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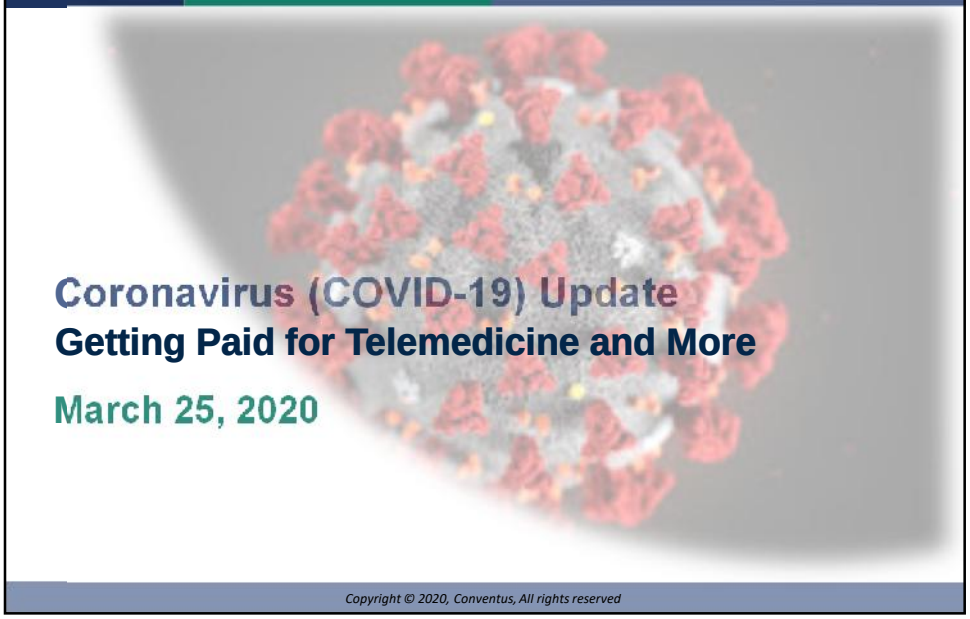

Coronavirus (COVID-19) Update
Getting Paid for Telemedicine and More

March 25, 2020

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Objectives

- Answer Telemedicine, Employee and Legislative Frequently Asked Questions (FAQs)
- Provide a Brief Overview of NJ Telemedicine Laws
- Explain Telemedicine Billing & Coding Basics
- Review Latest:
  - COVID-19 Legislation, Rules and Orders
  - Quality Reporting Relief
  - NJ Executive Order 109
- Provide Practice and Business Resources Information

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FAQs from 3/20/20 Webinar

- How should the provider be available to be contacted for the next 72 hours (after telemedicine visit)? Does telephone fall under the use of a provider being able to be contacted?
  - The NJ Board of Medical Examiners (NJ BME) does not specify how the patient can or has to be able to contact a healthcare professional, but the requirement is to provide the patient with your name, credentials and contact information (*NJAC 13:35-6B.5 2g).*
- In NJ, can new patients be seen for reason other than COVID-19?
  - If you are currently a licensed NJ Physician, then you can see new or existing patients regardless of the diagnosis. It is not limited to COVID-19.
  - For healthcare professionals, not licensed in NJ the recent legislation A3860 signed on 3/19/20 states that a healthcare practitioner not licensed/certified in NJ care is limited to screening, diagnosis, treating COVID-19, if no pre-existing relationship exists.
    - ► Expedited application forms

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FAQs from 3/20/20 Webinar (cont'd)

- Do you have a standard consent form that we can use as a start?
  - Please visit our website at **www.conventusnj.com > Practice Resources > COVID-19 Resources.**
  - We have a sample consent form there that is covers all the requirements set forth the NJ BME for Privacy and Notices to Patients (*NJAC 13:35-6B.9*).
- Can the doctor and patient use just telephones if the patient does not have access to video or computer?

Previous

  - Per the NJ BME (NJAC 13:35-6B.5), telemedicine services shall use interactive, real-time, two-way communication technologies which shall include a video component, except if the provider determines the same standard of care can be met without using the video component.

Current

  - Can use audio only smart phones or other technological devices (non-public facing) if same standard of care can be met
  - Notify patients of possible privacy risks (i.e., verbal/written consent)

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Telemedicine Summary

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NJ Telemedicine Laws Overview

- **Allowable Encounters – New and Existing Patients**

  Previous

  – New Patients ***if*** provider-patient relationship established prior to encounter:

    1. Properly identify patient and location, i.e. name, DOB, telephone #, address, health insurance #, etc.
    2. Conduct review of patient's medical history, including any available medical records
    3. Disclose provider's identity and credential, i.e. license, specialty, board certification and contact information
       - Allows patient ability to contact physician for at least 72 hours following service

  – Existing Patients – can review medical records during the visit

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NJ Telemedicine Laws Overview

- **Allowable Encounters – New and Existing Patients (cont'd)**
  ***Current* (During a Public Health Emergency [PHE])**
  - Same requirements apply except:
    - Provider no longer required to review patient's medical records prior to initial telehealth encounter
    - Use clinical judgment to obtain medical history and available medical records
    - Unavailability of records is not a barrier to establishing provider-patient relationship during PHE
- ***Conventus Recommends***
  - Obtain new patient packet similar to initial onsite visit (e.g., patient questionnaire and assessment forms, telemedicine risks/benefits, notice of privacy practices) PLUS COVID-19 pre-screening
  - Timing – Before visit, if feasible; or at start of encounter
  - Document in patient's medical record!

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NJ Telemedicine Law Overview

- Licensure
  - NJ license/certification/registration in good standing
  - Must have license in state where patient is ***located*** at time of encounter ***unless***:
    - Originating site's state Telemedicine Law allows unlicensed practitioner with similar license in another state
    - A3860 – Allows providers unlicensed/certified in NJ with similar licenses in other states to provide telehealth **only** for COVID-19 related screening, diagnosis and treatment (without existing relationship)
    - 1135 Medicare Waiver– Removes state licensure requirements if provider holds equivalent license in another state.
      Note: State Law Supersedes Medicare!!!
- Standard of Care
  - Same as in-office visit
  - Determination prior to and during visit; don't initiate encounter or discontinue if you can't meet same standard

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NJ Telemedicine Law Overview

- Technology

  Previous

  – Interactive, real time, two-way audio/video communication

  – Interactive two-way audio (i.e. phone) with asynchronous store and forward if provider determines same standard of care can be met

  Current

  – Availability to use audio only smart phones or other technological devices (non-public facing) if same standard of care can be met

  – Notify patients of possible privacy risks (i.e., verbal/written consent)

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NJ Telemedicine Law Overview

- HIPAA Compliance

  Previous

  – Must be HIPAA compliant technology

  Current

  – Medicare and NJ – Acceptable to use non-public facing two-way audio or video. (ex: Smart Phone, Facetime, Skype, Google G Suite Hangouts Meet, Webex Meeting/Teams, Amazon Chime, GoToMeeting)

  – A3860 – nothing authorizes waiver of requirements restricting collection, exchange, transmission, or use of confidential patient information

- *Conventus Recommends*

  – Use HIPAA compliant technology, whenever possible (ex: Updox,, Zoom for Healthcare, Doxy.me, VSee)

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NJ Telemedicine Law Overview

- Medical Records
  - Maintain complete medical record (NJAC 13:35-9.16)
  - Must still be HIPAA compliant
- Consents
  - Treatment
  - Telemedicine/Telehealth risks/benefits
  - Telemedicine notice of privacy practices
  - Release of medical records, if patient requests
- *Conventus Recommends*
  - Obtain consents prior to visit
  - If not feasible, obtain verbally at start of encounter and document in medical record.
  - Send written consents post-encounter for signatures

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Telemedicine
Billing & Coding

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Live Video Conferencing

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1135 Waiver Authority / Coronavirus Preparedness and Response Supplemental Appropriations Act

- Historically, Medicare coverage for telemedicine has been restricted to those patients who live in medically underserved areas
- Effective for services starting 3/6/20 and for the duration of the COVID-19 Public Health Emergency, Medicare will provide coverage for telehealth services furnished to patients in broader circumstances by allowing payment for professional services furnished to beneficiaries in all areas of the country in all settings.
- This includes services provided in any healthcare facility or in their home.
- These visits are considered the same as in-person visits and are paid at the same rate as regular, in-person visits.

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Requirements

- Provider must utilize interactive audio/video, real time communication (including Face Time and Skype)
- Place of service 02 – telehealth is required on the claim. No special modifier is required. (Certain payers may require modifier 95, but Medicare does not)
- CPT Code selection is based on the distant site location (i.e., where the physician or other non-physician practitioner is located during the service). **Documentation requirements remain the same**.
- If a physician is performing a telehealth service from his/her home during this emergency period, and home is not his/her usual place of business, the POS is still 02 and the claims is submitted with address from which services are usually billed, which is likely the office location.
- Providers will not need to be licensed in the originating state (facility or private residence where the patient is receiving telehealth services) if not their own

**Guidance regarding teaching physician and incident to billing is not available at this time.
CMS to address and release memorandum at an undetermined future date.**

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CPT Codes – Telehealth Services

LIST OF MEDICARE TELEHEALTH SERVICES – CY2020

Code	Short Descriptor	Code	Short Descriptor	Code	Short Descriptor
90785	Psytx complex interactive	96160	Pt-focused hlth risk assmt	G0396	Alcohol/subs interv 15-30mn
90791	Psych diagnostic evaluation	96161	Caregiver health risk assmt	G0397	Alcohol/subs interv >30 min
90792	Psych diag eval w/med srvcs	97802	Medical nutrition indiv in	G0406	Inpt/tele follow up 15
90832	Psytx pt&/family 30 minutes	97803	Med nutrition indiv subseq	G0407	Inpt/tele follow up 25
90833	Psytx pt&/fam w/e&m 30 min	97804	Medical nutrition group	G0408	Inpt/tele follow up 35
90834	Psytx pt&/family 45 minutes	99201	Office/outpatient visit new	G0420	Ed svc ckd ind per session
90836	Psytx pt&/fam w/e&m 45 min	99202	Office/outpatient visit new	G0421	Ed svc ckd grp per session
90837	Psytx pt&/family 60 minutes	99203	Office/outpatient visit new	G0425	Inpt/ed teleconsult30
90838	Psytx pt&/fam w/e&m 60 min	99204	Office/outpatient visit new	G0426	Inpt/ed teleconsult50
90839	Psytx crisis initial 60 min	99205	Office/outpatient visit new	G0427	Inpt/ed teleconsult70
90840	Psytx crisis ea addl 30 min	99211	Office/outpatient visit est	G0436	Tobacco-use counsel 3-10 min
90845	Psychoanalysis	99212	Office/outpatient visit est	G0437	Tobacco-use counsel>10min
90846	Family psytx w/o patient	99213	Office/outpatient visit est	G0438	Ppps, initial visit
90847	Family psytx w/patient	99214	Office/outpatient visit est	G0439	Ppps, subseq visit
90951	Esrd serv 4 visits p mo <2yr	99215	Office/outpatient visit est	G0442	Annual alcohol screen 15 min
90952	Esrd serv 2-3 vsts p mo <2yr	99231	Subsequent hospital care	G0443	Brief alcohol misuse counsel
90954	Esrd serv 4 vsts p mo 2-11	99232	Subsequent hospital care	G0444	Depression screen annual
90955	Esrd srv 2-3 vsts p mo 2-11	99233	Subsequent hospital care	G0445	High inten beh couns std 30m
90957	Esrd srv 4 vsts p mo 12-19	99307	Nursing fac care subseq	G0446	Intens behave ther cardio dx
90958	Esrd srv 2-3 vsts p mo 12-19	99308	Nursing fac care subseq	G0447	Behavior counsel obesity 15m
90960	Esrd srv 4 visits p mo 20+	99309	Nursing fac care subseq	G0459	Telehealth inpt pharm mgmt
90961	Esrd srv 2-3 vsts p mo 20+	99310	Nursing fac care subseq	G0506	Comp assess care plan ccm svc
90963	Esrd home pt serv p mo <2yrs	99354	Prolonged service office	G0508	Crit care telehea consult 60
90964	Esrd home pt serv p mo 2-11	99355	Prolonged service office	G0509	Crit care telehea consult 50
90965	Esrd home pt serv p mo 12-19	99356	Prolonged service inpatient	G0513	Prolong prev svcs, first 30m
90966	Esrd home pt serv p mo 20+	99357	Prolonged service inpatient	G0514	Prolong prev svcs, addl 30m
90967	Esrd home pt serv p day <2	99406	Behav chng smoking 3-10 min	G2086	Off base opioid tx first m
90968	Esrd home pt serv p day 2-11	99407	Behav chng smoking > 10 min	G2087	Off base opioid tx, sub m
90969	Esrd home pt serv p day 12-19	99495	Trans care mgmt 14 day disch	G2088	Off opioid tx month add 30
90970	Esrd home pt serv p day 20+	99496	Trans care mgmt 7 day disch		
96116	Neurobehavioral status exam	99497	Advncd care plan 30 min		
96150	Assess hlth/behave init	99498	Advncd care plan addl 30 min		
96151	Assess hlth/behave subseq	G0108	Diab manage trn per indiv		
96152	Intervene hlth/behave indiv	G0109	Diab manage trn ind/group		
96153	Intervene hlth/behave group	G0270	Mnt subs tx for change dx		
96154	Interv hlth/behav fam w/pt	G0296	Visit to determ ldct elig		

https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes

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Other Virtual Services

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E-Visits

- E-visits refer to communications with providers via online patient portals.
- These are for established patients, and are non-face to face interactions, which differentiates it from telehealth.
- Physicians and other providers who bill E/M codes can bill e-visits, using these codes:
  - 99421: Online digital evaluation and management service, for an established patient, for up to 7 days, cumulative time during the 7 days; 5–10 minutes
  - 99422: Online digital evaluation and management service, for an established patient, for up to 7 days cumulative time during the 7 days; 11– 20 minutes
  - 99423: Online digital evaluation and management service, for an established patient, for up to 7 days, cumulative time during the 7 days; 21 or more minutes.
- These codes should be billed **once** over a 7-day period, based on the total amount of time spent in the aggregate.
- The patient must generate the initial inquiry; however, the practice can reach out to patients to make them aware of service availability.

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E-Visits (cont'd)

- Clinicians who may **not** independently bill for evaluation and management visits (for example – physical therapists, occupational therapists, speech language pathologists, clinical psychologists) can also provide these e-visits and bill the following codes:
  - G2061: Qualified non-physician healthcare professional online assessment and management, for an established patient, for up to seven days, cumulative time during the 7 days; 5–10 minutes
  - G2062: Qualified non-physician healthcare professional online assessment and management service, for an established patient, for up to seven days, cumulative time during the 7 days; 11–20 minutes
  - G2063: Qualified non-physician qualified healthcare professional assessment and management service, for an established patient, for up to seven days, cumulative time during the 7 days; 21 or more minutes

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Virtual Check In / Phone Calls

- Medicare pays for "virtual check-ins" (or Brief communication technology-based service) for patients to communicate with their doctors and avoid unnecessary trips to the doctor's office.
- These virtual check-ins are for patients with an established (or existing) relationship with a physician or certain practitioners where the communication is not related to a medical visit within the previous 7 days and does not lead to a medical visit within the next 24 hours (or soonest appointment available).
- The patient must verbally consent to receive virtual check-in services. The Medicare coinsurance and deductible would generally apply to these services.
  - G2012 - Brief communication technology-based service, e.g. virtual check-in, by a physician or other qualified health care professional who can report evaluation and management services, provided to an established patient, not originating from a related e/m service provided within the previous 7 days nor leading to an e/m service or procedure within the next 24 hours or soonest available appointment; 5-10 minutes of medical discussion

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Phone Calls – Physician or Non-Physician Provider (NPP)

- Medicare does not pay for the following codes for phone calls, however, other payers might:
  - 99441 Telephone evaluation and management service by a physician or other qualified health care professional who may report evaluation and management services provided to an established patient, parent, or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 5- 10 minutes of medical discussion
  - 99442 11-20 minutes of medical discussion
  - 99443 21-30 minutes of medical discussion

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Phone Calls – Other NPPs

- For those providers other than MDs and NPPs, the following codes are applicable for a telephone call:
  - **98966:** Telephone assessment and management service provided by a qualified nonphysician health care professional to an established patient, parent, or guardian not originating from a related assessment and management service provided within the previous 7 days nor leading to an assessment and management service or procedure within the next 24 hours or soonest available appointment; 5-10 minutes of medical discussion.
  - **98967**: Telephone assessment and management service provided by a qualified nonphysician health care professional to an established patient, parent, or guardian not originating from a related assessment and management service provided within the previous 7 days nor leading to an assessment and management service or procedure within the next 24 hours or soonest available appointment; 11-20 minutes of medical discussion.
  - **98968**: Telephone assessment and management service provided by a qualified nonphysician health care professional to an established patient, parent, or guardian not originating from a related assessment and management service provided within the previous 7 days nor leading to an assessment and management service or procedure within the next 24 hours or soonest available appointment; 21-30 minutes of medical discussion.

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"Store & Forward"

- This service involves provider review, analysis, and interpretation of video and/or other images submitted by a remote patient and followed up with the patient in 24 business hours.
- This service cannot be related to an Evaluation and Management (E/M) service performed within the previous week or an E/M service or procedure performed within 24 hours or soonest available appointment.
- **G2010:** Remote evaluation of recorded video and/or images submitted by an established patient (e.g., store and forward), including interpretation with follow-up with the patient within 24 business hours, not originating from a related e/m service provided within the previous 7 days nor leading to an e/m service or procedure within the next 24 hours or soonest available appointment

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References

- CMS Fact Sheet
  - https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet?utm_campaign=government-affairs&utm_medium=email&utm_source=3.17.20%20Regulatory%20Alert%20Washington%20Connection&elqEmailId=9986
- Medicare Telehealth FAQ
  - https://www.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf

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Quality Payment Program (QPP) - Merit-based Incentive Payment System (MIPS)

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Relief for Quality Reporting Programs (QRP)

- 3/22/20: The Centers for Medicare & Medicaid Services (CMS) announced relief for clinicians, providers, hospitals and facilities participating in QRPs in response to COVID-19.
- CMS is implementing **additional extreme and uncontrollable circumstances policy exceptions and extensions** for upcoming quality measure reporting and data submission deadlines.
- For the QPP MIPS program the reporting deadline is **extended** from March 31, 2020 **to April 30, 2020**.

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Relief for QRPs (cont'd)

- For MIPS eligible clinicians:
  - **Do not submit data by April 30, 2020**
    - Qualify for the automatic extreme and uncontrollable circumstances policy
    - Will receive a neutral payment adjustment for 2021 (Penalty would have been 7%)
    - No action is required by providers.
  - **Already submitted data** or if you **submit data by April 30, 2020**
    - Be scored and receive a MIPS payment adjustment based on the data submitted.
    - Data revisions can be made by logging into qpp.cms.gov until the new deadline.

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Relief for QRPs (cont'd)

- For Performance Year 2020
  - CMS is evaluating options for providing relief around participation and data submission.
  - Impacts payment year 2022.
- https://www.cms.gov/newsroom/press-releases/cms-announces-relief-clinicians-providers-hospitals-and-facilities-participating-quality-reporting

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Executive Order 109

Suspends All Elective Surgeries, Invasive Procedures to Preserve Essential Equipment and Hospital Capacity

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NJ Executive Order No. 109

- Issued by Governor Murphy on March 23, 2020; *effective until rescinded*
- 3 Main Components
  1. Discontinue all adult elective surgeries or invasive procedures as of ***5:00 pm on Friday, March 27, 2020.***
  2. Take Inventory and report to state on personal protective equipment (PPE), ventilators, respirators, anesthesia machines at non-healthcare facilities which are not required for critical healthcare services.
  3. Division of Consumer affairs may restrict or expand scope of practice for any category of healthcare professional or veterinarian.

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NJ Executive Order No. 109 (cont'd)

I. Cancelling or Postponing Elective Surgeries Indefinitely (Medical or Dental)

Elective Surgery Defined

- "any surgery or invasive procedure that can be delayed without undue risk to the current or future health of the patient as determined by the patient's treating physician or dentist"
  - Considerations – time-sensitivity and postponement would not endanger health of patient
- Does not include administration of vaccines

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NJ Executive Order No. 109 (cont'd)

- Providers planning to perform surgery/invasive procedures
  - Consider possible post-op complications
  - Coordinate any possible post-op admissions with local hospitals
- Each Hospital or Ambulatory Surgery Center (ASC) shall:
  - Establish written guidelines to ensure adherence to EO 109
    - Include a process for consultation with treating provider about surgery designation (elective vs. non-elective)
  - Provide copy to NJ Department of Health (NJDOH)
- Facilities to immediately notify all patients and providers that the elective surgery is cancelled/postponed and cannot proceed

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Implementation Strategies

Determination of Elective vs. Non-Elective (CMS Guidance)

Tiers	Action	Definition	Location	Examples
1a	Postpone	Low acuity surgery & healthy patient Outpatient surgery Not life threatening	HOPD*; ASC**; Hospital low/no COVID-19	Carpal tunnel release; EGD; Colonoscopy
1b	Postpone	Low acuity surgery & unhealthy patient	HOPD*; ASC**; Hospital low/no COVID-19	Endoscopies
2a	Consider Postponing	Intermediate acuity surgery & healthy patient; Not life threatening but potential for future morbidity/mortality; Requires in-hospital stay	HOPD*; ASC**; hospital with low/no COVID-19	Low risk CA; Non-urgent spine/ortho - hip/knee replacement; elective spine; stable ureteral

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Implementation Strategies (cont'd)

Tiers	Action	Definition	Location	Examples
2b	Postpone, if possible	Intermediate acuity surgery & unhealthy patient	HOPD*; ASC**; Hospital with low/no COVID-19	
3a	Do not postpone	High acuity surgery & unhealthy patient	Hospital	Transplants; trauma; cardiac w/sx; limb threatening vascular surgery
3b	Do not postpone	High acuity surgery & unhealthy patient	Hospital	Same as above

* Hospital Outpatient Department
** Ambulatory Surgery Center

Reference: *CMS Adult Elective Surgery and Procedures Recommendation*, Created by: Sameer Siddquie, MD
https://www.cms.gov/files/document/31820-cms-adult-elective-surgery-and-procedures-recommendations.pdf

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Implementation Strategies

Other Suggestions for Cancellation/Postponement

- Log of cancellations/postponements
  - Patient name, procedure, date scheduled, call-back date, outcome of call-back (e.g. rescheduled date)
  - Paper log or check EHR capability (scanning?)
- Patient Instructions
  - Contact provider if conditions worsens or significant increase in pain
  - Call to reschedule by specific date (onus is on provider to reschedule)
- Medical Record Documentation
  - In each patients record - rationale for postponement, date to reschedule, explanation to patient
- Hospital/ASC Cancellation Documentation
  - Work with facility to provide written confirmation of non-elective status

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Implementation Strategies

Suggestions for Non-Elective Surgery

- Prescreen all patients for COVID-19 exposure
- Instruct patients to inform provider/facility before arrival if they or close contacts develop symptoms of COVID-19 or upper respiratory infection
- Triage patients upon arrival if they or close contacts develop symptoms of COVID-19 or upper respiratory infection
- Check patients for fever upon arrival
- Limit patient accompaniment by others
- Prohibit anyone from entering if they have elevated temperature or symptoms of COVID-19
- Implement follow-up 7-14 days post-procedure

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NJ Executive Order No. 109 (cont'd)

II. Inventory and Reporting of PPE, Ventilators, Respirators and Anesthesia Machines

- Applies to any business or non-hospital healthcare facility (dental or office-based healthcare, construction, research, veterinary practices, institutions of higher learning)
- Inventory of equipment not required for critical healthcare services
- Report to Office of Emergency Management by 5:00 pm on Friday, March 27, 2020
  - Process by which entities to submit information will be established

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NJ Executive Order No. 109 (cont'd)

III. Restricting or Expanding Scope of Practice for Any Professional Licensure

- Division of Consumer Affairs in consultation with NJDOH can issue orders
- Waiver of any restriction on entry or reentry into practice (or any restriction on Controlled Dangerous Substances [CDS] prescription) of any person who has received training or has retired from practice

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The Public Readiness and Preparedness Act (PREP)

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The PREP Act

- Declared February 4, 2020
  - COVID-19 caused by SARS-CoV-2 or a virus mutating therefrom
- Authorizes the Secretary of the U.S. Department of Health and Human Services (DHHS) to issue a PREP Act declaration in response to a public health emergency.
- The declaration provides **immunity from tort liability claims (except willful misconduct)** to individuals or organizations involved in the manufacture, distribution, or dispensing of medical countermeasures.
- Effective Time Period
  - Lasts through (1) the final day the emergency Declaration is in effect, or (2) October 1, 2024, whichever occurs first.

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The PREP Act (cont'd)

- Declaration
  - Includes the determination of a threat or credible risk, recommendation for action, and the category of diseases, health conditions or health threats.
  - Includes the effective time period, the covered population, the geographic area of administration, and any limitations.
- Covered Countermeasure
  - May include vaccines, antidotes, medications, medical devices or other FDA regulated assets used to respond to pandemics, epidemics, or any biological, chemical, radiological, or nuclear threat.
  - Used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom.

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The PREP Act (cont'd)

- Immunity From Tort Liability
  - There is no legal tort claim that can be pursued in state or federal courts.
  - Tort claims include all claims (**except for willful misconduct**), under federal or state law for any type of loss including death; physical, mental, or emotional injury; fear of such injury; or property damage or loss, including business interruption loss, with any causal relationship to any stage of development, distribution, administration, dispensing, or sue of the covered countermeasure recommended in the PREP Act declaration.

Public Readiness and Emergency Preparedness Act:
https://www.phe.gov/Preparedness/legal/prepact/Pages/COVID19.aspx

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The PREP Act (cont'd)

- Immunity from tort liability is at the secretary's discretion, and include:
  - Manufacturers of countermeasures;
  - Distributors of countermeasures;
  - Program planners of countermeasures (i.e., individuals and entities involved in planning and administering programs for distribution of a countermeasure);
  - Qualified persons who prescribe, administer, or dispense countermeasures (i.e., healthcare and other providers); and
  - Officials, agents, and employees of any of these entities or persons are also covered persons.
  - This immunity protection extends to individuals, partnerships, corporations, associations, or other private entities; or public corporations, including federal, state, or local government agencies and their departments.

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The PREP Act (cont'd)

- Limitations on Immunity From Liability
  - Death or serious physical injury caused by willful misconduct.
  - Claims based on activities that fall outside the scope of the declaration.
  - Claims of loss that do not allege a causal relationship to the administration or use of a covered countermeasure and are not in fact based on such a causal relationship.
  - Claims filed under foreign law in courts outside the United States.
  - Lawsuits other than tort claims. For example, violations of civil rights laws, the Americans with Disabilities Act, labor laws, or other such claims that have no connection to a tort claim.

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Human Resources

Families First Act (FFA); Family and Medical Leave Act (FMLA) and Internal Revenue Service (IRS) 2020-57

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Tax Credit for Payments to Employees Under FFA

- The Act provides for 10 days of paid sick leave and expanded paid FMLA leave for parents caring for children who are out of school during the COVID-19 pandemic.
- The employer is responsible for those costs as well as continuation of the employer portion of healthcare coverage for affected employees.
- However, employers are not required to withhold payroll taxes from the payments for sick leave and FMLA coverage under the Act
- The Act provided that businesses would receive tax credits for these costs.
- The IRS has now released guidance on the operation of the tax credit through the end of 2020.

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IRS 2020-57 Tax Credit for Businesses

- Employer costs incurred for sick pay, FMLA leave and the employer portion of health insurance coverage for clients receiving sick pay and FMLA leave may be taken as a DOLLAR FOR DOLLAR credit against current payroll tax costs.
- Deduction taken on a quarterly basis on form 941.
  Example:
  - Payroll taxes are $8,000
  - Costs for paid sick leave, FMLA leave and health care coverage are $5,000
  - Employer takes deduction on Form 941
  - Employer pays $3,000

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IRS 2020-57 Tax Credit for Businesses

- If you paid sick leave and FMLA costs are more than current payroll tax expenses:
  Example:
  - Payroll taxes are $5,000
  - Costs for paid sick leave, FMLA leave and healthcare coverage are $8,000
  - Employer reflects deduction on form 941
  - Employer pays no payroll taxes
  - $3,000 is refunded to employer from IRS “as soon as possible”

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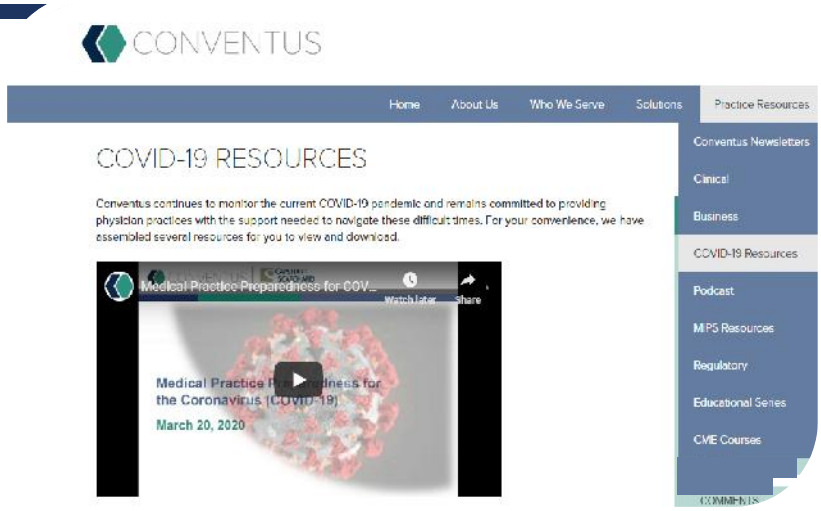
Medical Practice Assistance



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Conventus Practice Resources

- **www.conventusnj.com**
  Practice Resources > COVID-19 Resources
  - COVID-19 Resources
  - Clinical, Regulatory and Billing assistance and more
- **https://nipgroup.com/covid-19-resource-center/**
  - NIP Business Navigator Business Relief Assistance

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About Us

HealthCare Compliance Network

75 Years and Counting… That is the collective market experience of the leadership team at HealthCare Compliance Network. It is not bragging when we say, "been there, done that." We know our depth of knowledge of the regulatory and compliance field is an asset that sets us apart from the competition. But we believe that our commitment to daily in-field learning and passion for remaining abreast of the constantly evolving regulatory environment is just as important.

CAPEHART SCATCHARD

A full-service regional law firm with offices in NJ, NY and Philadelphia. The Health Care Group represents clients in: health care business transactions: healthcare mergers and acquisitions; billing and coding audits and investigations; regulatory compliance, including HIPAA, Medical practice employment and human resource questions; as well as licensing board investigations and litigation.

CONVENTUS

New Jersey's premier professional liability insurer formed by and governed through an alliance of physicians serving the best interests of physician practices. Conventus members and their staff enjoy exclusive access to insurance products and highly personalized services, gaining the practical knowledge and expert resources they need to improve practice performance, better serve their patients, and thrive in today's rapidly changing healthcare environment.

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