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# CMS publishes 2024 proposed Medicare Physician Fee Schedule rule

by Randi Seigel, Esq., Angela Haddon, Esq., and Jared Augenstein

On July 13, 2023, the Centers for Medicare & Medicaid Services' (CMS) proposed rule for the 2024 Medicare Physician Fee Schedule (MPFS) suggests significant programmatic and reimbursement changes in their annual MPFS.[1] In the proposed rule, CMS considers whether to extend certain temporary flexibilities that were in place during the COVID-19 public health emergency (PHE) to permanent solutions.[2] To facilitate the progression of CMS' telehealth policies going forward, CMS is proposing a streamlined approach for adding new services to the Medicare Telehealth Services List. The proposed rule provides important clarification on various payment policies, including remote patient monitoring, behavioral health services, and shared evaluation and management (E/M) visits. The proposed rule also expands CMS' authority to revoke Medicare enrollment and clarify when notice is required upon a provider's or supplier's enrollment change. As such, providers and suppliers should be aware of all requirements for coverage and anticipate how they will respond if and when CMS publishes the final rule.

## CMS emphasizes the need for clinical evidence of benefits of services delivered via telehealth

The Medicare Telehealth Services List (List) is updated annually and represents all services that are covered by Medicare when delivered via telehealth.[3] As it stands, CMS considers whether a particular service falls into one of the following three categories to determine whether the service should be added to the List:

1. Services that are similar to those already included on the List;
2. Services that are not similar to those already on the List but are accurately described by the corresponding code when delivered via telehealth and have a demonstrated benefit to the patient when delivered via telehealth; or
3. Temporary coverage for services that likely have a clinical benefit but for which there is insufficient evidence to consider permanent addition to the List.

Recognizing the potential for confusion when using these categories, CMS is proposing to consolidate services into two categories only: one permanent and one provisional.[4] The provisional category will still encompass services for which a benefit is likely, but further evidence is needed before it reaches permanent status on the list. Implementation of the new categories would begin calendar year (CY) 2025.

In addition, CMS proposed the following five-step process to consider whether a service should be added to the List, which emphasizes the need for clinical evidence that a service is beneficial when delivered via telehealth.[5]

1. "Determine whether the service is separately payable under the [M]PFS."
2. "Determine whether the service is subject to the provisions of § 1834(m) of the Social Security Act," which provides payment amounts for telehealth services furnished via a "telecommunications system." This includes store-and-forward technologies that transmit asynchronous healthcare information in single or multimedia formats.
3. "Review the elements of the service as described by the HCPCS [Healthcare Common Procedure Coding System] and determine whether each of them is capable of being furnished using an interactive telecommunications system as defined in 42 C.F.R. § 410.78(a)(3) " (conditions for payment of telehealth services under Medicare).
4. "Consider whether the service elements of the requested service map to the service elements of a service on the list with a permanent status described in previous final rulemaking."
5. "Consider whether evidence of clinical benefit is analogous to the clinical benefit of the in-person service when the patient, who is located at a telehealth originating site, receives a service furnished by a physician or practitioner located at a distant site using an interactive telecommunications system."

CMS would assign either a "provisional" or "permanent" status to a service that it determines either has elements that map to a service already on the List or for which there is evidence of a clinical benefit—similar to the benefit from receiving the service in person when the service is furnished via telehealth. CMS could assign permanent status to a previously designated provisional service as evidence accumulates and would propose any updates during the annual rulemaking process.[6]

In addition, CMS is proposing to add an individual and group face-to-face health and well-being coaching service to the List on a temporary basis. CMS rejected all requests for permanent additions to the List, including cardiovascular procedures, deep brain stimulation, physical therapy, and emergency department (ED) hospital care. Deep brain stimulation, physical therapy, and ED hospital care services will remain as temporarily covered services when furnished via telehealth. However, CMS completely rejected cardiovascular procedures from being included on the List.