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Telehealth updates: 2022 Physician Fee Schedule proposed rule and ongoing enforcement

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The COVID-19 pandemic has brought considerable transformation within the healthcare industry as well as uncertainty. Overnight, the pandemic elevated telehealth from a highly specialized and seemingly futuristic mode of care into a major component of today's healthcare delivery system. Nearing two years since the onset of the COVID-19 public health emergency (PHE), however, the permanence of Medicare coverage for various categories of telehealth services is still in question. On July 23, 2021, Centers for Medicare & Medicaid Services (CMS) published the Calendar Year 2022 Medicare Physician Fee Schedule (MPFS) proposed rule,[1] which included a number of notable prospective updates regarding the future of telehealth coverage. Meanwhile, the Office of Inspector General (OIG) and Department of Justice continue to prioritize telehealth fraud enforcement. This article will summarize the notable provisions in the proposed rule that pertain to telehealth and identify some of the most recent enforcement trends.

In order to understand the potential impact of the proposed rule, it is helpful to review how Medicare coverage for telehealth services has evolved. Prior to the PHE, CMS would only reimburse for telehealth services provided to patients residing in rural areas.[2] Furthermore, in order to provide payment, CMS previously required that the patient be physically located in specific originating sites, like a clinician's office or hospital. In response to the COVID-19 PHE, however, CMS has dramatically expanded the list of eligible telehealth services and allowed Medicare patients to receive telehealth services from their own home. Moreover, in an effort to encourage access, the OIG has even permitted providers to reduce or waive patient cost-sharing obligations for telehealth services.

Consequently, telehealth services have increased dramatically, having stabilized at an overall monthly volume 38 times greater than the pre-pandemic volumes.[3] As a result, stakeholders continue to question just how long the telehealth waivers will exist and how long the expanded list of telehealth-eligible services will be reimbursable.

CMS appeared to answer the question when it published the 2021 MPFS final rule on December 28, 2020.[4] The rule stated that the waivers and interim policies resulting from the Coronavirus Aid, Relief, and Economic Security Act will expire upon the conclusion of the PHE; however, CMS elected to use its authority to expand coverage for certain services. Historically, CMS classified reimbursable telehealth services in two separate categories: Category 1, consisting of services similar to office visits, professional consultations, and office psychiatry services currently on the list of telehealth services, and Category 2, consisting of services not similar to the current list of telehealth services but which are demonstrated to provide a clinical benefit to the patient. In response to the unique circumstances of the PHE and the lack of data regarding the benefits of the temporarily expanded services, CMS created a third category, Category 3, for purposes of evaluating the expanded services and potentially adding them permanently to either Category 1 or Category 2. Furthermore, CMS stated that the Category 3 services would remain reimbursable through the end of the year when the PHE ends.[5]