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$2 Trillion Stimulus Bill, Other COVID-19 Measures Unleash Telehealth; Codes May Confuse

By Nina Youngstrom

The floodgates of Medicare coverage for telehealth services were opened by the $2 trillion coronavirus economic stimulus bill[1] approved by the Senate March 25 and the March 6 telehealth legislation and CMS waivers.[2] The House passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, and President Trump signed it the same day. The path to sweeping telehealth adoption may not be entirely smooth, however, because hospitals and other providers must adapt their billing systems and technology to expansively deliver services by telehealth, communicate their capacity to patients and address state licensing restrictions.

"From a benefit category standpoint, this is a major expansion of telehealth," said attorney Jacob Harper, with Morgan Lewis in Washington, D.C. The CARES Act "is extremely far reaching in scope and touches basically every provider type." Unless patients require a service that can only be provided in person, such as certain lab tests, ventilator or infusion treatments, or non-elective surgeries, they probably can have their Medicare services delivered by telehealth until the COVID-19 public emergency is over.

The hope is that providing more services via remote communication technology will help contain the coronavirus. It will require moving fast under challenging circumstances. "There are a lot of logistics when you are expanding telehealth overnight," said Richelle Marting, an attorney in Overland Park, Kansas.

Congress took a big step toward relaxing requirements for telehealth with its first COVID-19 law, the Telehealth Services During Certain Emergency Periods Act of 2020,[3] which was part of the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020. The law gave HHS the authority to waive restrictions on telehealth services covered by Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) during the pandemic. In one fell swoop, Medicare services can now be delivered by telehealth to patients in their homes or at provider sites everywhere in the country. They're not restricted anymore to "originating sites"—hospitals, physician offices and other qualified providers in rural areas (counties outside of metropolitan statistical areas or in health professional shortage areas).

That means traditional evaluation and management codes can be provided via telehealth, with no geographic, patient status or site of service limitation. Commonly used codes are CPT 99201-99215 (office or other outpatient visits); G0425-G0427 (telehealth consultations, emergency department or initial inpatient); and G0406-G0408 (follow-up inpatient telehealth consultations furnished to beneficiaries in hospitals or skilled nursing facilities). The legislation also lifted the restriction on the use of smartphones to provide telehealth services, but only if it has audio and video for two-way, real-time interactive communication.

Other developments rapidly followed. After HHS declared a public health emergency in January and President Trump declared a national emergency March 13, CMS, the Office of Inspector General (OIG) and the Office for Civil Rights (OCR) announced waivers that paved the way for broader use of telemedicine. CMS issued a blanket waiver under Sec. 1135 of the Social Security Act[4] to temporarily "allow licensed providers to render services

outside of their state of enrollment" for Medicare, Medicaid and CHIP billing.[5] At the same time, OIG said it won't enforce fraud and abuse laws that prohibit routine copay waivers when providers waive or reduce cost sharing for telehealth services during the COVID-19 crisis[6] and added answers to frequently asked questions[7] about them on March 24. For its part, OCR promised not to impose penalties when providers deliver services in good faith with non-public-facing remote communication technologies (e.g., FaceTime and Skype) that may not be HIPAA compliant.[8]

Stimulus Bill Promotes Home Health by Telehealth

Now the stimulus bill takes things to another level. Harper said eight sections of the Senate bill advance the use of telehealth and encourage care of patients from their homes. For example, during the pandemic, Medicare will allow hospices to use telehealth to provide face-to-face visits. There's also a provision allowing CMS to grant a "temporary waiver of the requirement for face-to-face visits between home dialysis patients and physicians." And Medicare will make enhanced payments for telehealth services delivered by rural health clinics and federally qualified health centers, which traditionally were unable to provide telehealth services. They can be distant site providers, which means their physicians get paid for telehealth services, Harper said. The legislation also promotes home health services via telehealth and remote patient monitoring, and physician assistants and nurse practitioners can order home health, which he said is designed to keep patients at home during the COVID-19 crisis.

Although Medicare now covers many services via telehealth everywhere while COVID-19 holds America hostage, there's a glitch: physicians and other clinicians may still have to be licensed in the state where the patient is located. Even with CMS's enrollment waiver for providers, their hands are tied without the state's permission to practice there. HHS is trying to move things along. In a March 24 letter[9] to all governors, HHS Sec. Alex Azar urged them to "take immediate action to allow health professionals licensed or certified in other states to practice their professions in your state, either in person or through telemedicine," among other steps he said would "further the capacity of the health care workforce [to] address the pandemic."

Some states have already acted, including Texas, "which until recently has not embraced telehealth services. Currently, Texas is offering an expedited telehealth license to any physician already licensed in another state," Harper said. Other states, such as North Carolina, have waived their licensure requirements if a doctor is licensed in another state. "If you are licensed anywhere, you can provide services in North Carolina" during the pandemic, he said. "We are seeing more and more states taking some action, but not every state yet. It will be an important aspect to making the response successful." Harper cautions that a health care professional should understand the rules of the state where they plan to provide telehealth services. Florida, for example, has waived licensing requirements, but only if the practitioner is providing services through the Department of Health or American Red Cross.

'Culture of Patient Care Had to Shift Overnight'

In a flash, hospitals, other providers and patients had to wrap their heads around the change brought about by COVID-19 emergency measures. "The whole culture of patient care had to shift overnight," said Carol Yarbrough, business operations manager of the Telehealth Resource Center at University of California, San Francisco Medical Center. "Prior to two or three weeks ago, we were concerned about messaging to patients. How would we socialize the 2020 CMS changes that allowed providers to charge patients for MyChart messaging or for phone calls that used to be considered part of 'regular' care? But with this current environment, they understand we are providing care, not just in conjunction to an in-person visit." Culturally, Yarbrough said, "people are still getting used to the notion that a telehealth encounter truly is medical care."

Even though Medicare has dispensed with the originating site requirement, providers still must accurately report the place of service (02), Marting said. When providers deliver services to patients at home, no one is paid an originating site fee. The telehealth benefit is available for all covered services provided during the pandemic, not just testing and treatment related to COVID-19, and Marting envisions patients calling from home for minor needs, such as sinusitis, and having a consult with a specialist at a hospital elsewhere via telehealth while in a local freestanding facility. "The specialist doesn't have to leave the hospital to do it and doesn't have to expose the patient to a hospital setting," she explained.

There's Risk of Coding Errors

There's also a risk that providers will make billing mistakes unique to telehealth services. Yarbrough cautions about the potential for confusing evaluation and management (E/M) codes for in-person video visit services with the virtual visit versions. The nomenclature splits what place of service goes onto a bill. Also, "there are different time-based codes for digital online services versus telephone that are similarly numbered," she explained. Medicare pays for the digital E/M codes. They are:

- CPT 99421-23: Online digital E/M service for an established patient for up to 7 days, cumulative time during the 7 days: 5-10 minutes, 11-20 minutes or 21 or more minutes of medical discussion.
- CPT 99441-99443: Telephone E/M service by a physician or other qualified health care professional who may report E/M services provided to an established patient, parent or guardian not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment: 5-10 minutes, 11-20 minutes or 21 or more minutes of medical discussion.

"They are really similar, so people have to be careful in their haste [about] what they are pricing," Yarbrough said. "People are really confused about these codes."

Also, because CMS said it won't audit telehealth claims to enforce the requirement that patients have an established relationship with providers, there may not be a signed notice of privacy practices (NPP) on file, Marting said. Although OCR said it won't penalize providers for HIPAA noncompliance in several areas, including failure to have a signed NPP, she recommends getting the usual NPP acknowledgement anyway.

"We currently have a waiver on enforcement of getting acknowledgment of receipt of the NPP on or before the first date of service, but at some point, the emergency ends," Marting said. "That patient who was a new patient during the emergency period will be established at some point when the emergency ends, and there will be enforcement of getting the NPP once these waivers end. How will you identify which patients were subject to the leeway during the emergency and need the NPP once the emergency and waivers end? Getting the acknowledgment now despite the waivers, as part of the patient intake and registration process, can help avoid this situation when enforcement is active again."

Established telehealth providers often have online workflows that can secure NPPs and other legal documents (e.g., informed consents) before physician visits, Harper noted. "These may be resources for physicians and health systems that are having trouble implementing a telehealth system."

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1 Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, March 25, 2020, https://bit.ly/39ev5Ys.

2 Nina Youngstrom, "With Waivers the Catalyst for Telehealth Use in COVID-19 Response, Some Hospitals Act Fast," *Report on Medicare Compliance* 29, no. 11 (March 23, 2020), https://bit.ly/3au1hso.
3 Coronavirus Preparedness and Response Supplemental Appropriations Act, Pub. L. No. 116-123, 134 Stat. 146, 155 (2020).
4 42 U.S.C. § 1320b-5 .
5 CMS, "COVID-19 Emergency Declaration Health Care Providers Fact Sheet," March 13, 2020, https://go.cms.gov/2Qui46F.
6 OIG, "OIG Policy Statement Regarding Physicians and Other Practitioners That Reduce or Waive Amounts Owed by Federal Health Care Program Beneficiaries for Telehealth Services During the 2019 Novel Coronavirus (COVID-19) Outbreak," HHS, March 17, 2020, https://go.usa.gov/xdtXC.
7 OIG, "FAQs—OIG Policy Statement Regarding Physicians and Other Practitioners That Reduce or Waive Amounts Owed by Federal Health Care Program Beneficiaries for Telehealth Services During the 2019 Novel Coronavirus (COVID-19) Outbreak," March 24, 2020, https://go.usa.gov/xdSHf.
8 OCR, "Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency," HHS, March 17, 2020, http://bit.ly/3danGfP.
9 Alex Azar, letter to state governors, March 24, 2020, https://bit.ly/3ammcgB.