



In 2020, the U.S. Department of Health & Human Services (HHS) instituted flexibilities that waived many of the generally applicable rules governing Medicare telehealth services in response to the COVID-19 pandemic. Many of these waivers were in effect through the duration of the COVID-19 public health emergency (PHE).

The Biden administration ended the COVID-19 PHE on May 11, 2023. This decision came after multiple renewals over the previous three years. MGMA appreciates that the Administration heeded our call to provide at least 90-days’ notice prior to concluding the PHE. The end of the PHE has ramifications for a variety of flexibilities afforded by the pandemic over the last several years. Due to recent congressional action (discussed below), many of these flexibilities will now remain in effect through Dec. 31, 2024. Please keep in mind that this resource addresses Medicare payment policy, and that Medicaid and commercial payers may institute their own payment rules.

TELEHEALTH POLICY	PRE-PHE POLICY	PHE POLICY	DATE POLICY ENDS & REVERTS TO PRE-PHE
Originating site/geographic location	Beneficiaries must receive services at originating site in a rural area (not the home)	Location is waived – patients can be seen anywhere	Dec. 31, 2024 <i>**exception: mental health services</i>
Qualifying providers	Certain providers are allowed to deliver telehealth services	Provider types extended to PTs, OTs, and SLPs	Dec. 31, 2024
Audio-only services	CMS did not cover audio visits without a visual component	CMS will reimburse for services via phone (E&M visits)	Dec. 31, 2024
FQHCs and RHCs	FQHCs and RHCs could not qualify as distant site providers	Can qualify as distant site providers	Dec. 31, 2024
Payment parity	Telehealth services were reimbursed at typically lower, facility rates	Telehealth can be reimbursed at in-person rate if modifier 95 is used	Dec. 31, 2023 (see pg. 3 for proposed 2024 policy)
Cross-state licensure	Providers must be licensed in state where patient is located	If providers meet four conditions, can treat patients in other states (still must comply with state licensure requirements)	State specific
HIPAA compliant platforms	Providers must use HIPAA compliant platforms	Providers could use non-HIPAA compliant platforms so long as not public-facing	Aug. 9, 2023
Requirements for telehealth prescriptions	Required in-person evaluation before prescribing controlled substances via telehealth	Waived in-person requirement	Nov. 11, 2023 (Nov. 11, 2024 for patient-provider relationships established during COVID-19 PHE)



PAYMENT PARITY

The 2023 Medicare Physician Fee Schedule (PFS) finalized the continuation of its policy allowing physicians and practitioners to bill with the place of service (POS) indicator that would have been used if the service had been furnished in person through calendar year (CY) 2023, instead of reducing payments to the facility rate. The Centers for Medicare & Medicaid Services (CMS) will continue to allow for payment to be made for Medicare telehealth services at the place of service — for telehealth services that ordinarily would have been paid under the PFS — if the services were furnished in person, through the latter of the end of CY 2023 or the end of the calendar year in which the PHE concludes. Since the PHE ended in May 2023, this policy is set to end on Dec. 31, 2023.

For more information, visit MGMA's [Final 2023 Medicare Physician Payment and Quality Reporting Changes analysis](#).

POST-PHE POLICIES: MENTAL HEALTH SERVICES

The Consolidated Appropriations Act, 2021, allowed for continued telehealth flexibilities post-PHE for mental health services. Specifically, practitioners can provide telehealth services to patients in non-rural areas and in their homes for the purposes of diagnosis, evaluation, or treatment of a mental health disorder other than for treatment of a diagnosed substance use disorder (SUD) or co-occurring mental health disorder. However, this is contingent on there being an initial in-person visit within six months of the telehealth service and that there is an in-person visit within 12 months of each mental telehealth service furnished. The [Consolidated Appropriations Act, 2023 \(CAA, 2023\)](#) — which contains a handful of provisions that impact medical group practices — delayed the in-person requirement before a patient receives mental health services through Dec. 31, 2024.

CMS will also allow audio-only technology when rendering mental health services if the practitioner has the capacity to furnish two-way, audio/video telehealth services, but is providing the mental health services via audio-only communication technology in instances where the beneficiary is unable to use, does not wish to use, or does not have access to two-way, audio/video technology.

For more information on the new mental telehealth policies, visit MGMA's [Final 2023 Medicare Physician Payment and Quality Reporting Changes analysis](#).

TEMPORARY TELEHEALTH WAIVER EXTENSIONS

Throughout the COVID-19 pandemic, Congress and CMS waived many telehealth requirements, thereby making telehealth more accessible. To continue the telehealth reform momentum, Congress previously passed the CAA, 2022, which extended many telehealth flexibilities for 151 days past the conclusion of the COVID-19 PHE. The CAA, 2023, took this a step further and extends many of the prominent Medicare telehealth flexibilities through Dec. 31, 2024. The extended flexibilities include:

- The ability to see a patient in their own home regardless of geographic location
- An expanded list of eligible practitioners
- The ability for federally qualified health centers and rural health clinics to be distant site providers
- The ability to provide audio-only visits to patients
- The delay of the in-person visit requirement before a patient receives mental health visits



TEMPORARY TELEHEALTH WAIVER EXTENSIONS CONT.

The CAA, 2023, requires a study on telehealth and Medicare program integrity that includes a medical record review from Jan. 1, 2022, to Dec. 31, 2024. The study will contain various elements such as examining the duration of telehealth services and where they were furnished.

The Office of Civil Rights (OCR) provided a 90-day transition period after the PHE ended on May 11 for providers to come into compliance with HIPAA rules for telehealth. This transition period ended on Aug. 9, 2023, and providers are expected to use HIPAA-compliant telehealth platforms.

The Drug Enforcement Agency (DEA) waived in-person evaluation requirements for prescribing controlled substances via telehealth under the Ryan Haight Act during the COVID-19 PHE. The agency released a [temporary rule](#) a week before the PHE ended extending COVID-19 telehealth flexibilities related to prescribing controlled substances through Nov. 11, 2023. Further, for practitioner-patient telemedicine relationships established during the COVID-19 PHE or before Nov. 11, 2023, the telehealth flexibilities will extend until Nov. 11, 2024.

MGMA GOV. AFFAIRS INSIGHT

The recently proposed 2024 Physician Fee Schedule (PFS) includes several provisions regarding telehealth. Aside from implementing sections of the CAA, 2023, CMS is proposing reimburse telehealth services billed using the POS 10 code at the higher non-facility rate through 2024, while claims billed with POS 02 code would be reimbursed at the facility rate in 2024. The agency would also continue to define direct supervision to allow the presence and immediate availability of the supervising practitioner through real-time audio and video interactive telecommunications through Dec. 31, 2024. MGMA submitted [extensive comments](#) in response to the PFS and will update members once CMS issues a final rule in November.

RESOURCES

- MGMA's telehealth position [paper](#)
- CMS [list](#) of telehealth services payable under the Medicare Physician Fee Schedule
- OCR's HIPAA transition period [notice](#)
- CMS waivers and flexibilities for healthcare providers landing [page](#)
- MGMA's Final 2023 Medicare Physician Payment and Quality Reporting Changes [analysis](#)
- MGMA's 2023 Medicare Outlook [webinar recording](#)