Last updated 4.1.2020

LEGAL PARAMETERS OF VIRTUAL CARE DURING COVID-19

1. LEGAL CONSIDERATION

	Telehealth
1. Modality	Must be audio and video
2. Patient consent	Patient consent required. Verbal consent permitted. Prefer documented.
3. Patients (new/est.)	Medicare: New or established patients permitted
4. Professional license	The federal government has temporarily waived requirements that out-of-state providers be licensed in the state where they are providing services when they are licensed in another state. *State law may still apply. Look here for the most updated state waivers related to licensure ("States Temporarily Waiving Licensure Requirements").*
5. Frequency limitations	None
6. Controlled substance prescribing	During the public health emergency, DEA-registered providers may issue prescriptions for controlled substances to patients if the following conditions are met: • *The prescription is issued for a **legitimate medical** purpose by a provider acting within his/her usual scope of practice* • *The communication is conducted using **audio-visual, real time, two-way, interactive communication** system* • *The provider is **following applicable Federal and State** law.* State law in many VMD markets require an established relationship with the patient before prescribing via the internet (e.g. AZ, KY, IN, MI). Many states have issued waivers related to the COVID-19 pandemic. *Please check your state medical or pharmacy board for rules related to internet prescribing requirements.* Some examples: GA - Restrictions apply for delegating to a NP or supervising a PA. §360-3-.07. **Limitation**. §360-3-.02 • Prohibited from prescribing controlled substances or dangerous drugs based solely on electronic consult. Exceptions apply. • Chronic pain treatment must comply with 360-3-.06. §360-3-.07 MI – *Also*, includes requirements for follow-up care NH – Prohibited from prescribing opioid Schedule II controlled substances. Emergency Order TX – Physicians are temporarily allowed to treat chronic pain patients with scheduled drugs using Telemedicine if there is an existing doctor-patient relationship and if the PMP is checked for opioids, benzodiazepines, carisoprodol, and barbiturates. TMB FAQ. Also, recall that providers must enroll in the state's prescription monitoring program (PMP)
7. Type of Provider	**MD/DO** and certain non-physician practitioners such as **NPs, PAs and certified nurse midwives**. Other practitioners, such as **certified nurse anesthetists, LCSW, clinical psychologists, and RD or nutrition professionals** may also furnish services within their scope of practice and consistent with Medicare benefit rules that apply to all services. **Occupational therapist services and speech language pathology services** are now eligible to bill for Medicare telehealth services [as of 3/31/2020]. **PTs** may also provide "e-visits" if (1) there is an established relationship with the patient; (2) the patient initiates the inquiry and verbally consents to check-in services; and (3) the communications are limited to a seven-day period through an online patient portal.

2. Billing Requirements

	Telehealth
Eligible dates of service – Medicare	March 6, 2020 – end of Public Health Emergency
Cost-sharing	• Medicare FFS coinsurance and deductible generally apply • Providers permitted to reduce or waive cost-sharing for visit. *See HHS OIG Policy Statement here.*
Clinical documentation coding	Common telehealth services include: • 99201-99215 (office or other outpatient visits) • G0406-G0408 (Follow up inpatient telehealth consultations furnished to beneficiaries in hospitals or SNFs) • G0425-G0427 (Telehealth consultations, etc.) • G0438 and G0439 (AWV) • G2061-G2063 (PT online assessment and management services) For a complete list: https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes
Retroactive effect	Reimbursement for visits starting March 6, 2020
Billing and insurance	*Coverage for virtual visits*—varies by locale and insurance carrier. Medicare policy ongoing evolution. Requires regular updating. High deductible health plans with health savings accounts can cover telehealth services prior to the patient reaching the deductible. CMS Telemedicine services Reimbursement Laws Commercial payor resource *Note. See charts above for changes effective during the COVID-19 Public Health Emergency,
POS Code	11- Office • Box 32 – address of where the provider practices • CMS 1500 Other places where asynchronous services can occur
Modifier	**95 –** signals that the service was provided via telehealth **G0** – telehealth services to diagnose, evaluate, or treat symptoms of an acute stroke **GY** – Used to report that an Advanced Beneficiary Notice (ABN) was not issued because item or service is statutorily excluded or does not meet the definition of any Medicare benefit *Note. CMS is not requiring additional or different modifiers on Medicare claims for telehealth services except in the instances above.*

3. Other Guidance Related to the Visit

<table>
<tr><th></th><th>MEDICARE</th><th>MEDICARE ADVANTAGE/ COMMERCIAL</th></tr>
<tr><td>Access to Prescription medications</td><td>Local MACs are responsible for determining whether to cover 90-day or extended supplies of drugs to treat a patient's chronic condition.[1]</td><td>Anthem – doctors can recommend switch from 30 to 90-day supply
BCBS – Waived early medication refill limits on 30-day scripts. Patients not liable for obtaining non-preferred medication if preferred medication is not available due to shortage or access issues.
Cigna – will deliver medications
Humana – early prescription refills allowed for the next 30 days</td></tr>
<tr><td rowspan="5">Testing for COVID-19

Lab test billing reimbursement will begin April 1, 2020.

* For DOS on or after February 4, 2020

+ For DOS on or after March 13, 2020</td><td colspan="2">Deductible will not apply in Part B plans or in Medicare Advantage plans</td></tr>
<tr><td colspan="2">HCPCS U0001* – CDC developed lab test
• CDC 2019 Novel Coronavirus Real Time RT-PCR Diagnostic Test Panel
• Payment rate: approx. $36</td></tr>
<tr><td colspan="2">HCPCS U0002* – non-CDC developed lab test
• General 2019-nCoV Coronavirus, SARS-CoV-2/2019-nCoV using any technique
• Payment rate: approx. $51.00</td></tr>
<tr><td colspan="2">CPT code 87635+ – non-CDC developed lab test
Infectious agent detection by nucleic acid (DNA or RNA); severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (Coronavirus disease [COVID-19]), amplified probe technique</td></tr>
<tr><td colspan="2">Clinical diagnostic labs: for DOS on or after March 1, 2020
• G2023 - Spec Specimen collection for severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (Coronavirus disease [COVID-19]), any specimen source</td></tr>
<tr><td colspan="2">For VM at Home
Medicare will pay laboratory technicians to travel to a beneficiary's home to collect a specimen for COVID-19 testing, eliminating the need for the beneficiary to travel to a healthcare facility for a test and risk exposure to themselves or others</td></tr>
<tr><td rowspan="4">Diagnostic coding related to COVID-19</td><td>Asymptomatic Patient with Suspected or Known Exposure to COVID-19
• Code exposure status only</td><td>Z03.818 "Encounter for observation for suspected exposure to other biological agents ruled out"
- Only to be used if exposure is ruled out after evaluation.
Z20.828 "Contact with and (suspected) exposure to other viral communicable diseases"
• Use if known close personal contact to infected individual has occurred or if patient has been in an area where disease is epidemic</td></tr>
<tr><td rowspan="2">Symptomatic Patient with Suspected COVID-19 (suspected, possible or probable cases)
• Code the presenting symptoms
AND
• Code the exposure status, if known</td><td>Common symptoms include:
R05 "Cough"
R06.02 "Shortness of breath"
R50.9 "Fever, unspecified"</td></tr>
<tr><td>Exposure statues if known direct exposure or in an area where COVID-19 is prevalent:
Z20.828 "Contact with and (suspected) exposure to other viral communicable disease"</td></tr>
<tr><td>Confirmed COVID-19 with Associated Respiratory Illness
• Code the respiratory illness
AND</td><td>Common respiratory illnesses include:
J20.8 "Acute bronchitis due to other specified organisms"
J40 "Bronchitis, not specified as acute or chronic"</td></tr>
</table>

[1] https://www.hklaw.com/en/insights/publications/2020/03/cms-issues-new-medicate-reimbursement-guidance

	• Code B97.29 "Other coronavirus as the cause of disease classified elsewhere"	**J22** "Unspecified acute lower respiratory infection" **J98.8** "Other specified respiratory disorders" **J12.89** "Other viral pneumonia" **J80** "Acute respiratory distress syndrome"
HIPAA Security	*Effective March 15, 2020, HHS implemented a limited waiver, permitting physicians to serve patients in good faith via everyday communication technologies during the nationwide public health emergency. For example, healthcare providers can use applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to provide telehealth "without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency," according to OCR. OCR also notes: "Some of these technologies, and the manner in which they are used by HIPAA covered healthcare providers, may not fully comply with the requirements of the HIPAA rules."* This guidance is adapted from: https://www.govinfosecurity.com/covid-19-hhs-issues-limited-hipaa-waivers-a-13958. ***See below for comparison to VMD telemedicine solution***	
HIPAA Privacy	Visit should be conducted in a private room, consideration given to the patient circumstances (whether family in the room etc)	

4. Other Recommended Training From Literature (Not Legal or Compliance Related)

	Recommended learning	Resources
Adjust speaking and movement style	*Pace of Speech*—reduced for clear enunciation to ensure clarity over online platforms. *Keep it Professional:* Differentiate between professional encounter and lifestyle video communication such as FaceTime® *Body motion and gestures*—minimized and made in full view of camera. *Motions* should be slowed to avoid blurring or poor visualization over video.	• Media training groups such as Media Training Worldwide: https://www.tjwalker.com • Conferences offer simulation based training for clinicians: https://www.virtualhealthcarenyc.com • The American Telemedicine Association offers courses and webinars: http://learn.americantelemed.org/diweb/start • Coordinator training modules: http://www.caltrc.org/knowledge-center/training/
Consider how the image looks to the patient	*Background, lighting, and framing* are essential components of a virtual encounter which differ from traditional encounters. *Camera*—located in a fixed position with clinician's head and shoulders centered. Clinicians look at the camera rather than screen to maintain "eye contact."	
What to wear	*Dress*—solid clothes with a neutral background project optimally in a virtual setting	
Ending the visit	Provide summation, instruction for treatment and follow-up.	
Plan for emergencies	*Emergent response*—virtual visits may require activation of emergency services. Knowledge of patient location and ability to deploy EMS.	

For more information, visit

- https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet
- https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf
- https://www.cdc.gov/nchs/data/icd/ICD-10-CM-Official-Coding-Gudance-Interim-Advice-coronavirus-feb-20-2020.pdf
- *www.vmdworkingsmarter.com*
- Dialysis: https://www.cms.gov/files/document/qso-20-19-esrd.pdf
- Https://www.faegredrinker.com/en/insights/publications/2020/3/cms-and-cdc-issue-guidance-to-dialysis-facilities-during-coronavirus-pandemic
- https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page
- https://info.americantelemed.org/covid-19-medicare-policy-updates-3-31-20

5. Other Medicare Covered Services By Telephone (non-telemedicine)

	INTERPROFESSIONAL CONSULT — TREATING PHYSICIANS	INTERPROFESSIONAL CONSULT — CONSULTING PHYSICIANS	VIRTUAL CHECK IN* *Option during COVID-19*	REVIEW IMAGES SENT BY PATIENT	PHONE CALL WITH A PATIENT
WHAT IS IT?	A non-face-to-face consult for medical advice or opinion (not a transfer)	Review of data/in- formation telephone or internet	A check in through devices, such as phones or computers, rather than in person	Review of diagnostic images	An audio-only conversation between a provider and a patient
WHO REPORTS/USES THESE CODES/SERVICES?	Primary care	Specialist	Physicians and MLP	Physician and MLP	Physician and MLP
IS THERE A COPAYMENT?	Yes	Yes	Yes	Yes	No
IS PATIENT CONSENT REQUIRED?	Requires consent from the patient/family and documented in the patient's medical record	Requires consent from the patient/family and documented in the patient's medical record	Requires consent from the patient/family and documented in the patient's medical record – verbal consent is permitted	Requires consent from the patient/family and documented in the patient's medical record	Obtaining consent from the patient/family and documented in the patient's medical record would be a best practice
NEW OR ESTABLISHED PATIENTS	Can be reported for new or established patients	Can be reported for new or established patients	Can be reported for new or established patients	Can only be used for established patients of the physician or practice	Can only be used for established patients of the physician or practice
FREQUENCY LIMITS	Cannot be reported more than once per 14 days per patient	once per 7 days 14 days after a visit	Cannot be related to a medical visit seven days after or 24 hours before an in-person E/M service	Cannot be seven days after or 24 hours before an in-per- son E/M service	Cannot be seven days after or 24 hours before an in-per- son E/M service
TIMEFRAME LIMITATIONS	Requires a minimum of 16 minutes (this includes time preparing for the referral and/or communicating with the consultant)	None	None	Physicians must reply to asynchronous images/videos in 24 hours	None
DOCUMENT REQUIREMENTS	None	Require that the request and reason for the consult be documented in the record	None	None	None
OTHER	For time < 30 mins spent and can be for non-direct services like chart review	Can be reported for a new or exacerbated problem Are reported based on cumulative time spent even if that time occurs on subsequent days	Physicians can use any technology (telephone or video) Must be patient-initiated	Used for any store and forward patient generated still or video images that are submitted to the provider directly by the patient	No modifier needed CPT codes include: 99441 – 5-10 minutes 99442 – 11-20 minutes 99443 – 21-30 minutes

6. Other Clinical Guidance during COVID-19

CMS Recommendation: Dialysis (eff. March 10, 2020)

Screen	Safety *Undiagnosed, suspected, or confirmed COVID-19*	Tips

Encourage patient, staff, and visitor screening for
• **Signs/symptoms** of respiratory infection
• **Contact** in the last 14 days with someone with a confirmed diagnosis of covid-19
• **Travel** within the last 14 days to countries with sustained community transmission
• **Residence** in a community where community-based spread is occurring
	• **Six-foot rule.** Provide seating for patients in both the waiting room and while receiving dialysis treatment that is 6 feet apart.
	  • *Alternative. Permit the patient to wait in the car.*
	• **Isolate.** Bring patients with respiratory symptoms back to a designated treatment area for evaluation ASAP
	  • Symptomatic patients should be dialyzed in a **separate room** with the door closed (if possible) or **mask** symptomatic patients and place 6 feet away from other patients (in all directions). A corner or end-of-row station is ideal.
		• Each dialysis chair and nursing station should have items such as **tissues, no-touch receptacles and hand hygiene supplies** to minimize transfer.
		• Standard PPE and cleaning guidelines apply – use **gloves, facemask, eye protection, and isolation gown**. Follow routine infection control requirements related to cleaning and disinfecting.
		• Consider transferring patient to another treatment site if the facility cannot fully implement the standard PPE and cleaning guidelines.
		• Continue providing monthly monitoring of home dialysis patients onsite at the facility
		• Consider **cohorting** patients who are symptomatic or that have a confirmed COVID-19 diagnosis in the same unit and/or on the same shift (e.g. last shift of the day)

FDA Recommendations: Pharmacist compounding hand sanitizer (eff. March 13, 2020)

Eligible facility	State-licensed pharmacy Federal facility Registered outsourcing facility (i.e., 503B facilities)
Effective period	March 13 – end of the public health emergency
Requirements	1. Only the following USP grade ingredients may be used: Alcohol or Isopropyl alcohol; Glycerol; Hydrogen peroxide; sterile distilled water or boiled cold water 2. Either ethanol or isopropyl alcohol is the active ingredient and used in the correct amount 3. The hand sanitizer is prepared under conditions routinely used by the compounder to compound similar nonsterile drugs 4. The hand sanitizer is labeled consistent with the "Drug Facts Label" provided in the FDA's policy (see linked Appendices) *Minimum alcohol content: 60%. This policy does not apply to other hand sanitizers (e.g. lower potency, different ingredients, etc.)*

Exhibit:

7. Comparing VMD Solution with Use of FaceTime (Green is Better)

VillageMD Virtual Care vs FaceTime		
Features	VillageMD Virtual Care	FaceTime
Sharing personal phone number with patients	No	Yes
Secure messaging including pictures	Yes	No
Virtual waiting room for patients	Yes	No
Ability for PCP to manage the waiting room	Yes	No
Text/email message to patient to join the waiting room	Yes	No
Does the patient need an app?	No, web based	Yes
Integration with docOS	Yes	No
Picture in picture feature to keep patient video on screen even when switching between other programs	Yes	No

8. MEDICAL MALPRACTICE COVERAGE FOR TELEMEDICINE

Carrier of Coverage	Market	Level of Coverage/Exclusions
TMLT	Houston	1) The physicians' policies cover them up to the policy limits for telemedicine services. 2) The policy territory is the United States and its territories. However, a physician must follow all applicable licensing and practice rules in the state in which they are providing professional services. In telemedicine, that is the state where the patient is located. 3) There are no particular exclusions dealing expressly with telemedicine. However, as noted above, coverage may be affected if the physician is not following or in compliance with the applicable licensing rules and requirements in the state where the patient resides.
MICA	Arizona	1) MICA policy does cover patient treatment via telemedicine under the scope of medical practice. 2) MICA coverage will apply to the insured providing telemedicine services to patients located in Arizona, Utah, Nevada, or Colorado. If practice extends beyond those states, they will need to know. 3) Potential ability to extend to other geographic locations, need to confirm with MICA. Carrier mentioned state licensing requirements for treating patients out of state. There are limits in coverage for MeDefense ($25,000 per claim/$25,000 Aggregate) and Cyber Liability ($100,000 per claim/$100,000 Aggregate)
Coverys – Summit	Arizona	1) Policy covers telemedicine. Under normal circumstances, providers should be licensed in the states they are practicing. Not a strict requirement at the current time given the COVID-19 situation though. 2) Coverage is provided anywhere in the continental United State 3) There are no exclusions on the policy as it relates to telemedicine.
SVMIC	Kentucky	1) The coverage is the same for telemedicine as for in office medicine. $3Mil/$5Mil 2) There are geographic restrictions because we are a regional carrier and are not licensed in all states. We suggest the physician only treat patients that reside in Kentucky, but we do cover

Carrier of Coverage	Market	Level of Coverage/Exclusions
		Tennessee, Arkansas, Oklahoma, Georgia, Alabama and Northern Mississippi. But the physician should check with each state regarding licensure. We can't stress enough how important documentation is for telemedicine and each telemedicine visit should be treated as an in office visit. 3) There are no exclusions in policy pertaining to telemedicine.
Coverys – Excess	Walgreens	This is the coverage that Walgreens requested for our physicians who work in WAG stores. This was included in case this same level of coverage needs to be extended to the physicians who do telemedicine for WAG. 1) Excess medical malpractice coverage does extend to telemedicine services 2) There are no geographic restrictions on the policy. Advised to confirm with state licensure compliance when practicing across state lines. 3) No exclusions