Published on *The National Law Review* https://natlawreview.com

Remote Patient Monitoring (RPM) and Remote Therapeutic Monitoring (RTM): A Deep Dive into Proposed Medicare Changes

Article By:

Thomas B. Ferrante

Rachel B. Goodman

On July 13, the Centers for Medicare & Medicaid Services (CMS) released its annual Proposed Rule updating the Medicare Physician Fee Schedule (PFS) for calendar year (CY) 2024, which includes various proposed changes related to the provision of remote physiologic monitoring (RPM) and remote therapeutic monitoring (RTM) services.

The Proposed Rule, if enacted as proposed, will:

1. Clarify prerequisites for billing certain RPM and RTM codes;
2. Clarify that Medicare will pay separately for RPM and RTM during global surgery periods;
3. Allow separate payment of RPM and RTM for federally qualified health centers (FQHCs) and rural health clinics (RHCs);
4. Allow physical therapy assistants (PTAs) and occupational therapy assistants (OTAs) to provide RTM under the general supervision of physical therapists (PTs) and occupational therapists (OTs); and
5. Add RPM to the definition of primary care services used for purposes of Medicare Shared Savings Program (MSSP) beneficiary assignment.

Also of particular note, through the 2024 Proposed Rule, CMS is requesting information from stakeholders on various RPM/RTM topics as well as related digital therapies, including digital cognitive behavioral therapy (CBT).

RPM and RTM Clarifications

RPM Can Only be Furnished to an "Established Patient"

In the 2021 Final Rule, CMS stated that RPM services are limited to "established patients." In support of this position, CMS asserted that a physician who has an established relationship with a patient would likely have had an opportunity to provide a new patient Evaluation and Management

(E/M) service. During that new patient E/M service, the physician would have collected relevant patient history and conducted a physical exam, as appropriate. As a result, the physician would possess information needed to understand the current medical status and needs of the patient prior to ordering RPM services to collect and analyze the patient's physiologic data and to develop a treatment plan. CMS waived the "established patient" restriction during the Public Health Emergency (PHE) but in the 2021 Final Rule, CMS declined to extend such waiver beyond the PHE. Typically, this will require the practitioner to conduct a new patient E/M service in advance of initiating RPM services.

In the 2024 Proposed Rule, CMS provides clarification that patients who received initial remote monitoring services during the PHE are considered established patients.

It is notable that CMS expressly references only RPM (and not RTM) when clarifying the requirement that services may only be furnished to an "established patient." Thus, interested stakeholders should request that CMS clarify whether the "established patient" requirement applies to both RPM and RTM services.

Requirement to Collect 16 Days of Data Remains

In the Proposed Rule, CMS provides clarification that even though CMS has received various comments and inquiries about modifying its minimum data collection requirements for remote monitoring, as of the end of the PHE, the 16-day monitoring requirement was reinstated, meaning monitoring must occur over at least 16 days of a 30-day period.

Additionally, it is notable that CMS expressly lists RTM CPT (Current Procedural Terminology) codes (98976, 98977, 98978, 98980, and 98981) as those that depend on collection of no fewer than 16 days of data in a 30-day period. Last year, in its proposed 2023 Medicare Physician Fee Schedule, CMS proposed a requirement that at least 16 days of data must be reported during a 30-day period to bill the RTM professional codes (CPT codes 98980 and 98981). However, CMS ultimately did not finalize this proposal in the 2023 final rule. It appears CMS is once again re-instating this proposal. If this proposed clarification is finalized, the RTM professional codes could not be used to manage the treatment of a condition if the monitoring services did not include at least 16 days of data. Furthermore, by specifically referencing only the RTM codes, CMS potentially introduces uncertainty with respect whether it also intends these limitations to apply to the RPM professional codes (CPT codes 99457 and 99458).

Since separate payments for RPM and RTM services were established, industry stakeholders have advocated against this 16-day requirement arguing that it is clinically arbitrary and ignores conditions where a reduced number of days would be more clinically appropriate.

Interested stakeholders should consider submitting comments advocating for greater flexibility on the 16-days requirement and what nuances apply only to RTM, only to RPM, to both sets of codes, or only to some of the RPM or RTM codes, but not others.

Only One Practitioner Can Bill RPM/RTM

In the 2024 Proposed Rule, CMS reiterates that for either RPM or RTM, only one practitioner can bill CPT codes 99453 and 99454, or CPT codes 98976, 98977, 98980, and 98981, during a 30-day period and only when at least 16 days of data have been collected on at least one medical device. "Even when multiple medical devices are provided to a patient," CMS explained, "the services

associated with all the medical devices can be billed by only one practitioner, only once per patient, per 30-day period, and only when at least 16 days of data have been collected." CMS also reemphasizes that remotely monitored monthly services should be reported only when reasonably necessary. These concepts are consistent with previous CMS guidance.

It is notable that CMS does not expressly list the CPT codes for RPM treatment management services (CPT codes 99457, 99458) when reiterating that only one practitioner can bill these codes. Interested stakeholders should consider requesting CMS clarify whether more than one practitioner can bill CPT codes 99457 and 99458 for the same patient in the same month.

Use of RPM / RTM with Other Services

CMS reiterates practitioners may bill RPM or RTM (but not both RPM and RTM) concurrently with the following care management services for the same patient as long as time or effort are not counted twice: Chronic Care Management (CCM), Transitional Care Management (TCM), Behavioral Health Integration (BHI), Principal Care Management (PCM), or Chronic Pain Management (CPM) codes.

CMS also references the 2023 CPT Codebook Guidance that "RPM and RTM may not be billed together" to ensure that no time is counted twice by billing for concurrent RPM and RTM services and to make clear that the same patient cannot receive RPM and RTM services in the same month. CMS specifically equates a patient receiving RPM and RTM in the same month to a provider billing RPM multiple times in a single month where there is more than once device, which in this guidance and past guidance, Medicare has made clear is not permissible.

Stakeholders who disagree with this position and interpretation should seek clarity from CMS regarding why RPM and RTM being billed concurrently as long as time is not counted twice is treated any differently than billing RPM or RTM with other care management services, which is permitted as long as time is not counted twice.

Separate Payment of RPM or RTM During Global Surgery Periods

CMS clarifies that where a patient receives a procedure or surgery, and related services, which are covered under a payment for a global period, RPM or RTM (but not both) may be furnished separately to the patient and Medicare would pay for the RPM or RTM services, separate from the global service payment, so long as other requirements for the global service and any other service during the global period are met. Similarly, for a patient who already is receiving RPM or RTM services during a global period, a practitioner may furnish RPM or RTM services (but not both) to the patient, and Medicare will pay the practitioner separately for the RPM or RTM, so long as the remote monitoring services are unrelated to the diagnosis for which the global procedure is performed, and as long as the purpose of the remote monitoring addresses an episode of care that is separate and distinct from the episode of care for the global procedure - meaning that the remote monitoring services address an underlying condition that is not linked to the global procedure or service.

Allowing Separate Reimbursement for RHCs and FQHCs

For several years, RPM and RTM codes have been billable by physicians and physician groups, but FQHCs and RHCs have not been authorized to bill separately for these services. Generally, when these services are furnished incident to a physician or other professional's service during an FQHC or RHC visit, payment is made through the all-inclusive rate.

CMS is proposing permitting FQHCs and RHCs billing RPM/RTM using the general care management code, Healthcare Common Procedure Coding System (HCPCS) code G0511 on an FQHC or RHC claim form; provided that RPM/RTM services are medically reasonable and necessary, meet all the requirements, and are not duplicative of services paid to RHCs and FQHCs under the general care management code for an episode of care in a given calendar month.

CMS further proposes to revise how it calculates the payment amount for G0511. Currently, CMS uses an unweighted average of the various codes included within HCPCS Code G0511. CMS states that due to the lower clinical intensity of RPM and RTM, adding the RPM and RTM codes would result in the reduction of the G0511 payment amount from a monthly rate of $77.94 to a rate of $64.13. CMS proposes instead to use a weighted average, which would result in a rate of $72.98 for the combined code. CMS is specifically seeking comment on its proposal to revise the payment rate methodology for G0511.

Stakeholders should consider submitting input relating to how HCPCS Code G0511 will be valued going forward and requesting clarification on how practitioners should handle clinical scenarios where both RPM/RTM may be used concurrently with other care management codes (e.g., CCM).

PTs and OTs Can bill RTM for PTAs and OTAs under General Supervision

In prior rulemaking, CMS clarified that PTs and OTs can provide and bill for RTM services. However, current Medicare regulations require all physical and occupational therapy services be performed by, or under the direct supervision of, the PT or OT. In the Proposed Rule, CMS recognizes requiring direct supervision makes it difficult for PTs and OTs to bill for the RTM services performed by the PTAs and OTAs they are supervising. As a result, CMS is proposing to establish an RTM-specific general supervision policy that would allow RTM to be provided by an PTA or OTA under general supervision of the PT or OT, respectively.

RPM Included in Definition of Primary Care Services for MSSP

CMS proposes to add RPM CPT codes 99457 and 99458 to the definition of primary care services used for purposes of beneficiary alignment in the MSSP. This may serve to expand the scope of beneficiaries who receive RPM and more accurately assign beneficiaries to Accountable Care Organizations based on who the patient received RPM services from.

Request for Information on RPM, RTM and Digital Therapies

CMS is seeking information on how remote monitoring services, such as RPM and RTM, are used in clinical practice with a focus on digital CBT. **Specifically, CMS asks several pages of questions related to the following topics:**

- How practitioners would identify which patients would benefit from digital therapeutics and how practitioners would monitor their effectiveness.
- Standards that have been developed to ensure the privacy and security of digital therapeutics for behavioral health.
- Effective models for the distribution or delivery of digital therapies and best practices to support and train patients.
- Which practitioners and auxiliary staff are involved in furnishing RPM and RTM.
- How data are collected and maintained for recordkeeping and care coordination.

- How an episode of care should be defined, particularly when one patient may be receiving concurrent RTM or digital CBT services from two difference clinicians engaged in separate episodes of care.
- How allowing multiple, concurrent RTM services for an individual might affect access to care, patient costs, quality, health equity, and program integrity.
- The pros and cons of generic versus specific RTM device codes.
- What evidence CMS should consider when determining whether digital therapeutics are reasonable and necessary.
- What aspects of digital therapeutics for behavioral health should be considered when determining whether they fit into a Medicare benefit category, and which category should be used.
- If CMS determines that services fit within an existing Medicare benefit category, what aspects of digital CBT services should be considered when determining potential payment (including whether these services are furnished incident to or independent of a visit).
- Barriers to accessing digital CBT for underserved populations and strategies to address these access barriers.

Stakeholders with an interest in expanding availability and coverage for digital therapies, including software as a medical device and prescription digital therapeutics should consider commenting on the rule in hopes of expanding future coverage for these types of services.

Make Your Voice Heard

Providers, technology companies, and virtual care entrepreneurs interested in remote monitoring should consider providing comments to the Proposed Rule. CMS is soliciting comments on the Proposed Rule until 5:00 p.m. on September 11, 2023. Anyone may submit comments – anonymously or otherwise – via electronic submission at https://www.regulations.gov/. **Alternatively, commenters may submit comments by mail to:**

- *Regular Mail*: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1784-P, P.O. Box 8016, Baltimore, MD 21244-8016.
- *Express Overnight Mail*: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1784-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If submitting via mail, please be sure to allow time for comments to be received before the closing date.

Conclusion

The CMS Proposed Rule advances the ability of RPM and RTM services to drive revenue and improve the patient care experience. We will continue to monitor CMS for any rule changes or guidance that affect or improve RPM and RTM opportunities.

National Law Review, Volume XIII, Number 236

monitoring-rtm-deep-dive