Telehealth Flexibilities for Critical Access Hospitals

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The information in this session is intended to be educational and is not legal advice. No attorney-client relationship is created by way of this informational session.
Pre-COVID

- **CMS Covered Telehealth Services list**
  - Originating site
    - Geographic area
    - Limited eligible sites
      - The office of a physician or practitioner
      - A critical access hospital
      - A rural health clinic
      - A Federally qualified health center
      - A hospital
      - A hospital-based or critical access hospital-based renal dialysis center (including satellites)
      - A skilled nursing facility
      - A community mental health center
      - A renal dialysis facility, **but only for limited purposes**
      - The home of an individual, **but only for limited purposes**
  - Distant site
    - Defined by DHHS/CMS (not by statute)
  - Telecommunications system
    - Defined by DHHS/CMS (not by statute)
Public Health Emergency (PHE) renewed April 2022

Expected to renew again in July 2022
• Distant site professionals could be paid for telehealth rendered to patients in states where professional was not licensed
  • Payment rule, not licensing rule
• Eliminated geographic restriction on originating sites
• Added home as eligible originating site
• Clarified telehealth can be rendered incident-to professional’s services
• Allows direct supervision of telehealth be provided via virtual presence (permanent)
• Revised definition of telecommunications system to include audio-only for certain services
• Professionals allowed to render telehealth services from home
  • As always, must be within U.S.
• Does not require adding provider’s home as practice location on 855
• Added CAHs to list of eligible distant site telehealth billers
• Expansion of services that can be delivered via telehealth
Proposed Legislation

• **Telehealth Extension and Evaluation Act**
  • Introduced in February 2022
  • Concepts in large part adopted by CAA of 2022
  • Would have established a two-year extension for certain COVID-19 emergency telehealth waivers
    • Geographic and originating site restrictions
    • Controlled substances to be prescribed via telehealth under Ryan Haight Act
    • Extend payment flexibilities for CAHs including being eligible distant site billers
• $1.5 trillion Omnibus Spending Package passed in March 2022 that will extend Medicare telehealth coverage for 151 days after end of PHE
• Requires Medicare Payment Advisory Commission to provide Congress with a report by June 15, 2023, on program integrity risks associated with Medicare telehealth services
  • HHS must post quarterly data beginning on July 1, 2022, on Medicare claims for telemedicine services
• Services covered as audio-only during PHE will continue to be covered for 151 days
• Requires certain distant site professionals continue to be allowed to bill as distant site professionals during that time
• CAHs were not included
  • Impact: outpatient therapy billing
  • But: hospitals at home
Geographic Requirements

- Amends 1834(m)(4)(C) Definition of Originating Site
  - 1834(m)(4)(C) (i) = rural geographic area
  - 1834(m)(4)(C)(ii) = eligible originating healthcare sites

- CAHs typically are eligible originating sites but not eligible to bill for distant site services
  - During the PHE, CAHs may act as distant sites
Hospitals Operating Without Walls

• Temporary Expansion Sites during PHE
• Applies to both IPPS and CAH hospitals
• Allows hospitals, CAHs to create alternate care sites/temporary expansion locations under existing hospital licenses
  • Including tents, gyms, patient homes
  • Becomes a hospital department
• Professionals delivering services bill using POS 19 or 21 depending on IP/OP status
Mental Health Services via Telehealth

- SUPPORT Act and SUD coverage via telehealth pre-COVID PHE
- Consolidated Appropriations Act of 2020 and mental/behavioral telehealth
  - Home
  - Audio-only
  - In-person requirements: within 6 months prior to telehealth service, every year (exceptions apply)
- In-person requirements aren’t triggered until PHE ends
  - Only apply if service would not be covered under basic telehealth rules
- CAA of 2022 tolls implementation of in-person requirements for another 151 days
- Includes when rendered by FQHCs, RHCs
Proposed Telemental Healthcare Legislation

- Telemental Healthcare Access Act
  - Introduced in June 2021
  - Removes the statutory requirement that Medicare beneficiaries be seen in person within six months of being treated for mental health services through telehealth
Kansas Telemedicine Act

- KSA 40-2,210
- Went into effect January 1, 2019
- Telemedicine can be used to establish provider-patient relationship
- Created coverage (but not payment) parity
- Challenged in 2018 leading up to effective date
  
  Judge said section of the Act under review didn’t create standing until previous injunctions were resolved
• Emergency declaration expired

Permanent telemedicine license waiver

• The permanent telemedicine waiver is available for all healthcare professions regulated by the KBHA.

• Those who hold a telemedicine waiver in Kansas will be subject to all the rules and regulations pertaining to the practice of the licensed profession in this state and will be considered a licensee for the purposes of the applicable professional practice act

• Must hold a full, active, and unrestricted license in another state or meets the qualifications required under Kansas law to practice your profession

• Medicaid flexibilities still in effect – until rescinded
Missouri

- Terminated emergency declaration 8/27/2021
- **Emergency due to staff shortages**
  - “I do hereby order suspension of certain statutory and regulatory provisions related to telemedicine”
  - Temporarily waivered requirement to have provider-patient relationship before prescribing medications
  - Temporarily would allow prescriptions based on internet request or questionnaire
  - **Expired December 31, 2021**
Missouri

During the Public Health Emergency, MHD waived some requirements, including:

- **Provider patient relationship.** The requirement that physicians must have an established relationship with the patient before providing services via telehealth, per RSMo 191.1146

- **Full licensure in the state.** The requirement that, in order to treat patients in this state with telehealth, health care providers shall be fully licensed to practice in this state. The flexibility allowed providers to treat patients in this state if they are licensed in the state in which they practice.

- While the State of Emergency in Missouri concluded December 31, 2021, MHD must submit requests to the Centers for Medicare & Medicaid Services (CMS) to discontinue any of the flexibilities allowed during the Public Health Emergency (PHE). Therefore, the flexibilities continue temporarily until CMS approval is granted. Providers will be notified when the state is approved to discontinue the two flexibilities listed above.

- **Telephone, alternate sites.** MHD also allowed the use of telephone for telehealth services and allowed quarantined providers and/or providers working from alternate sites or facilities to provide and bill for telehealth services. These services should be billed as distant site services using the physician’s and/or clinic provider number. MHD did not require additional CMS flexibility for these options, and they will continue.
Telehealth payment parity passed May 2021
  • Went into effect Jan 1, 2022

"mhealth" also referred to as "mobile health", means patient medical and health information and includes the use of the Internet and wireless devices by patients to obtain or create specialized health information and online discussion groups to provide peer-to-peer support

"Originating site" means a site at which a patient is located at the time health care services are provided to him or her by means of telemedicine, which may include, but shall not be restricted to, a patient's home, workplace or school

"Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose and other condition-specific data, medication adherence monitoring and interactive video conferencing with or without digital image upload
• “Telemedicine”, “telehealth” includes synchronous mechanisms; asynchronous (including store and forward); remote patient monitoring; mhealth; “other electronic means”
• Any health benefit plan that is offered, issued or renewed in this state by an insurer on or after the effective date of this act shall provide coverage of health care services provided through telemedicine, as provided in this section
• An insurer shall not exclude a service for coverage solely because the service is provided through telemedicine and is not provided through in-person consultation or contact between a health care professional and a patient when such services are appropriately provided through telemedicine. An insurer may limit coverage of services provided by telehealth consistent with coding and clinical standards recognized by the American Medical Association or the Centers for Medicare and Medicaid Services as covered if delivered by telehealth or telemedicine, except as agreed to by the insurer and provider
• An insurer **shall reimburse** the treating health care professional or the consulting health care professional for the diagnosis, consultation or treatment of the patient delivered through telemedicine services **on the same basis and at least at the rate of reimbursement** that the insurer is responsible for coverage for the provision of the same, or substantially similar, services through in-person consultation or contact

• An insurer shall not apply any deductible to telemedicine services that accumulates separately from the deductible that applies in the aggregate to all items and services covered under the health benefit plan; no higher copay/coinsurance for telemed; no lifetime max benefits for telemed

• No utilization review unique to telemedicine

• An insurer shall not place any restrictions on prescribing medications through telemedicine that are more restrictive than what is required under applicable state and federal law

• Insurer can’t require use of particular telemed vendors
• Study from HHS in December found massive increases in telehealth that helped maintain healthcare access during COVID-19 pandemic.
• Without continued federal financial relief after the PHE, many rural hospitals struggling before the pandemic will be at risk of closure again.
• Rural healthcare organizations and community groups received financial assistance from Emergency Rural Health Care Grants available through the American Rescue Plan Act.
  • U.S. Department of Agriculture awarded $43 million to 93 rural healthcare organizations across 22 states in April 2022.
Questions?

Available Through Heartland Telehealth Resource Center for Technical Assistance
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