

Flexibilities for FQHCs During the COVID-19 Crisis

Last Updated: November 6, 2020

Red text indicates material that has been updated since the previous version of this deck (published on September 29, 2020). Given the fluid nature of the COVID-19 response, please consult the latest Federal, State and City guidance as needed for the most up-to-date information.

- **Context & Scope**
- **Operational Implications of Federal & State Flexibilities**
 - COVID-19 Testing & Reporting
 - Practitioner Workforce
 - Telehealth & Sites of Care
 - Administrative Activities
- **Revenue Cycle Implications & Billing Guidance**

To support providers during the COVID-19 crisis, federal and state governments have authorized regulatory relief and emergency funding.

Goal for this presentation:

Highlight COVID-related flexibilities with significant implications for clinical operations and revenue cycle for federally qualified health centers (FQHCs).

Sources for Flexibilities Addressed

- Section 1135 waivers (*including nationwide “blanket” waivers & NY waivers*)
- CMS’s interim final rules (March 31, May 8, September 2, and **November 2**, 2020)
- The CARES Act
- HHS and CMS Guidance (*e.g., HIPAA flexibility, Medicare coverage*)
- New York State Executive Orders (EOs) and Department of Health (DOH) guidance

See the Appendix for links to these authorities, as well as Manatt summaries and analysis

Note: The flexibilities discussed in this presentation are **temporary** and will expire when the emergency period ends (absent legislative/regulatory action).

Flexibilities Addressed in this Presentation

This presentation highlights the operational flexibilities most relevant for New York City FQHCs.

	Focus Area(s)	Not Addressed in this Presentation
Provider Type	FQHCs (<i>including look-alikes</i>)	Other provider types (<i>e.g., hospitals, long-term care providers, non-FQHC outpatient clinics</i>)
Source of Emergency Flexibilities	<ul style="list-style-type: none">▪ Federal legislative and executive action▪ New York State executive orders and DOH guidance	Comprehensive review of additional flexibilities that may be available under existing state law (<i>e.g., <u>OMH guidance</u>*</i>) <i>*FQHCs that are also licensed by OMH can refer to the <u>resource for behavioral health providers in the NYC COVID-19 Resource Center</u></i>
Payers of Interest	Medicare and Medicaid	Commercial plans
Type of Emergency Relief	Regulatory relief	Supplemental funding that is not connected to reimbursement for particular services (<i>e.g., CARES Act pools, Medicare advance payments</i>)

Operational Implications of Federal & State Flexibilities

Federal and state flexibilities allow FQHCs to rapidly increase access to care.



COVID-19 Testing & Reporting

Expand testing capacity through flexibilities on scope of practice and coverage

Comply with state and federal mandates on testing, reporting, and price transparency



Workforce Flexibilities

Maximize practitioner capacity by relaxing restrictions on:

- Licensure
- Scope of practice and supervision
- Physician compensation



Telehealth & Sites of Care

Leverage telehealth and flexibility on sites of care to:

- Increase capacity
- Enhance access
- Reduce contagion by minimizing in-person contact



Administrative Flexibilities

Minimize administrative burdens by:

- Delaying cost reporting
- Streamlining consent procedures

- ✓ **New flexibilities** expand the circumstances under which providers may administer and bill for COVID tests, including through expansions to practitioner scope of practice.



- ✓ New DOH mandates require providers to **collect and report data** to the state
- ✓ Federal law requires providers to **publicize the cash price of COVID tests**



COVID Testing: Flexibilities for Providers

Practitioners Who May Order/Administer Tests

Collection of throat, nasopharyngeal, and saliva swab specimens may be:

- Ordered via standing order from a physician or NP for anyone “suspected of suffering from” COVID-19
- Ordered and administered by an RN or a pharmacist
- Performed by an unlicensed individual (subject to completing DOH training)

Blood draws for antibody testing

- Non-nursing staff members who complete DOH-approved training may perform nursing tasks (such as blood draws) under the supervision of a nurse
- Pharmacists may order and administer COVID antibody tests

Coverage of Diagnostic Testing in General

Medicare will cover diagnostic tests performed or supervised by any PA, NP, CNS, or certified nurse midwife acting within scope of practice

Medicaid will cover laboratory tests that are:

- Administered in non-office settings (e.g., parking lots)
- FDA-authorized COVID-19 tests for self-collection.



Coverage of COVID-19 Testing

Medicare

- Tests for COVID-19, influenza, and respiratory syncytial virus may be ordered by any practitioner acting within scope of practice. Medicare documentation requirements are waived if no written order.
- Each Medicare beneficiary is entitled to one COVID-19 test *without* an order from a treating practitioner.

NY Medicaid has issued [guidance](#) on billing for COVID-19 specimen collection, diagnostic testing, and antibody testing.

Medicare and Medicaid will reimburse health care providers to “counsel patients to isolate/quarantine at the time of COVID-19 testing,” as applicable “under existing payment policies.” (See [MLN SE20011](#) for details.)



COVID Testing: State Reporting Mandate

Data Collection & Reporting

- Licensed healthcare professionals administering COVID-19 tests must **report results to DOH within 24 hours** using the Electronic Clinical Laboratory Reporting System (ECLRS). **DOH may set shorter reporting times as it deems necessary.**
- Healthcare professionals who administer COVID-19 tests **must ask for, and report to the ECLRS, the following information:**
 - The patient's local address (and permanent address, if different)
 - Whether the individual attends school and, if so, what school
 - The individual's place of employment, if any, including an indication of whether the individual works or volunteers in an elementary, secondary or postsecondary school



Note: These requirements apply to healthcare providers. Clinical laboratories are subject to additional requirements not discussed here.

DOH has also released guidance on the appropriate use of rapid molecular tests, such as the Abbott ID NOW.



COVID Testing: Federal Price Transparency Mandate

Price Transparency

- Providers that offer COVID diagnostic tests must publish on its website the cash price of a COVID test.
- If a provider does not have its own website, the provider must:
 - Upon request, make the cash price available in writing within two business days
 - Publicize the cash price through signage (if applicable).



FQHCs can maximize capacity and flexibility by leveraging relaxed restrictions on:

- ✓ Licensure
- ✓ Scope of practice and supervision
- ✓ Physician compensation



Note: Licensed practitioners are shielded from malpractice liability for services that are (1) directly related to diagnosing COVID-19 or treating a known/suspected case of COVID-19; (2) within their scope of practice; and (3) rendered in good faith without gross negligence.

Source: NY S7506B (Article 30-D), as amended by SB 8835 (similar flexibility previously provided through Executive Order).



Practitioner Licensure and Training

Relaxed Rules on Licensure and Training



- A practitioner may ***practice in New York*** as long as they hold a license in good standing in another state or a Canadian province
This flexibility applies to: MD, PA, nurse (NP, LPN, RN), radiologic technologist, clinical nurse specialist, special assistant, licensed social worker, respiratory therapy technician,* various types of counselors and therapists*
- ***Medicare & Medicaid offer streamlined enrollment procedures*** and will reimburse for services rendered in New York by a practitioner with out-of-state license (*if not excluded from the program or excluded from licensure in any state*)
- ***2020 medical graduates from NY medical programs*** may practice under supervision of a NY licensed and registered physician

**For these practitioners, NY waiver permits out-of-state licensure, but not Canadian licensure*

Source: NY Executive Orders.



Scope of Practice & Physician Reimbursement

Relaxed Rules on Scope of Practice and Supervision



Advanced Practice Clinicians

- NPs may work without physician supervision at FQHCs; physician remains responsible for FQHC medical direction and supervision of other staff members (either in person or through telehealth)
- NY has lifted requirements for physician supervision/written agreements for NPs, PAs, and medical assistants
- NPs, PAs, and clinical nurse specialists may order, and certify need for, home health supplies and services (*Note: this change is permanent*)

Pharmacists, pharmacy interns, and pharmacy techs

- Pharmacists may order & administer COVID-19 vaccines and ACIP-recommended child vaccines (subject to completing an ACPE training)
- Pharmacy interns and technicians may administer COVID-19 vaccines and ACIP-recommended child vaccines under the supervision of a pharmacist (subject to completing an ACPE training)

Enhanced Physician Pay & Benefits



FQHCs and hospitals may enter into “financial relationships” with physicians that would normally create risk under the Stark Law, including:

- **Enhanced reimbursement** (e.g., hazard pay)
- **In-kind benefits** for MDs and their families (e.g., housing, childcare, meals, laundry, or transportation)
- **Lease/sale** of space or equipment at below-market rates

Note: FQHCs and hospitals can already offer such benefits to non-physicians, although there may be Anti-Kickback Statute implications if a clinician can make referrals to the facility.

By leveraging telehealth and flexibility on sites of care, FQHCs can:

- ✓ Increase capacity
- ✓ Enhance access
- ✓ Minimize contagion by avoiding unnecessary physical contact among patients and practitioners





Telehealth

Medicare and NY Medicaid have substantially expanded the range of covered telehealth services. *(See the Appendix for additional detail.)*

Program	Covered Services	Eligible Practitioners	Permissible Locations	Tech Platforms
Medicare	<ul style="list-style-type: none"> Any service approved as a “distant site” telehealth service under the Physician Fee Schedule Online evaluation & management services (<i>i.e., patient-initiated digital communications using a secure online portal</i>) 	Any FQHC practitioner acting within their scope of practice	<ul style="list-style-type: none"> Both patient and practitioner may be anywhere (including at home) No restrictions on urban vs. rural 	<ul style="list-style-type: none"> Common video technologies like FaceTime, Skype, or Zoom Telephone without video for certain E/M and behavioral health services
New York State Medicaid	Coverage for all Medicaid providers in all situations, if “appropriate for the care of the member”		Same as above (<i>home or clinical setting, urban or rural</i>)	<ul style="list-style-type: none"> Common video technologies (<i>as above</i>) Telephone without video for assessment, monitoring, and E/M

Reimbursement Implications

- Medicare reimbursement for distant site telehealth services is set at \$92
- Medicaid wrap payments are available for telehealth & telephonic services

See [Manatt’s summary](#) and the [Appendix](#) for additional detail on telehealth billing and reimbursement





Flexibility on Sites of Care

Alternative Sites of Care

- CMS will allow FQHCs to **establish additional sites of care**. These temporary sites need not be:
 - Independently certified as FQHC sites; or
 - Located within a shortage/medically underserved area
- FQHCs licensed as Article 28 D&TC clinics should follow [DOH guidance](#) to seek approval for additional sites



Visiting Nurse Services

- Medicare patients may be certified as “**homebound**” if they have COVID-19, are suspected to have it, or are particularly vulnerable to it
- FQHCs can bill Medicare for **visiting nurse services** furnished by RN/LPN to homebound individuals throughout the FQHC’s service area (*no need for a determination that there is a shortage of home health agencies*)
 - FQHC must check the HIPAA Eligibility Transaction System (HETS) to ensure that the patient is not already under a home health plan of care
 - A visit *solely* to obtain a nasal/throat culture does not qualify as a visiting nurse service because the culture could be obtained by a medical assistant or lab technician



Source: MLN SE20016; CMS blanket waivers & interim final rule; DOH guidance.

Relaxed Rules on Medicare Administrative Requirements

- CMS extended the deadlines for **cost reports** and provided guidance on how to account for Provider Relief Fund payments and Small Business Administration Loan Forgiveness. See the [Medicare FFS FAQs](#) (Section V) for details.
- **Consent for care management & virtual communication** services may be obtained at the same time the services are furnished, including auxiliary personnel under the general supervision of the billing practitioner.
- For services related to COVID-19 testing (including telehealth), FQHCs must **waive all Medicare cost sharing** for beneficiaries. Use the “CS” modifier to receive full Medicare reimbursement.
- Providers may **use PHI to contact patients who’ve recovered from COVID-19** to provide information about donating blood & plasma, consistent with the HIPAA privacy rules on “healthcare operations.”



Although CMS initially [suspended](#) many types of provider surveys, CMS [directed states](#) in August to **resume certain types of provider survey, certification, and enforcement activities**. HRSA will be conducting virtual Operational Site Visits through the end of 2020.

[Effective August 17](#), the Medicare Administrative Contractors (MACs) have **resumed post-payment reviews** of items/services provided under Medicare FFS before March 1, 2020. *(The Targeted Probe and Educate program will restart later.)*

FQHCs should be mindful of **infection control guidelines** in outpatient settings developed by [CDC/CMS](#) and by [NYC](#), as well as COVID-19 notification requirements under [federal](#) and [state](#) law.

Revenue Cycle Implications & Billing Guidance

Secure enhanced reimbursement and avoid billing issues by using appropriate codes and modifiers, supported by proper documentation in the medical record.

Billing Guidance

Use appropriate modifiers to ensure smooth billing when exercising emergency flexibilities.

Medicare

- When billing for certain services that relied on 1135 waivers, use the condition code “DR” (disaster related) for institutional billing (form CMS-1450). Use the modifier “CR” (catastrophe/disaster related) for non-telehealth Part B billing. See [SE20011](#) for details.
- When waiving cost sharing for Part B claims, use the modifier “CS” to bill Medicare for the full claim amount.

Medicaid

- For COVID-related testing and treatment, report Type of Admission Code “1” for institutional billing.
- Undocumented immigrants are eligible for Medicaid coverage of “emergency services,” including COVID-19 testing and treatment; use coverage code “07.”

Source: MLN Matters SE20011, NY Medicaid coverage guidance.

Secure enhanced reimbursement and avoid billing issues by using appropriate codes and modifiers, supported by proper documentation in the medical record.

Billing Guidance

Clinical Documentation

Ensure appropriate documentation of emergency flexibilities, especially regarding alternative sites of care.

COVID-19 Testing

Current HCPCS and CPT codes for COVID testing (diagnostic and antibody) testing are listed [here](#).

Telehealth Billing

Bill appropriately for professional telehealth services (see slide 10 and the Appendix).

Source: MLN Matters MM11960 & SE20011

Thank You

For additional questions, please contact
COVIDProviderSupport@cityhall.nyc.gov

Appendices

Appendix: Key Federal Legislation & Executive Action

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- **Section 1135 Waivers issued by the Department of Health & Human Services (HHS) and CMS**
 - [CMS Webpage with New Waivers & Flexibilities for Health Care Providers](#)
 - ◆ [Full text of CMS blanket waivers](#) (last updated September 29) and [FQHC-specific summary](#) (last updated November 4)
 - [Manatt primer](#) on the 1135 waiver authority
- **The CARES Act, enacted on March 27, 2020** (Manatt summary [here](#))
- **CMS Interim Final Rules with Comment Periods**
 - Interim Final Rule effective [March 31, 2020](#) (Manatt summary [here](#))
 - Interim Final Rule effective [May 8, 2020](#)
 - [Interim Final Rule](#) effective **September 2, 2020**
 - [Interim Final Rule](#) **effective November 2, 2020**; CMS fact sheet [here](#)
- **CMS FAQ** on COVID-related changes that affect FQHCs
- **Telehealth & HIPAA**
 - CMS [fact sheet](#) & [FAQs](#) re: telehealth & HIPAA (March 17, 2020)
 - [Manatt summary](#) of FQHC-related telehealth flexibilities (as of June 9, 2020)
 - [OCR HIPAA guidance](#) re: commonly used telehealth technologies (March 17, 2020)
 - OIG guidance on [waiving cost sharing](#)
 - [Manatt summary](#) of HIPAA changes during the pandemic (as of April 23, 2020)
- **Medicare Coverage and Billing**
 - CMS [guidance](#): FQHC & RHC Flexibilities During COVID-19, MLN Matters SE20016 (last updated July 6, 2020)
 - CMS [guidance](#): Medicare Fee-for-Service (FFS) Response to COVID-19, MLN Matters SE20011 (last updated October 16, 2020)
 - CMS [FAQs](#) on Medicare FFS Billing during COVID-19 (last updated October 28, 2020)
 - CMS [guidance](#): Coverage and Payment Related to COVID-19 Medicare
 - CMS [guidance](#): Medicare Advantage and Medicare Part D: CMS, Information Related to COVID-19 (March 10, 2020)
- **Additional CMS Guidance on suspension of non-emergency surveys and infection control practices** [here](#) and [here](#)
 - CMS/CDC [guidance](#): Infection control practices in outpatient settings (March 30, 2020)
- **HHS PREP Act [Declarations](#)** (last updated September 3, 2020) and [related guidance](#) (October 20, 2020)

Appendix: Key State Executive Actions and City Resources

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New York Executive Orders and Department of Health (DOH) Guidance, catalogued by Manatt [here](#)

- **Executive Orders** may be renewed in 30-day increments, in accordance with N.Y. Executive Law § 29-a. **The Governor has renewed most of the healthcare-related waivers and directives through December 3 (except as expressly terminated), although some are currently scheduled to expire in mid November. (See the renewal language EO Nos. [202.69](#), [202.70](#), and [202.72](#)).**

- Particularly relevant Executive Orders include:

No. [202](#) (March 7, 2020) No. [202.1](#) (March 12, 2020) No. [202.5](#) (March 18, 2020)

No. [202.10](#) (March 23, 2020) No. [202.15](#) (April 9, 2020) No. [202.18](#) (April 16, 2020)

No. [202.30](#) (May 10, 2020) No. [202.40](#) (June 9, 2020) No. [202.44](#) (June 21, 2020)

No. [202.61](#) (Sept. 9, 2020)

Manatt summary [here](#)

- **Medicaid Coverage Guidance**

- NY DOH guidance on telehealth services in Medicaid
 - ◆ NY DOH [guidance](#): Medicaid Update, Telehealth & Telephonic Services During COVID-19 (last updated May 29, 2020)
 - ◆ Telehealth [FAQs](#) (last updated May 1, 2020)
- NY DOH [Medicaid Update](#): New York State Medicaid Coverage and Reimbursement Policy for Services Related to Coronavirus Disease 2019 (COVID-19) (last updated March 27, 2020)
- NY DOH [Medicaid Billing Guidance](#) for COVID-19 Testing and Specimen Collection

NYC Resources

- **NYC DOHMH [guidance for providers](#) regarding COVID-19, including with respect to testing and reporting**
- **NYC [summaries](#) of federal and state funding and regulatory activity**



Appendix: Medicare Telehealth Reimbursement & Billing

Distant Site Telehealth Services

Distant site services will be **reimbursed at \$92** (*volume-weighted average for Physician Fee Schedule telehealth services*). Phased-in billing approach:

- **Until June 30, 2020:**
 - Report the following three HCPCS/CPT codes:
 - ◆ FQHC PPS payment code (GO466 - G0470)
 - ◆ Code for services furnished via telehealth with modifier “95”; and
 - ◆ G code G2025
 - FQHCs will be paid at the PPS rate, which will be automatically reprocessed in July to the \$92 rate
- **Starting July 1, 2020**, report revenue code with G2025 to identify services furnished via telehealth (*modifier 95 no longer required*).
 - Use modifier CS to indicate waived cost sharing for preventive services (incl. services related to COVID-19 testing).
 - A medical visit and a mental health visit can be furnished on the same day as distant site telehealth services (rev code 052X for medical and 0900 for MH).
- Medicare Advantage wrap-around payment does not apply to telehealth services
- If the federally declared public health emergency continues into 2021, CMS will update the \$92 rate

Telephonic E/M Services

CMS has added telephone E/M services (CPT codes 99441-99443) to the [Medicare telehealth services list](#). FQHCs may bill for the services as they do other Medicare telehealth services using HCPCS code G2025.

- FQHCs may furnish these services to both new and existing patients.
- To bill for telephone E/M services, a physician or other qualified professional must provide at least 5 minutes of medical discussion to a patient, parent, or guardian.
- These services cannot be billed if they:
 - Originate from a related E/M service within the previous 7 days; or
 - Lead to another E/M service or a procedure within 24 hours (or the soonest available appointment), including a service furnished via telehealth.

Source: MLN SE20016; Medicare FFS FAQs.



Appendix: Medicare Telehealth (cont.)

Online E/M, Virtual Communication

- Use **HCPCS code “G0071”** (Virtual Communication Services), either alone or with other payable services, to claim for:
 - Online digital evaluation & management (CPT codes 99421–99423)
 - Virtual communication services (HCPCS codes G2012 & G2010)
- Starting March 1, claims submitted with G0071 will be **paid at \$24.76** (instead of CY 2020 rate of \$13.53)

Medicare Cost Reporting

FQHCs must report both originating and distant site telehealth costs on Form CMS-224-14, on line 66 of the Worksheet A, in the section titled “Other FQHC Services”



Source: MLN SE20016.



Appendix: Medicaid Billing for Telemedicine Services

Telemedicine Service	Billing Instructions (see Section VII of DOH's telehealth guidance & accompanying FAQs)
Modifiers (see below for additional discussion)	<p>95 = Telehealth via real-time interactive audio & video</p> <p>GT = Interactive audio & video systems that do not qualify for modifier “95” because they are not listed in Appendix P of the AMA's CPT Professional Edition 2018 Codebook</p> <p>GQ = Asynchronous telecommunications system</p> <p>25 = Significant E&M service furnished in-person on same day as a telemedicine service</p> <p>POS = 02 for telemedicine, store-and-forward, and remote patient monitoring</p>
FQHCs that bill at the FQHC PPS rate	
FQHC as Originating Site	<ul style="list-style-type: none"> For a telemedicine encounter, bill <i>only</i> rate code 4012 (FQHC offsite services). If the FQHC provides a separate, unrelated medical service in addition to the telemedicine encounter, bill the PPS rate for the separate service in addition to rate code 4012.
FQHC as Distant Site	<ul style="list-style-type: none"> Bill the FQHC PPS rate and append the applicable telehealth modifier (95 or GT, as above). The same guidelines apply whether an FQHC provider is physically located at the FQHC or at the practitioner’s home.
FQHCs that have opted into Ambulatory Patient Group (APG) billing	
FQHC as Originating Site	<ul style="list-style-type: none"> For a telemedicine encounter, bill <i>only</i> CPT code Q3014 (originating site facility fee). If the FQHC provides a separate, unrelated medical service in addition to the telemedicine encounter, bill as usual for the separate service plus modifier 25, in addition to code Q3014.
FQHC as Distant Site	<ul style="list-style-type: none"> Bill the APG rate and append the applicable telehealth modifier (95 or GT, as above). The same guidelines apply whether an FQHC provider is physically located at the FQHC or at the practitioner’s home.



Appendix: Medicaid Billing for Telephonic Services

Telephonic Service	Rate code	Procedure Codes
FQHC Practitioner Services	4012	99201 – 99215
Assessment and Patient Management <i>(report NPI of supervising physician as Attending)</i>	7963 – 7967	As applicable



Code the service location (ZIP Code + 4) as the FQHC's location (*i.e., where the service would have been provided if furnished as a face-to-face service*).

For additional details, see Section II of DOH's [telehealth guidance](#) & accompanying [FAQs](#).

Source: NY Medicaid telehealth guidance.