

*Administrator*

Washington, DC 20201

August 6, 2020

The Honorable Tina Smith  
United States Senate  
Washington, DC 20510

Dear Senator Smith:

Thank you for your letter regarding the Administration's efforts to expand telehealth availability during the Coronavirus disease 2019 (COVID-19) pandemic. In particular, you expressed concerns about the availability and payment of audio-only telehealth services. The Secretary asked that I respond on his behalf to your questions on telehealth, one of his top priorities for the U.S. Department of Health and Human Services. I appreciate the opportunity to tell you about steps that we have taken to make telehealth services more widely available during the COVID-19 pandemic.

Since the beginning of the Public Health Emergency (PHE), the Centers for Medicare & Medicaid Services (CMS) has issued an unprecedented array of temporary regulatory waivers and new rules to equip the American healthcare system with maximum flexibility to respond to the COVID-19 pandemic. On March 31, 2020, CMS announced in an interim final rule additional policies and flexibilities for telehealth services and other virtual services such as e-visits and virtual check-ins to expand options that patients have for communicating with their physicians and other practitioners without going into the doctor's office (85 FR 19230).<sup>1</sup> This included the addition of more than 80 services to the Medicare telehealth services list as well as allowing for certain services that are limited to established patients to also be furnished to new patients. We also appreciate the steps that Congress has taken to expand the availability of telehealth services through the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

CMS also announced that Medicare will make separate payment for telephone (audio-only) evaluation and management (E/M) services (CPT codes 99441-99443) furnished by physicians and other practitioners who can bill independently for E/M services, and telephone-only assessment and management services (CPT codes 98966-98968) furnished by practitioners who cannot separately bill for E/M services, during the PHE for the COVID-19 pandemic. CMS is allowing these codes to be used for both new and established patients during the PHE.

On April 30, 2020, CMS announced the issuance of a waiver under section 1135(b)(8) of the Social Security Act, as amended by section 3703 of the CARES Act, of the requirements under section 1834(m) of the Act and our regulation at §410.78 that Medicare telehealth services must

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<sup>1</sup> Available at: <https://www.federalregister.gov/d/2020-06990>

be furnished using video technology.<sup>2</sup> This new waiver allows certain behavioral health counseling and education services to be furnished via telehealth using audio-only communications technology during the PHE for the COVID-19 pandemic, effective for dates of service on or after March 1, 2020. The full list of telehealth services notes which services are eligible to be furnished via audio-only technology, including the telephone evaluation and management visits.<sup>3</sup>

In addition, in a second interim final rule issued on May 1, 2020, CMS increased payment rates for audio-only telephone E/M visit codes to be equivalent to the Medicare payment rates for the levels 2-4 office/outpatient E/M visits with established patients (CPT codes 99212-99214) for the duration of the PHE for the COVID-19 pandemic, effective for dates of service on or after March 1, 2020 (85 FR 27550, 27590).<sup>4</sup> On May 1, 2020 CMS issued guidance to the Medicare Administrative Contractors (MACs) to allow them to process claims for the telephone evaluation and management services at the updated payment rate (CR 11661).<sup>5</sup> On May 15, 2020 CMS issued guidance to physicians and other practitioners notifying them that MACs will reprocess claims for the telephone evaluation and management services that they previously denied and/or paid at the lower rates for claims with dates of service on or after March 1, 2020.<sup>6</sup> No additional action is needed by physicians and non-physician practitioners for these claims to be reprocessed. For the duration of the PHE, CMS will also consider adding services to the Medicare telehealth list on a rolling sub-regulatory basis as services are identified by the public or through internal review.

We recognize the importance of using telehealth services as a means of minimizing exposure risks for patients, practitioners, and the community at large. We believe these temporary changes will ensure that patients have access to their health care providers while remaining safely at home. For a complete and updated list of CMS actions and other information specific to CMS, please visit the Current Emergencies website.<sup>7</sup> For information on the COVID-19 waivers, guidance, and the interim final rules, please visit the CMS' Coronavirus Waivers & Flexibilities webpage.<sup>8</sup>

I am encouraged by the increased use of telehealth across the nation by our Medicare beneficiaries. Through March 7, 2020, about 14,000 beneficiaries received telemedicine services each week; this figure grew to over 1.7 million beneficiaries for the week ending April 25<sup>th</sup>. In total, over 10.1 million beneficiaries have received a telemedicine service during the public health emergency. During the COVID-19 pandemic, the expansion of telehealth services has allowed our Medicare beneficiaries to safely and conveniently access healthcare services. CMS

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<sup>2</sup> Available at: <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

<sup>3</sup> Available at: <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>

<sup>4</sup> Available at: <https://www.federalregister.gov/d/2020-09608>

<sup>5</sup> Available at: <https://www.cms.gov/files/document/mm11661.pdf>

<sup>6</sup> Available at: [https://www.cms.gov/outreach-and-education/outreachffsprovpartprogprovider-partnership-email-archive/2020-05-15-mlnc-se#\\_Toc40450033](https://www.cms.gov/outreach-and-education/outreachffsprovpartprogprovider-partnership-email-archive/2020-05-15-mlnc-se#_Toc40450033)

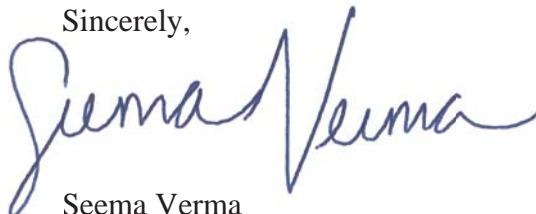
<sup>7</sup> Current emergencies. <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>.

<sup>8</sup> Coronavirus Waivers & Flexibilities. <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>.

has held weekly calls with providers to hear from the front lines about how telehealth has improved care for Medicare beneficiaries and hurdles they face to inform our thinking on this important subject.

Thank you for your letter on telehealth services and your leadership during this unprecedented pandemic. We look forward to continuing to work with you to protect the American people. If you have any further additional questions, please contact the CMS Office of Legislation.

Sincerely,

A handwritten signature in blue ink that reads "Seema Verma". The signature is fluid and cursive, with the first name "Seema" and the last name "Verma" clearly distinguishable.

Seema Verma