

## CMS Issues Regulatory Waivers Easing Restrictions on HHAs and Hospice Providers in Light of COVID-19 Pandemic

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Over the past several weeks, the Center for Medicare & Medicaid Services (“CMS”) has issued several important directives impacting home health agencies (“HHAs”) and hospice providers. As we [previously reported](#), CMS recently issued a series of [Blanket Regulatory Waivers](#) pursuant to its authority under Section 1135 and 1812(f) of the Social Security Act, including several waivers that significantly impact HHAs and hospice providers. CMS concurrently issued a [fact sheet](#) highlighting the myriad regulatory changes to assist various components of the health care system response to the COVID-19 public health emergency (“PHE”). The sweeping changes include the following:

- **Waiver of requirements for a nurse to conduct an onsite visit every two weeks for both home health and hospice care.** Recognizing that in-person visits may not be possible during the PHE, nurses or other professionals will not be required to make such visits, including bi-monthly visits to evaluate if aides are providing care consistent with the care plan.
- **Allowing the use of telehealth to meet many of the face-to-face visit requirements for clinicians to see their patients in home health and hospice.** During the PHE, individuals receiving home health or hospice care can use commonly available interactive audio/video applications to visit with their clinician if it is feasible and appropriate to do so. Of note, while HHAs can provide more services to beneficiaries using telehealth, it must be part of the patient’s plan of care and cannot replace any necessary in-person visits as part of the plan of care.

Integration of telemedicine in home health and hospice care was also featured in CMS’s [Dear Clinician Letter](#), issued earlier this week. The letter highlights CMS’s efforts to “ensure maximum flexibility to reduce unnecessary barriers that allow you to focus on your patients.”

These full scope of changes adopted by CMS are discussed in greater detail below.

### HOME HEALTH AGENCIES

**Requests for Anticipated Payment.** CMS is allowing Medicare Administrative Contractors (“MACs”) to extend the auto-cancellation date of Requests for Anticipated Payment (“RAPs”) during emergencies.

*Since HHAs can obtain 50-60 percent of anticipated payment at the beginning of a patient's care episode through a RAP, extending the auto-cancellation date is a substantial benefit for HHAs.*

**Reporting.** CMS is providing relief to HHAs on the timeframes related to Open Access Same-Time Information System ("OASIS") Transmission through the following actions below:

- Extending the five-day completion requirement for the comprehensive assessment to 30 days.
- Waiving the 30-day OASIS submission requirement; delayed submission is permitted during the PHE.

*During the PHE, CMS is relaxing the timing requirements for HHAs, allowing providers to focus on patient care.*

**Initial Assessments.** CMS is waiving the requirements at 42 CFR § 484.55(a) to allow HHAs to perform Medicare-covered initial assessments and determine patients' homebound status remotely or by record review.

*As noted by CMS, allowing remote assessment allows patients to be cared for in their homes while supporting infection control and reducing impact on acute care and long-term care facilities. Recognizing the scarcity of physicians and advanced practice clinicians, this adjustment to utilize telemedicine in home health care maximizes coverage by already scarce clinicians and allows them to focus on caring for patients with the greatest acuity during the pendency of the PHE.*

**Waiver of Onsite Visits for HHA Aide Supervision.** CMS is waiving the requirements of 42 CFR § 484.80(h) for a nurse to conduct an onsite visit every two weeks—as well as the requirement for a nurse or other professional to conduct an onsite visit to evaluate if aides are providing care consistent with the care plan—both of which reduce the burden on HHAs. This waiver also temporarily suspends the requirement under 42 CFR § 484.80(h)(1) that aides are to be supervised by a registered nurse for two weeks at the outset of implementing a plan of care.

*Recognizing that travel may be limited during the PHE, CMS is waiving the requirements for onsite visits. However, virtual supervision of aides by nurses is encouraged by CMS during the waiver period.*

**Testing and Claims Reporting for COVID-19.** CMS will allow patients receiving Medicare-covered home health services to receive COVID-19 testing through a home health nurse during an otherwise covered visit. Effective March 13, 2020, the CDC recommends collecting a single upper respiratory nasopharyngeal swab for COVID-19 testing and CMS has advised that CPT Code 87635 or HCPCS Code U0002 can be reported for the non-CDC diagnostic lab test, depending on the method used. HCPCS code U0001 can be reported for the CDC diagnostic lab test. Labs, physician offices, hospitals, and other settings can bill for tests ordered that they perform.

## HOSPICE PROVIDERS

**Waiver of Requirement for Hospices to Use Volunteers.** CMS is waiving the requirement under 42 CFR § 418.78(e) that hospices must use volunteers (including at least five percent of patient care hours).

*Anticipating that hospice volunteer availability and use will be reduced related to the COVID-19 surge and potential quarantine, CMS is relaxing this requirement to allow hospice care to continue uninterrupted because of a non-compliance issue.*

**Waiver of Timeframes for Comprehensive Assessments.** CMS is waiving certain 42 CFR § 418.54 requirements related to updating comprehensive assessments of patients, including timeframes for updates to the comprehensive assessment pursuant to 42 CFR § 418.54(d).

*While hospices must continue to complete the required patient assessments and updates, the timeframes for updating the assessment can be extended from 15 to 21 days.*

**Waiver of Requirement to Offer Non-Core Services.** CMS is waiving the requirement for hospices to provide certain non-core hospice services during the PHE, including 42 CFR § 418.72's physical therapy, occupational therapy, and speech-language pathology requirements.

*Recognizing that there could be staffing limitations and a need to focus on core services during the PHE, CMS is relaxing the requirement that hospice providers have certain non-core hospice services staffed.*

**Waiver of Onsite Visits for Hospice Aide Supervision.** CMS is waiving the requirements under 42 CFR § 418.76(h) that a nurse must conduct an onsite supervisory visit every two weeks. This waiver also applies to the requirement for a nurse or other professional to conduct a bi-monthly onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan.

*Recognizing that travel may be limited during the PHE, CMS is waiving the requirements for onsite visits for hospice aide supervision. However, virtual supervision of aides by nurses is encouraged by CMS during the waiver period.*

## Additional resources

Beyond the waivers and exceptions noted above, CMS has also issued guidance for infection control for each component of the health care system. Below are links to guidance for HHAs and hospice providers.

- [Guidance for Infection Control and Prevention Concerning Coronavirus Disease 2019 \(COVID-19\) in Home Health Agencies \(HHAs\)](#)
- [Guidance for Infection Control and Prevention Concerning Coronavirus Disease 2019 \(COVID-19\) by Hospice Agencies](#)

For any questions regarding the impact of these orders, please contact Amandeep Sidhu or your Winston relationship attorney. View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

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