Telehealth Audit Risks and Compliance, post PHE 2023

Presented by:
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- (updated 9.20.2023)
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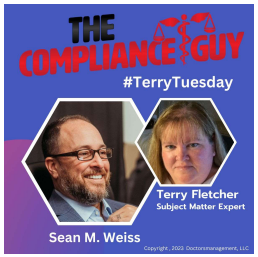
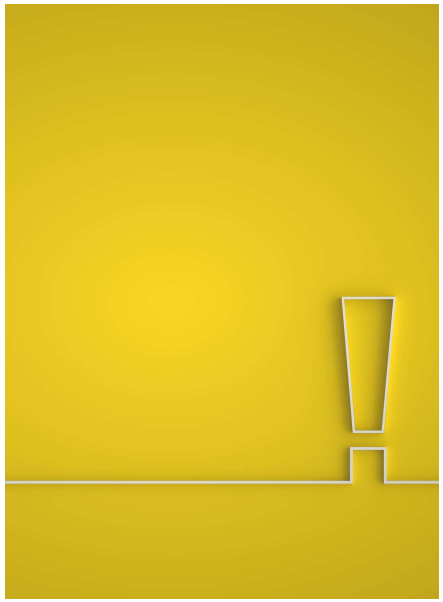
Speaker:

- **Ms. Terry Fletcher** is a Specialty Coding Industry Coding and Billing Expert, Auditor and Educator based in Laguna Beach, California, with over 30 years experience.
- Terry is a past member of the National Advisory Board for AAPC, past Chair of the AAPCCA, and AAPC National and Regional Conference Educator. Ms. Fletcher is an Advisory Board Member for ICD10Monitor.com and frequent guest of Talk Ten Tuesday, an Educator for McVey Seminars, CHIA, BC Advantage, AAPC, AHIMA, NAMAS, NSCHBC and her company Terry Fletcher Consulting, Inc., presenting over 100 specialty coding, billing and compliance Teleconferences, Webinars and Conference Sessions every year.
- Terry is the author of several coding and reimbursement publications, as well as a practice auditor for multiple specialty practices around the country.
- Terry holds a bachelor's degree (BS) in economics, multiple certifications in coding, and her proficiency certification in ICD-10-CM: CPC, CCC, CEMC, SCP-CA, ACS-CA, CCS-P, CCS, CMSCS, CMCS, CMC, QMGC, QMCRC, QMPM. Her coding and reimbursement specialties include: Cardiology, Peripheral-Cardiology, Gastroenterology, E/M Auditing, Orthopedics, General Surgery, Medicare Regulatory Rules and Telemedicine/Telehealth services.
- Terry also is a host and multiple podcast guest for the Healthcare Industry. – see >>



Session Overview

- **Post PHE**
- (The Public Health Emergency ended 5.11.2023)
- Who can provide Telehealth Services? Is there a limit to what they can provide?
- What is the documentation expectation of a Telehealth visit?
- Audio only vs. Audio and Video encounter
- Auditing the Telehealth encounter
- What are the regulatory/compliance points to consider for out of state virtual care?



CMS.gov
Centers for Medicare & Medicaid Services

PHE officially ended 05/11/2023
Source: www.phe.gov
HHS Secty Xavier Becerra
the 13th renewal since the beginning of the PHE

RENEWAL OF DETERMINATION THAT A PUBLIC HEALTH EMERGENCY EXISTS

As a result of the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic and to allow for an organized and coordinated transition from this unprecedented public health emergency, on this date and after consultation with public health officials as necessary, I, Xavier Becerra, Secretary of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby renew, effective February 11, 2023, the January 31, 2020, determination by former Secretary Alex M. Azar II, that he previously renewed on April 21, 2020, July 23, 2020, October 2, 2020, and January 7, 2021, and that I renewed on April 15, 2021, July 19, 2021, October 15, 2021, January 14, 2022, April 12, 2022, July 15, 2022, October 13, 2022, and January 11, 2023, that a public health emergency exists and has existed since January 27, 2020, nationwide.

February 9, 2023 /s/

Who can provide Telehealth services?

Is there a limit to who can deliver Telehealth Services? ***YES***, **ONLY** the following list of providers can receive reimbursement for delivering care using telehealth technology per Medicare, and most Commercial insurance payer plans:

- ❑ **Physicians (MD/DO)**
- ❑ **QHP's ~Nurse Practitioners (NP's or APPs), Physician Assistants (PA's), Certified nurse midwives (CNMs)**
- ❑ **Clinical Nurse Specialists (CNS's)**
- ❑ **Certified Registered Nurse Anesthetists (CRNAs)**
- ❑ **Clinical Psychologists (CP's) and Clinical Social Workers (CSW's)- Temporary addition under the PHE,** Medicare will pay for CPT codes 90792, 90833, 90836 and 90838 under telehealth/audio only **through 2024**.
- ❑ **Registered Dieticians (RD's) for** diabetic counseling, or MNT only supervised under an MD **Temporary addition post-PHE through 2024**
- ❑ **Nutritionist –**limited in some states and limited in diagnoses allowed (diabetic counseling, kidney transplant patients, etc) – **Temporary addition post – PHE through 2024**
- ❑ **Physical Therapists & Occupational Therapists** – **Temporary post- PHE extended through 2024**
- ❑ **Speech Pathologists – Temporary post- PHE extended through 2024**

Who CANNOT Bill Telehealth Direct?

- RN's
- Medical Assistants
- Acupuncturists
- LVN, LPN, Technicians
- And any provider that *cannot* bill E/M services or their specific services "independently" to a payer.
- Counselors, unlicensed healthcare providers
- These are not considered QHP's.
- **There are proposals to the 2024 PMFS to allow certain Mental Health Providers to be added to the Telehealth provider list. Keep an eye on the final rule.

Telehealth Remote Communications Technology

Covered UNDER PHE and extended through 2024

“with exceptions”

Telehealth – Payer Definition

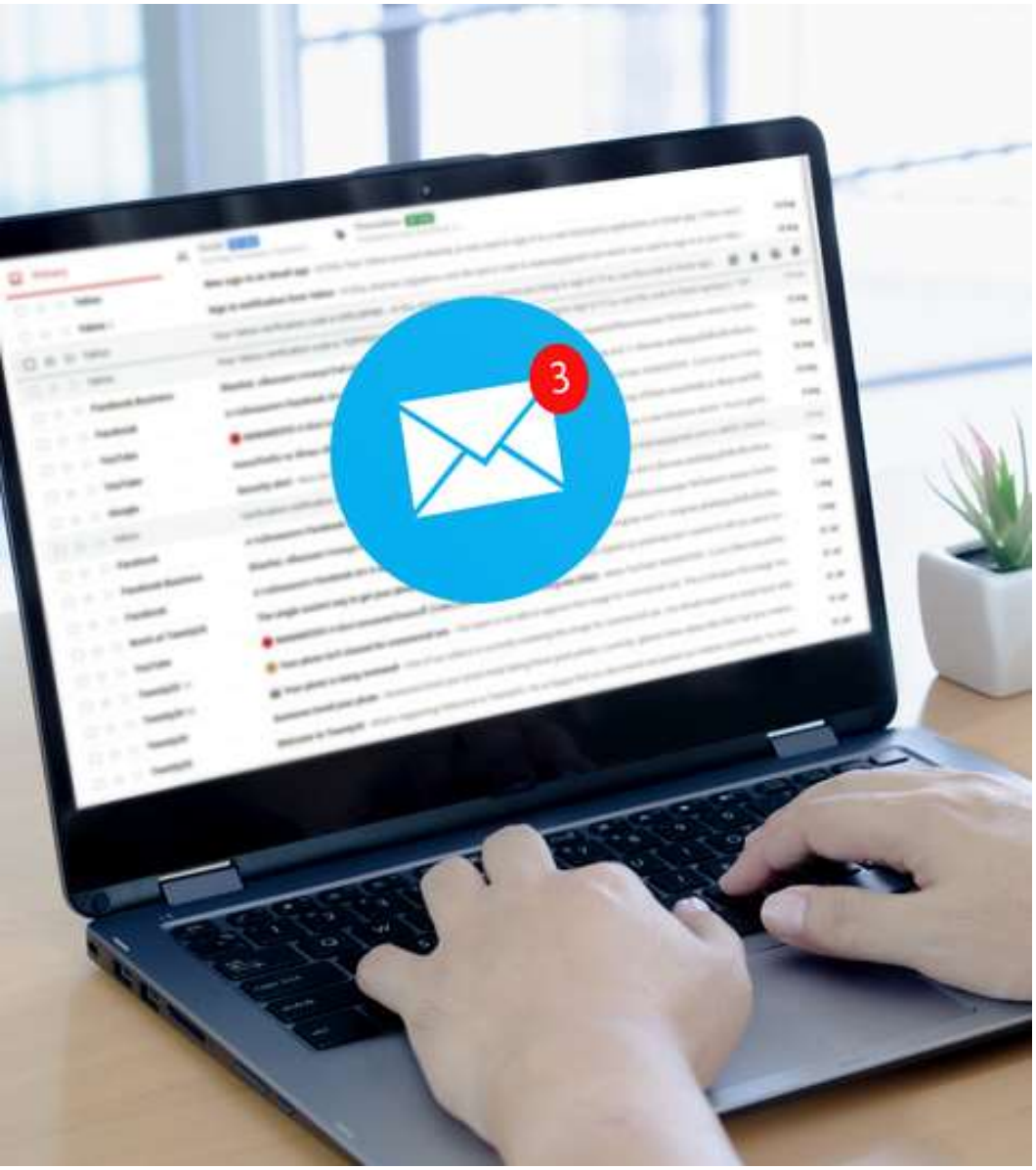
- 2-way interactive audio AND video visit
- E/M office visits, New and Established patients, hospital visits, etc.
- 99202-99215
- 99221-99233
- Certain Nursing Facility Codes
- G0425-G0427

Telemedicine – Payer Definition

- Phone call ONLY- no video chat - only audio with MD/DO or QHP
- Must be timed
- 99441-99443 or
- 98966-98968 (other QHPs)

**Post PHE this must be an established patient*

(these codes will be deleted in 2025)



eVisits, Portal Visits, Digital Visits – Payer Definition

- Password and HIPAA protected patient portals to communicate with providers online through secure email.
- 7-day cumulative visit. Not to be used to give lab results or refill prescriptions.
- Established Patients only
- Not tied to the PHE- CTBS (Communication Technology-Based Services)
- 99421-99423

What Do I Need to Know? CMS Waivers, Flexibilities, and the Transition Forward from the COVID-19 Public Health Emergency 2/27/2023 Alert!

- Medicare Telehealth During the PHE, the Secretary has been using the waiver authority under section 1135 of the Act to create flexibilities in the requirements of section 1834(m)(1) of the Act and 42 CFR § 410.78 for use of interactive telecommunications systems to furnish telehealth services.

- Additionally, after the PHE ends, the Consolidated Appropriations Act of 2023 provides for an extension for some of these flexibilities through December 31, 2024.. CMS has also been using these section 1135 waivers to create further PHE flexibilities to the requirements of section 1834(m)(1) of the Act and 42 CFR § 410.78(a)(3) for the use of interactive telecommunications systems to furnish telehealth services, to the extent they require use of video technology, for *certain* services.

- *This waiver allows the use of audio-only equipment to furnish services described by the codes for audio-only telephone evaluation and management services, and behavioral health counseling and educational services*. Unless provided otherwise, other services included on the Medicare Telehealth Services List must be furnished using, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site.

99441-99443 Audio Only Telephone Calls CPT® description

"Telephone evaluation and management service by a physician or other qualified healthcare professional who may report evaluation and management services provided to an **established patient**, parent or guardian, not originating from a related E/M service provided within the previous 7-days nor leading to an E/M service or procedure within the next 24-hours or soonest available appointment;

99441 – 5-10 minutes of medical care

99442 – 11-20 minutes of medical care

99443 – 21-30 minutes of medical care

*also not allowed within the post-op period of a previously completed procedure.

*not to be used for incidental services

***Once the PHE ends**, these codes **MAY NOT** be used for New Patients. (Also, as a reminder, these codes will be deleted from CPT as of 1/1/2025 per CPT Panel announcement in March 2023)*

CPT® Editorial Summary of Panel Actions February 2023 (effective: Jan 1st, 2025)

Telemedicine Office Visits (placeholder codes)

- 9X075, 9X076, 9X077, 9X078, 9X079, 9X080, 9X081, 9X082, 9X083, 9X084, 9X085, 9X086, 9X087, 9X088, 9X089, 9X090, 9X091
- D99441 D99442 D99443

Acceptance addition: of 17 codes and guidelines for reporting telemedicine E/M office visits; **addition** of new E/M subsection for Telemedicine Services; and **deletion** of codes 99441, 99442, 99443

Payment Parity for Audio Only Telehealth

Medicare payment parity.
During the PHE, CMS increased reimbursement for telehealth services outside the hospital setting, such as in a patient's home, essentially allowing providers to receive the same payment for a telehealth service as they would for an in-person service.

Audio only payments for 99441-99443, will continue to be equal to 99212-99214 respectively.

After the PHE ends, *the Consolidated Appropriations Act, 2023 provides for an extension for this flexibility through* ***December 31, 2024.*** *(2/24/2023 document)*

CMS *rejected requests* to permanently add these services (99441-99443) to the Medicare Telehealth Services List. (They will be deleted and replaced with new Telehealth encounter CPT codes under the E/M code section 1/1/2025).

"COVID-19" Application of Telehealth

More About Phone Calls……

- You ***cannot*** bill these codes if any of the following conditions apply:
  - Subject matter is related to a previous E/M encounter within past 7 days- so for calls to patients to give routine test results this is ***not*** a billable service (this was included in the ordering of the test at the in-person E/M).
  - Subject matter is related to a preplanned E/M encounter to occur within next 24 hours
  - **A call to confirm to a patient you refilled their prescription -NO**
  - If the call results in the scheduling of an E/M encounter within next 24 hours, this would be included in the in-person visit.
  - Medicare does not allow audio only for New Patients –post PHE. Most Commercial payers do not allow phone call (audio only) calls for New Patients, post-PHE. Check with your payers.
  - Many malpractice insurers do not cover physicians for audio only care. CHECK!
- Separate codes for other qualified providers *

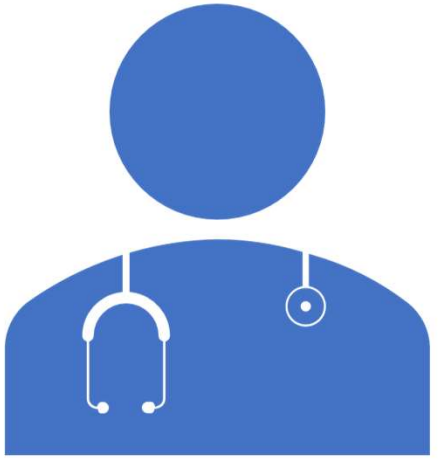
Time	MD and NPP	PT, OT, Speech, Clinical Psychologist
5-10 minutes	99441	98966*
11-20 minutes	99442	98967*
21 or more minutes	99443	98968*

Yes or No: Is this a billable “audio only” encounter? Audit Risk?

Patient was seen by an oncologist on March 1st., for an in-person level 4 encounter, (99214) for follow up on post radiation, to adjust medications, and to discuss returning to ADL. The physician ordered labs and let the patient know he would call them with the results. Patient was told to schedule a RTC visit in 3 months.

On March 7th, the labs results came back as at goal, with no concerns. The PA called the patient to give them the normal results and let them know they can engage in any tolerable ADL, and RTC as scheduled.

Can a phone call code be reported? NO. The order for the labs includes giving the result(s) (page 6 CPT Professional Edition 2023). This is included in the original visit. Also, there was no impact on additional treatment or risk to report a phone call or any encounter.



Audio only audited record – refund request by payer

Question: “Patient came into the office for leg pain. We ordered a venous doppler. We schedule a Telephone call (99441-99443) as a follow up to give her, the results. Then another Telephone call is billed 2 weeks later when we call her to "see how she's doing with her leg pain".

Response: I can’t say enough how this is NOT compliant.

First, giving test results is part of the order *(CPT page 6, “Ordering a test is included in the category of test result(s) and the review of the test is part of the encounter, and not a subsequent encounter”)*; thus there is ***no*** phone call.

We didn't do that before PHE why are you now?

Next, you *can't bill* for phone calls to "check in " on patients. If they are in need of a follow up appointment, make them one, or they will call for an appointment. Again, you didn't do this before PHE, why are you now?

Telehealth during the PHE, is on the OIG workplan since 2021 and into 2022 and 2023. This is low hanging fruit. Do not solicit or bill for excessive Telehealth visits to make up for staffing shortages, or incidental services, that were not billed prior to PHE.

Audio Only Encounter – compliant post PHE

Patient Name: xx
DOB: xx
MRN: xx

I had the the pleasure of speaking with Ms. Jones today in virtual consultation. *The patient has requested we use cell to cell for audio only call as she was unable to come into the clinic today and did not have an audio and video option, as she was at work and not able to be in a private space. I informed the patient that this may not be HIPAA protected and she consented for this call. I reviewed the patient's clinical situation and findings as listed in their chart and discussed results and plan as documented in this note.*

She underwent successful left renal embolization and is now here to discuss follow-up imaging. We had a 22-minute discussion/consultation including time for communication and image review however, the patient was on an audio only call and did not view the images personally. She is doing well and has had no complaints since her procedure.

She was recently found to have markedly elevated serum iodine levels. She reports a long history of taking oral iodine supplements. She wishes to avoid iodinated contrast which would be critical for performance of the CT angiogram to reassess the effects of our embolization procedure.

I spoke with my MRI colleagues who confirmed that performing an MRI/MR angiogram of the kidney would be equivalent. Therefore, we will plan for MRI/MRA. She indicates that she does have claustrophobia so we will give her 5 mg oral Valium beforehand. Assuming imaging goes without incident, then we will plan for a 12-month follow-up study and annual studies x2 and then extending out every 3 years afterwards for long-term follow-up via the Interventional Radiology Clinic.

Total time with the patient on the call = 22 minutes (99443)

- **Patient was not at home so POS 02 would be necessary here. If the patient was in their home, you could have used POS 11, or office, where the patient would have been if they came in person.**
- **If a Medicare patient, use -95 modifier for payment parity. If commercial plan, use their policy rules.**

Telemental Audio-only health services

With the exception of certain Telemental health services, CMS stated two-way interactive audio-video telecommunications technology will continue to be the Medicare requirement for Telehealth services following the PHE.

-FQ Modifier for Behavioral Health Services audio only ***when AVV is not available***

-FR Modifier for Behavioral Health Services audio and video – physician presence needs to be documented

CPT Codes:

Can Audio-only Interaction Meet the Requirements?

(Primary list – please go to the CMS.gov website for complete list)

Code	Short Descriptor	Can Audio-only Interaction Meet the Requirements?
90785	Psytx complex interactive	Yes
90791	Psych diagnostic evaluation	Yes
90792	Psych diag eval w/med srvcs	Yes
90832	Psytx w pt 30 minutes	Yes
90833	Psytx w pt w e/m 30 min	Yes
90834	Psytx w pt 45 minutes	Yes
90836	Psytx w pt w e/m 45 min	Yes
90837	Psytx w pt 60 minutes	Yes
90838	Psytx w pt w e/m 60 min	Yes
90839	Psytx crisis initial 60 min	Yes
90840	Psytx crisis ea addl 30 min	Yes
90845	Psychoanalysis	Yes
90846	Family psytx w/o pt 50 min	Yes
90847	Family psytx w/pt 50 min	Yes
90853	Group psychotherapy	Yes
99213	Office/outpatient visit est	

30. Question: How should practitioners bill for audio-only services that last longer than 30 minutes?

Answer: During the PHE for the COVID-19 pandemic, Medicare has added to the list of telehealth services CPT codes 99441–99443, which describe audio-only phone visits with

CPT codes 99443 and 98968 describe 21–30 minutes of medical discussion, respectively for each practitioner type; but there are no CPT codes available to describe medical discussions lasting longer than 30 minutes.

New: 5/27/2020 FFS- FAQ

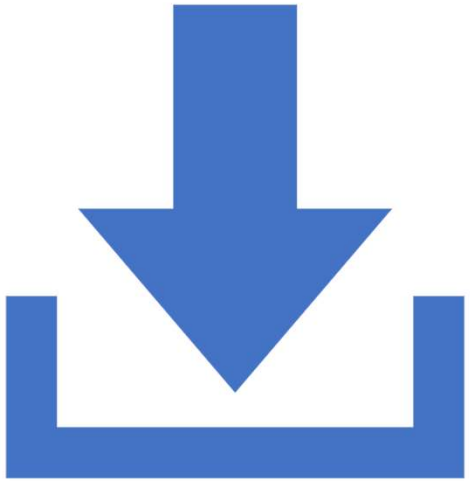
FAQ 25. Question: If the video connection is disconnected during an audio-video Medicare telehealth visit due to technological issues, can the visit still be billed as Medicare telehealth?

- **Answer:** Practitioners should report the code that best describes the service.
- If the service was furnished primarily through an audio-only connection, practitioners should consider whether the telephone evaluation and management or assessment and management codes best describe the service, or whether the service is best described by one of the behavioral health and education codes for which we have waived the video requirement during the PHE for the COVID-19 pandemic.
- If the service was furnished primarily using audio-video technology, then the practitioner should bill the appropriate code from the Medicare telehealth list that describes the service.
- Note that CPT codes 99441–99443, which describe audio-only telephone E/M phone visits with practitioners *who can independently bill for E/M services*, have been added to the Medicare telehealth list for the purposes of the PHE for the COVID-19 pandemic, and payment rates for these codes are set to be the same as the analogous in-person E/M visits.

New: 5/27/2020 FFS FAQ

Audio and Video E/M

Let patients know what to expect and what will be expected of them.



- If patients must download an app (must be HIPAA compliant by 8/9/2023), prepare a script to help them download the app and walk them through the platform. Become familiar with the platform yourself so you can help troubleshoot during the visit.
- Test your equipment before each visit to ensure there are no complications. Enter the platform and check your audio and video. Remember to be in a private space and remove any objects, like sticky notes, that may be blocking your camera. If you're using an interpreter, make sure their equipment is also working and that they are ready and dialed in for the telehealth visit.

Telehealth Visit Set up Tips – Audio and Video

How to set up a Telehealth Visit	How to effectively communicate during a Telehealth Visit.
Ensure your lighting is correctly placed. If possible, conduct the visit with natural light in front of you.	Maintain a normal pace of speech. Talk slowly enough that the patient can understand you. You may have to take longer pauses than you would during an in-person visit.
Eliminate background noise as much as possible. Make sure you're muted when you aren't speaking. Check both yours and the patient's internet connection.	Use empathetic word choices mindfully and nod your head so the patient knows they're being heard and understood.
Check your surroundings. Avoid leaving anything behind you that you wouldn't want your patients to see, especially personal items, mail, bills, etc. Ensure your space isn't cluttered.	Ensure your facial expressions and words are congruent. Make the patient feel that you are listening and remember they may not have the same internet connection that you do, so try not to over-talk the patient. Let them be heard.
Wear appropriate clothing that you'd wear to an in-person visit. If you normally would, wear a lab coat and ensure your name badge is visible if possible. (Also remind patients to have appropriate attire for their visit as if they were coming to the office).	When you're listening quietly, be aware of your resting face.
Avoid "primping" (looking at yourself on the screen, fixing your hair, etc.).	Do not forget: Consents, Platform used, HIPAA warning if using non-EMR A/V platforms, all people on the call, and any limitations during the visit. (reminder: Platforms have to be HIPAA compliant by 8.9.2023 per OCR.)
Ensure your head placement is in the center of the screen.	Lastly, if you lose video connection do not forget to time your visit, as this will change your FTF office visit to an audio only phone call.
Maintain proper eye gaze. Look at the area on your computer between the camera and the center of the screen.	Make sure any follow up appointments are offered for Telehealth or in-person and do not deny a patient to an in-person visit if they request it.
Let the patient know when you're charting so they know why you're looking down and not to look at your cell phone to text or play candy crush.	CMS has said you now have to document why the patient could not come in person or why they needed an audio only vs. audio and video – post PHE.

Exam Documentation Tips – 2023 rules

A clear description of all problems managed, evaluated and/or treated on the date of service, as well as the severity and acuity of those problems.

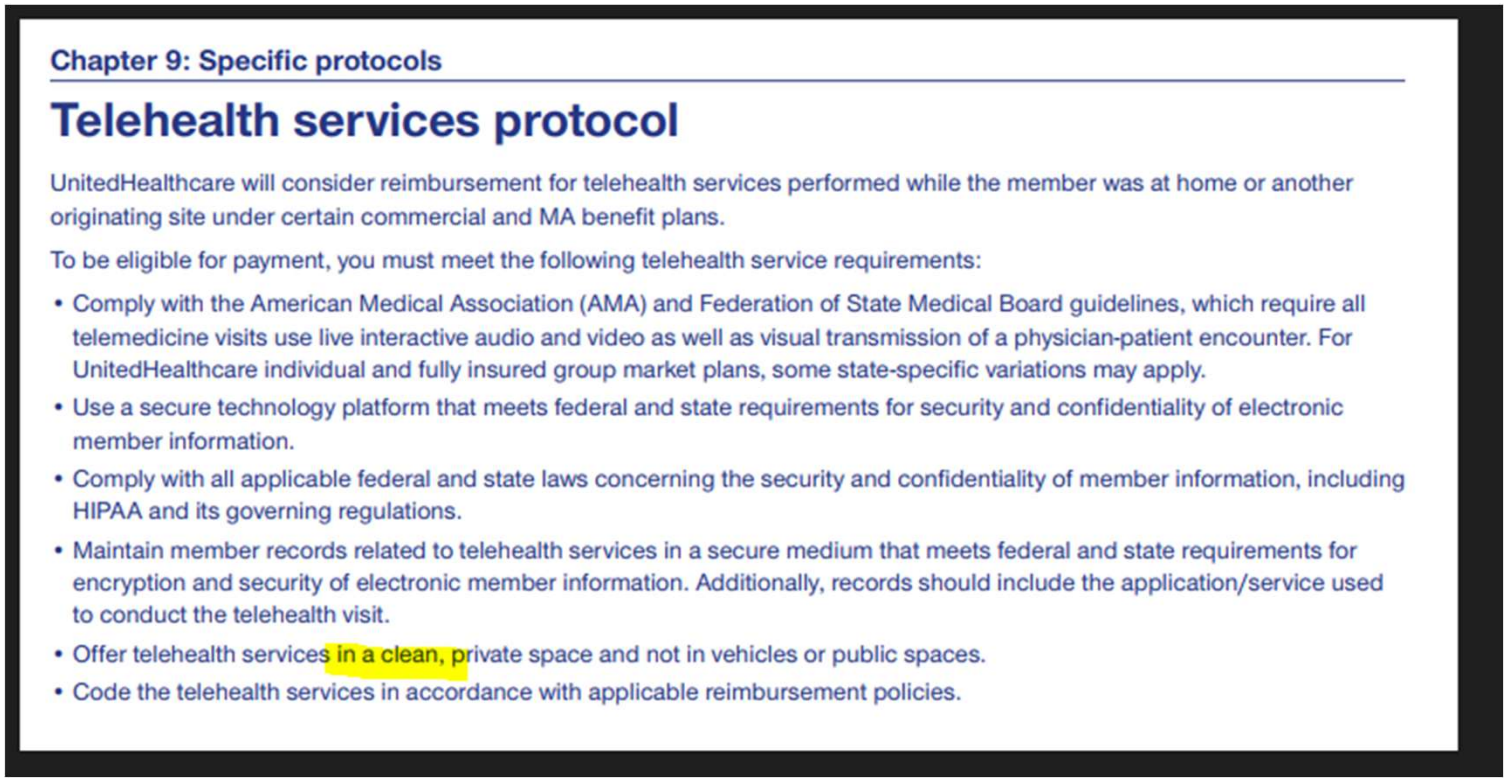
If managing chronic conditions, listing them alone does not meet the 1st element of MDM. Also, include the status of those conditions. , i.e. *"Patient presents today for management of non-insulin dependent type 2 diabetes, which is well managed by diet, exercise and at home glucose testing. Patient is taking her Metformin as directed. No new complaints or problems"*

Make sure there are exam elements "problem pertinent" to the presenting problem. A "medically appropriate" exam still has to exist to support medical necessity of the encounter.

If providing a Telehealth audio and video visit, the elements you are able to glean should be included in the documentation, and the elements you cannot should also be mentioned.

Watch for inconsistencies in the exam. If the History has a complaint, but the exam states WNL or not addressed, this can negate the record. Also watch for the "unbelievable encounter". Can you really document that you palpated a breast mass over virtual platforms?

UHC (United Healthcare) Post PHE – Telehealth rules



Chapter 9: Specific protocols

Telehealth services protocol

UnitedHealthcare will consider reimbursement for telehealth services performed while the member was at home or another originating site under certain commercial and MA benefit plans.

To be eligible for payment, you must meet the following telehealth service requirements:

- Comply with the American Medical Association (AMA) and Federation of State Medical Board guidelines, which require all telemedicine visits use live interactive audio and video as well as visual transmission of a physician-patient encounter. For UnitedHealthcare individual and fully insured group market plans, some state-specific variations may apply.
- Use a secure technology platform that meets federal and state requirements for security and confidentiality of electronic member information.
- Comply with all applicable federal and state laws concerning the security and confidentiality of member information, including HIPAA and its governing regulations.
- Maintain member records related to telehealth services in a secure medium that meets federal and state requirements for encryption and security of electronic member information. Additionally, records should include the application/service used to conduct the telehealth visit.
- Offer telehealth services in a clean, private space and not in vehicles or public spaces.
- Code the telehealth services in accordance with applicable reimbursement policies.

When to use Telehealth (Medicare): (C2C CMS) The appropriate use of telehealth may depend on the patient or situation, and it's ultimately decided by the provider. These are situations where providers may find telehealth more, or less, appropriate:

Telehealth is **likely appropriate** for:	Telehealth is **less appropriate** for:
General wellness visits	Health concerns that require a procedure
Management of chronic conditions	Abdominal pain
Discussion of test results, that may impact medical decision-making of current or future treatment(s)	Eye complaints
Counseling about diagnostic and therapeutic options	Gynecologic complaints, needing an in-person physical exam
Dermatology and other specialties, where quality video encounters are possible	Dental complaints
Prescription Drug Management – beyond refills	Highly nuanced or multiple complex health concerns
Nutrition counseling (*specific diagnoses apply for coverage)	Any situation in which a physical exam would change your recommendation
Mental health counseling	Possible Emergent concerns, i.e. chest pain, fainting, CVA, palpable masses oozing.

Possible Audit flag per OCR(office of civil rights):

People with disabilities, must have access to telehealth and telecommunications technology, as any other patient. This must be *inclusive*, especially for those patients who may have disabilities that cause the use of technology and/or communication to be more challenging.

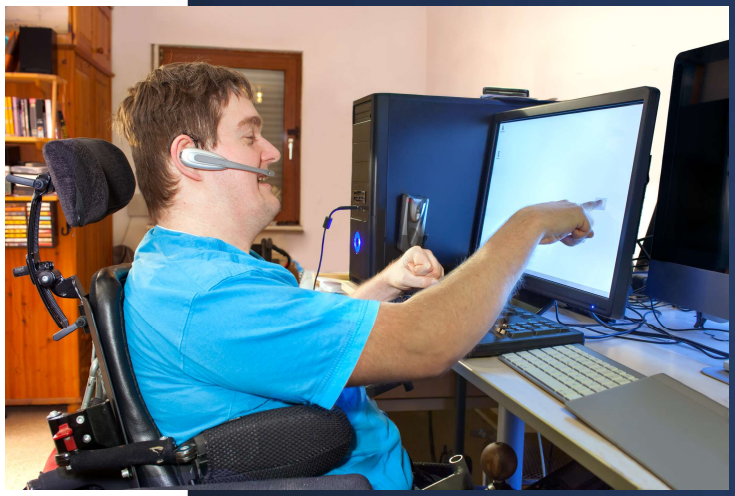
Section 504 of the Rehabilitation Act and the Americans with Disabilities Act protects qualified individuals with disabilities from discrimination on the basis of disability in the provision of benefits and services.

To provide these individuals with effective communications, covered providers must provide auxiliary aids and services when needed. Providers should discuss what aid or service is most appropriate with the person making the request.

**You will have an audit risk if you do not have options for patients with disabilities*

Examples of aids and services your patient may need include:

- **For blind/vision-loss/deaf-blind patients** — Providing a qualified reader; information in large print, Braille, or electronically for use with a computer screen-reading program; or an audio recording of printed information
- **For deaf/hearing-loss/deaf-blind patients** — Providing a qualified notetaker, qualified sign language interpreter, oral interpreter, cued-speech interpreter, tactile interpreter, real-time captioning, written materials, or a printed script of a stock speech
- **For patients with speech disabilities** — Providing a qualified speech-to-speech translator, or suggesting the patient use paper/pencil to write out words; staff should listen attentively and not be afraid to ask the patient to repeat a word or phrase they don't understand Per HHS Office for Civil Rights (OCR) Guidance, *failure to ensure that services provided through Electronic and Information Technology (EIT) are accessible to people with disabilities may constitute discrimination under federal civil rights laws.*



Place of Service for Telehealth Services (POS) (DURING and post-PHE)

Use the "intended" normal place of service, where it would have been provided if the patient was face-to-face.- per CMS FAQ sheet good through 2024.

Example: Patient seen by the physician via Telehealth Audio and Video visit. The physician was at the office, patient was at home. 20 minutes was spent on the encounter for the established patient.

How to Code: 99213-95 POS 11

Example: Patient encounter was started as an audio and video visit, and lost video connection after 5 minutes. The total time of the visit was 18-minutes, and audio only for the last 13 minutes.

How to Code: 99442 (Telephone call 11-20 minutes) POS 11

Source: COVID-19- FFS FAQ 5/27/2020

Of Note: CAA extension expires in 2024, CMS has created a HCPCS code G2252 for an 11-20-minute crosswalk audio only encounter.

How does an MD/DO or a QHP (NPP) bill for a Telehealth Service that would have been an office visit (extended thru 2024 post-PHE)?

If an Audio and Visual visit was performed for an established patient who was at home, physician was in his office, consent given and documented, presenting problem appropriate history and exam, time supported 30 minutes and/or medical decision-making was moderate, you would code:

99214-95 and POS 11

Telehealth MODIFIER (95) during PHE

- **Modifier 95: Synchronous Telemedicine service rendered via a real-time interactive audio and video telecommunications system** (CPT® definition)

- During the PHE, instructed to append to all Telehealth Services that meet the definition of CMS Telehealth. See list of 262 services.
- This is for tracking of the service under Telehealth, but also allows for 100% of the allowable payment under the PHE Waiver 1135.
- Effective retroactive to March 1, 2020, until the end of the PHE – *(CMS stated to use through 2024 unless otherwise instructed for payment parity).*
- CMS/Medicare directive – check with commercial plans on their rules for modifiers

-93 Modifier (new for 2023)
(FQ, FR for Behavioral Health)

For 2023, we have a new audio only **modifier -93**, check for payer guidance. (i.e. UHC has already stated to use the -93 modifier for Category-T CPT Codes as of 1/1/2023)

- **-FQ** is for ***audio only*** for **behavioral health** services performed via telehealth when audio and video or in person is not available, effective 1-1-2022.
- **-FR** Modifier for **behavioral health Services** audio and video – physician presence needs to be documented
- During the PHE, through 2024, 99441-99443 append the -95 modifier for Medicare only to receive payment parity. Check with private payers on coverage and modifiers.
- Virtual Check-In's G2012, G2252, G2010 and Digital Portal Visits 99421-99423 *are not on the Telehealth list and do not get a 95 modifier.* The are included in CBTS services.

Do we have to obtain Consent?

***Risk of Compliance? 10/10**

Obtaining Beneficiary Consent:

During the PHE, informed consent to receive services must have been obtained prior to the start of the service. Once the consent is obtained, and can be verbally by ancillary staff, this is valid for 1 year. Consent is authorization to treat, but also to inform the patient that they will have a share of cost.

This flexibility is currently set to return to pre-PHE rules at the end of the calendar year that the PHE ends.

Medicaid:

Consent required for:

- Providers are to obtain consent prior to rendering a service via telemedicine from the beneficiary receiving services or their legal guardian. Providers must also allow beneficiaries to elect to return to in-person services at any time. Services rendered via telemedicine may not be recorded without the beneficiary's consent. Beneficiaries may elect not to receive services via telemedicine at any time. Providers cannot use a beneficiary's refusal to receive services via telemedicine as a basis to limit the beneficiary's access to services.
- Allows audio-only in situations where the beneficiary does not possess or have access to video technology and when clinically appropriate OR for an urgent medical situation, provided that the use of audio-only telecommunication technology is consistent with state and federal requirements, including guidance by CMS with respect to Medicaid payment and OCR with respect to compliance with HIPAA.
- Documentation requirements:
  - Providers fully document service rendered and the telecommunication type
  - If audio-only, must document the reason audio/video technology could not be used
- Comply with HIPAA, Federal and State laws governing confidentiality, privacy and consent.

2023 POS – Place of Service Codes for Telehealth

Do NOT use during PHE for Medicare! Or face 20% possible reduction in payment. (facility rates)

POS 02: Telehealth Provided Other than in Patient's Home

- **Description:** The location where health services and health related services are provided or received, through telecommunication technology. Patient is not located in their home when receiving health services or health related services through telecommunication technology. (Effective January 1, 2017) (Description change effective January 1, 2022, and applicable for Medicare April 1, 2022.)

POS 10: Telehealth Provided in Patient's Home

- **Description:** The location where health services and health related services are provided or received, through telecommunication technology. Patient is located in their home (which is a location other than a hospital or other facility where the patient receives care in a private residence) when receiving health services or health related services through telecommunication technology. (This code is effective January 1, 2022, and available to Medicare April 1, 2022.)
- Check with your Commercial plans on usage and also with your MAC carriers if they are waiting until the end of the PHE to implement.

Per CMS – through 2024 via CAA extension, You must report the place of service (POS) where the visit would have taken place in person prior to the public health emergency - Claims without the appropriate POS or the 95 modifier will be paid at the facility rate.

PHYSICIANS SEEING PATIENTS VIRTUALLY WHEN THE PHYSICIAN'S LOCATION IS THE PHYSICIAN'S HOME:

Reporting Home Address: During the PHE, CMS allowed practitioners to render telehealth services from their home without reporting their home address on their Medicare enrollment while continuing to bill from their currently enrolled location.

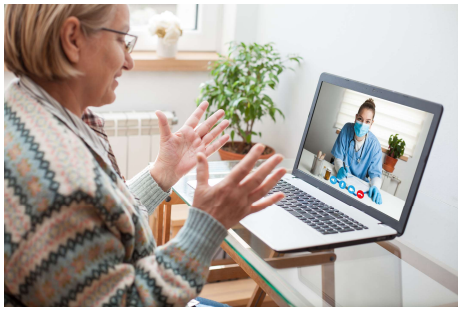
As of 1/1/2024, ***practitioners will be required to resume reporting their home address (all location addresses) on the Medicare enrollment.***
(on 2/24/2023 CMS extended this through 2023)

****CMS officials confirmed the need to update enrollment information, and that the address may be publicly available to patients through sites like Care Compare, a tool for Medicare beneficiaries.***

HIPAA Related Enforcement Discretion

Telehealth platforms must be HIPAA compliant.

For the duration of the PHE, the HHS Office for Civil Rights (OCR) exercised enforcement discretion allowing providers to use telehealth in good faith even if their platforms or software did not follow Health Insurance Portability and Accountability Act (HIPAA) rules. ***However, this enforcement discretion only remains in effect until 90-days after the end of the PHE***.



Thus, after **August 9th, 2023**, the OCR will resume enforcement of penalties on providers for noncompliance with HIPAA rules for technology use. Ahead of the end of the PHE, OCR has provided clarification on how and the circumstances under which the HIPAA rules apply to telehealth. ***This means the use of Skype, FaceTime, Google-Hangouts, Zoom, etc. for Telehealth encounters will expire when the PHE ends, as they are not HIPAA compliant.***

When the PHE ends, can individuals continue to see providers virtually using telehealth? *(End of PHE FAQ sheet dated: 4.24.2023)*

Yes, in most cases. During the PHE, individuals with Medicare had broad access to telehealth services, including in their homes, without the geographic or location limits that usually apply. These waivers were included as provisions of The Consolidated Appropriations Act, 2023, which extended many telehealth flexibilities through December 31, 2024, such as:

- *People with Medicare can access telehealth services in any geographic area in the United States, rather than only in rural areas.*
- *People with Medicare can stay in their homes for telehealth visits that Medicare pays for rather than traveling to a health care facility.*
- *Certain telehealth visits can be delivered using audio-only technology (such as a telephone) if someone is unable to use both audio and video (such as a smartphone or computer).*

**Auditors out there: This reads that you will have to have providers' document why a telehealth was necessary. If you don't you may be at "risk" for non-compliance or an audit flag.*

However, if an individual receives routine home care via telehealth under the hospice benefit, this flexibility will end at the end of the PHE.

Removal of Frequency Limitations on Certain Medicare Telehealth Services – *reinstated post-PHE*

Using section 1135 waiver authority, on *an interim basis during the PHE*, we removed the frequency restrictions for the following listed codes furnished via Medicare telehealth. These restrictions were established through rulemaking and implemented through systems edits.

The PHE has ended and all applicable rules for furnishing these services, unless otherwise specified, have taken effect:

- A subsequent inpatient visit could be furnished via Medicare telehealth, without the limitation that the telehealth visit is once every three days (CPT codes 99231-99233).

• A subsequent skilled nursing facility visit could be furnished via Medicare telehealth, without the limitation that the telehealth visit is once every 14 days (CPT codes 99307- 99310).

• Critical care consult codes could be furnished to a Medicare beneficiary by telehealth beyond the once per day limitation (CPT codes G0508-G0509)

Virtual Check In / Store & Forward

Not PHE related

(know the different between virtual check-ins and audio only encounters)

Intent of Virtual Check In is to avoid unnecessary trips to the office

Store & Forward – provider review of previously recorded images and video

Patient must verbally consent

Only for providers who can bill E/M codes

"7/24" concept applies

- **G2012** - Brief communication technology-based service, e.g. virtual check-in, by a physician or other qualified health care professional who can report evaluation and management services, provided to *an established patient*, not originating from a related e/m service provided within the previous 7 days nor leading to an e/m service or procedure within the next 24 hours or soonest available appointment; 5-10 minutes of medical discussion
- CMS permanently established separate coding and payment for the longer virtual check-in service described by HCPCS code **G2252** (CTBS-Communication Technology-Based Services) for CY 2022.
- **G2010** - Remote evaluation of recorded video and/or images *submitted by an established patient* (e.g., store and forward), including interpretation with follow-up with the patient within 24 business hours, not originating from a related e/m service provided within the previous 7 days nor leading to an e/m service or procedure within the next 24 hours or soonest available appointment

**** Once the PHE ends Virtual Check-Ins will no longer be covered for New patients and will only be reimbursable for established patients.***

CROSSING STATE LINES

CMS Clarification to Crossing State lines (4/2022 Alert)

"In addition to the statutory limitations that apply to 1135-based licensure waivers, "*an 1135 waiver, when granted by CMS, does not have the effect of waiving State or local licensure requirements or any requirement specified by the State or a local government as a condition for waiving its licensure requirements. Those requirements would continue to apply unless waived by the State.*

Therefore, *in order for the physician or non-physician practitioner to avail him or herself of the 1135 waiver under the conditions described above, the State also would have to waive its licensure requirements, either individually or categorically, for the type of practice for which the physician or non-physician practitioner is licensed in his or her home State."*

- Many practices made assumptions that if CMS and Medicare said you can do it, that this was a blanket waiver for all States and all Payers. Not true.

Telehealth/Telemedicine Crossing State Lines

Resource, The Practice of Telemedicine
Scott Rattigan, JD

Physicians who treat or prescribe through online services, are practicing medicine and must possess appropriate licensure in all jurisdictions where the patients receive care.

Commercial and Private Payors may impose location-based rules if you are a panel physician in-network.

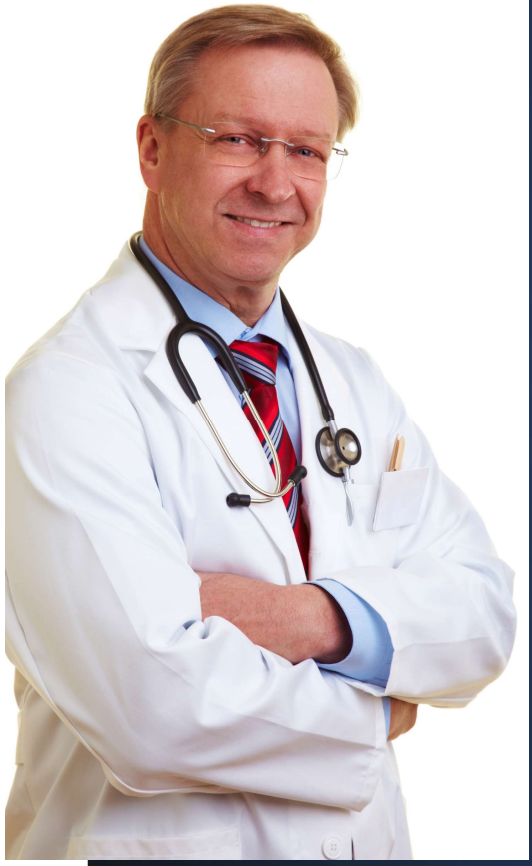
The practice of medicine occurs where the patient is located. If you are not licensed where the patient is located, and you don't fit in with the state's exception, then you are practicing medicine without a license in that state, which can carry criminal liability.

Check also with your malpractice insurance on Telehealth Coverage for both out of state, and audio and video and audio only applications.

Locums Tenens Changes post PHE

Modification of 60-day limit for ***Substitute Billing Arrangements*** (Locum Tenens): CMS has modified the 60-day limit in section SSA 1842(b)(6)(D)(iii) of the Social Security Act to allow a physician or physical therapist to use the same substitute for the entire time he or she is unavailable to provide services during the COVID-19 emergency, plus an additional period of no more than 60 continuous days after the public health emergency expires.

On the 61st day after the public health emergency ends (or earlier if desired), the regular physician or physical therapist must use a different substitute or return to work in his or her practice for at least one day in order to reset the 60-day clock. The modified timetable applies to both types of substitute billing arrangements under Medicare fee-for-service (i.e., reciprocal billing arrangements and fee-for-time compensation arrangements, formerly known as locum tenens).



2021 OIG Work Plan

Announced or Revised	Agency	Title	Component	Report Number(s)	Expected Issue Date (FY)
January 2021	Centers for Medicare and Medicaid Services	Audits of Medicare Part B Telehealth Services During the COVID-19 Public Health Emergency	Office of Audit Services	W-00-21-35862	2021-2022

2023 OIG Work Plan

Announced	Agency	Title	Component	Report Number(s)
January 2023	Centers for Medicare and Medicaid Services	OIG Toolkit on Analyzing Telehealth Claims To Assess Program Integrity Risks	Office of Evaluation and Inspections	OEI-02-20-00723

Coming Soon!

Telehealth AudioBook:
Written by Terry Fletcher and Published by NAMAS.
AVAILABLE FALL 2023

More Information?

Scan this QR code to auto-generate an email to NAMAS for additional information on the Telehealth Audiobook

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