



EDUCATIONAL RESOURCES

How to Properly Utilize Telehealth to Provide Cost-Effective Service

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Introduction



Introduction

- The pandemic has been a game changer.
- In the years leading up to the pandemic, health care delivery had been shifting towards telehealth.
- For the purpose of this webinar, the term “telehealth” will include all types of virtual communications among physicians, patients, caregivers, and pharmacies.

Introduction

- This made sense because many health care encounters did not need to be face-to-face.
 - A number of ailments can be diagnosed via a live video conference with the physician.
 - A number of treatments can be ordered via a live video conference with the physician.
 - A patient's vital signs can be monitored with remote technology.
 - A pharmacy can utilize technology to:
 - counsel and educate patients on how to take medications,
 - assist patients in setting up equipment and educate patients on how to use the equipment if the pharmacy provides DME.
 - In short, there are many scenarios in which a patient should not have to leave the confines of his home to receive health care.

Introduction

- Pre-pandemic, the shift towards telehealth had been led by commercial insurers, not by Medicare.
- Commercial insurers were more open to telehealth than the Medicare program. Insurers recognized the cost saving benefits of telehealth; Medicare was slow to follow the private sector's lead.

Introduction

- But then COVID changed everything. Beginning in March 2020, the health care delivery system went into triage mode.
- The focus was to keep as many patients as possible out of the hospitals so as to free up hospital beds for the sickest.
- The focus was to diagnose and treat patients as rapidly as possible.
- Many physicians had to close their offices and/or limit their availability for face-to-face encounters with patients.
- Ancillary providers had to figure out how to take care of their patients without having face-to-face contact.



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Medicare and Telehealth

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Pre-Pandemic Limitations

- Pre-pandemic pharmacies and other suppliers were limited in their ability to rely on physicians' orders resulting from telehealth encounters between Medicare beneficiaries and physicians.
- Pre-pandemic, in order for Medicare to recognize a physician's order for DME, resulting from a telehealth encounter, several limiting elements had to be met.
 - The beneficiary had to reside in a rural area.
 - The beneficiary had to leave his residence and drive to an "originating site" (e.g., critical access hospital).
 - Once inside the originating site, the patient was required to have both a visual and audio telehealth encounter with the physician.

Pre-Pandemic Limitations

- These limitations were exploited by providers caught up in Operation Brace Yourself in which DME suppliers, lead generation companies, telehealth companies and telehealth physicians were targets of kickback investigations because payments to the physicians (who prescribed braces) emanated from the DME suppliers that sold the braces and billed Medicare.

Pre-Pandemic Limitations

- In addition to the criminal cases, a number of DME suppliers:
 - were subjected to recoupment actions and/or
 - had their Medicare payments suspended.
 - The recoupments/suspensions were based on the fact that the three elements set out in the preceding slide were not met.
 - That is:
 - many Medicare beneficiaries resided in non-rural areas,
 - most of the beneficiaries never left the confines of their homes, and
 - most of the beneficiaries only had telephone conversations with the prescribing physicians.

Pre-Pandemic Limitations

- There is no question but that the back brace/lead generation/telehealth arrangements “gamed the system” and had to be stopped.
- And yet, when the pandemic hit Medicare determined that the telehealth restrictions as they pertain to DME suppliers needed to be relaxed during the pandemic.
- It was obvious that DME suppliers had an important role in keeping patients out of the hospital. If DME suppliers could take care of patients in their homes with a combination of equipment and services, then undue restrictions should not be placed on the suppliers.



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Medicare Policy Changes

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Policy Changes

- Since early March 2020, CMS has issued a number of waivers, regulations, and rules pertaining to telehealth.
 - Expanded the health care workforce by removing barriers to providing care.
 - Removed regulatory barriers with the goal of ensuring that hospitals can handle a surge of COVID patients.
 - Removed regulatory barriers with the goal of ensuring that patients have access to care while remaining at home.
 - Expansion of in-place testing.
 - “Patients over Paperwork.”

Coronavirus Preparedness & Response Supplemental Appropriations Act (March 6, 2020)

- Congress authorized HHS to waive certain Medicare telehealth requirements.
- Expands coverage to:
 - patients outside of rural areas and
 - patients in their homes.
- Expands coverage to new (not just established) patients.

Coronavirus Preparedness & Response Supplemental Appropriations Act (March 27, 2020)

- Broader waiver authority
 - HHS can waive statutory coverage requirements for telehealth.
- Increased funding for e.g., remote care technologies.
- Effective March 1, 2020, through the end of the Public Health Emergency (“PHE”).

New CMS Rules

- CMS issued rules (CMS-1744-IFC, CMS-5531-IFC) and FAQs addressing telehealth expansion during the PHE.
 - Medicare now pays for telehealth services at the same rate as in-office visits for all diagnoses, not just services related to COVID.
 - Physicians can reduce or waive Medicare beneficiary cost-sharing for telehealth visits, virtual visits, e-visits, and remote monitoring services.

Medicare Telehealth Changes

- Patients can receive telehealth and other technology-based services wherever they are located.
- Telehealth services can be provided to new or established patients.
- Health care providers can waive Medicare copayments for beneficiaries of traditional Medicare.
- Certain evaluation and management (“E & M”) services, behavioral health visits, and educational services can be provided via audio only.
- Other services must be furnished with audio and video technology, but IT and location requirements have been relaxed.

Medicare Telehealth Changes

- CMS has expanded the types of practitioners who may provide telehealth services.
- Telehealth can now be billed by all provider types who are eligible to bill Medicare for their professional services.
- CMS can add new CPT codes to the list of services that can be provided via telehealth on a sub-regulatory basis, which will result in the quicker addition of CPT codes to the list of codes that may be provided by telehealth.

Medicare Telehealth Changes

- Clinicians can provide:
 - remote evaluation of patients and
 - virtual check-in services to both new and established patients.
- Medicare payment for telephone E & M codes are equivalent to payment for office and/or outpatient visits with established patients.
- Clinicians can provide remote patient monitoring services to both new and established patients and these services can be provided to patients with only one disease. To the extent that an NCD or LCD would require a face-to-face visit for evaluations and assessments, clinicians do not have to meet those requirements for the duration of the PHE. This, however, does not apply to power mobility devices.

Medicare Telehealth Changes

- Q&As From the DMEPOS Ask the Contractor Teleconference
 - Respiratory Policy Focus
 - **Question** - If a beneficiary is receiving a virtual set-up and equipment is shipped to his house, is the date of service the ship date or the visit date?
 - **Answer** - Suppliers should reference the Standard Documentation Article which indicates that the date of service may be either the ship date or the date the beneficiary receives the item.

Medicare Telehealth Changes

- Q&As From the DMEPOS Ask the Contractor Teleconference
 - Respiratory Policy Focus
 - **Question** - We are attempting to obtain telehealth visits as much as possible for PAP, oxygen etc. for non-COVID beneficiaries. Should we be obtaining video and audio in order to use the telehealth visits as face-to face? I realize they are not required but if a beneficiary is able to participate, we are requesting the visit.
 - **Answer** – If the beneficiary can have the video and audio visit, this meets the relaxed telehealth criteria, and this is recommended. If the beneficiary is not able to, you should be confirming that the medical records contain the reasonable and necessary information, including the documented telehealth visit that took place. These medical records must be available to Medicare on request.

Medicare Telehealth Changes

- Q&As From the DMEPOS Ask the Contractor Teleconference
 - Respiratory Policy Focus
 - **Question** - What if the beneficiary is in a rural area and does not have access to video for a telephone visit?
 - **Answer** – Regardless of where the beneficiary is located, for the duration of the PHE, visits are not required except for PMD. However, in order to qualify as a face-to-face visit, under the “relaxed” telehealth rules during the PHE there must be both audio and visual interaction between the beneficiary and the prescribing practitioner

Medicare Telehealth Changes

- Q&As From the DMEPOS Ask the Contractor Teleconference
 - Respiratory Policy Focus
 - **Question** - We are having a sleep lab that sometimes uses telephone-only to do compliance follow-ups when beneficiaries cannot do an audio/video visit. Is this acceptable?
 - **Answer** – Because the face-to-face requirements are not being enforced during the PHE, audio only will be accepted during the emergency. However, audio only does not meet the telehealth requirements for a true face-to-face. As such, suppliers need to follow instructions for actions to be taken when the PHE ends once they are provided.

Medicare Telehealth Changes

- Q&As From the DMEPOS Ask the Contractor Teleconference
 - Respiratory Policy Focus
 - **Question** - We are in a rural area so a visual and audio conference would be sufficient for a face-to-face, but what about audio-only?
 - **Answer** – If you just have an audio call, then that would be allowed because the face-to-face is not required during the PHE. However, you will want to watch for direction on how to manage these cases when the PHE has ended. If it was audio and video and the beneficiary was compliant during the first 90 days, then all of the criteria would have been met.

Medicare Telehealth Changes

- Q&As From the DMEPOS Ask the Contractor Teleconference
 - Respiratory Policy Focus
 - **Question** - In this scenario, the beneficiary did not meet compliance in the 90 days. Normally, we would have a beneficiary return the device or go back to the sleep lab. With the PHE, the physician still wants the beneficiary to use the PAP device. Do we continue to bill and hope that the beneficiary becomes compliant by month five (for example) or do we stop billing until he becomes compliant?
 - **Answer** – If the beneficiary is unable to obtain a face-to-face or return to the sleep lab as a result of the PHE, there are waivers and flexibilities in place to allow non-enforcement of the standard clinical indications for coverage and not require the face-to-face. Suppliers must ensure that the medical records show that the equipment is medically reasonable and necessary.

Medicare Telehealth Changes

- Q&As From the DMEPOS Ask the Contractor Teleconference
 - Respiratory Policy Focus
 - **Question** - If we get a telehealth visit, and it contains all of the information we need, do we know whether the beneficiary will need to go back for a subsequent face-to-face?
 - **Answer** – A telehealth visit with both audio and video components will meet the requirements of a face-to-face visit for DME.

Medicare Telehealth Changes

- Beneficiary consent can be obtained remotely.
- Physician supervision of other health care professional can be performed remotely for services that require it.
- Temporary waiver of requirement that practitioners be licensed in the state where he is providing services (note that state requirements still apply).

Medicare Telehealth Changes

- The CARES Act permanently allows mid-level providers, including nurse practitioners and physician assistants, to prescribe DME for patients.
- In many instances, these changes apply to Medicaid.
- Commercial payors have adopted many of these changes and have expanded access to telehealth in significant ways.

Office for Civil Rights (“OCR”) Relaxation of Technology Requirements

- Historically, telehealth requirements limited access to telehealth to those with access to advanced technologies.
- OCR relaxed HIPAA requirements for the use of technology to facilitate the relaxed CMS guidelines for telehealth, including standards of good faith for the HIPAA requirements when using alternate technology.
- This allows providers to utilize other mediums including Zoom, FaceTime, WebEx, Skype, and other platforms that did not meet the previous OCR requirements for telehealth.

Office for Civil Rights (“OCR”) Relaxation of Technology Requirements

- Public-facing technologies like Facebook Live, Twitch, and TikTok remain prohibited.
- Providers that wish to seek additional privacy protections should identify technology providers that will enter into HIPAA compliant Business Associate Agreements. Examples of such providers include Skype for Business and Zoom for Healthcare.

Future of Telehealth

- Most experts anticipate that the expansion of telehealth is here to stay.
- The best analogy may be that we are experiencing 10 or more years of progress towards telehealth in a matter of months. It is unlikely that all of this progress will be reversed.
- Former President Trump signed multiple executive orders with an intent to expand telehealth and to make some of these changes permanent. HHS has demonstrated a willingness to make some of these changes permanent.



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State Regulation of Telehealth

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State Regulation

- Notwithstanding the recent enactment of federal statutes and regulations during the PHE, telehealth continues to be primarily regulated by the states.
- This makes sense. Regulation of professionals – pharmacist, physicians, attorneys, accountants, engineers, etc. - almost exclusively lies in the domain of the states. Because telehealth is primarily connected to physician services, regulation of the space logically should come from the states.
- Normally, there is a great deal of commonality among the states when it comes to regulating industries and professionals. This not the case with telehealth.

Florida

- Health care practitioners licensed outside of Florida must obtain an “Out of State” telehealth provider registration from the Florida Board of Medicine (“Board”).
- A telehealth provider may use telehealth to perform patient evaluations. If a telehealth provider conducts a patient evaluation sufficient to diagnose and treat the patient, the telehealth provider is not required to research the patient’s medical history or conduct a physical examination before using telehealth to provide health care services.

Ohio

- Effective March 9, 2020, providers can use telemedicine in place of in-person visits. Throughout the PHE, the State Medical Board of Ohio (“Board”) will not enforce in-person visit requirements normally required by Board rules.
- Providers must document their use of telemedicine and meet minimal standards of care. The Board will require advanced notice before resuming enforcement of standard regulations when the state emergency orders are lifted.

Other States

- Missouri
 - Any physician who is licensed in Missouri can practice telehealth. The telehealth encounter must be both visual and audio.
- New York
 - A New York licensed physician can provide telehealth services. New York law requires a telehealth encounter to be both visual and audio.
- Tennessee
 - Tennessee law requires a telehealth encounter to be both visual and audio. A Tennessee licensed physician can provide telehealth services. The previous requirement that a patient must go to a “qualified site” for a telehealth encounter has been removed.



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Federal vs. State Regulation

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Federal vs. State Regulation

- When a pharmacist receives a physician order that emanates from a telehealth encounter, then the pharmacist should consider the following:
 - State Board of Pharmacy regulations
 - Is the patient covered by traditional Medicare? If so, are the PHI-relaxed rules still in place?
 - The state may have decided to follow Medicare's lead, but
 - the state legislature has not had time to pass a new law and/or
 - the state Medical Board has not yet promulgated new regulations.
 - If this is the case, informal guidance from the Board of Pharmacy may be sufficient.

Commercial Insurers

- In addition to being aware of federal and state regulations, if the DME supplier is billing commercial insurers the supplier should be aware of the insurers' coverage policies regarding telehealth. This applies to straight commercial insurance plans (group health insurance offered by an employer), Medicare Advantage, and Medicaid Managed Care.

Questions?





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Thank you

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