Telehealth Developments – December 2020

Legislation

December 27: President Donald Trump signed the combination COVID-19 relief bill/FY 2021 omnibus spending bill. While the bill includes relatively few telehealth provisions, there are some notable inclusions.

- **Newly eligible facilities:** The law adds critical access Hospitals (CAHs) and small, rural hospitals with less than 50 beds to the list of sites eligible for reimbursement through Medicare for certain telehealth services, opening the door to the expansion of telehealth services in parts of the country where access is a challenge.
- **Mental health:** The law eliminates geographic restrictions for the mental health treatment delivered via telehealth, while also allowing patients to be treated in their homes.
- **FFC Telehealth Program:** The law authorizes an additional $250 million for the FCC's COVID-19 Telehealth Program, as well as new guidelines for stricter federal oversight. Created by the CARES Act in March, the program was designed to support healthcare providers across the country in expanding or developing connected health platforms to address the coronavirus pandemic. The program was shut down in July after exhausting its $200 million budget. In all, the FCC approved 539 funding applications from 47 states, Washington DC and Guam.

Administrative Action

December 29: The US Dept. of Labor's Wage and Hour Division permanently extended an emergency order giving employees the option to use telehealth to meet with doctors who qualify for taking time off under the Family and Medical Leave Act. It comes six months after the department issued the emergency declaration to allow employees to use a connected health visit in place of an in-person visit with a doctor during the ongoing coronavirus pandemic.

December 3: HHS issued its fourth amendment to the Declaration under the Public Readiness and Emergency Preparedness (PREP) Act, adding connected health channels to increase access to countermeasures against COVID-19. The order allows healthcare providers to use telehealth in any state to administer what are called Covered Countermeasures, such as diagnostic tests that have received Emergency Use Authorization (EUA) from the FDA. The HHS order defines a "qualified person" as a healthcare provider using telehealth to order or administer Covered Countermeasures for patients in other states. This would include certain pharmacists, pharmacy interns and pharmacy technicians who order or administer certain COVID-19 tests or vaccines.

December 2: CMS published its CY 2021 Physician Fee Schedule Final Rule. It includes a number of provisions affecting telehealth, including:

New Services and Providers

- The final rule includes roughly 60 new telehealth services that can be reimbursed under Medicare, as follows:
    - Group Psychotherapy (CPT code 90853);
    - Psychological and Neuropsychological Testing (CPT code 96121);
    - 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 Evaluation and Management (E/M) (HCPCS code G2211); and
    - Prolonged Services (HCPCS code G2212).
- Those services are included under Category 1, making coverage permanent.
- A separate group, called Category 3, reflects services that were included in emergency waivers issued during the past year to improve connected health coverage and adoption during the public health emergency created by the coronavirus pandemic. CMS has decided these services will continue to be reimbursed through the calendar year that the public health emergency concludes:
    - 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 1-5 (CPT codes 99281-99285);
    - Nursing facilities discharge day management (CPT codes 99315-99316);
    - Psychological and Neuropsychological Testing (CPT codes 96130-96133; CPT codes 96136-96139);
    - Therapy Services, Physical and Occupational Therapy, All levels (CPT codes 97161-97168; CPT codes 97110, 97112, 97116, 97535, 97750, 97755, 97760, 97761, 92521-92524, 92507);
    - Hospital discharge day management (CPT codes 99238-99239);
    - Inpatient Neonatal and Pediatric Critical Care, Subsequent (CPT codes 99469, 99472, 99476);
    - Continuing Neonatal Intensive Care Services (CPT codes 99478-99480);
    - Critical Care Services (CPT codes 99291-99292);
    - End-Stage Renal Disease Monthly Capitation Payment codes (CPT codes 90952, 90953, 90956, 90959, 90962); and
    - Subsequent Observation and Observation Discharge Day Management (CPT codes 99217; CPT codes 99224-99226).
- **Nursing facility visits:** CMS will now cover one nursing facility visit via telehealth every 14 days, down from once every 30 days.
- **New providers:** CMS has expanded the list of care providers able to be reimbursed for using telehealth to include clinical social workers, clinical psychologists, physical and

occupational therapists and speech language pathologists. The agency is adding two new billing codes so that these providers can bill for virtual check-ins and remote evaluation of patient-submitted video or images.

Remote Patient Monitoring

- The following RPM rules, initially proposed in the August, are included in the final rule:
    - Once the public health emergency ends, a care provider must have an established patient-physician relationship for RPM services to be furnished.
    - Consent to receive RPM services may be obtained at the time that RPM services are furnished.
    - Auxiliary personnel (including contracted employees) may provide services described by CPT codes 99453 and 99454 incident to the billing practitioner's services and under their supervision.
    - The mHealth technology supplied to a patient in an RPM program must be defined as a medical device under Section 201(h) of the Federal Food, Drug, and Cosmetic Act and must be reliable and valid. In addition, the data coming from these platforms must be electronically (i.e., automatically) collected and transmitted rather than self-reported.
    - After the PHE ends, 16 days of data must be collected and transmitted every 30 days to meet the requirements to bill CPT codes 99453 and 99454.
    - Only physicians and NPPs who are eligible to furnish E/M services may bill RPM services.
    - RPM services may be medically necessary for patients with acute conditions as well as patients with chronic conditions.
    - Via CPT codes 99457 and 99458, an "interactive communication" takes place in real-time and includes synchronous, two-way interactions that can be enhanced with video or other kinds of data as described by HCPCS code G2012. In addition, the 20-minutes of time required to bill for the services of CPT codes 99457 and 99458 can include time for furnishing care management services as well as for the required interactive communication.

"Dear Colleague" Letters and Other Events

December 18: Reps. Jason Smith (R-MO) and Tony Cardenas (D-CA) introduced the Permanency for Audio-Only Telehealth Act (H.R. 9035), a bill that would require CMS to reimburse providers who use audio-only platforms for evaluation and management services as well as mental and behavioral health services. It would also remove CMS' geographic restriction on the patient's home as a delivery site for audio-only telehealth and give the Health and Human Services Secretary the ability to add services for audio-only telehealth coverage.

December 11: Telehealth advocacy organizations – including the Alliance for Connected Care, the American Telemedicine Association, and HIMSS – sent a letter to congressional leaders calling for the extension of telehealth flexibilities during the public health emergency through the end of 2021. Most of the current telehealth flexibilities are contingent upon the PHE, meaning that the flexibilities themselves will expire along with the PHE. The letter calls on Congress to extend the current telehealth flexibilities until the end of the calendar year.

December 10: Sens. Rob Portman (R-OH, Sheldon Whitehouse (D-RI), and Amy Klobuchar (D-MN) introduced the Comprehensive Addiction and Recovery Act (CARA) 2.0 of 2020. The bill – a sweeping package aimed at providing support for substance use disorder prevention, treatment, and recovery – includes two notable provisions affecting telehealth. First, the bill would allow providers to use telehealth to prescribe medications in MAT therapy without an in-person exam, a restriction put in place by the Ryan Haight Act of 2008. Second, the measure would allow providers to use audio-only telehealth platforms in substance abuse treatment, as long as they have first met with the patient in person.

December 4: 28 Senators and 19 Representatives, including New Jersey Rep. Jeff Van Drew (R-NJ-02), sent a letter to congressional leaders urging them to include provisions in the end-of-year package to make permanent expanded coverage of Medicare telehealth services. Specifically, the letter calls for immediate action to permanently waive geographic restrictions for originating sites, authorize health centers in rural and underserved areas to provide telehealth, and allow beneficiaries to use telehealth in their homes.