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CMS Extends Certain Waivers; 'Conversations Are Happening'

By Nina Youngstrom

It almost sounds like a riddle, but CMS said May 15 that two waivers that expired with the end of the COVID-19 public health emergency (PHE) on May 11 won't expire yet. Or, more precisely, CMS will use its enforcement discretion through Dec. 31, 2023, according to updated answers to FAQs.^[1] CMS is allowing teaching physicians to continue virtual supervision of residents and not reverting to pre-PHE frequency limits on telehealth visits for subsequent hospital and skilled nursing facility (SNF) visits until 2024. Not to look a gift horse in the mouth, however, some hospitals are weighing whether to pretend this isn't happening because otherwise it requires them to unflip a switch after already flipping it in anticipation of the PHE's end, an attorney said.

"Those conversations are happening," said Richelle Marting, an attorney and certified coder in Olathe, Kansas. The decision on whether or how to operationalize last-minute extensions will depend partly on what's in the 2024 proposed Medicare Physician Fee Schedule (MPFS) rule, she noted.

"We spent two months educating our providers" and "implementing workflows and changing operations" to incorporate the expired waivers, Marting said. Now some of the waivers are being reversed and while "it's ultimately a good thing for providers," it turns the communication about the rules on its head. Already the variable dates during the PHE unwinding are an invitation for noncompliance, she noted.

In another significant move, the FAQs allow additional hospital-employed staff to continue to bill telehealth services provided to patients at home through the end of 2023. CMS had already said that provider-based departments will be able to bill Medicare for professional services delivered by telehealth to patients at home after the PHE ends without corresponding facility fees, as a CMS spokesperson explained to *RMC* April 20. In other words, provider-based departments won't jeopardize their status if they bill only professional fees.

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