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On the Calendar:

- **September 22:** HIPAA: Remote Workers and Emergency Situations Webinar (see page 6).
- **September 23:** "ADT" (information Blocking) Webinar (see page 6).
- **September 25:** Virtual Revenue Cycle Conference, (see page 8).
- **October 19-21:** MGMA Virtual Medical Practice Excellence Conference.

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The Pulse

September 2020

Message from Our President

"...and then COVID hit."

I'd be shocked if you haven't said these words sometime in the past couple of months. The pandemic has affected our work, our home life and the entire fabric of our society. Of course, IMGMA is no different.



Don Stumpp

We first postponed our Annual Conference from July to October, and have now made the difficult decision to cancel altogether. Most other state associations have done the same thing. National MGMA will transform their conference to a virtual conference. Register with code STATE100 and you will receive a \$100 discount!

Indiana MGMA considered converting our annual conference to virtual, but quite honestly, the technology, organization and coordination was overwhelming. We'll focus on next year and finding ways to bring value to our Business Partners and our members. **Thank you for your**

patience as we work through what is best for all involved.

Even without an Annual Meeting, we still need to conduct business in regards to officers for Indiana MGMA next year. You will be receiving an electronic ballot to elect officers.

I'm pleased to announce that Jim "Buck" Fuller has consented to serve as president beginning in October. Buck has been on the board since July of 2019. He attended the State Leaders Conference in Denver this past January, and is an excellent choice for president. He is currently the CFO of Methodist Sports Medicine in Indianapolis.

In addition, Carmen Garringer will be on the ballot for president-elect for a president seat in 2021-2022. Carmen had been slated to be IMGMA president in 2018, but an out-of-state job change derailed that plan. She is now the Executive Director of Primary Care at Lutheran Health Physicians in Ft Wayne. We're so glad she will be on the leadership team next year.

How about you? Will you consent to be part on Indiana MGMA Leadership and

continued on page 2



Medical Practice Excellence Conference

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ACMPE CORNER: On Demand Testing Available

MGMA began offering **on demand testing** for those registering their board certification examinations starting March 9, 2020.

ACMPE program participants can register and sit for their exams with as little as two days' notice any time of the year. Before registering for an exam, a participant must:

- Be an MGMA member,
- Have been accepted into the ACMPE board certification program,
- Completed the education and experience requirements.

For more information about scheduling, rescheduling, and scoring, click the button below.

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President's Message ... *continued from page 1*

serve on the Board or on a committee? We will be making a call out for those interested to fill a Board Director position.

Long time board member and Past President Phil Ellis will be stepping off the Board in October. Phil has been a supporter and advocate for IMGMA for many years even before serving. When Carmen was unable to assume the president role, Phil consented to remain as president another year. He brought great knowledge, expertise and leadership to IMGMA. On behalf of all the members Phil, thank you!

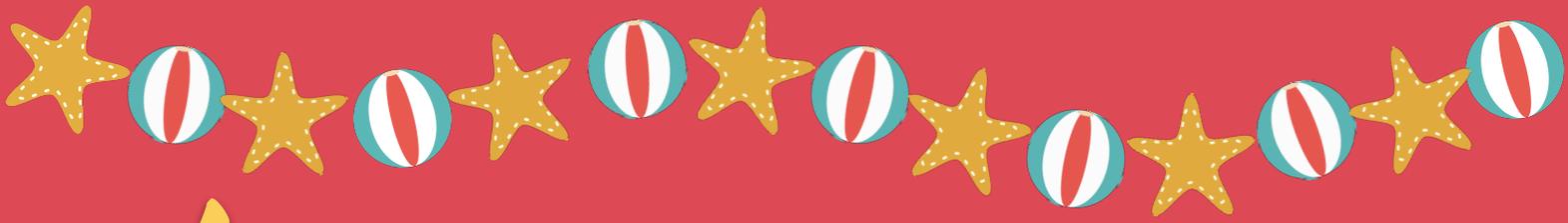
In other news, we will change our Revenue Cycle Conference in Indianapolis to a virtual event. A one day event is much easier to handle. Look for more information about that in this newsletter. The Board will begin to work on the 2021 RCC's and Annual Conference for 2021 now scheduled for July 19-21, 2021. (Please note that is Monday through Weds.)

The only thing I think I've left out is that my term as President ends in October so this is my last newsletter (although I bet I could always have a guest column!). This actually concludes my second stint as President having served in 2010-12. For me, it's been fabulous. I have connections and a professional network throughout Indiana and even nationally. My career has advanced far more than I could imagine. I have gained more from IMGMA than I could ever give. Like anything in life, you only get out of it, what you put into it. I encourage you to be active, come to events (well, when we start to have them again!) and consider a leadership position. You've chosen medical group management as your career – so why not be a leader in the leading organization for your professional?

Before I sign off though, I want everyone to know the tremendous job done by our Executive Director, Angie Stevenson. Angie is unique in that she is also a member, the COO of the Indiana Hand to Shoulder Center, and our ACMPE representative. She keeps the Board focused and makes IMGMA run. She's been a joy to work with and I appreciate what she has done for me and the Board. I know she will continue her excellent service for Buck and Carmen.

I hope the best for you in the future, and I pray that you and your family stay healthy and are not affected by this devastating disease.

by **IMGMA President Don Stump**
CEO/CFO of Careage of Logansport, Inc.



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RECOMMENDED READING: Including Everyone on the Journey

Why leaders need to be humble, self-aware, and inclusive in this new, uncertain era, according to Korn Ferry CEO Gary Burnison.

READ NOW

Welcome to our Newest IMGMA Business Partner!



Ilyas Baig, Partner
ibaig@arthurlawrence.net

HIPAA Considerations for Social Media Use in Your Practice

The Coronavirus pandemic has changed how we live, how we work, how we socialize. The number of people who were utilizing social media and mobile applications in their daily lives before the pandemic was already high. Facebook alone reported 2.6 billion users in the first quarter of 2020¹.



Loretta Maddox, MS, FACMPE

Since COVID-19 has limited so much of how we interact, the number of people “living” online has increased even more. A recent study revealed that mobile application usage grew 40% in the second quarter of 2020, reaching over 200 billion hours during the month of April 2020¹¹. Based on these numbers, having an online presence is no longer optional for healthcare providers who want to stay competitive.

Many healthcare providers have embraced social media by utilizing Facebook, Instagram, Twitter, and other platforms to engage current patients and attract new ones. As fantastic as this is from a marketing and patient experience

standpoint, some risks need to be considered. One area of particular risk involves the Health Insurance Portability and Accountability Act (HIPAA). To understand the risks associated with HIPAA and social media, permitted and authorized disclosures under the Privacy Rule need to be defined.

HIPAA Uses and Disclosures Defined

Permitted Uses and Disclosures

There are six different situations in which the Privacy Rule permits a covered entity to disclose protected health information (PHI)¹¹¹:

- To the individual
- For treatment, payment, and healthcare operations (TPO)
- When given the opportunity to agree or object
- Incident to an otherwise permitted use or disclosure (Incidental Disclosures)
- For public interest and benefit activities
- When using limited data sets

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Authorized Uses and Disclosures

Uses and disclosures that are not required or permitted under the Rule must be authorized in writing by the individual or the individual's personal representative. In addition, the authorization must include specific language as outlined in the Privacy Rule at [45 CFR 164.508\(b\)](#) and [164.508\(c\)](#).

Posting PHI on Social Media is Not a Permitted Disclosure

There have been many incidents of patient information being disclosed online, in violation of the Privacy Rule. Here are just a few examples:

- A nurse posted on a social networking site about her experience with a patient and divulged enough information to identify the patient.^{IV}
- A dental practice responded to a patient's comment on social media, costing the practice \$10,000 and a corrective action plan with the Department of Health and Human Services, Office for Civil Rights (OCR).^V
- A physical therapy practice paid a \$25,000 settlement to the OCR for posting patient testimonials on their website without proper written authorization.

It is essential to understand what information is considered PHI when posting online. Eighteen elements are considered individually identifiable health information (IIHI) by the Privacy Rule. Any one of these 18 identifiers paired with the past, present, or future provision of care, makes the information protected under HIPAA. A patient name, a full-face photo, or even a picture of a unique tattoo can be considered PHI. If disclosed on social media without proper written patient authorization, it is a violation of the HIPAA Privacy Rule, even in situations where the patient provides verbal consent.

HIPAA Compliant Authorization

For an authorization to be considered HIPAA compliant, it must include the following:

- A description of the information to be used or disclosed
- The name or other specific identification of the individual authorized to make the requested use or disclosure
- The name or other specific identification of whom the covered entity may make the requested use or disclosure
- A description of reason for the requested use or disclosure
- An expiration date or event
- Signature and date by the individual or the individual's personal representative
- The right to revoke the authorization and how to do it
- The inability of the covered entity to condition treatment on the authorization
- The potential for information to be redisclosed by the recipient and no longer protected
- A statement that the covered entity will receive payment specifically for the use or disclosure, if that is the case

The covered entity must keep a copy of the signed authorization and provide one to the patient. If a patient

chooses to revoke their authorization, all future uses or disclosures must cease.

Conclusion

Incorporating social media use in your practice can be beneficial for patient engagement, education, and marketing products and services. To ensure HIPAA compliance when using patient photos, testimonials, and other patient-related information online, make sure to obtain a HIPAA compliant authorization from the patient before such use. Having policies and procedures for appropriate use, assigned responsibility for managing social media platforms, and ongoing training for your entire staff (including physicians) will help keep your practice in compliance.

For questions about this article or more information about managing compliance in your practice, reach out to the author at <http://info.healthcarecompliancepros.com/loretta>.

- I. <https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/>
- II. <https://www.appannie.com/en/insights/market-data/mobile-app-usage-surged-40-during-covid-19-pandemic/>
- III. <https://www.hhs.gov/sites/default/files/privacysummary.pdf>
- IV. <https://www.clinicaladvisor.com/home/my-practice/legal-advisor/social-media-post-prompts-firing/>
- V. <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/elite/index.html>

by **Loretta Maddox, MS, FACMPE, CHC**
Sr. Compliance Consultant with *Healthcare Compliance Pros*



UPCOMING WEBINARS

HIPAA: Remote Workers and Emergency Situations

presented by Healthcare Compliance Pros
12noon, Tuesday, September 22, 2020

REGISTER NOW

"ADT" (information Blocking)

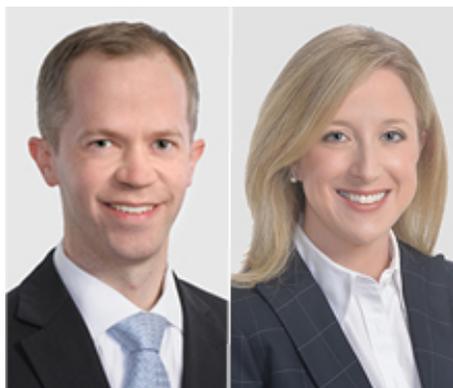
presented by Natalie Stewart of PHA
12noon, Wednesday, September 23, 2020

The information blocking rule, with defined exceptions, prohibits health providers, technology vendors, health information exchanges and health information networks from practices that inhibit the exchange, use, or access of electronic health information (EHI).

SAVE THE DATE

Don't Be Surprised by Indiana's New Surprise Billing Requirements

House Bill 1004 (“HB 1004”), signed into law earlier this year, imposes new patient billing requirements affecting health care providers and health care facilities beginning July 1, 2020. With few exceptions, HB 1004 requires health care providers and facilities to give a patient a good faith estimate of scheduled health care services within five (5) days of receiving a request and to post notices to patients of their right to receive the good faith estimate. Health care providers and entities subject to the new billing requirement may be subject to administrative penalties for noncompliance.



Brandon W. Shirley and Stephanie T. Eckerle

First, HB 1004’s new billing requirements apply only to nonemergency health care services provided by providers

(other than dentists and optometrists) and at health care facilities. Effective July 1, 2020, those providers and facilities must give a patient a good faith estimate of the charge of the nonemergency health care service within five (5) days of receiving the request. The minimum requirements for the good faith estimates as it applies to practitioners and exceptions to the law are explained in the Practitioner Good Faith Estimate Decision Tree.

Second, providers and facilities must publicize a patient’s right to request this information through waiting room and internet postings and in person notices to patients who have had a nonemergency procedure ordered. Those notices must explain to patients their right to request a good faith estimate in accordance with the new law. Practitioners and entities who fail to meet these new requirements are subject to administrative penalties, including licensure sanctions or monetary penalties.

Third, an out-of-network provider providing services to an insured patient at an in-network facility must notify the

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Join Us at the IMGMA Virtual Revenue Cycle Conference

This fall, IMGMA will host our first virtual Revenue Cycle Conference. Formerly known as Third Party Payer Day, our Revenue Cycle Conferences have an expanded focus and even offer AAPC, HFMA, and ACMPE CEUs.

This event is designed for practice managers, business office managers, administrators, front office, and billing, insurance and coding staff.

While our in-person events had to be cancelled because of COVID-19, we are excited to offer this virtual event featuring representatives from WPS GHA, Anthem, United Healthcare, and CareSource. Also, learn about E/M Visit Level Changes from Cheryl Carr, CPC, CCS-P COO, Bill Dunbar and Associates, LLC, and Payment Options to Cut Internal Cost & Bring In More Patient Revenue from Jake Bourassa, RCM and Digital Solutions Consultant, Professional Office Services, Inc.

Watch for this popular in-person series to return to several locations around the state in 2021!

REGISTER

AGENDA

Surprise Billing ... *continued from page 7*

patient of the anticipated charges for their services and obtain the patient's consent to bill at a higher out-of-network rate. Patients are not legally required to pay a higher out-of-network cost when such notice is not provided and consented to in accordance with the new law.

HB 1004 is a complex bill with numerous definitions and new requirements imposed upon providers and facilities. Understanding your role in complying with the new law and adapting policies and procedures is critical to avoiding potential administrative sanctions. Please contact [Brandon W. Shirley](#), or [Stephanie T. Eckerle](#), to discuss your practice and compliance with HB 1004.

Mr. Shirley and Ms. Eckerle hosted a webinar on July 23, 2020, which provided a more detailed overview of HB 1004 applicability to providers and various types of health care facilities, such as hospitals, ambulatory surgical centers and laboratories. You may view the webinar [here](#).

by **Brandon W. Shirley, Senior Associate,**
and Stephanie T. Eckerle, Partner
Krieg Devault

Originally published on the Krieg Devault blog.



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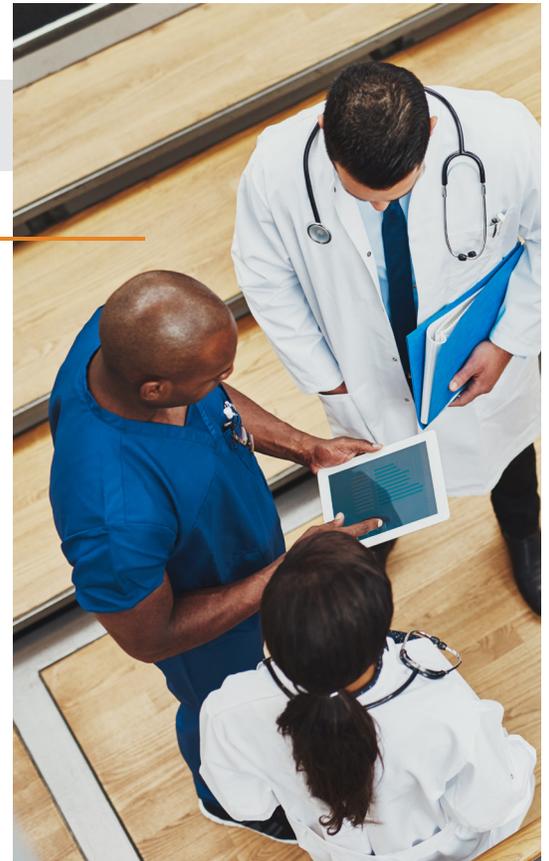
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IMGMA Board Changes

Several changes will be made to the IMGMA Board of Directors over the next month.

First, IMGMA President Don Stumpp, CEO/CFO, Careage of Logansport, Inc., will end his presidency on October 31, 2020.

At that time, Buck Fuller, CFO, Methodist Sports Medicine, will assume the role of IMGMA president.

Fuller's nomination for president-elect is Carmen Garringer, Executive Director Primary Care, Lutheran Health Physicians. IMGMA members will receive an electronic ballot to confirm her nomination, and results will be announced in December.

If confirmed, Carmen will serve as president-elect beginning October 31, 2020, and will become president on October 31, 2021.

Finally, long time board member and IMGMA past president, Phil Ellis has tendered his resignation from the board of directors effective October 31, 2020. He will be missed greatly!

Letter from Our Incoming President

Thanks to all of the IMGMA Board members for your encouragement and support. I am looking forward to this role as well as the challenges and opportunities we will face over the next year. Having been on the board the last two years, I am optimistic about our direction and momentum. We have added some strong new members to complement our experienced, long time contributors that have built IMGMA to be what it is today.



Buck Fuller

A little bit about me personally. A local product, I grew up in Anderson, Indiana. I graduated from Ball State University in 1991 with a BS in Finance. I finished my MBA at Ball State in 1996. I also completed my Bachelors in Accounting from Indiana University - Kokomo in 2012. I have two amazing children, Isabella - 16, and Ezra - 14. They inspire me every day to be the best person I can be. I have a passion for the great outdoors. I enjoy camping, hiking, boating and water sports, snowboarding, running, cycling and competing in triathlons.

I began my healthcare career at Ball Hospital in Muncie as the Finance Director for the outpatient rehab and homecare nursing divisions, 2000-2005. I was with St Joseph Hospital in Kokomo 2006-2012 as the Sr. Financial Consultant. During 2012-2016 I worked for Honeywell as the Controller for a global industrial manufacturing division. My passion for healthcare brought me back to Obstetrics & Gynecology of Indiana where I was the CFO from 2016-2020. Just prior to my departure from there, we successfully merged the 31 physician-owned group into Axia Women's Health, a private equity backed, New Jersey based medical group of over 300 physicians. I am currently the CFO for Methodist Sports Medicine - an exceptional group of 26 orthopedic and sports medicine physicians.

Again, I am looking forward to serving as the President of IMGMA and working with Angie, the Board, all of the committee members and business partners over the next year. **A big thank you to Phil Ellis and Don Stumpp for all of the guidance and support you both have provided over the last two years and even the last two decades!!!** We all hope you will continue to be involved with IMGMA in the future.

by IMGMA President-Elect Buck Fuller
CFO, Methodist Sports Medicine

Change is Good



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How Can Outsourced Accounting Support Help You Cope With COVID-19?

The financial downturn caused by COVID-19 marks an abrupt end to one of the longest periods of consistent economic growth in U.S. history. In the span of just a few months, every decision has taken on much greater significance, and the margin for error has dwindled down to the thinnest of cushions. This environment is causing many businesses to take a close look at their accounting functions.



Zach Sauder

Some companies can survive inadequate invoicing and payment management processes when times are good but learn quickly in a downturn that failure to manage these functions in a cost-efficient manner can create a drag on the business that none can afford. Others that have excelled by going with their gut and reacting quickly to market changes during a strong economy are struggling to analyze and understand what their numbers are telling them about how to manage through a crisis like this one. These extraordinary circumstances are leading many executives to conclude that outsourced accounting support can have an outsized impact on their ability to survive the downturn and position themselves for success when it ends.

Why Now?

It might seem counterintuitive to institute a systemic change to your accounting processes in the midst of so much turmoil. Many businesses are hunkering down with the systems that got them to this point and choosing not to think about major changes to fundamental functions like accounting. But the fact is that the economic downturn is already forcing changes on us at a level not seen in generations. Many businesses are being compelled to reevaluate processes from the supply chains that deliver their materials and supplies to the customer interfaces that get their products and services out to the public. If your accounting processes aren't delivering the transactional and strategic support you need, you may not find a *better* time to make this change. Consider how much more valuable some of the key benefits of an outsourced accounting function are in the current situation:

- Strategic CFO advisory services provide a wealth of added expertise at this critical time. Senior-level professionals can give your business the benefit of decades of experience managing businesses through economic shifts.
- If your business has a strong CFO in place, a trusted outsourced accounting provider can offer additional support and just-in-time insights and analysis to help get through today's challenges.

- On the transactional side, outsourced accounting providers use cloud-based solutions to provide the "blocking and tackling" support for basic functions like billing and invoicing, expense management, and month-end closings. If businesses have learned anything in the last few months, it's just how much can be done remotely. If you're struggling to keep all of the "i's" dotted and "t's" crossed, outsourcing these activities can help to eliminate one of the problems keeping you awake at night.
- If you're suddenly spending a lot more time trying to make sense of your financial reports, reporting and analytics support can help you figure out what your balance sheet and income statement are telling you. There's no doubt that your monthly and quarterly reports look a lot different this year than they have in the past. Outsourced accounting professionals can give you assurance that the information in those reports is accurate and help you interpret what all of the changes mean for the future of your business.

We've seen the economy face challenges before and it always finds a way to reach a new normal and return to growth. The businesses that make the right financial choices in the midst of the current crisis will be the ones best positioned to thrive when things get back on track. If your business needs transactional, analytical, or strategic finance and accounting support to be ready for those opportunities, now is the time to put those processes in place.

Moving Forward

With so much riding on the ability of your accounting function to meet day-to-day needs as well as deliver the big-picture information and insights you require to manage your business through this crisis, now is the perfect time to consider outside support. Customized outsourced accounting solutions like those we provide at Katz, Sapper & Miller can shore up the weak points in your financial processes and provide additional resources to support those who are doing all they can to keep your business afloat.

To learn more about how our team of professionals can help you with outsourced finance and accounting solutions, [please complete this form](#).

by **Zach Sauder**
Director in Katz, Sapper & Miller's
Outsourced Finance & Accounting Services Group
Originally published on the KSMCPA Blog.



Proposed 2021 Medicare Physician Fee Schedule: What You Need to Know

The Centers for Medicare and Medicaid Services (CMS) recently published [the proposed draft of the Medicare Physician Fee Schedule \(PFS\) for 2021](#). At the heart of the MPFS is the annual conversion factor update. After legislatively mandated adjustments, the 2021 conversion factor will be \$32.26, a \$3.83 (or 11 percent) decrease from the 2020 PFS conversion factor of \$36.09.

In addition to changing the payment rates for 2021, the Proposed Rule also recommends changes to several payment policies. We've highlighted a few of the biggest changes.

E/M Changes

In the 2020 Medicare Physician Fee Schedule, CMS finalized simplified coding and billing requirements for office/outpatient E/M visit codes that will go into effect January 1, 2021. Along with those changes, RVUs for the three highest E/M levels for both new and established patients will be increased to reflect "the changes in the practice of medicine, recognizing that additional resources are required of clinicians to take care of their Medicare patients, of which two-thirds have multiple chronic conditions," according to CMS.

In the proposed 2021 rule, CMS also recommended similar increases to the value of many other services that are comparable to or include office/outpatient E/M visits, including emergency department visits, end-stage renal disease capitated payment bundles, physical and occupational therapy evaluation services, and others. The agency says these changes will "help to ensure that CMS is appropriately recognizing the kind of care where clinicians need to spend more face-to-face time with patients, like primary care and complex or chronic disease management."

For many office-based specialties, the changes are expected to result in a positive net increase in Medicare allowable charges, including the following:

- Allergy/Immunology: +9%
- Endocrinology: +17%
- Family Practice: +14%
- Hematology/Oncology: +14%
- Interventional Pain Management: +7%
- Rheumatology: +16%

For other specialties, especially hospital-based and non-patient facing specialties, the policy changes are expected to result in significant decreases in Medicare allowable charges, including the following:

- Anesthesiology: -8%
- Cardiac Surgery: -9%
- Chiropractic: -10%
- Emergency Medicine: -6%
- Interventional Radiology: -9%
- Nurse Anesthetists/Anesthesiologist Assistants: -11%

- Pathology: -9%
- Physical Therapists/Occupational Therapists: -9%
- Radiology: -11%

Telehealth

During the COVID-19 public health emergency (PHE), CMS temporarily added numerous codes to the list of approved telehealth services. These temporary codes are known as Category 2 telehealth codes. In the proposed rule, CMS is recommending that some of these services be permanently added to the approved telehealth services list (Category 1 codes), some be extended through the calendar year in which the PHE ends (what are now being called Category 3 codes), and some be removed from the list at the end of the PHE (or remain Category 2 codes).

Some services added as Category 2 codes during the PHE are so similar to other Category 1 codes that CMS is recommended they be added to the permanent list. Those services include the following:

- Group Psychotherapy (CPT code 90853)
- Domiciliary, Rest Home, or Custodial Care services, Established patients (CPT codes 99334-99335)
- Home Visits, Established Patient (CPT codes 99347-99348)
- Cognitive Assessment and Care Planning Services (CPT code 99483)
- Visit Complexity Inherent to Certain Office/Outpatient E/Ms (HCPCS code GPC1X)
- Prolonged Services (CPT code 99XXX)
- Psychological and Neuropsychological Testing (CPT code 96121)

According to CMS, services which do not present "significant concerns" with regards to "patient safety, quality of care, or the ability of clinicians to provide all elements of the service remotely" are being proposed for continuation on the temporary list of telehealth services (Category 3) through the calendar year in which the PHE ends. Those services include the following:

- Emergency Department Visits (99281-99283)
- Domiciliary, Rest Home, or Custodial Care services, Established patients (99336, 99337)
- Home Visits, Established Patient (99349, 99350)
- Nursing facilities management (99315, 99316)
- Psychological and Neuropsychological Testing (96130-96133)

While all the services CMS has added to the temporary list during the COVID-19 public health emergency will continue for the duration of the emergency period as Category 2

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codes, some have been identified as not appropriate for Category 3 status (continuing through the end of the year in which the PHE ends) because of “increased concerns for patient safety or jeopardizing quality of care; and furnished fully and effectively, including all elements of the service, by a remotely located clinician via two-way, audio/video telecommunications technology.”

The extensive list includes the following:

- Initial and final/discharge interactions (CPT codes 99234-99236 and 99238-99239)
- Higher level emergency department visits (CPT codes 99284-99285)
- Hospital, Intensive Care Unit, Emergency care, Observation stays (CPT codes 99217-99220; 99221-99226; 99484-99485, 99468-99472, 99475-99476, and 99477- 99480)

At the same time, CMS is requesting comment on the specific codes mentioned above to see if they should be considered for Category 3 status.

Direct Supervision by Interactive Telecommunications Technology

During the COVID-19 PHE, CMS revised the definition of “direct supervision” to include virtual presence of the supervising physician or practitioner using interactive audio/video real-time communications technology. In the 2021 PFS proposed rule, CMS is proposing to extend that revision through December 31, 2021.

MIPS

In light of the COVID-19 PHE, CMS has proposed limited changes to MIPS policies that “focus on the highest priorities for the program.” Here are a few changes to particularly take note of.

Quality and Cost Performance Category Weighting

Performance categories will be weighted as follows for 2021, representing slight changes from 2020 (as noted below):

- Quality = 40% (down 5% from 2020)
- Cost = 20% (up 5% from 2020)
- Promoting Interoperability = 25%
- Improvement Activities = 15%

By law, the Cost and Quality performance categories must be equally weighted at 30% beginning in the 2022 performance period.

Performance Threshold and Payment Adjustments

Also proposed for the 2021 performance period, the performance threshold would increase to 50 points, up from 45 in 2020, and the exceptional performance threshold would remain at 85 points,

As well, in 2020, the MIPS program reached the maximum negative payment adjustment of -9 percent, with positive payment adjustments up to a factor of 9 percent, and those adjustments will remain the same for 2021.

Performance Category Updates

Among the various performance categories, the following updates and changes have been proposed for 2021 and beyond:

- **Quality:** Use performance period, not historical, benchmarks to score quality measures for the 2021 performance period; Address substantive changes to 112 existing MIPS quality measures, removing 14 quality measures from the MIPS program, and proposing a total of 206 quality measures starting in the 2021 performance year, including two new administrative claims-based measures.
- **Cost:** Update existing measure specifications to include telehealth services that are directly applicable to existing episode-based cost measures and the TPCC measure.

MIPS Value Pathways

Because of the COVID-19 PHE, MIPS Value Pathways (MVPs), which were supposed to begin in 2021, will not be available for MIPS reporting until the 2022 performance period, or later. In the meantime, the 2021 proposed rule did propose several tweaks to the program, including allowing qualified clinical data registries (QCDRs) to support MVPs starting in 2022.

Complex Patient Bonus

Finally, CMS is proposing to double the complex patient bonus for the 2020 performance period only. Clinicians, groups, virtual groups and APM Entities would be able to earn up to 10 bonus points (instead of 5 bonus points) to account for the additional complexity of treating their patient population due to COVID-19.

Learn More

For more information about the proposed rule, including numerous policies that we didn’t have room to highlight, check out the following resources:

- [Proposed Policy, Payment, and Quality Provisions Changes to the Medicare Physician Fee Schedule for Calendar Year 2021 – CMS Fact Sheet](#)
- [2021 Quality Payment Program Proposed Rule Overview – CMS Fact Sheet {PDF DOWNLOAD}](#)

by CIPROMS, Inc.

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HIPAA Enforcement Discretion

What It Means for Your Practice During COVID-19 and Beyond

Amid a global pandemic, life as we know it changes. The practice of medicine changes, too. Social distancing makes seeing patients in the office challenging. Having a fully staffed office, in tight spaces, sharing office supplies and equipment has been another challenge, especially with employees who fall into high-risk categories.



Loretta Maddox, MS, FACMPE

Medical practices must adapt to the current environment not only to be socially responsible but frankly to stay in business. These adaptations force new procedures and ways of doing things outside the “normal” realm of operations. Providing telehealth services is a logical solution for some patients' treatment during these times, but not all practices were appropriately prepared to conduct business in this manner before COVID-19. Recognizing this issue, the Department of Health and Human Services (HHS), Office for Civil Rights (OCR), announced the Notification of Enforcement Discretion for violations of the Health Insurance Portability and Accountability Act (HIPAA) in connection with the good faith provision of telehealth services.

Providing Telehealth

HHS has defined telehealth as “the use of electronic information and telecommunications technologies to support and promote long-distance clinical health care, patient and professional health-related education, and public health and health information.” The technologies that can be used include “videoconferencing, the internet, store-and-forward imaging, streaming media, and landline and wireless communications.”¹

Medical practices may provide telehealth services by telephone, text messaging, or video communication and still be covered by enforcement discretion. However, payors may impose restrictions on the types of technology allowed for reimbursement purposes. Payor restrictions do not limit enforcement discretion.

What Enforcement Discretion Means

Enforcement discretion applies to all services provided during the COVID-19 public health emergency (PHE), not just services related to the testing, diagnosis, or treatment of COVID-19. The purpose is to protect individuals at high risk (employees and patients), keep infectious individuals away from others to decrease the spread of the virus, and allow a higher number of patients to be seen without having to leave their home.

When providing these services, covered entities will not be subject to penalties for violations of the HIPAA Privacy, HIPAA Security, or Breach Notification Rules if services are being provided in good faith.

Bad Faith

If you are wondering what constitutes good faith, let's take a look at what HHS considers “bad faith.” Doing any of the following while providing telehealth services would vacate enforcement discretion:

- Criminal acts such as fraud, identity theft and intentional invasion of privacy
- Uses or disclosures of patient information that are prohibited by HIPAA (sale of data, using data for marketing without authorization)
- Violations of state licensing laws or professional, ethical standards resulting in disciplinary actions
- Use of public-facing remote communication products, such as TikTok, Facebook Live, Twitch, or chat rooms like Slack

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HIPAA Compliant Applications

As mentioned earlier, enforcement discretion applies to the Breach Notification Rule, meaning that if a breach occurs while providing telehealth services in good faith, no penalties will be applied. However, your practice should consider using telehealth platforms known in the industry for being HIPAA compliant and who are willing to execute a business associate agreement (BAA). HHS considered this and provided a list of telehealth vendors that represent themselves as HIPAA compliant and will sign a BAA. These vendors can be found in the [Notice](#).

Beyond COVID-19

A recent [report from HHS](#) showed a dramatic uptick in telehealth utilization by Medicare beneficiaries. Before COVID-19, Medicare primary care telehealth visits were less than one percent. In April, 43.5% of Medicare primary care visits were provided through telehealth. With the Centers for Medicare and Medicaid Services (CMS) proposing in August to expand telehealth benefits permanently, one can assume this is a trend that is not going away.

Even though it may feel like it, the current public health emergency will not last forever, and neither will enforcement discretion. If telehealth services are provided in your practice, or you are considering adding telehealth as an option for your patients, it is in your best interest to get compliant now. Even if an issue falls under enforcement discretion, the OCR can still penalize your practice for non-compliance in other areas of the HIPAA Rules.

Now is the time to review policies and procedures that relate to telehealth. Make sure that your telehealth vendor is HIPAA compliant and will sign a BAA. Ensure that all healthcare providers and other members of the workforce involved in providing telehealth services understand which platforms they can use and which ones to avoid. If there are methods of telehealth being used such as email and text messages that involve PHI and the PHI is not encrypted, look into ways to change these processes before enforcement discretion expires. The longer systems are in place, the harder it is to change them once the time comes.

For questions about this article or more information about managing compliance in your practice, reach out to the author at <http://info.healthcarecompliancepros.com/loretta>.

1. <https://www.hhs.gov/sites/defaultfiles/telehealth-faqs-508.pdf>

by **Loretta Maddox, MS, FACMPE, CHC**
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IRS Adds Frequently Asked Questions Addressing Taxation of Provider

On July 10, 2020, the Department of Health and Human Services (“HHS”) updated its Frequently Asked Questions (“FAQ”) webpage to provide guidance on the tax treatment of payments received under the Public Health and Social Services



Kendall A. Schnurpel and Brian M. Heaton

Emergency Fund (the “Provider Relief Fund”). The new FAQ makes it clear that a payment received from the Provider Relief Fund is includible in gross income of for-profit providers. However, Provider Relief Fund payments received by tax-exempt health care providers are not subject tax, unless the payment relates to an unrelated trade or business activity.

Background

The Provider Relief Fund provisions of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) created a \$100 billion fund to reimburse eligible health care providers for health care-related expenses or lost revenues attributable to the COVID-19 pandemic. An additional \$75 billion was appropriated to the Provider Relief Fund under the Paycheck Protection Program and Health Care Enhancement Act. In early April, the HHS began issuing Provider Relief Fund payments to selected health care providers.

Tax Treatment of Provider Relief Fund Payments

In enacting the CARES Act, Congress did not address the tax treatment of the Provider Relief Fund payments. Many providers and practitioners were hopeful that the IRS and HHS might determine that the Provider Relief Payments constituted qualified disaster relief payments, excludable from income under section 139 of the Internal Revenue Code (the “Code”). However, without much fanfare, both the IRS (on July 6) and HHS (on July 10), in updates to existing FAQ’s, made clear this would not be the case. Both stated that “[a] payment to a business, even if the business is a sole proprietorship, does not qualify as a qualified disaster relief payment under section 139.” Instead, payments from the Provider Relief Fund are includible in gross income under section 61 of the Code.

However, both the IRS and the HHS distinguished payments made to tax-exempt health care providers, described in section 501(c) of the Code. Provider Relief Fund payments made to these tax-exempt providers are not subject to federal income tax unless the payments reimburse the provider for expenses or lost revenue attributable to an unrelated trade or business, as defined in section 513 of the Code.

If you have any questions regarding the Provider Relief Fund payments, or any other tax issue impacting health care organizations, please contact **Kendall A. Schnurpel**, **Brian M. Heaton**, or your regular Krieg DeVault attorney.

by Kendall Schnurpel, Of Counsel attorney,
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Originally published on the Krieg DeVault blog.



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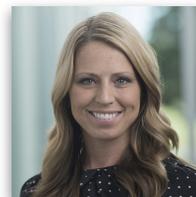
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