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ACROinsights – Preparing for End of COVID-19 Public Health Emergency

The goal of this series of articles is to ensure that radiation oncologists are aware of and provided with the knowledge to ensure day-to-day processes are being addressed in a compliant manner. This installment will discuss how the how the end of the COVID-19 public health emergency (PHE) will impact radiation oncology and assist physicians and practices in transitioning back to "normal". The information contained within this ACROinsights article is meant as general guidance and is not intended to replace appropriate legal or authoritative guidance.

COVID-19 Public Health Emergency

On January 31, 2020, the Secretary of Health and Human Services (HHS) declared the first public health emergency (PHE) related to the COVID-19 pandemic. PHEs are initially declared d for 90 days and can be renewed as necessary, but the Secretary can adjust the length to be shorter than 90 days. Since the original declaration, CMS developed waivers and extensions in response to the burden on the healthcare system, physicians, and beneficiaries. On January 30, 2023, it was announced the PHE would end May 11, 2023. This announcement provided the required 60-day notification to state governors to prepare for many of state waivers and extensions to end. The PHE sunset also means many providers, radiation practices and physicians, need to prepare to return to "normal" or pre-pandemic practice standards.

Timeline of Changes

The PHE rollback and change in the state waiver initially enacted in March 2020 and adjusted over the past 3 years will be manifested in a transitional period. Due to Congressional legislation and various regulations the waivers will be phased out or changed over the next couple of years. The changes to the Medicare waivers will take place at three different times over the next two years. An initial set of waivers will end when the PHE ends on May 11, 2023. Next, there are several waivers Medicare indicated would continue through December 31st of the year the PHE ends; these waivers will revert to pre-pandemic standards effective January 1, 2024. Lastly, due to previously mentioned Congressional legislation there are several waivers specific to telehealth services which will continue through December 31, 2024, adjusting back to pre-pandemic standards effective January 1, 2025.

Due to the significant number of changes to occur over next 2 years, CMS has a dedicated page, *Coronavirus Waivers & Flexibilities*[i], on their website with responses to many FAQs documents, toolkits and other information for different settings or entities. Information on the CMS site relate only to Medicare services, unless otherwise identified. Private payers may have their own timeline for waivers related to the COVID-19 PHE and some have previously instituted changes. There may be additional actions or changes in the future as the phase out from the PHE continues.

The following maps out several of the waivers and changes that are most impactful to radiation oncology. The list is not all inclusive.

- **Phase 1 PHE ends May 11, 2023 – the following changes take effect May 12, 2023**
  - Use of virtual check-ins and e-visits for new patients will no longer be covered by Medicare, they will only be covered for established patients.
    - Remote evaluation of patient video/images and virtual check-in services (HCPCS codes G2010 and G2012 for physicians and G2251 and G2252 are for non-physician practitioners) provided to established patients only.
  - Telehealth via any non-public facing application.
    - Telehealth visits will continue to be reimbursable for another 18 months after the end of PHE, the technology used to conduct the visit must be HIPAA compliant. The waivers and

extensions which allowed telehealth visits to be performed with non-HIPAA compliant technology and violations were not pursued, will end on May 11th, and will revert to pre-pandemic requirements on May 12th. Radiation Oncologists who expect to continue providing services must verify the technology they are using is HIPAA compliant and document this, or they may be subject to legal fines and penalties.

- Decisions regarding billing by physicians for services outside their Medicare region of enrollment will be deferred to the states: there is no CMS-based requirement that a provider must be licensed in its state of enrollment.
- Telemedicine services furnished to hospital patients through an agreement with an off-site facility will end.
- A beneficiary's home, designated as a provider-based department of the hospital for purposes of receiving outpatient services paid under the OPPS will end.
- The process allowing for addition of services to the Medicare Telehealth Services List on a sub-regulatory basis will end.
- The ability to providing subsequent inpatient visits via telehealth, without the once every three days limitation (CPT® codes 99231-99233) will end.
- Teaching physicians in residency training sites located outside of a metropolitan statistical area may direct, manage, and review care furnished by residents through audio/video real-time communications technology.
- The ability of locum tenens physicians to provide coverage longer than 60 consecutive days during the PHE, whether the arrangement is reciprocal billing arrangements or fee-for-time compensation arrangements, will revert to original CMS guidelines. On the 61st day following sunset of the PHE, the regular attending physician must use a different substitute physician or return to work at the practice.

- **Phase 2 – Waivers through December 31, 2023 – the following changes take effect January 1, 2024**
  - Treatment management visits (CPT® 77427) for radiation oncology.
    - Radiation Oncologists will be required to see patients for external beam radiation therapy in-person in their treatment facility. CPT® 77427 is the only physician management code that allowed for real-time audio/video capabilities to patient management. Other physician management codes (CPT® 77431, 77432, 77435, and 77469) continue to require the radiation oncologist to perform this visit in person.
  - Prolonged Outpatient Office Visit (HCPCS code G2212).
    - Prolonged outpatient services must be in-person beginning January 1, 2024, when reporting for services to Medicare beneficiaries. This code was temporarily added to the list of telehealth services.
  - Telehealth visits performed from a provider's home, while reporting the facility address, ends.
    - CMS allows physicians to be at their home and provide telehealth visits and to report the address as their office or Medicare enrolled location. This practice will discontinue, requiring the physician to bill for any telehealth services to be physically present in the office or department where they are enrolled with Medicare to provide services. The address and place of service (POS) will reflect where the physician is physically present providing the work to bill for the telehealth visit.
  - Physician supervision in office setting utilizing real-time audio/video capabilities will end.
    - CMS has allowed for direct supervision of diagnostic tests, physicians' services which included services provided incident to in the office setting, and some hospital outpatient services, to be provided using real-time audio/video capabilities. CMS reiterated in the in the CY 2022 MPFS final rule, on December 31st of the year the PHE ends, physicians

will be required to be physically present to meet the direct supervision guidelines as there were prior to the public health emergency.

- **Phase 3 – Waivers through December 31, 2024 – the following changes take effect January 1, 2025**
  - Telehealth services available in any geographic area originating site in the United States will end.
    - H.R.134 was introduced on January 9, 2023, to allow for the allowance of patients to be in any originating site located anywhere geographically, not only the limited locations as part of telehealth services pre-pandemic.
  - Patients able to continue receiving telehealth services from their home.
    - Prior to the Consolidated Appropriations Act of 2023, CMS had finalized only certain designated patients could continue to receive telehealth services while they are in their home. This waiver was predominantly limited to behavioral health, end-stage renal disease (ESRD) and acute stroke. This extension, through the end of 2024 is not diagnosis specific, but if no other changes are made could be limited by diagnosis.
  - Audio-only encounters via telephone evaluation and management services (CPT® 99441-99443) will discontinue and CMS will no longer reimburse or accept these codes for services.
  - CMS updated the telehealth list of services[ii] on February 13, 2023, to remove the column designating the different phase-out timelines for the approved codes.
  - Expansion of health care professionals who can furnish distant site telehealth services to include all those who are eligible to bill Medicare will end and no longer include many NPPs.
  - Medicare payment of telehealth services at same rate as if service was in-person will end.
    - At this time, it is unknown what payment for telehealth services will look like. Prior to the PHE telehealth services were reimbursed, but not at the same rate as in-person services.

The Take Home Message

Given the multiple waivers and extensions over the past three years due to the COVID-19 public health emergency, it is important radiation oncologists, their practices, employees, and employers are aware of the upcoming changes. A review of current practice patterns to determine how prevalent telehealth services are provided and billed is necessary to better determine what changes are needed to plan ahead. Some physicians may find the impact to the upcoming changes will be minimal, but there may be some for which revision of processes is necessary. Any future discussions with CMS to allow for continued telehealth or other waivers and extensions will only be as good as the data specialties like radiation oncology can provide. Preparing now will assist in continued care to patients with fewer interruptions or disruptive changes. To ensure telehealth services remain available for oncology patients, it is vital for radiation oncologists to advocate for continuation of these services to their respective legislative representatives and CMS.

[i] The Centers for Medicare and Medicaid Services, *Coronavirus Waivers & Flexibilities*, https://www.cms.gov/coronavirus-waivers.

[ii] The Centers for Medicare and Medicaid Services, *List of Telehealth Services*, https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes