

COVID-19 and Guidance from CMS

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Practice Area: Health Law

To address growing concerns over the coronavirus pandemic, recent guidance by the Centers for Medicare and Medicaid Services (CMS) and Center for Disease Control (CDC) will assist providers in preparing for a possible influx of patients with COVID-19. This *Health Law Update* will provide brief summaries of key pieces of guidance and links to those guidance documents.

Medicare Coverage and Payment Related to COVID-19: Medicare has published a fact sheet on key benefits covered by Medicare which may be implicated by the coronavirus pandemic. For example, the fact sheet addresses:

- Coverage for clinical diagnostic testing, including two new HCPCS codes for laboratory tests to diagnose COVID-19 that will go into effect in April for tests performed after February 4, 2020.
- Existing reimbursement rules for telehealth visits and patient encounters using other communication-based technologies.
- Reimbursement to hospitals who establish “alternate care sites” (ACSs) for patients who are not critically ill. Specifically, a hospital may add a remote location that provides inpatient services if the inpatient location satisfies the requirements to be provider-based to the hospital’s main campus. As soon as the hospital adds an additional location, it would be expected to file an amended Form CMS 885A with the Medicare Administrative Contractor.
- Coverage for inpatient hospital quarantines. CMS states that “the DRG rate (and cost outliers as applicable) includes payment for when a patient needs to be isolated or quarantined in a private room.” CMS states further that these patients “may not meet the need for acute inpatient care any longer but may remain in the hospital for public health reasons.”

The Medicare Coverage and Payment fact sheet can be located [here](#).

Emergency Medical Treatment and Labor Act (EMTALA) Guidance: The federal EMTALA provisions require all Medicare-participating hospitals (including critical access hospitals or CAHs) with dedicated emergency departments (EDs) to perform appropriate medical screening examinations (MSE) to determine if a patient who presents to the ED has an emergency medical condition. If the patient has an emergency condition, the hospital must treat and stabilize the patient within its capability or transfer the patient to a hospital that has the capability and the capacity to treat and stabilize. CMS’s current guidance addresses EMTALA obligations when screening possible COVID-19 patients including:

- Confirms that every hospital or CAH with a dedicated ED must conduct an appropriate MSE of any individual who comes to the ED, including individuals who are suspected of having COVID-19. Moreover, every ED is expected to have the capability to immediately identify and isolate individuals who meet the screening criteria for COVID-19.
- Allows hospitals to set up alternative screening sites on campus so that the MSE does not take place in the ED.
- Hospitals may encourage the public to go to off-campus screening sites but may not re-direct individuals who have already come to the ED for an MSE.
- Directs hospitals to consider current CDC guidance and that of public health officials to determine whether the hospital or CAH has the capability to provide appropriate isolation required for stabilizing treatment and/or to accept appropriate transfers.

CMS's guidance on EMTALA can be found [here](#).

Coding Guidance: The Center for Disease Control (CDC) has issued guidance regarding ICD-10 codes to be used for patients diagnosed with COVID-19. The CDC guidance can be found [here](#).

FAQs for State Medicaid and Children's Health Insurance Program Agencies: CMS has published answers to "frequently asked questions" regarding state Medicaid and CHIP coverage related to the coronavirus pandemic. The FAQs address how state Medicaid programs can address a variety of resource issues, including the authority that can be granted through section 1135 waivers which are available since the President has declared a national emergency and flexibilities that states have in regards to eligibility and enrollment in their Medicaid program. The Medicaid FAQs can be found [here](#).

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