

COVID-19 and Telehealth

Emerging Federal Issues

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Today's Agenda

1. Coronavirus Preparedness and Response Supplemental Appropriations Act
2. Section 1135 Waivers
3. Medicaid and Telehealth
4. Current Uses of Telehealth in Response to Coronavirus Outbreak
5. Federal Coverage & Payment
 - Medicare
 - Medicare Advantage
6. Federal Fraud and Abuse
7. Office of Civil Rights

Recent Developments

- Congress passed **the Coronavirus Preparedness and Response Supplemental Appropriations Act**, which includes statutory amendments related to telemedicine.
 - Gives the Secretary of HHS the authority to waive certain restrictions on delivery of telemedicine to Medicare patients where either the President has declared a National Emergency or the Secretary has Declared a Public Health Emergency
 - The Secretary declared the COVID-19 a Public Health Emergency in January 2020

Recent Developments

Coronavirus Preparedness and Response Supplemental Appropriations Act

- Gives Secretary the authority to waive the originating site requirement for telehealth services furnished by a “qualified provider” to Medicare beneficiaries in any identified emergency area during emergency periods
- Allows telehealth services to be provided to Medicare beneficiaries by phone, but only if the phone allows for audio-video interaction between the qualified provider and the beneficiary
- Allows physicians and other healthcare professionals to bill Medicare fee-for-service for patient care delivered by telehealth during the current coronavirus public health emergency

Recent Developments

Coronavirus Preparedness and Response Supplemental Appropriations Act

- Defines a “qualified provider” who can furnish telehealth services to a Medicare beneficiary as a provider who has furnished covered Medicare services to the individual in the three years prior to the telehealth service (or another qualified provider under the same tax identification number that has provided services within three years, e.g. someone in the same group practice)
- Additional Medicare telehealth flexibility granted by Secretary of HHS as of March 17, 2020, retroactive to March 6, under a “Section 1135” waiver.

Section 1135 Waivers

- Section 1135 of the Social Security Act (“Section 1135”) authorizes the Secretary of the US Department of Health and Human Services (“HHS”) to temporarily modify or waive certain Medicare, Medicaid, Children’s Health Insurance Program (“CHIP”), and Health Insurance Portability and Accountability Act (“HIPAA”) requirements in a declared national emergency or disaster.
- A Section 1135 waiver is not available unless:
 - (1) The President has declared a national emergency or major disaster under the Stafford Act or National Emergencies Act; and
 - (2) The Secretary of the HHS (“Secretary”) declares a public health emergency under Section 319 of the Public Health Service Act.
- On January 31, 2020, the Secretary declared a public health emergency existed since January 27, 2020, nationwide and on March 13, 2020, the President declared a national emergency, so Section 1135 waivers are now available.

Section 1135 Waivers

Purpose of a Section 1135 Waiver: To ensure during an emergency:

- Sufficient health care items and services are available to meet the needs of Medicare, Medicaid and CHIP beneficiaries; and
- Health care providers that provide health care items and services in good faith can be reimbursed for them and exempted from sanctions for noncompliance, absent any fraud or abuse. See 42 U.S.C. § 1320b-5(a).
- Waivers can be granted for conditions of participation, enrollment requirements, EMTALA standards, some Stark prohibitions and telehealth requirements, among others.
- Section 1135 Waivers cannot be used to allow Medicare/Medicaid coverage for items that are otherwise not covered or to extend eligibility to individuals who otherwise would not qualify.

Section 1135 Waivers

The Waiver Process After the Secretary has the Power to Grant Section 1135 Waivers

- Individual providers, or systems on behalf of their providers, can submit specific waiver requests to the CMS Regional Office for the impacted area.
- Secretary can issue on own initiative or States can seek “blanket” waivers from CMS for certain requirements for all similarly situation providers in an area impacted by a national emergency.
- On March 17, 2020 CMS approved the first Section 1135 Waiver request submitted in connection with COVID-19 (no telehealth changes), which came from the State of Florida; other state’s waiver request submissions are imminent.

CMS Section 1135 Telehealth Waiver

On March 17, 2020, CMS announced that the Secretary of HHS would be invoking the authority under Section 1135 to afford providers additional flexibility in delivering telehealth services.

- Expanded telehealth benefit applies to all beneficiaries in all areas of the country.
- Medicare will now pay for telehealth services to patients who are in their places of residence, in addition to patients in facilities, clinics, etc.
- Office of Inspector General allowing providers to reduce or waive co-pays for telehealth.
- CMS/HHS will not enforce “qualified provider” requirements for telehealth services while COVID-19 emergency remains in place.
- HIPAA enforcement also will be relaxed with respect to telehealth.

Medicaid and Telehealth

States have always had discretion/flexibility to determine who telehealth will be covered and paid for under their respective Medicaid programs.

- State Medicaid telehealth coverage and payment policies are different in virtually every state.
- Most states that already covered telehealth are now at least now encouraging Medicaid providers to increase use of telehealth in light of COVID-19 outbreak, including California and Oregon.
- Some states may be easing current Medicaid telehealth requirements, will vary by state.

COVID-19: Telehealth Service Categories

- Virtual Office Visit
- Virtual Check-In
 - By Smartphone or Telephone (Synchronous)
 - By Image or Video Transmission & Review (Asynchronous)
- eVisits
- Remote Patient Monitoring
- Teleconsultations

Virtual Office Visit



Virtual Office Visit

- **Description:** Office or other outpatient visit for the evaluation and management
- **Codes and Payment:**
 - New Patients – 9920X (Non-Fac: \$51.49 - \$227.92; Fac: \$28.69 - \$182.74)
 - Established Patients – 9921X (Non-Fac: \$26-43 – \$161.25; Fac: \$9.96 - \$120.71)
- **Requirements:**
 - History
 - Examination
 - Medical Decision Making

COVID Issues:

- Originating Site Waiver
 - No rural requirement
 - Home okay
- Other 42 CFR 410.78 requirements apply

Virtual Check-In



Medical providers at UCHealth's Virtual Urgent Care are trained to help people in Colorado figure out if they need additional help or testing for symptoms of coronavirus. Photo by Cyrus McCrimmon for UCHealth.

Virtual Check-In

(Smart Phone or Telephone Visit)

- **Description:** Brief communication technology-based services (e.g., virtual check-in)
- **Codes and Payment:** HCPCS G2012 (Non-Fac: \$15.83; Fac: \$14.14)
- **Requirements:**
 - Synchronous (audio-video, or audio-only okay)
 - Patient-initiated
 - Established patients only
 - Performed by physician, NP or PA
 - 5-10 minutes of medical discussion
 - Not originating from office visit in last 7 days
 - Does not result in office visit in next 24 hours (or next available)
 - Annual consent required

COVID Issues:

- Use to screen symptoms
- Use to determine appropriate care/triage
- Not billable if screen results in office visit
- Negative screen, hospitalization=Billable

Virtual Check-In

(Review of Image or Video)

- **Description:** Remove evaluation of recorded video and/or images (store and forward)
- **Codes and Payment:** G2010 (Non-Fac: \$13.34; Fac: \$9.96)
- **Requirements:**
 - Asynchronous
 - Patient-initiated, by established patients only
 - Performed by physician, NP or PA
 - Interpretation with follow-up with the patient within 24 business hours
 - Not originating from office visit in last 7 days
 - Does not result in office visit in next 24 hours (or next available)
 - Annual consent required

COVID Issues:

- Unclear utility for screening patients for COVID-19 risks/symptoms

COVID-19 Screening, Self-Isolation and Monitoring Pathways

by Fred Pennic 03/16/2020 0 Comments



eVisit

(Physician, NP or PA Online E/M Service)

- **Description:** Online digital evaluation and management service, for up to 7 days, cumulative time during the 7 days.
- **Codes and Payment:**
 - CPT 99421 – 5-10 minutes (Non-Fac: \$16.67; Fac: \$14.14)
 - CPT 99422 – 11-20 minutes (Non-Fac: \$33.23; Fac: \$29.01)
 - CPT 99423 – 21 or more minutes: (Non-Fac: \$53.77; Fac: \$46.17)
- **Requirements:**
 - Asynchronous
 - Patient-initiated, by established patients only
 - Performed by physician, NP or PA
 - Cumulative time during 7 days
 - Annual consent required

COVID Issues:

- Screen for COVID-19 with questionnaires
- Limited to established patients who initiate the digital E/M service

eVisit

(Non-Physician Online Assessment)

- **Description:** Qualified nonphysician healthcare professional online assessment, for up to 7 days, cumulative time during the 7 days.
- **Codes and Payment:**
 - HCPCS G2061 – 5-10 minutes (Non-Fac: \$12.99; Fac: \$12.99)
 - HCPCS G2062 – 11-20 minutes (Non-Fac: \$22.90; Fac: \$22.90)
 - CPT 99423 – 21 or more minutes: (Non-Fac: \$35.89; Fac: \$35.89)
- **Requirements:**
 - Asynchronous
 - Patient-initiated, by established patients only
 - Performed by “qualified nonphysician healthcare professional”
 - Cumulative time during 7 days
 - Annual consent required

COVID Issues:

- Providers can staff using non-physician practitioners

Remote Patient Monitoring



Remote Patient Monitoring

- **Description:** Set-up, education and remote monitoring of physiologic parameters (e.g., body temp, blood oxygen, respiratory flow rate, other vitals)
- **Codes and Payment:**
 - CPT 99453 – Set-Up and Education (Fac. & Non-Fac: \$21.84)
 - CPT 99454 – 30 days of Remote Monitoring (Fac. & Non-Fac: \$72.93)
 - CPT 99457 – 20 minutes of professional time (Non-Fac: \$56.75; Fac: \$34.79)
 - CPT 99458 – Additional 20 minutes of professional time (Non-Fac: \$45.77; Fac: \$34.79)

Remote Patient Monitoring

■ Requirements:

- Type of technology/equipment not specified
- RPM services may be performed by the physician or clinical staff
 - Clinical staff includes RNs and MAs subject to state scope of practice laws.
 - Can be billed as “incident to” the billing practitioner
 - RPM is a “Designated Care Management Service” and therefore only requires auxiliary staff’s RPM service to be furnished under “general supervision” of a physician
- Patient consent is required and must be documented in the medical record
- Unclear whether RPM services must be preceded by an in-person visit or must be provided to established patients only

COVID Issues:

- Effective way to monitor vulnerable populations for symptoms
- Non-physician practitioners can staff

Telehealth Consultations



Telehealth Consultations (Peer to Peer)

- **Description:**

- CPT 99446-449: Interprofessional telephone or internet assessment and management service
- CPT 99451: Interprofessional telephone/internet/EHR assessment and management service
- CPT 99452: Interprofessional referral services provided by a treating/requesting practitioner

- **Codes and Payment:**

- CPT 99446-449 (Non-Fac. & Fac.: \$19.44 to \$78.28)
- CPT 99451 (Non-Fac. & Fac.: \$39.83)
- CPT 99452 (Non-Fac. & Fac.: \$39.83)

- **Requirements:**

- May be conducted through telephone, internet or EHR modality
- Time-based codes (From 5 to 31+ minutes)
- Annual consent required

COVID Issues:

- Promotes social distancing between practitioners

Medicare Advantage and Telehealth

(Before Coronavirus Outbreak)

- MA plans must cover the telehealth services available under traditional Medicare
- MA plans must cover services that are **adjunct** to the delivery of those covered telehealth services (e.g., e-mail, text, etc., between patient and physician)
- MA plans may offer telehealth services as a “**supplemental benefit**”
 - “**Standard**” supplemental benefits offered to all enrollees
 - “**Targeted**” supplemental benefits offered to qualifying enrollees by “objective and measurable” health status or disease state
 - “**Chronic**” supplemental benefits offered to the chronically ill on an individually tailored basis

Medicare Advantage and Telehealth

(March 10th CMS Announcement to all MA Plans)

- “Special Requirements” during a disaster or emergency
- “Permissive Actions”
 - MA Plans may waive or reduce enrollee cost-sharing for members impacted by the outbreak
 - Such waivers will be deemed to satisfy the Anti-Kickback safe harbor for reduced cost-sharing payments (42 CFR 1001.952(I))
 - “Originating Site” requirements may be waived for telehealth services provided to MA members, should the MA plan “wish”



Federal Fraud and Abuse

(Copayment Waivers)

- OIG issues Policy Statement (March 17, 2020)
- Coinsurance/deductibles may be waived for telehealth services provided to federal program patients if services are:
 - Provided consistent with applicable coverage and payment rules, and
 - Furnished during declaration of public health emergency
- Additional considerations:
 - Providers not required to waive coinsurance/deductibles
 - Free telehealth services will not be considered an inducement



Office of Civil Rights



- **“Notice of Enforcement Discretion for Telehealth Remote Communications during the COVID-19 Nationwide Public Health Emergency”** (March 17, 2020)
 - OCR recognizes importance of delivery of services via telehealth technologies
 - OCR recognizes some technologies may not fully comply with HIPAA
 - “OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency. This notification is effective immediately.”

Office of Civil Rights



- Additional considerations:
 - “A...provider...can use any non-public facing remote communication product that is available to communicate with patients.”
 - “This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to...COVID-19”
 - “Providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to provide telehealth”
 - “Facebook Live, Twitch, TikTok and similar video communications...should not be used”
 - “Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks”

Takeaways

Telehealth Models

- There are many telehealth models to consider
- Synchronous audio-video; Telephone-only; Asynchronous Messaging; Store and Forward; Remote Patient Monitoring; Teleconsultation

Medicare

- Medicare covers these models
- Patients can present from home
- Providers can waive copayment and deductibles for federal program patients

HIPAA

- Okay to use FaceTime, Facebook Messenger, Google Hangouts, or Skype

Section 1135 Waivers

Medicaid

- Coverage will vary by state. Keep eyes out for expanded coverage or waivers of state requirements.



Questions?

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Thank you!



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