



**Federal PHE Ending May 11, 2023  
Telehealth Compliance Audit Checklist**

**Extended Flexibilities**

**What Federal Medicare PHE Flexibilities Have Been Extended?**

On Thursday, December 29, President Biden signed the Fiscal Year 2023 Consolidated Appropriations Act. This legislative package extends most of the pandemic-era Medicare telehealth flexibilities for two years, through December 31, 2024.

The following Medicare telehealth flexibilities have been extended through December 31, 2024:

- a. Removing Geographic Requirements and Expanding Originating Sites for Telehealth. This will continue to allow all Medicare beneficiaries, regardless of geographic location, to be able to utilize telehealth services. Medicare beneficiaries will also be able to continue to utilize telehealth services in the comforts of their home.
- b. Extending Telehealth Services for Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs).
- c. Delaying the In-Person Requirements Under Medicare for Mental Health Services Furnished Through Telehealth and Tele-Communications Technology. FQHC and RHCs will also be able to furnish telehealth services for mental health patients without an in-person requirement through January 1, 2025.
- d. Allowing for the Furnishing of Audio-Only Telehealth Services for Medicare Beneficiaries.
- e. Allowing for the Use of Telehealth to Conduct Face-to-Face Encounters Prior to Recertification of Eligibility for Hospice Care.
- f. Expanding Practitioners Eligible to Furnish Telehealth Services. This provision will continue to allow physical therapists, occupational therapists, and speech-language pathologists to furnish telehealth services to Medicare beneficiaries.
- g. Requiring the Secretary of the Department of Health and Human Services to Conduct a Study on Telehealth and Medicare Program Integrity by October 1, 2024.
- h. Extending the Acute Hospital Care at Home Initiative.
- i. \*Virtual Supervision has been extended under the Medicare Physician Fee Schedule through December 31, 2023. It is unclear at this time if Virtual Supervision flexibilities will be extended again into fiscal year 2024.



## Expiring Flexibilities

### **What Federal PHE Flexibilities Will Expire on May 11?**

#### **1. *Prescribing Controlled Substances Via Telehealth Directly into the Home.***

On March 1, 2023, the Drug Enforcement Administration (DEA) issued a proposed rule (Docket No. DEA 407; RIN 1117-AB40) titled “Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation”. The proposed rule, if finalized, would allow for the following changes:

- Establish a “referral pathway” for telemedicine providers to prescribe Schedule II - Schedule V controlled substances. DEA defines a qualifying telemedicine referral as, “a referral to a practitioner that is predicated on a medical relationship that exists between a referring practitioner and a patient where the referring practitioner has conducted at least one medical evaluation in the physical presence of the patient, without regard to whether portions of the evaluation are conducted by other practitioners, and has made the referral for a legitimate medical purpose in the ordinary course of their professional practice.
- If a practitioner wishes to issue a “telemedicine prescription,” they would have to have a DEA registration in both the state where the patient is located and the state where the practitioner is located.
- Registered practitioners would not need to obtain a “physical address” in each state where they practice medicine. “Practitioners using telemedicine to prescribe controlled substances may operate out of multiple locations. To avoid any confusion and ensure that DEA investigators can locate the records, when necessary, proposed § 1304.04(i) would specify that the records must be maintained at the registered location of the practitioner’s registration under 21 CFR 1301.13(e)(1)(iv)”.
- Waive the “in-person” requirements for patients with an “established telemedicine relationship established during the COVID-19 public health emergency” for an additional 180 days after the proposed rule is finalized. To continue prescribing controlled medication to this patient beyond 180 days from the end of the public health emergency, you must conduct an in-person medical evaluation of the patient.



2. ***HIPAA HHS' Office for Civil Right's (OCR) telehealth HIPPA enforcement flexibilities.***

OCR's enforcement flexibilities will expire when the PHE ends on May 11. OCR is granting a 90-day additional grace period for telehealth providers to become compliant, from May 12 – August 9, 2023.

These Notifications and the effective beginning and ending dates are:

- [Enforcement Discretion Regarding COVID-19 Community-Based Testing Sites During the COVID-19 Nationwide Public Health Emergency](#), effective from March 13, 2020, to 11:59 pm May 11, 2023.
- [Enforcement Discretion for Telehealth Remote Communications During the COVID–19 Nationwide Public Health Emergency](#), effective from March 17, 2020, to 11:59 pm May 11, 2023.
- [Enforcement Discretion Under HIPAA To Allow Uses and Disclosures of Protected Health Information by Business Associates for Public Health and Health Oversight Activities in Response to COVID-19](#), effective from April 7, 2020, to 11:59 pm May 11, 2023.
- [Enforcement Discretion Regarding Online or Web-Based Scheduling Applications for the Scheduling of Individual Appointments for COVID-19 Vaccination During the COVID-19 Nationwide Public Health Emergency](#), effective from December 11, 2020, to 11:59 pm May 11, 2023.



### May 11, 2023: Post PHE Check List

- Is your telemedicine platform compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act?**

Review your telemedicine operations to determine compliance with the following OCR enforcement discretions that will expire on May 11, 2023. (*\*OCR is offering a 90-day transition period and will not impose penalties on covered health providers for noncompliance with the HIPAA Rules that occur in connection with the good faith provision of telehealth. This transition period runs from May 12 – August 8, 2023.*)

- [Enforcement Discretion Regarding COVID-19 Community-Based Testing Sites During the COVID-19 Nationwide Public Health Emergency - PDF](#), effective from March 13, 2020, to 11:59 pm May 11, 2023.
  - [Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency - PDF](#) (“Telehealth Notification”), effective from March 17, 2020, to 11:59 pm May 11, 2023.
  - [Enforcement Discretion Under HIPAA To Allow Uses and Disclosures of Protected Health Information by Business Associates for Public Health and Health Oversight Activities in Response to COVID-19 - PDF](#), effective from April 7, 2020, to 11:59 pm May 11, 2023.
  - [Enforcement Discretion Regarding Online or Web-Based Scheduling Applications for the Scheduling of Individual Appointments for COVID-19 Vaccination During the COVID-19 Nationwide Public Health Emergency - PDF](#), effective from December 11, 2020, to 11:59 pm May 11, 2023.
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- If you prescribe controlled substances and DEA’s proposed prescribing rules do not go into effect by May 11, 2023, are your telemedicine prescribing practices compliant with the Ryan Haight Act of 2008?** \*Note: DEA has issued a proposed rule on March 1, 2023, that may substantially amend the Ryan Haight Act of 2008. This rule is not yet finalized. This means that unless DEA’s proposed rules are finalized by May 11, the legal and regulatory prescribing requirements of the Ryan Haight Act will immediately go into effect.
  - Have you reviewed the list of [CY23 Medicare telemedicine service codes](#) that are eligible for reimbursement after the PHE expires to determine potential changes to billing practices for Medicare patients?**
  - Have you reviewed the list of CY23 Medicaid telemedicine service codes that are eligible for reimbursement in the states that you deliver medicine and determine potential**



**changes to billing practices for Medicaid patients?** *\*Note: Please review each state's Medicaid provider manual to determine covered services.*

- Have you evaluated whether the state you deliver medicine in is a coverage parity, service parity, payment parity for Medicaid and commercial plan reimbursement?**
- Have you reviewed contracts with commercial payers to determine potential changes in reimbursement and covered services?**
- Have you engaged with your organization's payor strategy/revenue cycle leader to negotiate sustained reimbursement with your contracted payors?**