

Guidance for the use of telehealth in hospice and palliative care

To: NHPCO Provider and State Members

From: NHPCO Regulatory and Policy Teams

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NHPCO has gotten many questions from members and state leaders about telehealth in hospice and palliative care, including what stays and what goes at the end of the COVID-19 Public Health Emergency (PHE). NHPCO has consulted with CMS and the HHS Office of Civil Rights to provide additional clarity and to answer questions about these issues.

Hospice Face-to-Face Encounters through Telehealth

1. Statutory provision:

- This telehealth flexibility for hospice is a statutory provision and was part of the telehealth package included in the [Consolidated Appropriations Act \(CCA\)](#), 2023.

2. How long can the hospice face-to-face telehealth flexibility be used?

- The statutory provision extends the hospice face-to-face telehealth flexibility through December 31, 2024, regardless of the status of the PHE.

3. What methods can be used for the hospice face-to-face encounter?

- The statutory requirement for the hospice face-to-face encounter specifies that when an encounter is conducted via telehealth it **MUST** be performed via audio-visual communications technology. The definition of telehealth that applies to the hospice face-to-face encounter is:
Two-way audio-video telecommunications technology that allows for real-time interaction between the hospice physician/hospice nurse practitioner and the patient.
- The hospice face-to-face encounter may **NOT** be conducted using audio-only technology.

Use of Telehealth for Hospice Routine Home Care

a. When can telehealth be used for hospice routine home care?

- Hospice providers can provide services to a Medicare patient receiving routine home care through telecommunications technology (e.g., remote patient monitoring; telephone calls (audio only and TTY); and two-way audio-video technology), if it is feasible and appropriate to do so.
- Only in-person visits are to be recorded on the hospice claim.

b. When will this waiver expire?

- This waiver will expire at the end of the PHE on May 11, 2023.

c. Where is the regulatory language that only allows telehealth for hospice routine home care only until the end of the COVID-19 Public Health Emergency?

- Language was added to hospice regulations on April 6, 2020 as published in the Interim Final Rule with Comment ([CMS – 1744-IFC](#))
- Section 418.204 is amended by adding paragraph (d) to read as follows:

§ 418.204 Special coverage requirements.

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(d) Use of technology in furnishing services during a Public Health Emergency.

When a patient is receiving routine home care, during a Public Health Emergency as defined in § 400.200 of this chapter, hospices may provide services via a telecommunications system if it is feasible and appropriate to do so to ensure that Medicare patients can continue receiving services that are reasonable and necessary for the palliation and management of a patients' terminal illness and related conditions. The use of such technology in furnishing services must be included on the plan of care, meet the requirements at § 418.56, and must be tied to the patient-specific needs as identified in the comprehensive assessment and the plan of care must include a description of how the use of such technology will help to achieve the goals outlined on the plan of care.

§ 400.200 General definitions.

In this chapter, unless the context indicates otherwise:

- **Public Health Emergency (PHE)** means the Public Health Emergency determined to exist nationwide as of January 27, 2020, by the Secretary pursuant to section 319 of the Public Health Service Act on January 31, 2020, as a result of confirmed cases of COVID-19, including any subsequent renewals.

Telehealth Services Payable under the Physician Fee Schedule when Furnished via Telehealth

It is likely that some services offered by palliative care providers will be covered as telehealth services. Providers should check the list of codes in the [2023 Physician Fee Schedule](#) to determine how and how long services will be paid. We are grateful to Acevedo Consulting for preparing [this list of services](#) to determine their post public health emergency status as the PHE concludes on May 11, 2023.

a. Where are the codes for telehealth services paid for under the Physician Fee Schedule?

- CMS has published [a list](#) of services payable under the Medicare Physician Fee Schedule when furnished via telehealth.

b. How long can these codes be used?

- In the CY 2023 Final Rule, CMS finalized alignment of availability of services on the telehealth list with the extension timeframe enacted by the CAA, 2022. The CAA, 2023 further extended those flexibilities through CY 2024. Check the [Medicare Telehealth Post-Pandemic Resource List](#) (PDF) for deadlines for use.

c. Where are the codes for audio-only telehealth services?

- Audio-only telehealth services are specially designated in the [List of Telehealth Services for Calendar Year 2023 \(ZIP\)](#) - Updated 02/13/2023
- Any codes that can be used for audio-only must be designated in the column labeled "Can Audio-only Interaction Meet the Requirements?"
- There are two codes allowed through audio-only interaction that are often used by hospice and palliative care providers – the two advance care planning codes:
 - 99497 – Advance care planning, first 30 minutes
 - 99498 – Advance care planning, additional 30 minutes
- The hospice face-to-face encounter may **NOT** be conducted through audio-only telehealth.

Use of Non-Compliant Devices for Telehealth

a. What is a non-HIPAA compliant device?

On April 21, 2020, the Department of Health and Human Services (HHS) issued a [Notification of Enforcement Discretion](#) for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency

Under this Notification, covered health care providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, or Skype, to provide telehealth without risk that the Office of Civil Rights (OCR) might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency.

Under this notification, however, Facebook Live, Twitch, TikTok, and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers.

b. What is the deadline for the use of non-HIPAA compliant devices?

The allowance to use non-HIPAA compliant devices is set to end at the end of the PHE on May 11, 2023. OCR's [FAQs](#) on the topic indicate it will end with the PHE. See question #6.

The specific provisions that apply to hospice and palliative care providers are still evolving. NHPCO expects that there will be additional clarification issued for some components of hospice flexibilities, so watch for additional updates.

If there are questions, please contact regulatory@nhpco.org and add Telehealth and PHE in the subject line!

Mark your calendar for March 23 for the webinar: Unwinding the COVID-19 Public Health Emergency

Get the latest information on changes to regulations and practice as the public health emergency comes to a close. Join the NHPCO Policy Team as we talk about the regulatory, policy, and advocacy implications of the end of the COVID-19 Public Health Emergency on May 11th. [Register for the webinar](#).