

Physician Fee Schedule for Calendar Year 2023 Final Rule Summary

II.D. Payment for Medicare Telehealth Services Under Section 1834(m) of the Act

The [Final Rule \(fact sheet\)](#), in alignment with the Consolidated Appropriations Act (CAA) of 2022, implements an extension of a number of flexibilities for a 151-day period after the expiration of the Public Health Emergency (PHE):

- Geographic restrictions extended (§301): the originating site restrictions (which allowed the beneficiary to be located at any site in the United States at the time of the telehealth service) will remain lifted for the duration of the 151-day post-PHE period. These restrictions after the PHE do not apply to telehealth services for the “purpose of diagnosis, evaluation, or treatment of mental health disorders.”
- Delayed in-person requirement for the initiation of mental health services via telehealth (§304): the requirement that beneficiaries be seen by their practitioner in-person within 6 months prior to the initiation of mental health telehealth services will go into effect the 152nd day after the PHE expires.
 - Note for mental health telehealth services: For beneficiaries who initiated mental health care via telehealth during the PHE or during the 151-day period after the PHE ends, there is no immediate in-person requirement because the patient is considered “established.” These beneficiaries will therefore need to meet the requirement of an annual in-person visit with their mental health practitioner (“so long as any such subsequent telehealth service is furnished by the same individual physician or practitioner (or a practitioner of the same sub-specialty in the same practice) to the same beneficiary”).
- Extended audio-only flexibilities (§305): beneficiaries may continue to use audio-only technology for [certain](#) behavioral health and counseling services during the 151-day period after the expiration of the PHE.
- Payment for telehealth services by providers at Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs) will also be extended during the 151-day period after the expiration of the PHE.

Remember, the Consolidated Appropriations Act of 2022 provided exceptions for Medicare telehealth services, such as no geographic limitations and certain audio-only services for mental health and substance use disorder services, including opioid use disorder.

- Beneficiaries can still receive mental health and substance use services via telehealth in their homes (and certain other “residence-like” locations) after the end of the PHE and the 151-day post-PHE period. Beneficiaries can also utilize audio-only services if all other requirements are met. In circumstances where the patient does not have the capability or has not consented to two-way/audio-video technology, audio-only technology for mental health and substance use disorder services, including opioid use disorder, is permitted so long as all other requirements are met.



II.E. Valuation of Specific Codes

(34) Revisions to the “Incident to” Physicians’ Services Regulation for Behavioral Health Services

The [Final Rule](#) amends the requirements for behavioral health providers under the “incident to” regulations to allow behavioral health services to be governed by the general supervision (instead of direct supervision) of a physician or nonphysician practitioners (NPP) when services are provided by auxiliary personnel incident to services of a physician or NPP. CMS clarifies that payment for the provision of services by Licensed Professional Counselors (LPCs) and Licensed Marriage and Family Therapists (LMFTs) under Medicare can only be made indirectly through “incident to” billing. LPCs and LMFTs may perform services as auxiliary personnel “incident to” and under the direct supervision of a physician or NPP.

- CMS will not define “behavioral health services” for the purposes of this regulation and indicates that providers are in the best position to determine whether a service is a behavioral health service. However, CMS does note that it generally understands behavioral health services to include “any service furnished for the diagnosis, evaluation, or treatment of a mental health disorder, including substance use disorders (SUD).”
- CMS indicates that although it did not amend the definition of auxiliary personnel in this Final Rule, other clinician types (such as those that participate in providing behavioral health treatment services) who meet all requirements for auxiliary personnel (§ 410.26) could satisfy the definition of auxiliary personnel. CMS does not, however, specify which clinician types it believes meets the requirements of auxiliary personnel.

III.F. Modifications Related to Medicare Coverage for Opioid Use Disorder (OUD) Treatment Services Furnished by Opioid Treatment Programs (OTPs)

The [Final Rule](#) allows for the reimbursement of services provided by OTP mobile units, in accordance with Drug Enforcement Agency (DEA) and Substance Abuse and Mental Health Services Administration (SAMHSA) guidance. Payment for mobile units will be included in the Medicare OTP bundled payment codes (as well as add-on codes) for services that are “medically reasonable and necessary” and meet SAMHSA and DEA guidance. Such services will be considered as being provided at the physical location of the OTP for geographic adjustment purposes.

Additionally, in the [Final Rule](#), CMS will allow OTPs to initiate treatment of OUD with buprenorphine via two-way/audio-video modality, so long as it is authorized by SAMHSA and DEA at the time the service is initiated (42 CFR 8.12(f)(2)). Audio-only modality for the initiation of treatment with buprenorphine is also permitted when two-way/audio-video is not available to the patient and all other requirements are met. At the publication of the Final Rule, SAMHSA and DEA have authorized, for the duration of the PHE, an exemption for OTPs from performing an in-person physical evaluation (when a determination is made that an adequate evaluation can be achieved via telehealth). CMS is also including an OTP intake add-on code for the purposes of this provision. Further, CMS will be permitting periodic assessments via audio-only modality for the purposes of this provision until the end of calendar year 2023, to the extent that it is authorized by SAMHSA and DEA.

