

# COVID-19 Crisis: How Medical Providers Should Be Responding – Part 2

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# COVID-19 Crisis: Tips for Mitigating Risk to Patients

- ***Fact sensitive – look at individual practices***
- Look to CDC/DOH guidelines for patients and staff
  - guidelines are not requirements
  - standard of care
- Prescreen over the phone
- Spread out patient appointments (waiting room)
- Limit office occupancy
- Dedicated times for seniors and those at high risk

# New Jersey COVID-19 Emergency Executive Order 107 - Overview

- Shelter in place and stay home (limited exceptions)
- Accommodate work from home
- Closing brick and mortar for non-essential retail
- **MUST** practice social distancing and stay six feet apart whenever practicable
- Avoid public transportation
- No gatherings

## EO 107 – Exceptions

- Obtaining goods/services/food from essential businesses
- Seeking medical attention, essential social services, or assistance from law enforcement or emergency services
- Visiting family or caretaker/close personal partner
- Reporting to, or performing, their job
- Walking, running, operating a wheelchair, or engaging in outdoor activities with **immediate contacts**
- Educational, religious, or political reason
- Reasonable fear for health or safety
- Direction of law enforcement/governmental authority

## EO 107 – Remote Work Not Possible:

- Reduce staff to minimum possible
- Examples of staff needed on site
  - Law enforcement/firefighter/first responders
  - Cashiers/store clerks
  - Construction workers
  - Utility/repair workers
  - Warehouse workers
  - Lab research
  - IT maintenance
  - Janitorial/custodial
  - Certain administrative staff

## EO 107 – Medical & Therapeutic

- Not intended to limit, prohibit, restrict medical services
- No limitation on healthcare facilities performing medically necessary and therapeutic services
  - Example – physical therapy
- Personal care services, including medical spas for solely elective and cosmetic procedures, are **prohibited**

# EO 107 - Essential Retail Business Services

- Grocery stores, farmers' markets, food banks/stores
- **Pharmacies and medicinal marijuana dispensaries**
- **Medical supply stores**
- Gas stations
- Convenience stores
- **Stores within healthcare facilities**
- Hardware and home improvement stores
- Retail functions of banks and other financial institutions
- Laundromats and dry-cleaning services
- Stores that sell supplies for children under five years old
- Pet stores
- Liquor stores
- Auto maintenance and repair services
- Printing and office supply shops
- Retail mail and delivery stores

## EO 108 - Overview

- Under EO 108, a locality or county can enforce EO 107
  - Unnecessary travel
  - Social distancing
- Employers encouraged to give employees a letter indicating that the employee works in an industry permitted to continue operations.



# Assembly Bill 3862 – Signed by Governor

- Relaxes licensing process for out-of-state providers during state of emergency
- Allows expediting the professional and occupational licensing process for out-of-state individuals
- Enables healthcare workers licensed in other states to work in New Jersey to address outbreak
- Individual must have a corresponding license, certificate of registration, or certification in good standing from another state
- State can waive criminal history record background check, fees, certificate of registration, or certification.

# EO 109 – No Elective Adult Surgeries

- 5:00 p.m. on Friday, March 27, 2020
- No adult “elective” surgeries (medical and dental)
- An “elective” surgery or invasive procedure
  - Any surgery or invasive procedure that can be delayed without undue risk to the current or future health of the patient as determined by the patient’s treating physician or dentist.
  - An “elective” surgery or invasive procedure does not include the administration of vaccines.

## EO 109 – ASCs and Written Guidelines

- Providers and ASCs are to coordinate any possible post-surgery admissions with local hospitals prior to performing any surgery or invasive procedure.
- Hospitals and ASCs must establish written guidelines in accordance with order
  - Consultation with treating provider required about elective designation
- No limitation on family planning/pregnancy termination

# EO 109 – Inventory of PPE/Supplies

- Any business or non-hospital healthcare facility in possession of PPE, ventilators, respirators, or anesthesia machines that are not required for the provision of critical healthcare services should undertake an inventory of such supplies
- Submit information to State by 5 PM Friday - March 27
- Including but not limited to dental facilities, construction facilities, research facilities, office-based healthcare or veterinary practices, and institutions of higher learning
- OEM to identify submission process

# EO 109 – Limitations on Practice Scope

- DCA may issue orders restricting or expanding the scope of practice for any category of healthcare professional or veterinarian
- Including but not limited to, orders restricting elective surgeries, procedures, and examinations, or for further limiting the scope of practice, or the location for the delivery of service of other licensees subject to regulation by any licensing board

# EO 109 – Waivers for Professionals/CDS

- DCA may in consultation with DOH:
  - Waive any restriction on the entry or reentry into practice of any person who has received training for employment in a healthcare profession or who has retired from practice.
  - Waive any restriction on the prescription of controlled dangerous substances or on access to the prescription monitoring program

# Elective and Nonessential Services

- AMA/CMS/professional associations recommendations for elective procedures → minimize, postpone, and cancel where appropriate
- Avoid inadvertent exposure and wasted resources
- Minimize use of needed items
  - ICU beds
  - Personal protective gear
  - Ventilators
  - Key cleaning supplies
- Hold off on throwing out expired meds in short supply

# OSHA and COVID-19

- No specific OSHA standards for COVID-19 hazards
- Look to general duty - employer must to maintain the workplace in a safe condition and take steps to ensure that work is performed safely
- Take reasonable steps to either eliminate the hazard posed by the virus or materially reduce the risk of exposure to that hazard
- Look to CDC/DOH standards governing (1) workplace sanitation, (2) personal protective equipment, and (3) use of respirators



# Public Readiness and Emergency Preparedness Act (PREP)

- Addresses liability concerns during pandemics
- Limited Immunity for acts arising out of, relating to, or resulting from the administration or use of a countermeasure by a “Covered Person”
- *Covered Person* – includes licensed healthcare professionals and agencies, manufacturers, distributors, program planners, and their officials, agents, and employees, as well as certain additional persons connected to the administration of the countermeasures
- *Countermeasures* – any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom

# HIPAA and State of Emergency

- Limited waivers and non-enforcement measures
- Applicable normal waivers
  - Treatment purposes
  - Public health
    - CDC, state and local health
    - Public health authority direction
    - Persons at risk of contracting or spreading
  - Family and friends involved in care of those ill
  - Prevention and reduction of imminent threat
- Minimum necessary

<https://www.bracheichler.com/insights/covid-19-and-hipaa-what-you-need-to-know/>

<https://www.bracheichler.com/insights/healthcare-law-alert-dhhs-ocr-issues-notification-of-enforcement-discretion-to-enhance-telehealth-communications-during-covid-19-crisis/>

# Assembly Bill 3860 – Signed by Governor

- Immediate-relaxes telehealth standards to address crisis
- Provider need only be licensed in another state
- Providing services within scope of practice
- **Unless there is a preexisting relationship, telehealth must be limited to COVID-19**
  - Screening,
  - Dx,
  - Treatment
- Fees shall be reasonable and ordinary
- Waiver related to transmission re: privacy concerns

# Telemedicine Update

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March 23, 2020



# Live Video Conferencing

# 1135 Waiver Authority / Coronavirus Preparedness and Response Supplemental Appropriations Act

- Historically, Medicare coverage for telemedicine has been restricted to those patients who live in medically underserved areas
- Effective for services starting 3/6/20 and for the duration of the COVID-19 Public Health Emergency, Medicare will provide coverage for telehealth services furnished to patients in broader circumstances by allowing payment for professional services furnished to beneficiaries in all areas of the country in all settings.
- This includes services provided in any healthcare facility or in their home.
- These visits are considered the same as in-person visits and are paid at the same rate as regular, in-person visits.

# Requirements

- Provider must utilize interactive audio/video, real time communication (including Face Time and Skype)
- Place of service 02 – telehealth is required on the claim. No special modifier is required. (Certain payers may require modifier 95, but Medicare does not)
- CPT Code selection is based on the distant site location (i.e., where the physician or other non-physician practitioner is located during the service). Documentation requirements remain the same.
  - If a physician is performing a telehealth service from his/her home during this emergency period, and home is not his/her usual place of business, the POS is still 02 and the claims is submitted with address from which services are usually billed, which is likely the office location.
- Providers will not need to be licensed in the originating state (facility or private residence where the patient is receiving telehealth services) if not their own

**Guidance regarding teaching physician and incident to billing is not available at this time. CMS to address and release memorandum at an undetermined future date.**

# CPT Codes – Telehealth Services

LIST OF MEDICARE TELEHEALTH SERVICES - CY2020					
Code	Short Descriptor	Code	Short Descriptor	Code	Short Descriptor
90785	Psytx complex interactive	96160	Pt-focused hlth risk assmt	G0396	Alcohol/subs interv 15-30mn
90791	Psych diagnostic evaluation	96161	Caregiver health risk assmt	G0397	Alcohol/subs interv >30 min
90792	Psych diag eval w/med srvcs	97802	Medical nutrition indiv in	G0406	Inpt/tele follow up 15
90832	Psytx pt&/family 30 minutes	97803	Med nutrition indiv subseq	G0407	Inpt/tele follow up 25
90833	Psytx pt&/fam w/e&m 30 min	97804	Medical nutrition group	G0408	Inpt/tele follow up 35
90834	Psytx pt&/family 45 minutes	99201	Office/outpatient visit new	G0420	Ed svc ckd ind per session
90836	Psytx pt&/fam w/e&m 45 min	99202	Office/outpatient visit new	G0421	Ed svc ckd grp per session
90837	Psytx pt&/family 60 minutes	99203	Office/outpatient visit new	G0425	Inpt/ed teleconsult30
90838	Psytx pt&/fam w/e&m 60 min	99204	Office/outpatient visit new	G0426	Inpt/ed teleconsult50
90839	Psytx crisis initial 60 min	99205	Office/outpatient visit new	G0427	Inpt/ed teleconsult70
90840	Psytx crisis ea addl 30 min	99211	Office/outpatient visit est	G0436	Tobacco-use counsel 3-10 min
90845	Psychoanalysis	99212	Office/outpatient visit est	G0437	Tobacco-use counsel>10min
90846	Family psytx w/o patient	99213	Office/outpatient visit est	G0438	Ppps, initial visit
90847	Family psytx w/patient	99214	Office/outpatient visit est	G0439	Ppps, subseq visit
90951	Esrdr serv 4 visits p mo <2yr	99215	Office/outpatient visit est	G0442	Annual alcohol screen 15 min
90952	Esrdr serv 2-3 vsts p mo <2yr	99231	Subsequent hospital care	G0443	Brief alcohol misuse counsel
90954	Esrdr serv 4 vsts p mo 2-11	99232	Subsequent hospital care	G0444	Depression screen annual
90955	Esrdr serv 2-3 vsts p mo 2-11	99233	Subsequent hospital care	G0445	High inten beh couns std 30m
90957	Esrdr serv 4 vsts p mo 12-19	99307	Nursing fac care subseq	G0446	Intens behave ther cardio dx
90958	Esrdr serv 2-3 vsts p mo 12-19	99308	Nursing fac care subseq	G0447	Behavior counsel obesity 15m
90960	Esrdr serv 4 visits p mo 20+	99309	Nursing fac care subseq	G0459	Telehealth inpt pharm mgmt
90961	Esrdr serv 2-3 vsts p mo 20+	99310	Nursing fac care subseq	G0506	Comp asses care plan ccm svc
90963	Esrdr home pt serv p mo <2yrs	99354	Prolonged service office	G0508	Crit care telehea consult 60
90964	Esrdr home pt serv p mo 2-11	99355	Prolonged service office	G0509	Crit care telehea consult 50
90965	Esrdr home pt serv p mo 12-19	99356	Prolonged service inpatient	G0513	Prolong prev svcs, first 30m
90966	Esrdr home pt serv p mo 20+	99357	Prolonged service inpatient	G0514	Prolong prev svcs, addl 30m
90967	Esrdr home pt serv p day <2	99406	Behav chng smoking 3-10 min	G2086	Off base opioid tx first m
90968	Esrdr home pt serv p day 2-11	99407	Behav chng smoking > 10 min	G2087	Off base opioid tx, sub m
90969	Esrdr home pt serv p day 12-19	99495	Trans care mgmt 14 day disch	G2088	Off opioid tx month add 30
90970	Esrdr home pt serv p day 20+	99496	Trans care mgmt 7 day disch		
96116	Neurobehavioral status exam	99497	Advncd care plan 30 min		
96150	Assess hlth/behav init	99498	Advncd care plan addl 30 min		
96151	Assess hlth/behav subseq	G0108	Diab manage trn per indiv		
96152	Intervene hlth/behav indiv	G0109	Diab manage trn ind/group		
96153	Intervene hlth/behav group	G0270	Mnt subs tx for change dx		
96154	Interv hlth/behav fam w/pt	G0296	Visit to determ ldict elig		

<https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>



# Other Virtual Services

# E-Visits

- E-visits refer to communications with providers via online patient portals.
- These are for established patients, and are non-face to face interactions, which differentiates it from telehealth.
- Physicians and other providers who bill E/M codes can bill e-visits, using these codes:
  - 99421: Online digital evaluation and management service, for an established patient, for up to 7 days, cumulative time during the 7 days; 5–10 minutes
  - 99422: Online digital evaluation and management service, for an established patient, for up to 7 days cumulative time during the 7 days; 11– 20 minutes
  - 99423: Online digital evaluation and management service, for an established patient, for up to 7 days, cumulative time during the 7 days; 21 or more minutes.
- These codes should be billed once over a 7-day period, based on the total amount of time spent in the aggregate. The patient must generate the initial inquiry; however, the practice can reach out to patients to make them aware of service availability.

# E-Visits

Clinicians who may not independently bill for evaluation and management visits (for example – physical therapists, occupational therapists, speech language pathologists, clinical psychologists) can also provide these e-visits and bill the following codes:

- G2061: Qualified non-physician healthcare professional online assessment and management, for an established patient, for up to seven days, cumulative time during the 7 days; 5–10 minutes
- G2062: Qualified non-physician healthcare professional online assessment and management service, for an established patient, for up to seven days, cumulative time during the 7 days; 11–20 minutes
- G2063: Qualified non-physician qualified healthcare professional assessment and management service, for an established patient, for up to seven days, cumulative time during the 7 days; 21 or more minutes.

# Virtual Check In / Phone Calls

- Medicare pays for “virtual check-ins” (or Brief communication technology-based service) for patients to communicate with their doctors and avoid unnecessary trips to the doctor’s office.
- These virtual check-ins are for patients with an established (or existing) relationship with a physician or certain practitioners where the communication is not related to a medical visit within the previous 7 days and does not lead to a medical visit within the next 24 hours (or soonest appointment available).
- The patient must verbally consent to receive virtual check-in services. The Medicare coinsurance and deductible would generally apply to these services.

**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**

# Virtual Check In / Phone Calls

- Medicare does not pay for the following codes for phone calls, however, other payers might:
  - 99441 Telephone evaluation and management service by a physician or other qualified health care 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; 5- 10 minutes of medical discussion
  - 99442                    11-20 minutes of medical discussion
  - 99443                    21-30 minutes of medical discussion

## “Store & Forward”

- This service involves provider review, analysis, and interpretation of video and/or other images submitted by a remote patient and followed up with the patient in 24 business hours.
- This service cannot be related to an E/M service performed within the previous week or an E/M service or procedure performed within 24 hours or soonest available appointment.
- 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

# References

- CMS Fact Sheet: [https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet?utm\\_campaign=government-affairs&utm\\_medium=email&utm\\_source=3.17.20%20Regulatory%20Alert%20Washington%20Connection&elqEmailId=9986](https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet?utm_campaign=government-affairs&utm_medium=email&utm_source=3.17.20%20Regulatory%20Alert%20Washington%20Connection&elqEmailId=9986)
- Medicare Telehealth FAQ: <https://www.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>

# New Jersey Epidemic and Emergency Relief Employment Fund (Proposed Law)

- Passed the New Jersey Assembly
- Senate passed it March 19
- **FAILED – GOVERNOR DID NOT SIGN IT INTO LAW AND WILL NOT DO SO**



## New Jersey Did, However, Adopt a New Law That:

- Makes it unlawful to terminate or otherwise penalize an employee who requests time off from work based upon the recommendation of a medical professional that the employee has, or is likely to have, an infectious disease, which may infect others in the workplace.
- Would also make it unlawful to refuse to reinstate the employee to his or her position held when the leave commenced.

# New Jersey Governor did enact Executive Order 107 over the weekend:

- People are permitted to leave their homes to report to their job
- The EO is not intended to limit, prohibit, or restrict in any way the provision of healthcare or medical services to the public.

# Remember, the President Signed into Law Last Weekend:

- The “Families First Coronavirus Response Act”
- The new law takes effect April 2
- The law amends existing law and creates new law:
  - Amendment to the FMLA
  - Creates Federal Paid Sick Leave program

# The Emergency Family Medical Leave Act

- Employers with less than 500 employees are required to provide up to 12 weeks of leave
- The employee only needs to be employed for at least 30 days and:
  - The employee is unable to work (or telework) due to the need to care for the son or daughter whose school or place of care has been closed; or
  - The employee's child care provider is unavailable
- In either case due to a public health emergency with respect to COVID-19 declared by a Federal, State, or local authority.

# The Emergency Family Medical Leave Act (continued)

- Employers of healthcare providers or emergency responders may exclude these employees from this new leave entitlement.
- The Secretary of Labor may also exempt businesses with fewer than 50 employees when such leave would jeopardize the viability of the business as a going concern.
- The first 10 days of this new leave category may be unpaid except that the employee may elect to substitute any accrued vacation, personal, medical, or sick leave in place of the unpaid leave.

# The Emergency Family Medical Leave Act (continued)

- For all subsequent days, the employer must provide paid leave equal to at least two-thirds of the employee's regular rate of pay, not to exceed \$200/day and \$10,000 in the aggregate.
- For employers with less than 25 employees, reinstatement will not be required if the position no longer exists due to economic conditions of the employer caused by a public health emergency, and the employer makes reasonable efforts to restore the employee to an equivalent position.

# The Emergency Paid Sick Leave Act

- This is a new federal emergency paid leave benefits program similar to what many states (including New Jersey and New York) enacted over the past few years.
- Employers must provide paid sick time to the extent the employee is unable to work (or telework) due to a need for leave because the employee:
  1. Is subject to quarantine or isolation order related to Coronavirus;
  2. Has been advised by a healthcare provider to self-quarantine due to concerns related to Coronavirus;
  3. Is experiencing symptoms related to Coronavirus and is seeking medical diagnosis;

# The Emergency Paid Sick Leave Act (continued)

4. Is caring for an individual who is subject to a quarantine or isolation order or who has been advised by a healthcare provider to self-quarantine;
5. Is caring for a son or daughter if their school or place of care has been closed, or the child care provider is unavailable due to Coronavirus; or
6. Is experiencing any substantially similar condition specified by the Secretary of Labor.



# The Emergency Paid Sick Leave Act (continued)

- There shall be 80 hours of paid sick time for full-time employees, and, for part-time employees, the average hours worked over a two-week period.
- The paid sick time shall not exceed \$511/day and \$5,110 in the aggregate when the leave is for any of (1), (2) or (3) above; or \$200/day and \$2,000 in the aggregate when the leave is for any of (4), (5) or (6) above.
- Employers of healthcare providers or emergency responders may exclude these employees from this new leave entitlement.
- Employers may *not* require the use of other paid leave before the use of paid sick time.

# The Emergency Paid Sick Leave Act (continued)

- It shall be unlawful to discharge, discipline, or otherwise discriminate against any employee who takes leave under this new act.
- The Secretary of Labor may also exempt businesses with fewer than 50 employees when such leave would jeopardize the viability of the business as a going concern
- The law provides tax credits for the paid sick leave and paid family leave mandates placed on employers.
  - Employers would receive a tax credit equal to all paid sick leave wages and paid family medical leave wages against the 6.2% social security tax and the 1.45% Medicare tax on wages paid by the employer as to all employees, refundable in some instances, with some limits based upon the reason for the employee's leave.

# All Options Are on the Table for Employers:

- Take action to save the business so that there is a business for the employees to return to
- Reductions in hours
- Reductions in pay
- Temporary layoffs/furloughs
- Permanent layoffs
- Be aware of impact on benefits plans (healthcare and otherwise)

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