Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

Medicare/Medicaid Telehealth Updates

Akilah J. Kinnison
Of Counsel
Hobbs, Straus, Dean & Walker, LLP
September 23, 2020

Overview

- **Medicare Telehealth & Remote Services**
  - Overview
  - Federal flexibilities during the public health emergency (PHE)
  - Extending flexibilities beyond the PHE

- **Medicaid Telehealth**
  - Overview
  - State flexibilities during PHE
  - Extending flexibilities beyond the PHE

Medicare Telehealth Overview

- **Telehealth Services:** Section 1834(m) of the Social Security Act governs Medicare telehealth services, which are subject to certain restrictions.
  - There is a limited list of services that are ordinarily furnished in person;
  - Real-time interaction using both audio and visual technology is required;
  - Includes geographic restriction: must be rural; and
  - Includes site of service restriction: patient must be in the facility at the time of service.
- **Other Remote Services:** Certain other that do not qualify as “telehealth” services are also reimbursed under Medicare.
  - These use communications technology for services that are not normally provided in-person.
  - This includes remote patient monitoring, virtual check-ins, and e-visits through an online patient portal.

Medicare PHE Flexibilities

- **CARES Act**
  - Section 3703 amended Social Security Act to authorize HHS to waive 1834(m) requirements during national emergency
- **CMS's Interim Final Rule & Subsequent Action**
  - CMS used the CARES Act waiver authority to introduce new flexibilities for both telehealth services and other remote, communications-technology based services.
  - **Telehealth**
    - Expanded list of services (detailed in subsequent slides)
    - Removed geographic and site of service restrictions
  - **Other remote services**
    - Expanded remote evaluation and virtual check-in flexibilities
    - Allowed remote services to be used for new patients
    - Authorized certain audio-only evaluation and management services

Extending Medicare Flexibilities

- **Administrative Efforts: CMS's Physician Fee Schedule Proposed Rule**
  - **Telehealth**
    - Would permanently add certain services (detailed in subsequent slides)
    - Would extend other services to end of the calendar year during which the PHE ends
  - **Other remote services**
    - Would expand practitioners who can bill for eVisits
    - Seeks comment on creating a service for longer, audio-only, virtual check-ins at a higher payment rate
- **Submitting Comments:**
  - **Due October 5, 2020 at 5:00ET;** See https://tinyurl.com/CMSPFSProposedRule
  - We recommend addressing the importance of telehealth services to tribes and what reimbursement rates are needed to sustain those services.

Extending Medicare Flexibilities

- Services CMS proposes to add permanently:

Service	Related Code(s)
Group Psychotherapy	CPT code 90853
Domiciliary, Rest Home, or Custodial Care services, Established patients	CPT codes 99334-99335
Home Visits, Established Patient	CPT codes 99347- 99348
Cognitive Assessment and Care Planning Services	CPT code 99483
Visit Complexity Inherent to Certain Office/Outpatient E/Ms	HCPCS code GPC1X
Prolonged Services	CPT code 99XXX
Psychological and Neuropsychological Testing	CPT code 96121

Chart from CMS

Extending Medicare Flexibilities

- Services CMS is proposes to extend through calendar year during which PHE ends:

Service	Related Code(s)
Domiciliary, Rest Home, or Custodial Care services, Established patients	CPT codes 99336-99337
Home Visits, Established Patient	CPT codes 99349-99350
Emergency Department Visits, Levels 1-3	CPT codes 99281-99283
Nursing facilities discharge day management	CPT codes 99315-99316
Psychological and Neuropsychological Testing	CPT codes 96130- 96133

Chart from CMS

Extending Medicare Flexibilities

- Services CMS is proposes to let expire at end of PHE (chart 1 of 2)

Service	Related Code(s)
Initial nursing facility visits, all levels (Low, Moderate, and High Complexity)	CPT 99304-99306
Psychological and Neuropsychological Testing	CPT codes 96136-96139
Therapy Services, Physical and Occupational Therapy, All levels	CPT 97161- 97168; CPT 97110, 97112, 97116, 97535, 97750, 97755, 97760, 97761, 92521- 92524, 92507
Initial hospital care and hospital discharge day management	CPT 99221-99223; CPT 99238- 99239
Inpatient Neonatal and Pediatric Critical Care, Initial and Subsequent	CPT 99468- 99472; CPT 99475- 99476
Initial and Continuing Neonatal Intensive Care Services	CPT 99477- 99480

Chart from CMS

Extending Medicare Flexibilities

- Services CMS is proposing to let expire at end of PHE (chart 2 of 2)

Service	Related Code(s)
Critical Care Services	CPT 99291-99292
End-Stage Renal Disease Monthly Capitation Payment codes	CPT 90952, 90953, 90956, 90959, and 90962
Radiation Treatment Management Services	CPT 77427
Emergency Department Visits, Levels 4-5	CPT 99284-99285
Domiciliary, Rest Home, or Custodial Care services, New	CPT 99324- 99328
Home Visits, New Patient, all levels	CPT 99341- 99345
Initial and Subsequent Observation and Observation Discharge Day Management	CPT 99217- 99220; CPT 99224- 99226; CPT 99234- 99236

Chart from CMS

Legislative efforts: CONNECT Act (S. 2741)

- **General Waiver Authority:** Would allow HHS to waive current restrictions, including geographic, site of service, modality, and other restrictions.
  - Requirements for waiver:
    - Reduce spending without reducing quality, or improve quality without increasing spending
    - Waiver only in high need health professional shortage areas
- **IHS/Tribal Facilities:** Would eliminate site of service requirements.
- **Behavioral Health Services:** Would remove geographic restrictions and add home as permissible originating site for mental health services.

Medicaid Telehealth Overview

- Unlike Medicare, telehealth is not by statute a distinct service for Medicaid.
- States have broad flexibility to cover telehealth services in their Medicaid State Plans.
- No SPA is needed to pay for services delivered via telehealth if payment rates or methodologies do not differ from in-person services.
- “Telehealth” includes a variety of services, including “telemedicine,” which generally involves two-way, real time, audio-visual communication.
- Definitions and requirements vary by state.

State Practices Pre-PHE

- Some states already widely supported telemedicine:
  - All 50 states allow Medicaid reimbursement for some live video telemedicine.
  - 22 reimburse for remote patient monitoring
  - 14 reimburse for “store-and-forward” services and remote patient monitoring.
  - 19 states already allowed home as originating site.
  - Certain states already allowed for audio-only visits (e.g., Alaska)
  - Certain states already allowed encounter rate for telemedicine provided by IHS/tribal programs (e.g., Washington, Arizona, Maine).

PHE Best Practices

- **Reimbursement & rates**
  - Nebraska authorized encounter rate for ITUs for telehealth services provided within the four walls of an ITU facility
  - Minnesota authorized encounter rate for IHS/Tribal services
  - California authorized Tribal programs to be reimbursed at encounter rate for telehealth/telephonic services when clinic is originating or distant site
  - Washington increased rates for audio-only visits and patient portal services
  - Montana added originating site reimbursement in addition to provider reimbursement

PHE Best Practices

- **Site of service**
  - Alaska, Connecticut, North Carolina, South Dakota, and others received waivers allowing services from practitioner's home to be included in definition of clinical services
- **Technology**
  - During PHE, all State Medicaid agencies issued guidance to allow some form of audio-only telehealth services
- **Longer-term changes**
  - Washington allows professional and evaluation and management services over phone or online at same rate as face-to-face, and allows in any case where governor declares emergency.

Extending Medicaid Flexibilities

- **Working with States:** There may be opportunities to work with States to make PHE flexibilities permanent
  - Remember, no SPA needed if reimbursement rate/methodology is the same as in-person services (i.e., encounter rate is paid to tribes)

- **Barriers Remain:** Legislative fix needed for CMS's Four Walls Rule
  - CMS will begin to enforce the Four Walls restriction beginning January 30, 2021
  - Heroes Act (HR 6800) would eliminate four walls restriction for one year

Thank you!

Akilah J. Kinnison
Of Counsel
Hobbs, Straus, Dean & Walker, LLP
akinnison@hobbsstraus.com
202-822-8282