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Final MPFS, OPPTS 2023 Rules: More Doors Open for Mental Health Services, Pain Management

By Nina Youngstrom

Patients who have been receiving mental telehealth services under COVID-19 public health emergency (PHE) flexibilities have been permanently spared the initial in-person visit, according to the final 2023 Medicare Physician Fee Schedule (MPFS) rule.^[1] CMS put to rest the vexing question of whether established mental telehealth patients have to be brought in after the fact for required in-person visits when they resume 151 days after the PHE ends.

That's one of the revisions and clarifications in the final MPFS and hospital outpatient prospective payment system (OPPS) rules, which were released Nov. 1.^[2] They include comprehensive changes to evaluation and management (E/M) services, new coverage for hospital mental health services provided in patient homes, new codes for pain management and a kinder, gentler approach to Medicare coverage of incident-to services delivered via telehealth.

"There are a lot of action items that need to be taken as a result of this rule," said Richelle Marting, an attorney and certified coder in Olathe, Kansas. Providers should begin to get their systems updated and ready for Jan. 1, when both rules take effect, she added.

Changes to behavioral health services appear in both rules. A "huge sticking point" has been what to do about the requirement for an in-person visit with patients before a telehealth visit when the patient is home or outside covered geographic areas if they're already receiving mental health services via telehealth throughout the PHE, Marting said. The 2022 Consolidated Appropriations Act (CAA) suspended the in-person visit requirement for 151 days after the PHE ends, but CMS hadn't yet addressed how the requirement would affect patients who have been receiving mental telehealth services under COVID-19 PHE flexibilities for almost three years, she said. Now CMS, with an enormous emphasis on access to mental health care services, has explained its position.

"If a beneficiary began receiving mental health telehealth services during the PHE or during the 151-day period after the end of the PHE, then they would not be required to have an in-person visit within 6 months; rather, they will be considered established and will instead be required to have at least one in-person visit every 12 months," the rule states.

On the hospital side of telebehavioral health, CMS in the final 2023 OPPS rule said behavioral health services furnished remotely by clinical staff of hospital outpatient departments to patients in their homes will be covered outpatient services paid under the OPPS. During the PHE, hospitals have had flexibility to temporarily relocate provider-based departments to patient homes for the purpose of providing certain hospital outpatient services—counseling, therapy, education and partial hospitalization services—by hospital clinical staff via telehealth. That authority goes away at the end of the PHE, but with this provision in the 2023 OPPS rule, CMS is redefining the scope of outpatient services to allow behavioral services to be delivered virtually.

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