Additional CMS Actions in the Wake of COVID-19: Increase Hospital Capacity by Using Ambulatory Surgery Centers, Remove Barriers to Physician Employment, Promote Telehealth and More

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April 1, 2020

In the wake of the COVID-19 pandemic, the Centers for Medicare and Medicaid Services (CMS) have taken additional actions in an attempt to streamline the delivery of healthcare. These temporary measures will only last for as long as the declaration of the national emergency as a result of the COVID-19 pandemic remains in effect. As always, these actions must be reconciled with any applicable state requirements, as CMS does not have the authority to waive state requirements.

Each temporary change does have certain requirements, and providers must be careful to follow all requirements in order to qualify for payment and avoid recoupments. Providers should also take care to ensure that any arrangements that they enter into utilizing any of the above waivers should clearly sunset or terminate when the national emergency declaration is terminated.

Increase Hospital Capacity

Ambulatory surgery centers will temporarily be permitted to contract with local healthcare systems to provide hospital services, or they can enroll and bill as hospitals during the emergency declaration as long as they are not inconsistent with the applicable state's Emergency Preparedness or Pandemic Plan. The new flexibilities will also leverage these types of sites to provide services typically provided by hospitals such as cancer procedures, trauma surgeries and other essential surgeries.

CMS will also temporarily allow non-hospital buildings and spaces to be used for patient care and quarantine sites, provided that the location is approved by the applicable state and ensures the safety and comfort of patients and staff.

CMS will also permit hospitals, laboratories, and other entities to perform tests for COVID-19 on people at home and in other community-based settings outside of the hospital. Further, CMS will permit hospital emergency departments to test and screen patients for COVID-19 at drive-through and off-campus test sites.

Ambulances will temporarily be allowed to transport patients to a wider range of locations when other transportation is not medically appropriate. These destinations include community mental health centers, federally qualified health centers, physician's offices, urgent care facilities, ambulatory surgery centers, and any locations furnishing dialysis services when an end-stage renal dialysis facility is not available.

Physician-owned hospitals can temporarily increase the number of their licensed beds, operating rooms, and procedure rooms.

Moreover, hospitals can temporarily bill for services provided outside their four walls. Emergency departments of hospitals can use telehealth services to quickly assess patients to determine the most appropriate site of care, freeing emergency space for those that need it most. Patients can be screened at alternate treatment and testing sites which are not subject to the Emergency Medical Labor and Treatment Act.

Expand the Healthcare Workforce

CMS's temporary requirements permit healthcare systems to increase their workforce capacity by removing barriers for physicians, nurses, and other clinicians to be readily hired from the local community as well as those licensed from other states without violating Medicare rules. These healthcare workers can then perform the functions they are qualified and licensed for, while awaiting completion of federal paperwork requirements.

CMS is also issuing waivers so that hospitals can use other practitioners, such as physician assistants and nurse practitioners, to the fullest extent possible, in accordance with the applicable state's emergency preparedness or pandemic plan. These clinicians can perform services such as order tests and medications that may have previously required a physician's order where this is permitted under applicable state law.

CMS is waiving the requirement that a certified registered nurse anesthetist (CRNA) must be under the supervision of a physician. This will allow CRNAs to function to the fullest extent allowed by the applicable state.

CMS has also issued a waiver to allow hospitals to provide benefits and support to their medical staffs, such as multiple daily meals, laundry service for personal clothing, or child care services while the physicians and other staff are at the hospital and engaging in activities that benefit the hospital and its patients. This would normally be prohibited by the Stark Law and the Federal Anti-Kickback Statute.

CMS will also allow healthcare providers to enroll in Medicare temporarily to provide care during the public health emergency.

Temporary Elimination of Other Requirements

CMS is temporarily allowing Medicare to cover respiratory-related devices and equipment for any medical reason determined by clinicians.

Hospitals will not be required to have written policies on processes and visitation of patients who are in COVID-19 isolation and will have additional time to provide patients a copy of their medical record.

CMS is providing temporary relief from many audit and reporting requirements. This is being done by extending reporting deadlines and suspending documentation requests.

Telehealth in Medicare

CMS will now permit more than eighty additional services to be furnished via telehealth. Providers may also evaluate Medicare beneficiaries who have audio phones only.

Providers can also bill for telehealth visits at the same rate as in-person visits, provided that the applicable clinician is allowed to provide telehealth. New as well as established patients now may stay at home and have a telehealth visit with their provider. CMS is also permitting the use of telehealth to fulfill many face-to-face visit requirements for clinicians to see their patients in inpatient rehabilitation facilities, hospice and home health. Clinicians can provide remote patient monitoring services to patients with acute and chronic conditions and can be provided for patients with only one disease.

Further, CMS is allowing physicians to supervise their clinical staff using virtual technologies when appropriate, instead of requiring in-person presence.

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