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Report on Medicare Compliance Volume 30, Number 26. July 19, 2021 Proposed MPFS: Some Telehealth Stays Through 2023; Split/Shared Billing Has New Math

By Nina Youngstrom

Telehealth services are again mixed and matched in the proposed 2022 Medicare Physician Fee Schedule (MPFS) rule announced July 13.[1] Medicare will continue to cover some telehealth services until the last day of 2023, but others will be history when the COVID-19 public health emergency (PHE) ends. At the same time, the rule brings to life permanent telehealth coverage for mental health services enacted in the 2021 Consolidated Appropriations Act (CAA),[2] with few limits on where the services can be performed. The requirements are a bit confusing, however, and may be hard to translate into audit-proof documentation, an attorney said.

"Medicare is continuing in the direction of continually expanding telehealth," said Richelle Marting, an attorney and certified coder in Olathe, Kansas. "They have statutory restrictions they're working within, but these rules are giving providers the flexibility they rely on for workflows and care delivery. It signals there may be legislative changes like an end to the originating site requirement that will give Medicare more flexibility in coming years."

An abundance of other changes fill the pages of the proposed rule. Notably, CMS formalized coverage requirements for split/shared evaluation and management (E/M) services and critical care after removing them from the *Medicare Claims Processing Manual* in May, but with revisions to split/shared billing that may complicate life for providers. "It's a huge change," said attorney David Glaser, with Fredrikson & Byron in Minneapolis. The proposed rule also would strengthen CMS's authorities to revoke Medicare billing privileges, empower physician assistants and tinker with teaching physician billing, among other things.

In the telehealth world, CMS brushed off requests to add new telehealth codes to category 1 (defined as "services that are similar to professional consultations, office visits, and office psychiatry services that are currently on the Medicare telehealth services list") or category 2 ("services that are not similar to those on the current Medicare telehealth services list"). The services didn't pass muster for various reasons (e.g., they require in-person monitoring), CMS said.

What happened next is a little convoluted. The proposed rule would continue coverage of all the telehealth services it added to category 3 (for temporary codes) through 2023. Category 3 codes are in a holding pattern while CMS determines whether they are worth moving to a permanent spot (category 1 or 2). Covering them for two more years gives CMS "time to collect more information regarding utilization of these services during the pandemic, and provide stakeholders the opportunity to continue to develop support for the permanent addition of appropriate services to the telehealth list through our regular consideration process, which includes notice-and-comment rulemaking," the rule stated.

But coverage of "interim" telehealth codes, which was added during the worst months of the pandemic in interim final rules, will evaporate at the end of the PHE. Interim codes are listed in table 11 of the proposed rule. "Services that were temporarily added on an interim basis during the PHE for COVID-19 would not be continued on the list after the end of the PHE for COVID-19," CMS emphasized. Again, CMS is asking for comment on whether any of these codes should be moved to category 3 (which is protected through 2023).