

CMS EXPANDS USE OF TELEHEALTH TO ADDRESS COVID-19 PUBLIC HEALTH EMERGENCY

Hodgson Russ Healthcare Alert
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On March 17, 2020, the Centers for Medicare and Medicaid Services (CMS) announced an unprecedented expansion of the use of telecommunications technology to deliver healthcare during the current COVID-19 public health emergency. This expansion builds on the Telehealth Services During Certain Emergency Periods Act of 2020,” enacted March 6, 2020 as part of the Coronavirus supplemental appropriations package, a summary of which is available [here](#). In addition, CMS acted pursuant to its emergency authority under Section 1135 of the Social Security Act to waive compliance with certain requirements during the period of a public health emergency.

In the Act, Congress authorized the Secretary of Health and Human Services to waive certain Medicare telehealth payment requirements during a public health emergency to allow for the delivery of telehealth to beneficiaries outside of rural areas, in their homes, and by means of a telephone with audio and video capabilities. CMS’s recent announcement facilitates access to telehealth services for Medicare beneficiaries during the public health emergency, as summarized below. Additional information is available in the Medicare Telehealth Frequently Asked Questions (FAQs) issued March 17, 2020, available [here](#), and in the links below.

Use of Telephones with Audio and Video Capabilities. During the COVID-19 public health emergency, CMS announced, physicians can use telephones to provide a wide range of healthcare services to Medicare beneficiaries, no matter where the patient lives, and even if the patient is at home. Medicare’s Fact Sheet with information about Medicare coverage and payment for virtual services is available [here](#). See also the related changes under *HIPAA Enforcement* below.

Originating Site Requirement. During the COVID-19 public health emergency, the waiver eliminates the requirement that the originating site – the site where the patient is located – must be a physician’s office or other authorized healthcare facility and allows for the payment of telehealth services rendered to patients in their homes or any care setting.

Attorneys

Christine Bonaguide
David Bradley
Jane Bello Burke
Roopa Chakkappan
Reetuparna Dutta
Joshua Feinstein
Peter Godfrey
Michelle Merola
Matthew Scherer
Gary Schober
David Stark

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Established Relationship Requirement. During the COVID-19 public health emergency, CMS will not enforce the requirement that a patient have a prior “established relationship” with a particular provider. To accomplish this, HHS implemented a policy of enforcement discretion under which “HHS will not conduct audits to ensure that such a prior relationship existed for claims submitted during this public health emergency” for Medicare telehealth services.

HIPAA Enforcement. Effective March 17, 2020, the HHS Office for Civil Rights (OCR) will exercise enforcement discretion and waive penalties for HIPAA violations during the public health emergency against healthcare providers that serve patients in good faith through common, non-public facing communications technologies, such as FaceTime or Skype. According to OCR’s Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency, available here, the exercise of discretion will apply to telehealth provided for any reason, regardless of whether the telehealth service relates to health conditions involving COVID-19.

OCR encourages providers to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications. For more information on COVID-19 and HIPAA, click here.

Qualified Providers. Qualified providers who may furnish Medicare telehealth services during the public health emergency include physicians and certain non-physician practitioners, such as physician assistants, nurse practitioners, and certified nurse midwives. Other practitioners, such as certified registered nurse anesthetists, licensed clinical social workers, clinical psychologists, and registered dietitians or nutrition professionals also may furnish services within their scope of practice and consistent with Medicare benefit rules that apply to all services. The waiver does not change the existing regulatory requirements under 42 C.F.R. § 410.78.

Eligible Services. As in the past, CMS maintains a list of services that are normally furnished in-person that may be furnished via Medicare telehealth and paid under the Physician Fee Schedule. The current list is available here.

These actions are significant and can be expected to streamline the use of telehealth during the coronavirus emergency. At the same time, there remain open issues relating to licensure, scope of practice, credentialing, controlled substance prescribing and other matters. Stay tuned as we continue to monitor these rapid developments.

CONTACT US

If you have any questions regarding this alert, please contact Jane Bello Burke at jbburke@hodgsonruss.com.

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