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Telehealth trends and tips for 2020

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While telehealth is an exciting and constantly developing area of health law, it also poses certain challenges to compliance professionals to keep up with the changes. This article outlines recent legal and policy developments in telehealth that are most important to compliance professionals. It also examines the various sources of regulation and enforcement actions involving telehealth and reviews some of the considerations and common pitfalls for compliance professionals to be aware of when providers use telehealth.

Legal and policy developments

As we detail below, the past year has seen a number of recent legal and policy developments focused on encouraging implementation of telehealth solutions at both the federal and state levels.

Expanded Medicare coverage of telehealth in 2020

The biggest change to Medicare's financing of telehealth in 2020 is its expansion of telehealth services available to Medicare Advantage (MA) beneficiaries. Historically, MA plans have had the authority to cover and reimburse for telehealth services as supplemental benefits, meaning the capitated payments that MA plans received from the Centers for Medicare & Medicaid Services (CMS) did not factor in telehealth services. As of January 1, 2020, MA plans may elect to offer certain telehealth services as basic benefits paid through the capitated rate, as long as (1) the same service is covered by Medicare when it is provided in person and (2) the MA plan has determined that the service can be provided via telehealth. This presents a strategic opportunity for providers using telehealth to contract with MA plans.

New Medicare telehealth services

Medicare maintains a list of services that it will cover for fee-for-service beneficiaries and reimburse providers for when they are provided via telehealth. These services must satisfy the requirements set forth in 42 C.F.R. § 410.78, including that the patient be at a qualifying originating site and in a rural health professional shortage area (HPSA), unless an exception applies. Every year, Medicare reviews the list of Medicare telehealth services, seeks input from industry as to what services should be added, and ultimately decides whether to add any new services to the list.

For 2020, CMS introduced three new codes to allow office-based treatment of opioid use disorder, such as care coordination, development of a treatment plan, individual therapy, group therapy, and counseling, to be provided via telehealth. The new HCPCS codes are GYYY1, GYYY2, and GYYY3. These services became eligible for reimbursement January 1, 2020. As noted above, CMS normally requires patients receiving treatment via telehealth to be located at an approved originating site—typically a brick-and-mortar healthcare facility in a rural HPSA—for telehealth services to be covered (among other requirements). However, pursuant to the

SUPPORT Act of 2018,[1] CMS waived those requirements for treatment of substance use disorder and correlated services. As a result, these services can be provided to patients regardless of their location.

New remote patient monitoring code and general supervision

Through 2019, CMS reimbursed providers for remote patient monitoring (RPM) services under CPT code 99457, which pays providers for 20 or more minutes of RPM services per month. For 2020, CMS introduced CPT code 99458, which is an add-on code that allows providers to obtain payment for an additional 20 minutes of RPM services each month.

CMS also tweaked its RPM requirements pertaining to supervision for 2020. Traditionally, CMS did not allow RPM services to be provided incident to a physician's service, which meant that the physician and the non-physician practitioner needed to be in the same building when services were rendered for CMS to cover the RPM services. In the 2020 Physician Fee Schedule, CMS announced that it was redesignating RPM services as designated care management services. The significance of this change is that designated care management services can be provided under general supervision under 42 C.F.R. § 410.26(b)(5). This means that RPM services can be provided by non-physician practitioners under a physician's general supervision, and that such supervision can now be provided via telehealth.

State law continues to evolve

No two states are alike in regulating telehealth. Even within states, there are often varying bodies of law and regulations governing telehealth; for example, many states have incorporated specific telehealth-related coverage requirements into law in addition to including separate, and sometimes even inconsistent, requirements in their Medicaid program guidelines. This variability among states creates an invariably confusing environment for compliance professionals counseling providers looking to use telehealth.

That said, there is an evident trend to refine and expand upon the telehealth laws and policies in a number of states. For example, California joined Connecticut last year in having its Medicaid program reimburse for at least one eConsult code. Other noteworthy trends include the broadening of what constitutes an eligible originating site, including the patient's home or school. Several states have also passed new telehealth private payer legislation, including California and Georgia, which now require payment parity, and Florida, which allows plans and providers to negotiate reimbursement rates. Additionally, laws and regulations allowing practitioners to prescribe medications through live video interactions have increased, with a few states even allowing for the prescription of controlled substances over telehealth within federal limits.