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TELEHEALTH EXPANSION IN RESPONSE TO COVID-19

In a groundbreaking move responding to the COVID-19 public health emergency, the Centers for Medicare & Medicaid Services (“CMS”) expanded access to Medicare telehealth services.

As of March 6, 2020, Medicare will pay for professional telehealth services in all areas of the country and in all settings of care. President Trump signed into law the “Coronavirus Preparedness and Response Supplement Appropriations Act of 2020” (H.R. 6074), which makes \$8.3 billion of emergency funding available to federal agencies responding to the outbreak. CMS subsequently issued a Section 1135 Waiver to modify requirements and expand telehealth services available to Medicare beneficiaries.

Before March 6, 2020, Medicare beneficiaries had to travel to certain originating sites to obtain telehealth services. Payment was limited to a qualifying rural area. The services had to be received at qualifying originating sites from a practitioner who could furnish and be paid by Medicare for the services.

The expansion is a part of the Trump Administration’s efforts to ensure that those at high-risk of complications from COVID-19 can make use of telehealth benefits, stay healthy, and limit their potential exposure to COVID-19. The temporary expansion allows Medicare beneficiaries to receive more reimbursable telehealth services from their providers without having to leave the comforts of home. Providers who can furnish and be paid for covered telehealth services (subject to state law) include physicians and certain non-physician practitioners, such as nurse practitioners, physician assistants and certified nurse midwives. Other practitioners may provide telehealth services within their scope of practice and consistent with Medicare benefit rules.

Prior to the Section 1135 Waiver, CMS improved access to virtual care by paying for brief, patient-initiated communications with a healthcare practitioner or “virtual check-ins.” Medicare Part B also pays providers for non-face-to-face, patient-initiated communications through a provider’s online patient portal (e-visits). These telehealth options in addition to those subject to the Section 1135 Waiver provide additional ways to extend healthcare outside of office clinic walls.

KEY POINTS:

- **Applicable Services:** The services that may be furnished by Medicare telehealth are listed at <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>.
- **Patient Location:** Under the emergency declaration and Section 1135 Waiver, these services may be provided to patients by professionals regardless of patient location, including the patient's home. For the duration of the public health emergency, telehealth services provided in all care settings, including a patient's home can qualify for Medicare reimbursement.
- **HHS Audits:** If the Section 1135 Waiver requires a patient have a prior established relationship with a practitioner, HHS will not conduct audits in that regard for the claims submitted during this public health emergency. Note, however, that state laws regarding established provider-patient relationships still apply.
- **Covered Codes:** Any telehealth covered code may be paid even if the treatment or screening is related to COVID-19.
- **OCR Penalties:** Although some methods of remote communication and virtual technologies are not fully HIPAA compliant, HHS's Office for Civil Rights ("OCR") will not penalize providers for providing telehealth services in good faith using common real-time audio/visual technologies, such as FaceTime or Skype, during the COVID-19 public health emergency.
- **Business Associate Agreements:** Further, OCR will not impose penalties on healthcare providers who do not have a business associate agreement with video communications vendors that are used to conduct telehealth visits with patients during the COVID-19 outbreak.
- **CMS Fact Sheet:** CMS published a number of fact sheets about the Section 1135 Waiver reimbursable telehealth services as well as additional guidance on telehealth logistics such as virtual check-ins and e-visits:
<https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- **Additional Resources:** For more information, see:
 - <https://www.medicaid.gov/medicaid/benefits/telemedicine/index.html>
 - <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>
 - <https://www.cms.gov/files/document/03052020-medicare-covid-19-fact-sheet.pdf>
 - <https://www.cms.gov/newsroom/press-releases/covid-19-response-news-alert-cms-issues-frequently-asked-questions-assist-medicare-providers>
 - <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html>

As the COVID-19 public health emergency evolves, CMS and other federal or state agencies continue to release guidance. Please contact a member of the Cline Williams Health Care Section if you have any questions or need any assistance.



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