

## CMS updates expiration dates for telehealth PHE flexibilities



Rick L. Hindmand | Monday, November 14, 2022

The Centers for Medicare & Medicaid Services (CMS) on November 1, 2022, issued the Medicare Physician Fee Schedule (MPFS) 2023 Final Rule (the “2023 Final Rule”), which sets forth updates, policy revisions and guidance relating to services under the MPFS. This includes updates and summaries regarding relaxed standards and related flexibilities that have facilitated the expanded use of telehealth and other digital health services during the Public Health Emergency (the PHE).

Some of the principal PHE telehealth flexibilities are summarized below, based on the 2023 Final Rule as well as relevant provisions of the Social Security Act and prior guidance from CMS and other agencies. As noted below, Medicare telehealth flexibilities are generally scheduled to continue through the PHE and then for 151 days, in some cases through December 31, 2023, or through the end of the PHE or the calendar year in which the PHE ends. The table is limited to Medicare and federal standards, and does not address state and payor (other than Medicare) standards.

Telehealth providers and their leaders, advisers and business associates should watch for future statutory, regulatory, and payor updates to the PHE standards and expiration dates and plan ahead for adjustments to their digital health service models and related policies, procedures and training, keeping in mind that significant lead time may be needed in order to effectively implement the necessary changes.

Restriction	PHE Flexibility	Flexibility End Date[1]
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Patient geography (rural) and originating site (generally facilities)	<ul style="list-style-type: none"> <li>Any geographic area in U.S.</li> <li>Where patient is located (e.g., in home)</li> </ul>	<ul style="list-style-type: none"> <li>151 days after PHE</li> <li>In-home allowed permanently for substance use disorder (SUD) and mental health</li> </ul>
Modality (interactive audio/video technology)	Allow audio-only for some services	<ul style="list-style-type: none"> <li>151 days after PHE</li> <li>Audio-only mental health will continue</li> </ul>
Medicare telehealth limited to services under specified billing codes	<p>Eligible codes/services expanded<sup>[2]</sup></p> <ul style="list-style-type: none"> <li>New Category 1 (permanent) codes<sup>[3]</sup></li> <li>Category 3 codes</li> <li>Temporary codes</li> </ul>	<ul style="list-style-type: none"> <li>December 31, 2023 (Category 3 codes)</li> <li>151 days after PHE (temporary codes)<sup>[4]</sup></li> </ul>
Limited to services furnished by physicians or eligible practitioners (e.g., physician assistants, nurse practitioners, clinical nurse specialists, nurse-midwives, CRNAs, clinical psychologists, clinical social workers, registered dietitians or nutrition professionals)	<p>Eligible practitioners expanded to include physical therapists, occupational therapists, speech-language pathologists and audiologists</p>	151 days after PHE
Federally qualified health centers (FQHCs) and rural health centers (RHCs) not allowed to bill for distant site telehealth services	<p>FQHCs and RHCs can furnish and bill for telehealth services under code G2025</p>	151 days after PHE
		<ul style="list-style-type: none"> <li>December 31 of the calendar year in which the PHE ends (CMS solicited comment on allowing direct supervision through real-time a/v on a permanent basis)</li> </ul>

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In-person physical immediate availability required for “incident to” services, diagnostic tests & hospital outpatient services that are subject to direct supervision	Allow immediate availability through virtual presence using real time a/v to satisfy direct supervision	for some services) <ul style="list-style-type: none"> <li>Supervision level for remote therapeutic monitoring (RTM) revised from direct to general starting in 2023 (and general supervision continues for remote physiologic monitoring (RPM))</li> </ul>
In-person visit requirement within 6 months prior to mental telehealth, and then within 12 month intervals (unless patient and practitioner agree in-person risks & burdens outweigh benefit, and this is documented in medical record)	Requirements delayed	151 days after the PHE
Established patient relationship and face-to-face visit requirements for RPM	New patients allowed during PHE. Initiating visit can be by telehealth.	End of the PHE
Licensure	Allow services across state lines (subject to state law)	151 days after the PHE
Minimum of 16 days of monitoring in 30 day period required for RPM & RTM	RPM minimum reduced to 2 days for patients with confirmed or suspected COVID-19	End of the PHE
Copays	Optional to collect (per Office Inspector General (OIG) enforcement discretion)	End of the PHE
HIPAA privacy, security and breach notification standards apply	HIPAA enforcement loosened for good faith use of non-public facing audio or video communications during the PHE (HHS Office for Civil Rights (OCR) enforcement	End of the PHE

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For more information on digital health, the PHE telehealth flexibilities or related matters, please contact the attorney below.

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[1] Last scheduled date for the PHE flexibility, unless future legislative or agency action extending the flexibility.[2] See <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes> .[3] The 2023 Final Rule added the following new Category 1 telehealth service codes:

chronic pain management (G3002 and G3003), and the following prolonged services by a physician or other qualified health provider (QHP): inpatient or observation services (G0316), nursing facility services (G0317) and home or residence services (G0318).[4] 2023 Final Rule, Table 14.



**Rick L. Hindmand**