What's New on Telehealth Legal Landscape

Kentucky Telehealth Summit 2019

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Coverage and Reimbursement
Medicare Telehealth Coverage - The Perfect Storm

- Distant Site Provider
- Originating Site
- Covered Services (CCPT Code)
- Geographic Locations

Proper Technology Platform
MEDICARE TELEHEALTH REIMBURSEMENT

GEOGRAPHIC LOCATIONS
Telehealth Medicare Coverage/Payment

- **Geographic Location**
  - Originating site (where the patient is) must be in either:
    - a rural Health Professional Shortage Area (HPSA) in a rural census tract; or
    - a county outside of a Metropolitan Statistical Area (MSA)
  - Entities participating in a federal telehealth demonstration project qualify regardless of location
  - U.S. Health Resources and Services Administration (HRSA) makes geographic designations
  - Location analyzer
    - [https://data.hrsa.gov/tools/medicare/telehealth](https://data.hrsa.gov/tools/medicare/telehealth)
MEDICARE TELEHEALTH REIMBURSEMENT

GEOGRAPHIC LOCATIONS

ORIGINATING SITE
Telehealth Medicare - Originating Site (patient location)

- Physician/practitioner office
- Hospitals
- Critical Access Hospitals
- Rural Health Clinics
- Federally Qualified Health Centers
- Hospital-based or CAH-based Renal Dialysis Centers (including satellites)
- Skilled Nursing Facilities
- Community Mental Health Centers

**NEW FOR 2019**

- Renal Dialysis Facilities (Jan. 2019)*
- Homes of beneficiaries with ESRD receiving home dialysis (Jan. 2019)*
- Mobile Stroke Unit (Jan. 1, 2019)*
- Beneficiaries home when receiving SUD and related mental health services (July 1, 2019)*

*Geographic limitations do not apply
MEDICARE TELEHEALTH REIMBURSEMENT

GEOGRAPHIC LOCATIONS

ORIGINATING SITE

DISTANT SITE PROVIDER
Medicare Distant Site Practitioner

- Physicians
- Nurse practitioners
- Physician assistants
- Nurse-midwives
- Clinical nurse specialists
- Certified registered nurse anesthetists
- Clinical psychologists
- Clinical social workers
- Registered dietitians or nutrition professionals

*Check for conflicts under state law, e.g., Medicaid
*No location requirement for the distant site practitioner
MEDICARE TELEHEALTH REIMBURSEMENT

GEOGRAPHIC LOCATIONS

ORIGINATING SITE

DISTANT SITE PROVIDER

PROPER TECHNOLOGY PLATFORM
Telehealth Medicare Coverage/Payment (continued)

- **Technology**
  - Must be “synchronous.” Communication must be live interactive audio and video connection that allows for “real time” communication
  - No coverage for “asynchronous” or “store and forward” technology outside of federal demonstration program
  - No coverage for remote patient monitoring
MEDICARE TELEHEALTH REIMBURSEMENT
THE PERFECT STORM

DISTANT SITE PROVIDER

ORIGINATING SITE

COVERED SERVICES (CCPT CODE)

GEOGRAPHIC LOCATIONS

PROPER TECHNOLOGY PLATFORM
Telehealth Medicare Coverage/Payment (continued)

- **Covered Services**
  - Published each year by November 1 in final Physician Fee Schedule
    - [https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes.html](https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes.html)

- **Additional codes may be requested and added**
  - Category 1 requests. Granted if similar to the types of telehealth services already covered
  - Category 2 requests. Granted if not similar to the currently approved telehealth services; code is accurate and use of telehealth provides a demonstrated benefit – evidence required
Telehealth Medicare Coverage/Payment (continued)

Resources:

- *Medicare Telehealth Fact Sheet*

- *Physician Fee Schedule Look up – Great Tool!!*
No longer “not a Medicare issue”

- Expansion of originating site
- Medicare advantage expansion
- Reimbursable “non-telehealth” digital health
  - Unrestricted by SSA §1834(m)
  - “Technology – based” services
  - Remote patient monitoring
“Technology – based” services

- **Per CMS: Innately not face-to-face =not “telehealth”**

- **Virtual Check-In (HCPCS G2012)**
  - Established patients
  - No E/M in prior 7 days or subsequent 24 hours/ “soonest available”
  - 5-10 minutes of discussion

- **Remote Evaluation of Pre-Recorded Data (HCPCS G2010)**
  - Established patient recorded images or videos
  - Interpretation and follow-up in 24 hours
  - No E/M in prior 7 days or subsequent 24 hours/ “soonest available”
“Technology – based” services

- Interprofessional Consultations
  - 6 codes
    - 4 recently unbundled (99446, 99447, 99448, 99449)
    - 2 new (99451, 99452)
  - 5 for **consultative physician**; 1 for **treating or requesting physician or QHP**
  - Telephone, internet, EHR assessment/management
  - Verbal and/or written reports required
  - Certain limitations on frequency
“Technology – based” services

- Physician Fee Schedule Data

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Remote Patient Monitoring

- New Codes Effective January 1, 2019
  - Education/Equipment Set – Up (CPT 99453)
  - Device Supply (CPT 99454)
  - Collection and interpretation of data (CPT 99457)

- More User Friendly than 99091
  - 99457 – calendar month
  - Accounts for equipment related costs
  - No face to face exam
  - 20 minutes
  - Clinical staff allowed
Remote Patient Monitoring

- Certain detailed requirements
  - Minimum of 16 days
  - Consent
  - Co-pay applies

- **Recent TC allows for incident to billing**
  - is “general supervision” next????

- Questions still outstanding:
  - Who can bill for set-up?
  - What education is required?
  - What device and how must data be recorded?
Remote Patient Monitoring

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On the Horizon

- Mental Health Telemedicine Expansion Act
  - Would amend 1834(m)
  - New codes
  - No geographic limitations
  - Home could be originating site
  - In-person assessment?

- Proposed Coverage for Ambulatory Blood Pressure Monitoring
Medicare Compliance

- Mandatory Claims Submission rules
  - Potential penalties include fines and program exclusion
- Proper claims submission requires proper enrollment
- Cross jurisdictional telehealth models add layer of compliance considerations
Medicaid Basics

- Not tied to the Medicare requirements
- May be more expansive
- State specific requirements such as registrations
- Telehealth is not uniformly defined
- [www.cchpca.org](http://www.cchpca.org) (Great and FREE resource)
Commercial Insurance

- Commercial Payor Rules
  - What are the restrictions?
    - Location
    - Service
    - Provider
- Most states have parity laws
  - Note: **Coverage Parity** is not the same as **Payment Parity**
  - Each parity law must be reviewed closely to determine if a business model is lucrative or a loss leader
- RPM often specifically covered otherwise it would not be covered by parity statute
Institutional Considerations
Service Limitations

- Initial hospital services and nursing facility services must be in-person
- Subsequent services are limited
  - Hospital: One telehealth visit per three day period
  - SNF: One telehealth visit per thirty day period
- Medicare Claims Processing Manual, Ch. 12 Section 190
Telemedicine Credentialing by Proxy

Source: Foley & Lardner 2017 Telemedicine & Digital Health Survey (Nov 2017)
Proper Claims Submission (Distant & Originating if Part B)

- Submit to correct MAC
- Report correct Code
- Report correct POS
- Proper completion of fields (24B v. 32)

*Patient location governs for state licensing law compliance*
Telehealth Licensure and Practice
Telemedicine and Licensing

- Laws of the state where the patient is located control
- Special rules for VA
- Common exceptions: peer-to-peer consultations, border states, follow-up care
Questions regarding the current status and extent of these states’ and boards’ participation in the IMLC should be directed to the respective state boards.
Notable Exceptions for Telemedicine

- **Consultation**: Allows unlicensed physician to practice medicine in peer to peer consultation with a physician licensed in the state.
- **Bordering State**: Allows practice of medicine by out-of-state physicians who are licensed in a bordering state.
- **Special License or Registration**: Abbreviated license or registration for telemedicine-only care.
- **Follow-up Care**: Allows physician to provide follow-up care to his/her patient (e.g., post-operation).
Telemedicine Practice Standards

- Modality Restrictions
- “Valid Prescription”
- Patient Consent
- Disclosures
- Choice of provider
- Verify patient identity
- Record-sharing
- Originating site
- Special registration
Asynchronous Telemedicine by the Numbers

- **12 states** have laws that *expressly* ban asynchronous telemedicine to be used to establish a valid doctor-patient relationship, instead requiring the use of either audio-video or “interactive audio with store & forward” as the modality.

- **15 states** have laws that *expressly* allow asynchronous telemedicine to be used to establish a valid doctor-patient relationship.

- **23 states** do not mandate or proscribe a specific modality, instead choosing to more broadly define telemedicine to allow for new changes in technology and innovation (e.g., the use of secure electronic communications and information technologies between a patient at an originating site and a physician at a distant site).

- **19 states** have telehealth coverage laws that *expressly* require commercial health plans to cover asynchronous telemedicine.

- **Medicare covers more than 19 codes** for non-face-to-face services (e.g., G2010, G2012, 99453, 99454, 99457, 99446, 99447, 99448, 94449, 99091, 99490, 99487, 99489, 99492, 99493, 99494, 99484, 99358, 99359)

*Interpretive summary only; not legal advice; state laws are constantly evolving and state laws must be analyzed and applied to a specific clinical application.*
Fraud & Abuse Considerations
## Fraud & Abuse Considerations

### Federal Laws
- Anti-Kickback Statute
- Physician Self-Referral
- Civil Monetary Penalties Law

### State Laws
- Patient Brokering Acts
- Self-Referral Laws
- Fee-Splitting Laws
- Corporate Practice of Medicine
Fraud and Abuse

- 2018 OIG Report
  - 100 Claims without both originating and distant site claims
  - 31% error rate
  - Noncompliance with the “perfect storm”
  - Fraud? Lack of education? Lack of clarity on rules?

- Recent investigations into remote services = not “Tele-Fraud” just Fraud

- Questionnaire based models – all are not alike
General Compliance

- Proper physician-patient relationship
- Prudent marketing practices
- Legitimate medically necessary services
- Adherence to state practice standards
- Claims, coding, billing education (Medicare, Medicaid AND commercial)
- Fair market value compensation!!
Thank you!

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