Telehealth during COVID-19: A quick look at service during the pandemic

The Centers for Medicare & Medicaid Services (CMS) expanded access to Medicare telehealth services on March 17, 2020, with a presidential emergency declaration so that beneficiaries can receive a wider range of services from their health care providers without having to travel to a health care facility. This declaration also allows health care providers to keep the most vulnerable population away from facilities where they are potentially exposed to COVID-19 by supporting alternative care technology.

In looking at the definition of telehealth, there are considerations for both the scope of services and the method of communication. The Health Resources and Services Administration of the U.S. Department of Health and Human Services (HHS) defines telehealth as: the use of electronic information and telecommunications technologies to support and promote long-distance clinical health care, patient and professional health-related education, and public health and health administration. Telehealth services may be provided through audio, text messaging or video communication technology, including video conferencing software. For purposes of reimbursement, certain payors, including Medicare and Medicaid, may impose restrictions on the types of technologies that can be used.

With the 1135 waiver authority (named a 1135 waiver because the authority to do so is granted under section 1135 of the Social Security Act) and Coronavirus Preparedness and Response Supplemental Appropriations Act, Medicare can pay for office, hospital and other visits furnished via telehealth across the country, including in a patient’s place of residence, i.e., retirement community and/or long-term care facility, retroactive to March 6, 2020. CMS is expanding this benefit on a temporary and emergency basis under the 1135 waiver authority.

While this expansion of benefits would increase volume as well as access to telehealth services, there are still important patient privacy considerations. The Office of Civil Rights (OCR) expects that telehealth visits should still be conducted with the most privacy possible, i.e., in private settings, such as a doctor in a clinic or office connecting to a patient who is at home or at another clinic. Providers should always use private locations and patients should not receive telehealth services in public or semi-public settings, absent patient consent or other untoward circumstance. If telehealth cannot be provided in a private setting, covered health care providers should continue to implement reasonable HIPAA safeguards to limit incidental uses or disclosures of protected health information (PHI). Such reasonable precautions could include using lowered voices, not using speakerphone, or recommending that the patient move to a reasonable distance from others when discussing PHI.
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In addition to reviewing privacy safeguards around location and proximity to the public, there are similar concerns regarding the technology platforms in use. Per the American Academy of Family Physicians, Using Telehealth to Care for Patients During the COVID-19 Pandemic: “FaceTime or Skype can now be leveraged to perform video visits with patients. Patient-informed consent was required before HHS’ Office for Civil Rights announced it would use its discretion authority to not enforce some HIPAA requirements during the pandemic, although care providers are still encouraged to notify patients that these third-party applications potentially introduce privacy risks, and they should enable all available encryption and privacy modes when using such applications.

Under this waiver, however, Facebook Live, Twitch, TikTok, and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers.

Two other points of note. First, the OCR has indicated that it will not impose penalties against covered health care providers for the lack of a business associate agreement, with video communication vendors, or any other noncompliance with the HIPAA rules that relate to the good faith provision of telehealth services during the COVID-19 nationwide public health emergency.

Second, there is no change to the definition of a qualified provider contained within the waivers regarding COVID-19: “Qualified providers who are permitted to furnish Medicare telehealth services during the Public Health Emergency include physicians and certain non-physician practitioners such as nurse practitioners, physician assistants and certified nurse midwives. Other practitioners, such as certified nurse anesthetists, licensed clinical social workers, clinical psychologists, and registered dietitians or nutrition professionals may also furnish services within their scope of practice and consistent with Medicare benefit rules that apply to all services.”

All appropriate telehealth guidelines regarding documentation, regulatory updates, billing, federally or rurally funded sites must still be followed during this emergency waiver period. Keep in mind, this is a federal time-limited waiver retroactive only to March 6, 2020. “These waivers under section 1135 of the Social Security Act typically end no later than the termination of the emergency period, or 60 days from the date the waiver or modification is first published unless the Secretary of HHS extends the waiver by notice for additional periods of up to 60 days, up to the end of the emergency period and the 1135 waiver authority applies only to Federal requirements and does not apply to State requirements for licensure or conditions of participation.”

The three types of visits that qualify under the 1135 waiver:

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<th>Type of service</th>
<th>What is the service?</th>
<th>HCPCS/CPT code</th>
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| Medicare telehealth visits | A visit with a provider that uses telecommunication systems between a provider and a patient. | Common telehealth services include:  
- 99201-9921 S (Office or other outpatient visits)  
- G0425-G0427 (Telehealth consultations, emergency department or initial inpatient)  
- G0406-G0408 (Follow-up inpatient telehealth consultations furnished to beneficiaries in hospitals or SNFs) | For new* or established patients. |
| Virtual check-in | A brief (5-10 minutes) check in with your practitioner via telephone or other telecommunications device to decide whether an office visit or other service is needed. A remote evaluation of recorded video and/or images submitted by an established patient. | HCPCS code G2012  
HCPCS code G2010 | For established patients. |
| E-visits | A communication between a patient and their provider through an online patient portal. | 99421  
99422  
99423  
G2061  
G2062  
G2063 | For established patients. |

For a complete list: https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes

For new*: To the extent the 1135 waiver requires an established relationship, HHS will not conduct audits to ensure that such a prior relationship existed for claims submitted during this public health emergency.

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It is likely that post the COVID-19 pandemic, telemedicine regulations will revert to the pre-COVID-19 pandemic state. The 1135 waiver allows for flexibility of telehealth services to keep both patients and providers safe during this unprecedented period.

For additional information, you can access a Telemedicine Toolkit to use during the COVID-19 pandemic at: https://www.aafp.org/dam/AAFP/documents/advocacy/prevention/crisis/CMSGeneralTelemedicineToolkit.pdf

Each applicable policy of insurance must be reviewed to determine the extent, if any, of coverage for COVID-19. Coverage may vary depending on the jurisdiction and circumstances. For global client programs it is critical to consider all local operations and how policies may or may not include COVID-19 coverage.

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Sources
4 Ibid.
7 https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html
8 Ibid.

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