



Policy Brief

August 7, 2020



President Trump Releases Executive Order on Telehealth

The Trump Administration released an [Executive Order](#) (EO) to expand access to telehealth services, particularly in rural areas. The EO directs the Department of Health and Human Services (HHS) to identify through rulemaking which telehealth waivers granted during the public health emergency should be made permanent. The EO also urges the U.S. Department of Agriculture and other agencies to implement a strategy to improve “the physical and communications healthcare infrastructure available to rural Americans.” Despite this EO, making some of the COVID-19 telehealth waivers permanent would require [legislative action](#). To learn about other actions related to telehealth, read more.

- **The Senate’s COVID-19 legislative package extends the telehealth waivers until the end of 2021.** The [legislation](#) would also have the Medicare Payment Advisory Commission (MedPAC) review the impact of the telehealth flexibilities on access, quality and cost by July 1, 2021. HHS would be required to post data on telehealth use during the pandemic and give Congress recommendations on coverage.
- **The Physician Fee Schedule (PFS) CY 2021 rule proposes to reimburse physicians for additional telehealth services.** The [rule](#) would add seven new telehealth services to the list of Medicare covered services, including group psychotherapy, care planning for patients with cognitive impairment and home visits. CMS also proposes to extend coverage for some of the COVID-19 telehealth services until the end of 2021. CMS is

seeking public input on other services to permanently add to the telehealth list beyond the public health emergency.

- **The House Ways and Means Committee released a proposal to make the COVID-19 waivers permanent.** The [proposal](#) would include the removal of Medicare's originating site requirements. Additionally, it would increase funding for HHS to oversee the increase of telehealth claims since the start of the pandemic.



Government Efforts to Fast-Track Vaccines

Last week, Moderna and Pfizer [began](#) Phase 3 human clinical trials for experimental coronavirus vaccines. While there have been [policy efforts](#) to fast-track the development of COVID-19 treatments, many public health officials agree that more deaths will be unavoidable unless there a vaccine is created. Earlier this year, the Trump Administration launched [Operation Warp Speed](#) (OWS) to shorten the development [timeline](#), investing in the future of half a dozen potential vaccines. The Administration has also begun to [commit](#) buying millions of doses of vaccines still in development, should they be proven effective, which will help make the vaccines available in large quantities. Will the government's efforts be enough to produce a timely vaccine?

Operation Warp Speed

Overseen by HHS Secretary Alex Azar, [Operation Warp Speed](#) was created by the Trump Administration to deliver 300 million doses of a safe COVID-19 vaccine by January 2021. The program has [bankrolled](#) promising vaccines, such as the one created by Moderna. OWS has also started [buying](#) millions of doses of vaccines before they are completed, which will help improve access for millions of Americans. Finally, the federal government is already [awarding money](#) to manufacturers to start producing a vaccine once clinical trials are completed to support the [distribution](#) to Americans.

When Can We Expect a Vaccine?

Normally, the [process](#) to develop a vaccine can take eight to 15 years; OWS is attempting to create a working vaccine in a matter of months. Globally, [there are more](#) than 165 vaccines being developed and 27 vaccines are in human trials. Pfizer has announced that they have enough data to be ready to receive [authorization](#) for their vaccine as early as October 2020, however, the timeline could be extended if the vaccines pose safety concerns or have too many side effects.

Health Implications and Concerns

Many consumers are [concerned](#) with the "warp speed" development of a vaccine; a botched vaccine could cause harm and further increase mistrust of the scientific community. In addition, researchers are trying to encourage more high-risk patients and minorities to enroll in the clinical trials to ensure the efficacy of the vaccine with these populations. Researchers are still [determining](#) if a vaccine will generate lifetime immunity or be needed in repeat doses.



Election 2020: Could It Really Be Postponed?

Last week, the President floated the idea of postponing the 2020 presidential elections on [twitter](#). Delaying the presidential election is unprecedented, even during times of crisis or war. Despite this, the President stated that the use of mail-in ballots to reduce the spread of COVID-19 would severely compromise the integrity of the election results. Read more on the use of universal mail-in ballots and whether the presidential election could really be postponed.

What is “universal mail-in voting”?

The idea of mail-in voting is not a new one; states have been adopting this practice in some form [since 2000](#). A state that has deployed universal mail-in voting automatically mails a ballot to all registered voters living in the state. [Seven states](#)—California, Colorado, Hawaii, Oregon, Utah, Vermont and Washington—allow residents to vote by mail.

Has postponing the presidential election been done before?

No. While the idea has been explored before, the presidential elections have never been outright cancelled or postponed. Voting has [continued](#) even during the Great Depression, major hurricanes and despite the 1918 Spanish flu pandemic. The elections were held even despite credible fear of a post-9/11 terrorist attack on election day. States are able to move their primary dates around as needed, however.

Is this something President Trump can really do?

It's extremely unlikely, especially without Republican support. Even if the President did manage to get congressional approval to make this unprecedented change, the 20th Amendment states that the terms of the President and Vice President has to end on January 20th. Without an election to replace these officials, the puzzle of succession becomes extremely complicated. Regardless of who would succeed him, postponing the election would not extend President Trump's term past this point.



Updates on COVID-19 Regulations

AHPA continues to follow new COVID-19 regulations, guidance and other government actions. The updates below are the latest guidance and other developments since July 25th to help mitigate the impacts of COVID-19. For earlier COVID-19 regulations and guidance, visit the last [Policy Brief](#).

HHS Renews the COVID-19 Public Health Emergency Declaration

- HHS has [renewed](#) the COVID-19 public health emergency until late October, extending the CMS waivers and flexibilities that apply during this time.

Trump Administration Allocates \$5 Billion in COVID-19 Relief Funds to Nursing Homes

- The President has [announced](#) that the Administration will provide \$5 billion to help nursing homes fight COVID-19 as cases rebound.

Additional Information on Reporting Requirements for the Provider Relief Fund

- HHS has [released](#) additional requirements for Provider Relief Fund recipients that received payments totaling more than \$10,000 to submit reports on how the funds have been expended.

Provider Reimbursement for COVID-19 Self-isolation Patient Counseling

- CMS and the CDC have announced that payment is [now available](#) for providers to counsel patients at the time of COVID-19 testing about the importance of self-isolation. CMS will use existing E/M payment codes to determine reimbursement.

Temporary Premium Reduction Policy from CMS

- CMS has [announced](#) a policy that will allow health insurers to offer temporary premium reductions for individuals with 2020 coverage in the individual and group insurance markets.

Trump Administration Proposes Permanent Expansion of Certain Telehealth Benefits

- As part of the Physician Fee Schedule (PFS) proposed rule, CMS is [proposing](#) to permanently reimburse physicians for certain telehealth services that were added during the public health emergency

340B Update: Appeals Court Rules Cuts Legal

Last week, an appeals court ruled that the HHS policy to cut Medicare outpatient drug payments by 28.5% at 340B hospitals is legal, [overturning](#) a lower court's previous decision. The court's [opinion](#) found that HHS acted within its statutory authority and does not have to reimburse hospitals at a much higher costs than it takes to acquire the drugs. These cuts were originally made in the CY 2018 Outpatient Payment System (OPPS) final rule. This same court of appeals [recently upheld](#) HHS' site neutral payment policy for clinic visits; hospital plaintiffs are requesting a [rehearing](#) of this case.

OPPS CY 2021 Proposed Rule Released

CMS has released the OPPS [proposed rule](#) for Calendar Year 2021. The published version is scheduled to be posted on the Federal Register on August 12th. Below are three highlights from the proposed rule; stay tuned for a full rule summary.

- Gradual elimination of the Inpatient Only list over the course of three years, beginning in CY 2021.
- Additional payment cuts to the 340B program, paying for drugs acquired at Average Sales Price minus 28.7%.
- Continued site-neutral payment provisions, particularly site-neutral payments for clinic visits.

PFS CY 2021 Proposed Rule Released

CMS has released the CY 2021 Physician Fee Schedule (PFS) [proposed rule](#). The published version has not yet been released; comments are due October 5th. Below are three highlights from the proposed rule; stay tuned for a full rule summary.

- Expand telehealth by adding services to the Medicare telehealth list of services and retaining certain COVID-19 flexibilities.
- Reduce payments to certain specialties, including a 4% cut to infectious diseases.
- Increase payment rates for office/outpatient E/M visits.



A Look at the Federal Register

Inpatient Rehabilitation Facilities Final Rule

CMS has released the FY 2021 final rule updating Medicare payment policies and rates for the Inpatient Rehabilitation Facilities Prospective Payment System. Click [here](#) for the factsheet or [here](#) to access the rule in full.

Skilled Nursing Facilities Payment Rates Final Rule

CMS has released the FY 2021 final rule updating Medicare payment rates and the value-based purchasing program for Skilled Nursing Facilities. Click [here](#) for the factsheet or [here](#) to access the rule in full. The rule is effective October 1, 2020.

Hospice Payment Rate Update Final Rule

CMS has released the FY 2021 final rule updating payment rates and the wage index for hospices serving Medicare beneficiaries. Click [here](#) for the factsheet or [here](#) to access the rule in full. This final rule is effective October 1, 2020.

IN OTHER NEWS

[Former GOP Presidential Hopeful Herman Cain Dies of COVID-19](#) – AP

[The Unique U.S. Failure to Control the Virus](#) – NY Times

[Millions of Children Have Lost Their Health Insurance—What's Our Plan?](#) – Health Affairs

[Many Parents Prefer Mixing Online and In-person School](#) – Washington Post

[Trump Issues Drug Pricing Executive Orders on 340B, Outpatient Drug Pay](#) – Modern Healthcare