

Report on Medicare Compliance Volume 31, Number 25. July 18, 2022 MPFS Rule: Say Goodbye to Incident-To, Audio-Only Telehealth Services; CMS Adds Codes

By Nina Youngstrom

Providers will say goodbye to the telehealth version of incident-to services at the end of the year if CMS finalizes a provision in the proposed 2023 Medicare Physician Fee Schedule (MPFS) rule announced July 7.^[1] The same goes for audio-only telehealth services for the most part, although its kill date is different. They are two of the telehealth revisions in the proposed rule, which adds and shuffles codes around different Medicare coverage categories and incorporates the 2022 Consolidated Appropriations Act's extension of Medicare telehealth coverage for 151 days past the end of the COVID-19 public health emergency (PHE). Although there is additional coverage, the overlapping expiration dates bring compliance challenges and operational uncertainties, attorneys said.

"Adjusting business models for compliance will be a little complicated," said Thomas Ferrante, with Foley & Lardner.

A major change is the end of virtual presence for direct supervision of incident-to services unless an exception applies, which is a "huge" loss, said Richelle Marting, an attorney and certified coder in Olathe, Kansas. In the proposed rule, CMS reiterates that at the end of the year in which the PHE ends, pre-PHE rules for direct supervision will be back in action: "Telehealth services can no longer be performed by clinical staff incident to a physician's professional service," CMS said. That's a shame, Marting said. "As expansive as telehealth services have become, this is a way providers give flexibilities to their care teams to help see patients when nurses and providers are not in the same office suite," Marting said. But Ferrante noted that CMS isn't saying "no" forever to telehealth delivery of direct supervision: "CMS is concerned that widespread direct supervision by telehealth may not be safe in some situations. They are requesting more information and advocacy from stakeholders." Also, providers are permitted to do remote physiologic monitoring with general supervision, which means the physician doesn't have to be in the office suite, he said.

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