

Post-Pandemic Access to Telehealth: Highlights of the CMS 2022 Physician Fee Schedule Final Rule

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Last week, CMS announced its final [Physician Fee Schedule Payment Policies](#) (the “Final Rule”), which will become effective January 1, 2022. The Final Rule included several updates to Medicare coverage of telehealth services, including a number of COVID-19 related changes that will be extended or be made permanent. [As previously covered](#), while temporary orders allowing expanded use of telehealth have increased access to care across the country during the public health emergency (“PHE”), the regulatory environment for telehealth has always been somewhat unsettled. The changes in the Final Rule described below signal a move towards increased access to telehealth for Medicare beneficiaries as regulators acknowledge the potential benefits of these alternate methods of delivering care.

Addition of Telehealth Services Eligible for Reimbursement

Early in the pandemic, CMS issued a waiver providing for reimbursement of certain telehealth services for the duration of the public health emergency (“PHE”) regardless of where the patient was located. The additional covered services, which were deemed likely to offer clinical benefit if provided via telehealth, were placed on a temporary list of eligible telehealth services. Certain of these services will remain eligible for delivery via telehealth and reimbursed until the end of 2023, with the possibility of being made permanent if (1) the service is essentially similar to a telehealth service that is already eligible, or (2) there is evidence that demonstrates clinical benefit to the patient if it is provided via telehealth. Additionally, the Final Rule adds a number of codes related to outpatient and intensive cardiac rehabilitation to the temporary list of covered telehealth services.

Mental Health Services

Under the Consolidated Appropriations Act (“CCA”), which was passed last December, CMS will be implementing a permanent policy of reimbursing mental health services delivered via telehealth in the patient’s home if certain conditions are met. Specifically, the patient must have had a Medicare-covered in-person visit with the provider (or a colleague of the provider within the same specialty and group) within the six months prior to the delivery of the telehealth services. The Final Rule also clarifies that subsequent telehealth interactions must occur within 12 months of the in-person visit,

unless the patient and provider agree that the risks and burdens of an in-person visit are outweighed by the benefits of telehealth. This determination must be documented in the patient's record, and the provider must verify that the patient is able to obtain necessary point-of-care testing. The in-person requirement does not apply if the rural location requirements are met, or if the patient is being treated for substance use disorder with a co-occurring mental health disorder.

Audio-Only

Under the Final Rule, CMS has finalized its proposal to allow the delivery of mental health treatment, evaluation, and diagnosis via audio-only interaction, provided that the following conditions are met:

- Services are being provided to an established patient;
- The home is the eligible originating site;
- The in-person requirement discussed above has been met; and
- The provider has audio-visual capabilities but is utilizing audio-only due to patient choice, or because the patient is unable to use live video.

Opioid Treatment Programs will also be able to furnish therapy and counseling via audio-only interaction when the beneficiary lacks access to live video. While these changes will help increase access to behavioral health services for Medicare beneficiaries, providers should check applicable state requirements to ensure that there are no state law restrictions that prohibit delivery of audio-only telehealth services.

Conclusion

The Final Rule reflects a move towards permanent expanded coverage of telehealth services by Medicare, provided that certain requirements aimed at protecting beneficiaries and the integrity of the Medicare program are met. As we continue to move out of the COVID-19 pandemic, we expect to see states take similar steps to make permanent changes to telehealth policy.

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