



## ***Missouri Alliance for HOME CARE***

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**Please find information related to the following:**

- CMS Permits Outpatient Services in the Home
- New IRS Guidance Eliminates all Tax Benefits of PPP Loan Forgiveness
- OCR Issues Guidance on Covered Health Care Providers and Restrictions on Media Access to Protected Health Information about Individuals in Their Facilities
- DSDS Releases COVID-19 Information – Community Reintegration; Testing Reimbursement; Analytics
- Battelle Decontamination System – Jeff City Armory Now a Drop-Off/Pick-Up Location

### **CMS Permits Outpatient Services in the Home**

In the most recent COVID-19 Interim Final Rule with Comment (IFC), the Centers for Medicare & Medicaid Services (CMS) provides flexibility for hospital outpatient departments (HOPD) to provide services to their patients in the home. During the COVID-19 PHE, a patient's home may be considered an off-site location of a hospital department and only registered outpatients may receive services in the home by the HOPD.

The HOPD may bill for services of registered outpatients provided in the patient's home by the HOPD clinical staff, but the services provided must require the staff be present in the home, and cannot be provided via telecommunications, such as wound care, drug administration etc. However, the physician/practitioner providing care in the HOPD may conduct a visit with the patient via telehealth and bill it as an HOPD visit.

The HOPD services may not be provided to patients in the home that are under a home health plan of care (POC). However, a home health agency may not open a patient to services if the HOPD is providing outpatient services in the home.

Although this might be helpful for HOPD patients receiving wound care and other recurring outpatient services, it could compete with potential home health admissions.

**Below are excerpts from the rule:**

#### **Hospital In-Person Clinical Staff Services in a Temporary Expansion Location (which may be home)**

##### **Clinical staff**

Hospitals also provide services that are furnished by clinical staff under a physician's or qualified NPP's order that do not require professional work by the physician or qualified NPP, and thus

are billed only under the OPPTS when furnished by the hospital and are not separately billable under the PFS. Wound care, chemotherapy administration, and other drug administration are examples of these types of services.

This flexibility enables hospitals to furnish these clinical staff services in the patient's home as an outpatient PBD and to bill and be paid for these services as HOPD services when the patient is registered as a hospital outpatient. Because these services have to be provided in person by clinical staff, they cannot be furnished by telecommunication technology by the hospital. In these instances, hospital clinical staff must be physically present in the patient's home or other temporary expansion location

Importantly, during the time period that the patient is receiving services from the hospital clinical staff as a registered outpatient, the patient's place of residence cannot be considered a home for purposes of HHA services, because HHAs cannot bill for services furnished in PBDs of hospitals, and a patient's home has provider-based status when the patient is a registered hospital outpatient and HOPD services are being furnished.

The hospital should be aware if the patient is under a home health plan of care, and it must not furnish services to the patient that could be furnished by the HHA while the plan of care is active. That is, to the extent that there is some overlap between the types of services a HHA and a HOPD can provide, and the patient has a current home health plan of care, the hospital should only furnish services that cannot be furnished by the HHA.

## **Hospital Services Accompanying a Professional Service Furnished Via Telehealth**

### **Professional services**

For many professionals, the HOPD is the usual location where they furnish services. For the duration of the COVID-19 PHE and effective March 1, 2020, when a practitioner who ordinarily practices in a HOPD furnishes a telehealth service to a patient who is located at home (or otherwise not in a telehealth originating site), they would submit a professional claim with the place of service code indicating the service was furnished in the HOPD.

## **New IRS Guidance Eliminates all Tax Benefits of PPP Loan Forgiveness**

*(A special report from Ted Cuppett of [The Health Group](#))*

The IRS has released guidance ([Notice 2020-32](#)) to explain that a taxpayer that receives a loan through the Paycheck Protection Program (PPP) is not permitted to deduct expenses that are normally deductible under the Code, to the extent the expenses were reimbursed by a PPP loan that was then forgiven. This Notice would effectively eliminate all the tax benefits to employers that were provided for in the **CARES Act**.

Section 1106(i) of the CARES Act addresses certain Federal income tax consequences resulting from covered loan forgiveness. Specifically, that subsection provides that, for purposes of the Code, any amount that (but for that subsection) would be includible in gross income of the recipient by reason of forgiveness described in section 1106(b) "shall be excluded from gross income." Thus, section 1106(i) of

the **CARES Act** operates to exclude from the gross income of a recipient any category of income that may arise from covered loan forgiveness, regardless of whether such income would be (1) properly characterized as income from the discharge of indebtedness under section 61(a)(11) of the Code, or (2) otherwise includible in gross income under section 61 of the Code.

While an overwhelming majority of businesses benefit from PPP loans that are forgiven, the question is whether or not the position taken by the IRS in Notice 2020-32 is consistent with the intent of the CARES Act. It is our opinion that it does not, and Congress did not intend the tax consequences to be as described in Notice 2020-32. Why would the legislation specifically state that the forgiveness would not be taxable if, in fact, the forgiveness is taxable by reducing expenses by the amount of the forgiveness? Hopefully, this will be corrected quickly if Congress truly wanted the forgiveness to be tax-free.

Everyone who applied for and received a PPP loan should contact their Congressional representatives to make certain that they understand that Notice 2020-32 effectively makes the loan forgiveness taxable to the recipient.

## **OCR Issues Guidance on Covered Health Care Providers and Restrictions on Media Access to Protected Health Information about Individuals in Their Facilities**

The Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) issued additional guidance reminding covered health care providers that the HIPAA Privacy Rule does not permit them to give media and film crews access to facilities where patients' protected health information (PHI) will be accessible without the patients' prior authorization.

The guidance explains that even during the current COVID-19 public health emergency, covered health care providers are still required to obtain a valid HIPAA authorization from each patient whose PHI will be accessible to the media **before** the media is given access to that PHI. The guidance clarifies that masking or obscuring patients' faces or identifying information before broadcasting a recording of a patient is not sufficient, as a valid HIPAA authorization is still required **before** giving the media such access. Additionally, the guidance describes reasonable safeguards that should be used to protect the privacy of patients whenever the media is granted access to facilities.

"The last thing hospital patients need to worry about during the COVID-19 crisis is a film crew walking around their bed shooting 'B-roll,'" said Roger Severino, OCR Director. "Hospitals and health care providers must get authorization from patients before giving the media access to their medical information; obscuring faces after the fact just doesn't cut it," Severino added.

The guidance may be found at <https://www.hhs.gov/sites/default/files/guidance-on-media-and-film-crews-access-to-phi.pdf>.

## **DSDS Releases COVID-19 Information – Community Reintegration; Testing Reimbursement; Analytics**

### **Community Reintegration**

As we “flatten the curve” of COVID-19 infections, many states, including Missouri, are moving to re-open businesses and relax stay-at-home restrictions. For many, this is welcome news and a necessary step to restore our economy and society. During this transition time, everyone must remember COVID-19 still remains in Missouri, the US, and throughout the globe. It is imperative that everyone do their part to help prevent the spread of COVID-19 by continuing to social distance as much as possible, practice good hand hygiene frequently, and stay home when you are ill—even as businesses re-open and people return to work. These steps will be even more important for those at higher risk for severe illness and poor outcomes of COVID-19.

As Missouri enters Phase 1 of the Show Me Strong Recovery, adults 65 and older and other high-risk populations should take enhanced precautionary measures to mitigate the risks of contracting COVID-19. [Click here](#) to access guidance for these populations as they work to re-enter their communities in addition to a planning guide for Home and Community-Based Service providers/clients.

### **COVID 19 Testing Reimbursement**

[Click here](#) to access a communication to providers around billing for COVID 19 testing. This includes information for billing Medicaid and for testing and treatment of the uninsured.

### **State of Missouri COVID-19 Analytics Update**

The Department of Health and Senior Services (DHSS) posted to the website on 5/5/2020 a presentation showing the multiple data points to inform Missouri’s COVID-19 response. Included in this data, but not limited to the below, is:

- Hospitalized cases by region
- Hospital and ICU bed availability by region
- Cumulative and daily testing numbers
- Positivity Rates and Positivity Rates by county
- Cases and Cases per 100K by county
- New case growth, including 7-day % case increase
- Modeling of hospitalization rates

Here is the link to this data <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/pdf/analytics-update.pdf>

## **Battelle Decontamination System – Jeff City Armory Now a Drop-Off/Pick-Up Location**

The Jefferson City Armory will now be able to also serve as a drop-off/pick-up site for contaminated N95 masks. It was previously reported that this location’s operation was only devoted to the decontamination equipment and staff.

Updated information about the Battelle CCDS system and process is located at <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/professionals.php>.