Regulatory Considerations for a Post-PHE World

June 23rd, 2022

2:00 pm EST

Agenda

- Covid Public Health Emergency Recap
- Liability Immunity
- Medicare/Medicaid Waivers and Reimbursement
- Telehealth
- Regulatory Triggers
  - Appropriate Use Criteria (AUC) Mandate
  - Quality Payment Program Flexibilities
- Submitted Questions

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Disclaimer:

The content presented within this webinar *is not* an exhaustive list of all regulatory items reliant on the declaration of the public health emergency. Please consult national/state guidance for the most up-to-date policies.

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COVID PHE Recap

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COVID PHE Recap

- Federal Public Health Emergency (PHE) due to COVID – 19
  - First issued January 31st, 2020
    - Renewed in 90-day increments
    - Currently set to expire ***July 16th, 2022***
  - CMS/HHS have promised **60-day notice** ahead of letting PHE expire
    - Anticipated that PHE will be renewed at least once more this year

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COVID PHE Recap

During a declared PHE the federal government has the ability to waive or modify requirements over a range of areas to support patients, providers, and healthcare systems. ***Examples:***

- Patient-focused flexibilities – cost-sharing/coverage related policies
- Provider-focused flexibilities – scope of practice, licensure/enrollment requirements, compliance enforcement waivers, reimbursement increases

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Liability Immunity: PREP ACT

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PREP ACT

- **March 2020** – HHS Secretary issued PREP Act declaration to related to COVID-19, providing immunity protections for:

  - Licensed health professionals authorized to administer covered medical countermeasures under the law of the state where the countermeasure is administered, and

  - Other individuals identified in the declaration by the Secretary of Health and Human Services (HHS) to prescribe, dispense, or administer covered countermeasures, including the COVID-19 vaccine

Declaration ends October 1st, 2024

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PREP ACT

Amendments to Declaration (ending October 1st, 2024):

- Pharmacists and pharmacy interns to administer COVID-19 vaccines (and other immunizations) to children between the ages of 3 and 18, pre-empting any state law that had age limits
- Healthcare providers licensed in one state to vaccinate against COVID-19 in any state
- Physicians, registered nurses, and practical nurses whose licenses expired within the past five years to administer COVID-19 vaccines in any state

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Medicare/Medicaid Waivers and Reimbursement

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Medicare/Medicaid Waivers

CMS has utilized their authority granted under Section 1135 of the Social Security Act to provide federal 'blanket waivers' within the following categories:

- Conditions of participation or other certification requirements
- Program participation and similar requirements
- Preapproval requirements
- Requirements that physicians and other health care professionals be licensed in the State in which they are providing services, so long as they have equivalent licensing in another State
  - (this waiver is for purposes of Medicare, Medicaid, and CHIP reimbursement only – state law governs whether a non-Federal provider is authorized to provide services in the state without state licensure)

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Medicare/Medicaid Waivers

Continued:

- Emergency Medical Treatment and Labor Act (EMTALA)
- Sanctions under the physician self-referral law (also known as the “Stark Law”)
- Performance deadlines and timetables may be adjusted (but not waived)
- Limitations on payment for health care items and services furnished to Medicare Advantage enrollees by non-network providers

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Medicare/Medicaid Waivers

Active CMS Waivers (Updated 6/16/2022) Available Here:

https://www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf

Waivers may be active until:

- End of the emergency period
- 60 days after the waiver or modification was first published
- At the end of the year the PHE expires

- **Duration is specific to the waiver itself**
- **CMS opted to terminate some waivers already**
- **Recommend reviewing any waivers currently being used to create transition plan if needed**

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Medicare/Medicaid Reimbursement

- **20% increase DRG weighting for COVID positive inpatients**
  - In place since September 1st, 2020 – reimbursement increase given to reflect costs/resources for caring for COVID patients
- **99072 CPT – Used to report additional expenses related to supplies and staff time for non-facility settings**
  - Reportable once per in-person patient encounter during an active PHE
- **Telehealth**
  - Payment parity for in-person visits, audio-only reimbursement
- **Medicare Sequestration**
  - Cut deferred during PHE – (-1%) restarted April 1st
  - Full (-2%) starting **July 1st**

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Medicare/Medicaid Reimbursement

- **Additional cuts initially planned or unintentionally triggered loom in 2023…**
  - **Temporary bumps to Medicare Fee Schedule conversion factor anticipated to end**
    - Congress intervened to add more money towards yearly budget which lessened impact of reduced conversion factor
    - +3% for 2022 – next conversion factor will be at lowered by this at least
  - **-4% PAYGO Cut**
    - American Rescue Plan of 2021 triggered statutory PAYGO budget control measure
    - "Protecting Medicare and American Farmers from Sequester Cuts Act" delayed cut to 2023
    - Requires congressional action to waive PAYGO

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Telehealth

Telehealth

- **Social distancing and strain on healthcare systems created huge need to pivot to telehealth**
  - Prior to start of PHE, Medicare very restrictive of telehealth services/requirements

- **Medicare (CMS) is limited in terms of permanent expansion of telehealth**
  - Congressional intervention required to alter provisions that result in most restrictions
  - Waivers have been propping up telehealth for past two years
  - CMS did take steps to permanently expand behavioral health services via telehealth and change their ability to manage telehealth list in 2022 rule

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Telehealth

Major Changes Post-PHE Declaration:

- Medicare beneficiaries in **any** geographic area can receive telehealth services

- Beneficiaries can remain in their homes for telehealth visits reimbursed by Medicare, rather than needing to travel to a health care facility

- Telehealth visits can be delivered via smartphone in lieu of equipment with **both** audio and video capability
  - Waiver of HIPAA to expand telehealth platforms/technology

- Expanded list of Medicare-covered services which can be provided via telehealth

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Telehealth

Consolidated Appropriations Act of 2022 preserves the following telehealth flexibilities for **151 days** after the official end of the PHE.

- The originating site of care will continue to include any site at which the patient is located, including the patient's home;
- Occupational therapists, physical therapists, speech-language pathologists and audiologists able to continue conducting services via telehealth
- Federally qualified health centers and rural health clinics can furnish telehealth services;
- Delay of the 6-month in-person requirement for mental health services furnished through telehealth until 152 days after the emergency.
- Extending coverage and payment for audio-only telehealth services;
- Extending the ability to use telehealth services to meet the face-to-face recertification requirement for hospice care

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Other Regulatory Triggers

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Regulatory Triggers - AUC

Appropriate Use Criteria (AUC) Mandate Recap:

- **PAMA legislation created law to require ordering providers to consult CDSM tool when ordering advanced imaging for Medicare beneficiaries in outpatient settings**
  - MRIs, PET/CT, Nuclear Medicine
- **Furnishing providers must report outcome of consultation on applicable claims in form of Modifiers and G-Codes**
- **Claims that lack required documentation will be denied once penalty phase begins**

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Regulatory Triggers - AUC

Appropriate Use Criteria (AUC) Penalty Phase now depends on PHE

- Penalty phase delayed until **January 1st, 2023 OR** the **first year following the end of the PHE (whichever the latter)**
- **CMS cited industry unreadiness combined with impact of pandemic as reason for extended testing year(s)**
  - ~10% of 2020 claims were considered compliant for reimbursement
- **Reminder** – PAMA is law and would take congressional action to remove entirely

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Regulatory Triggers - QPP

Quality Payment Program (QPP) offered various flexibilities for participants:

- **Merit-Based Incentive Payment Program (MIPS) Track**
  - **2019 –** Automatic EUC policy applied to individuals
  - **2020/2021 –** EUC Hardship applications for COVID opened for applications, automatic EUC applied to individuals, COST category reweighted
  - **2022 –** COVID EUC Hardship applications opened again
  - **Complex PT bonus expanded 2020 PY**

- **Advanced APM (AAPM) Track**
  - **Qualifying participant thresholds frozen until after 2023**

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Regulatory Triggers - QPP

Although QPP offered flexibility, the MIPs program continued to mature in scope and difficulty…

- **2022 PY Reminders:**
  - **Penalty Threshold: 75 points**
  - **Exceptional Performer Threshold: 89 points**
  - **Maximum Payment Adjustment: +/- 9%**
  - **Fewer ways to earn points towards Quality score**
    - **Topped out/capped measures**
    - **High priority/EHR Bonus Points Removed**
  - **Risk of penalty is VERY REAL**

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Summary

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Summary

- COVID-19 PHE expected to be renewed once more
  - If renewed, PHE would last until mid-October
- Keep eye out for 60-day notice from CMS/HHS
  - This would happen in August
- Plan for items triggered by the end of PHE
  - MIPs, AUC, Reimbursement Cuts…etc
- If using CMS waivers/telehealth, important to plan for transitioning off

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Submitted Questions

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Thanks!

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