CLIENT ALERTS & INSIGHTS

Benesch COVID-19 Resource Center: Telehealth During COVID-19 National Emergency

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On March 17, 2020, the Centers for Medicare and Medicaid Services ("CMS") announced an unprecedented expansion of telehealth services,[1] widening provider access to its 62 million Medicare beneficiaries. It also strongly encouraged state Medicaid programs and commercial payors to do the same. Such action prioritizes the need of immediate and on-going care for vulnerable populations during the COVID-19[2] pandemic. As such, we expect many states to take swift action to similarly expand telehealth services and Medicaid reimbursement for the same. CMS issued a Telehealth Fact Sheet and a series of FAQs to assist providers and patients make immediate use of the telehealth services now available.

TELEHEALTH PATIENT CARE

1. **Telehealth Office Visits for Medicare Beneficiaries**

As of March 6, 2020, while under a public health emergency, Medicare beneficiaries within the United States may use technology to have telehealth visits with their providers and providers will be reimbursed the same as an in-office face-to-face visit. This is not limited to COVID-19 related care and may include all types of evaluation and management office visits, mental health counseling and preventive care. These visits may occur in the home, hospital outpatient units, nursing homes and skilled nursing facilities or other health care facilities and removes the requirement that such services be provided at originating sites or in a qualifying rural area. Also:

- "Qualified Providers" under this expansion of telehealth services include physicians, nurse practitioners, clinical psychologists, licensed social workers, nurse midwives, certified nurse anesthetists, registered dietitians and nutrition professionals.
- There is a requirement that the provider or the provider's practice has treated the patient within three years prior to the service, but the U.S. Department of Health & Human Services ("HHS") has indicated that it will not conduct audits to ensure that such a prior relationship existed for claims submitted during this public health emergency.
- Cell phones and other technology may be used between the provider and the patient, if the technology has audio and video capabilities (e.g., smartphones, tablets, etc.).
- Medicare coverage is available for these visits through E/M Codes (Ex: 99213, 99214) with a telehealth place of service code and potentially a modifier if required by commercial payors. Medicare beneficiaries will be responsible for coinsurance and deductibles, however, HHS is

providing flexibility for healthcare providers to reduce or waive cost-sharing for telehealth visits paid for by CMS.

- Check State requirements for consideration of provider licensing, billing and other regulatory rules regarding telehealth, including payment under Medicaid, for such requirements vary state by state.[3]
- Commercial payors are also taking steps regarding telehealth visits, such as waiving telehealth copays. Check here for a summary of commercial payor telehealth payment changes.

2. **Virtual Check-In for Medicare Patients (and Commercial Payors where applicable)**

- Regardless of whether a public health emergency is present, Medicare beneficiaries may continue to communicate with their physicians or certain other practitioners without going to the doctor's office in person for a full visit for:
  - Brief, virtual check-ins for patients with an established relationship with the physician or certain practitioner;
  - 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); and
  - Where consent is documented in the medical record prior to the patient using the service.

- Physicians and certain practitioners may bill for these virtual check-in services furnished through several technology modalities, such as telephone (HCPCS code G2012) or captured video or image (HCPCS code G2010).

3. **On-Line Patient Portals or E-Visits**

- Medicare continues to pay for patient initiated communication with their providers without going to the physician's office through the use of online patient portals. The relationship with the provider must be previously established.
  - In order for this communication to be billable by the physician, the communication must be patient initiated, but information on how to use the service may be initially provided by the practitioner.
  - The communications may occur over a 7 day period.
  - The physician may bill for this communication using CPT codes 99421-99423, depending on the minutes, and HCPCS codes G2061-G206, as applicable.
  - Medicare coinsurance and deductibles would apply to these services.

REMOTE PATIENT MONITORING

In addition to telehealth, or telemedicine, providers may engage in remote patient monitoring and other non-face-to-face care management services. The Medicare coinsurance and deductible would apply to these services.

HIPAA WAIVERS [4]

Effective immediately, the HHS Office for Civil Rights ("OCR") will exercise enforcement discretion and waive certain HIPAA sanctions and penalties against healthcare providers that serve patients in good faith through everyday audio and video communication products, such as FaceTime or Skype, which may otherwise risk HIPAA violations during the public health emergency. OCR provides additional guidance related to several other technologies, including those that should specifically not be used, related to the provision of telehealth.

STATE CONSIDERATIONS

Please contact your Benesch attorney for clarification of any particular state laws and Medicaid reimbursement which are changing very rapidly on a moment by moment basis.

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Also, consult the Benesch COVID-19 Resource Center for sources and additional information regarding COVID-19.

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Benesch stands ready to assist with any questions as we closely follow COVID-19 developments and support client's response efforts.

Please note that this information is current as of the date of this client bulletin, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by CDC and local officials.

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[1] https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf

[2] SARS-CoV-2, which causes coronavirus disease 2019 ("COVID-19") which was declared to be a pandemic by the World Health Organization on March 11, 2020.

[3] States may request licensure waiver for providers under a Section 1135 CMS waiver for licensure across state lines.

[4] https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcem