspension of routine audits of providers by insurers: The Department of Financial Regulation is preparing to issue an emergency bulletin directing insurers to suspend routine (i.e. retrospective) audits of providers. Insurers will, however, be permitted to conduct audits to prevent and detect ongoing fraud or other illegal conduct. We will update once this bulletin is available.

Insurers must make 30-day refills of prescription drugs available: this bulletin is meant to minimize the need for Vermonters to physically visit pharmacies. It includes prescriptions that are not otherwise due for a refill. It does not allow members to obtain additional medication if they have a short-term script or a script for narcotic or specialty medication.

Postponement of non-essential health care procedures: the Governor ordered all clinicians in Vermont to expedite postponement of all non-essential adult elective surgery and medical and surgical procedures.

Medicaid Telehealth Expansion: Medicaid is expanding to covered of health care services provided by telephone. More information found here.

State Legislation

Status: Passed House, NOT IN EFFECT. COVID-19 Response, H.742, passed the House, but it still needs to pass the Senate in order to go to the governor's desk. The Senate version now includes the following:

FINANCIAL ASSISTANCE

- Modify or postpone hospital provider tax – this needs to be a legislative change
- Medicaid testified to the mechanisms they already have to financially support the health care system
    - Suspend provider tax

  - Exploring payment to health care providers in absence of claims or utilization due to COVID-19
  - Potential advantageous change in payment methodology to FQHCs and Rural Health Clinics, if necessary
- Medicaid-funded facilities providing 24-hour-per-day services, such as long-term care facilities, may be reimbursed by AHS for bed-hold days.

REGULATORY FLEXIBILITY

- Variance in state regulatory standards, including:
  - Hospital licensing
  - Hospital reporting
  - Nursing home licensing and operations
  - Home health licensing and operations
  - Childcare licensing regulations
  - Public assistance program regulations
  - Other rules and standards under AHS
- Green Mountain Care Board has the authority to waive statutes or rules pertaining to
  - Hospital budget review
  - Certificate of Need
  - Health insurance rate review
  - ACO certification and budget review
- To the extent permitted under federal law, documentation or reporting requirements for involuntary treatment is waived
- Quarantine is not considered involuntary seclusion or restraint if the patient has been exposed to COVID-19

WORKFORCE FLEXIBILITY

- Relaxed provider credentialing for Medicaid and commercial insurance
- Automatic licensure of providers licensed in other jurisdictions in good standing, as well as providers who have retired in the last three years as long as they are working at a health care facility. Temporary licenses for those who are not with a facility.
- Waiver of delegation agreements for PAs and transition to practice requirements for APRNs
- Temporary licenses to providers who have retired four to 10 years ago in good standing and to graduates of medical programs who are unable to obtain licenses because exams are not reasonably available
- All fees waived

PROGRAMS AND COVERAGE FOR PATIENTS

- DFR shall consider adopting
  - Expanded health insurance coverage for cost sharing requirements related to COVID-19 diagnosis
  - Pharmacies can re-fill maintenance medications in 30-day supplies and physicians prescribing buprenorphine for treatment of SUD can renew the prescription without office visits, to the extent federal law requires

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TELEHEALTH EXPANSION

- Same reimbursement as in-person visit for a telehealth visit
- Store and forward expansion
- DFR can require telephone health care services to be reimbursed by commercial insurers
- Medicaid to reimburse for telephone health care services starting 3/23