

Medicare Telehealth Payment Expanded to Help Address the COVID-19 Public Health Emergency

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On March 17, 2020, the Centers for Medicare and Medicaid Services (“CMS”) and the Department of Health and Human Services Office of the Inspector General (“OIG”) each issued policy statements which expand access to telehealth services for Medicare beneficiaries and permit physicians and other practitioners to reduce or waive beneficiary cost-sharing obligations for Medicare telehealth services during the COVID-19 public health emergency.

Immediately following the enactment of the Coronavirus Preparedness and Response Supplemental Appropriations Act, available [here](#), CMS issued a temporary expansion of the Medicare telehealth benefit beginning as of March 6, 2020 and effective until the public health emergency declared by the Secretary of the Department of Health and Human Services ends. The CMS policy statement can be found [here](#).

A key element of this telehealth expansion is that payment will be made for office visits and other covered Medicare telehealth services furnished to beneficiaries located in any part of the U.S. Moreover, the CMS waiver facilitates payment for telehealth services furnished while the beneficiary is located in their home or in any care setting. Without this emergency expansion, current Medicare rules at Social Security Act § 1834(m) generally limit coverage for telehealth services to beneficiaries located in rural areas, and only when the beneficiary is within a hospital, clinic, or other medical facility at the time of the telehealth visit.

Clinicians who may offer telehealth services to Medicare beneficiaries include physicians, nurse practitioners, physician assistants, clinical social workers, clinical psychologists, and registered dietitians. CMS also states that to the extent Medicare reimbursement for a telehealth service requires a prior relationship

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between the clinician and beneficiary, CMS will use its enforcement discretion and not audit claims submitted during the public health emergency to determine if such a prior relationship existed.

The CMS waiver explicitly permits clinicians to use telephones with audio and video capabilities to furnish Medicare telehealth services during the COVID-19 public health emergency. Together with the new waiver of certain HIPAA privacy rules (addressed in our prior blog post found [here](#)), this now will permit clinicians to conduct visits with Medicare beneficiaries using common communications tools such as personal phones, devices and computers, and common technologies such as FaceTime or Skype.

CMS issued a FAQ document on this temporary and emergency telehealth benefit expansion, which can be found [here](#).

In tandem with CMS' expansion of the Medicare telehealth benefit, the OIG issued a policy statement to address the potential anti-kickback and beneficiary inducement issues that providers may face during this emergency. OIG states that it will not sanction physicians or other practitioners for reducing or waiving cost-sharing obligations that a beneficiary may owe for telehealth services furnished during the COVID-19 public health emergency and furnished in accordance with the then-applicable Medicare rules (which would include the CMS telehealth benefit expansion during the emergency). Normally, the routine reduction or waiver of Medicare beneficiary cost-sharing obligations would implicate the federal anti-kickback statute and the civil monetary penalty law prohibiting beneficiary inducement.

Clinicians are not *obligated* to reduce or waive Medicare beneficiary coinsurance and deductible obligations, but *may* do so in accordance with the OIG policy statement without risk of anti-kickback or beneficiary inducement enforcement. Moreover, the OIG states that it will not view providing future services that may occur as a result of any free telehealth services to, by itself, be evidence of beneficiary inducement.

The OIG Policy Statement can be found [here](#).

These CMS and OIG issuances are intended to give providers added flexibility to combat the COVID-19 emergency. Hospitals and other providers should consider how the temporary Medicare telehealth expansion and the flexibility in dealing with beneficiary cost-sharing can help them keep clinicians and beneficiaries safer, alleviate some of the burden on provider staff and space, and help reduce the spread of COVID-19.

If you have any questions, please contact the author or any member of Dorsey's healthcare transactions and regulations practice group.