

## CMS proposes remote patient monitoring policy changes and guidance



Rick L. Hindmand | Tuesday, August 11, 2020

*UPDATE: The [Medicare Physician Fee Schedule proposed rule](#) was published in the Federal Register on August 17.*

On August 3, 2020, the Centers for Medicare & Medicaid Services (CMS) issued proposed changes and offered guidance on Medicare payment requirements for remote patient monitoring (RPM) and other services within its Medicare Physician Fee Schedule (PFS) [proposed rule](#) for calendar year 2021. [Click here](#) for a summary of additional changes under the proposed rule.

CMS has recently recognized seven CPT codes for RPM (referred to in the code descriptors as “remote physiologic monitoring”) relating to the collection and analysis of patient physiologic data by providers who develop and manage a treatment plan for patient chronic or acute conditions. During the COVID-19 public health emergency (PHE), CMS temporarily revised Medicare payment policies to loosen RPM reimbursement requirements and to allow expanded use of RPM. The PHE status, which affects these RPM flexibilities, is scheduled to expire on October 23, 2020, but is subject to early termination or extension by the U.S. Department of Health and Human Services.

In the PFS proposed rule, CMS notes that five of the seven CPT codes for RPM have generated “frequent questions from stakeholders” and that CMS previously stated in the 2020 PFS final rule that it would provide future guidance about these codes. As a result, CMS attempts to clarify its reading of the CPT code

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descriptors and instructions relating to Medicare billing for the following:

1. 99453 (initial set-up and patient education)
2. 99454 (monthly supply and transmission)
3. 99091 (collection and interpretation of physiologic data by a practitioner)
4. 99457 (RPM treatment management, first 20 minutes)
5. 99458 (RPM treatment management, additional 20 minutes)

CMS provides significant guidance on the application of the RPM codes in the following explanations:

- **Eligible providers** - CPT codes 99453, 99454, 99091, 99457, and 99458 are evaluation and management (E/M) codes, so these RPM services can only be ordered and billed by physicians or non-physician practitioners (NPPs). Moreover, RPM services are not diagnostic tests, and therefore cannot be furnished or billed by an independent diagnostic testing facility on the order of a physician.
- **Who can perform RPM services?**
  - RPM services under codes 99453, 99454, 99457 and 99458 can be furnished by clinical staff under the general supervision of the billing physician or NPP. CMS is proposing to allow auxiliary personnel to furnish these services under the general supervision of the billing physician or practitioner even if the auxiliary personnel do not qualify as clinical staff.
  - It appears that Code 99091 services must be performed directly by the billing practitioner (e.g., physician or NPP), although CMS also referred later in the same paragraph to the possibility of incident to services, so further clarification from CMS would be helpful.
- **Eligible patients** - Patients with either acute or chronic conditions can be eligible recipients of RPM. CMS had previously indicated that RPM was limited to patients with chronic conditions, before clarifying this spring that RPM can also be provided to patients with acute conditions during the PHE.
- **Interactive communication time requirement** - For purposes of satisfying the 20 minute monthly thresholds for payment under CPT codes 99457 (initial 20 minutes) and 99458 (additional 20 minutes), CMS defines “interactive communication” to mean a real-time conversation with synchronous, two-way interactions that can be enhanced with video or other data, and interprets these codes to require at least 20 minutes of interactive communication with the patient.
  - **Note:** By excluding review and analysis time from the 20 minute element, CMS’s position would impose a more demanding standard than apparent in the descriptors for CPT codes 99457 and 99458, which can reasonably be read to allow the 20 minutes to include non-interactive time as long as some interactive communication is involved during the month. Further clarification by CMS on this issue would be helpful.
- **Device requirements** - In order to receive the monthly payment under CPT code 99454, the device must:
  1. Satisfy the Food and Drug Administration’s definition of a medical device.
  2. Digitally (automatically) upload patient physiologic data.
  3. Be reasonable and necessary for the diagnosis or treatment of the patient’s illness or injury, or to improve the functioning of a malformed body member (This is a reminder of the importance to document medical necessity for all RPM services.).
  4. Be used to collect and transmit reliable and valid physiologic data that allow understanding of a patient’s health status to develop and manage a plan of treatment.

**CMS is proposing to permanently allow:**

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- Patient consent to be obtained when RPM services are furnished (rather than requiring prior consent).
- Auxiliary personnel to furnish RPM services under CPT codes 99453 and 99454 under the general supervision of the billing physician or practitioner.

### **CMS is proposing a return to the following policies at the expiration of the PHE:**

- The standard requirement that an established physician-patient relationship must exist prior to the performance of RPM services.
- At least 16 days (rather than 2 days during the PHE) of data each 30 days will be required to be collected and transmitted to meet the requirements to bill CPT codes 99453 and 99454 (however, CMS is asking for information on whether it would be beneficial to allow payment for shorter monitoring periods).

CMS is requesting comments on whether the RPM codes adequately capture the work furnished to patients with acute conditions for which RPM services may be beneficial and whether coding revisions are needed.

Public comments on the proposed rule are due by October 5, 2020.

For more information on these changes, please contact the attorneys below.

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