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Compliance Today - December 2023

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Telehealth in a post-PHE world

by Raul G. Ordonez III

The COVID-19 pandemic ushered in a radical expansion of telehealth coverage seemingly overnight. Prior to the public health emergency (PHE), telehealth reimbursement was extremely limited; however, due to COVID-19, federal agencies removed various telehealth treatment and reimbursement restrictions. Throughout the pandemic, telehealth's prominence in a post-pandemic environment was unclear. Many proponents characterized telehealth's availability as the dawn of a new era in patient care delivery. Although some argued that there could be no going back to the pre-PHE days of limited telehealth coverage, many regulatory waivers that made telehealth services so available were designed to be temporary.[1] The uncertainty continued over three long years until the PHE finally concluded on May 11, 2023.

This article will discuss the present state of telehealth coverage and considerations for ensuring compliance in the new post-PHE era.

Telehealth Medicare reimbursement

By May 11, 2023, several important developments solidified telehealth coverage temporarily beyond the sunset of the PHE. First, through the passage of the Consolidated Appropriations Act (CAA) of 2023, Congress formally extended many of the telehealth flexibilities through December 31, 2024—an increase beyond the 151 days post-PHE originally allotted during the prior year's CAA.[2] One of the flexibilities relates to the geographic area where the patient must be located for the service to qualify for Medicare payment. The regulation requires that the patient must be present at an originating site that is either (1) a health professional shortage area that is outside a metropolitan statistical area (MSA) or within a rural census tract of an MSA or (2) a county not included in an MSA as of December 31 of the preceding year.[3]

The 2023 CAA extended the flexibility through December 31, 2024, guaranteeing coverage in all geographic areas during the increased timespan, and the Centers for Medicare & Medicaid Service (CMS) has agreed to confirm the regulatory change in its 2024 proposed rule.[4]

Similarly, another flexibility relates to the eligibility of the distant site practitioner (i.e., the clinician performing the telehealth service). The regulation limits Medicare reimbursement eligibility to services provided by the following providers: physician, nurse practitioner, physician assistant, nurse–midwife, clinical nurse specialist, certified registered nurse anesthetist, clinical psychologist, clinical social worker, or a registered dietitian or nutrition specialist.[5] However, the 2023 CAA also extended the flexibilities for services provided by federally qualified health centers (FQHCs), rural health centers, physical therapists, occupational therapists, speech-language pathologists, and audiologists through December 31, 2024.[6] Similarly, in the calendar year (CY)

Medicare Physician Fee Schedule (MPFS) Proposed Rule, CMS implemented the regulatory changes regarding the continued eligibility of rural health centers and FQHCs through the end of 2024.[7]

Another flexibility relates to the "originating site" type, where the patient must receive services. To qualify for Medicare reimbursement, the patient must be present in one of the specific care locations—such as the office of a practitioner, hospital, rural healthcare clinic, or other qualifying locations. Meanwhile, the COVID-19 flexibility allowed for Medicare reimbursement when the patient receives telehealth services in any healthcare setting—including the patient's own home. Similarly, the 2023 CAA clarified that the flexibility would extend to December 31, 2024, as well, and CMS confirmed the regulatory change in the 2024 Physician Fee Schedule.[8]

The 2023 CAA also extended the flexibility related to the permitted means of communication. To qualify for Medicare reimbursement, the practitioners must typically provide the telehealth service using, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner.[9] However, with the current flexibility in place through December 31, 2024, providers can continue receiving payment for Medicare telehealth services despite not meeting the real-time audio and video standards, such as the use of an audio-only telephone call.[10]

Another extension relates to the in-person treatment requirements to qualify for Medicare payment for performing mental health services. Whereas the telehealth regulation already provided for the qualification of the patient's home as an eligible originating site for substance abuse services, it was not until the CAA of 2021 where other mental health services could qualify for telehealth payment when the patient receives treatment in their own home.[11] Notwithstanding, the regulation requires that in order for the home to qualify as an originating site, the treating practitioner must have treated the patient in-person within the six months prior to the initial telehealth visit and within 12 months of each subsequent telehealth visit unless the practitioner and patient agree that the risks of the in-person visit would outweigh the benefits.[12] The in-person requirements for mental health services would have begun on the 152nd day after the expiration of the PHE; however, the 2023 CAA postponed the implementation of the in-person requirement through December 31, 2024, and CMS has confirmed the regulatory change in its 2024 MPFS Proposed Rule.[13]

One flexibility that was not extended related to the ability for hospitals to receive originating site facility fees for telehealth services occurring in the patient's home or a temporary expansion site. Under the flexibilities, hospitals could receive facility fees when the patient's home or mobile stroke unit qualified as a provider-based department. However, the 2023 CAA stated that upon the expiration of the PHE, neither the patient's home nor a temporary expansion site can qualify for facility fee payment.[14]

Another notable flexibility relates to the "direct supervision" requirement whereby physicians can be "immediately available" during a procedure by having a virtual presence using two real-time audio and visual technologies. As of the end of the PHE, the flexibility was set to last through the last day of the year in which the PHE would end (December 23, 2023).[15] However, in the 2024 MPFS Proposed Rule, CMS proposes to extend the flexibility through the end of 2024.[16]

Similarly, another flexibility existed regarding the statutory requirement that the treating provider be licensed in the state where the patient receives the services; CMS had relaxed the requirement under its emergency authority.[17] When the PHE finally ended, however, the licensure requirements once again went into effect.

Another flexibility involves the requirement that teaching physicians be physically present to bill for services provided that involve residents. Since the CY 2021 Physician Fee Schedule Final Rule, teaching physicians have

been able to bill for teaching services when they have been present for the key portions of the resident services through telehealth rather than through physical presence. In the CY 2024 MPFS Proposed Rule, CMS proposes to extend the flexibility through the end of 2024.[18]