

Health Information Compliance Alert

Telehealth: Prep for More Telehealth Changes in 2022

Health equity factors into the feds' latest proposals.

The COVID-19 public health emergency (PHE) isn't going away any time soon, so it is no surprise that the feds propose expanding telehealth services in the mental health realm.

Background: On July 13, the Centers for Medicare & Medicaid Services (CMS) released the calendar year (CY) 2022 Medicare Physician Fee Schedule (MPFS) proposed rule - and it's brimming with policy surprises. This latest iteration, which was published in the Federal Register on July 23, is trimmer than past proposals; however, it offers guidance on previous E/M changes, clarity on split/shared visits, new telehealth updates, and more.

Additionally, the agency proposes several quality updates. CMS plans to push full steam ahead with its Merit-Based Incentive Payment System (MIPS) Value Pathways program and recommends a major overhaul of the Medicare Shared Savings Program (MSSP) for accountable care organizations (ACOs).



Patient Access and Equity Are Central to Telehealth Proposals

The COVID-19 PHE was also a factor in the substantial policymaking, but CMS maintains that many of the suggested changes address longstanding issues in healthcare and health equity that were revealed during the pandemic.

"Over the past year, the public health emergency has highlighted the disparities in the U.S. healthcare system, while at the same time demonstrating the positive impact of innovative policies to reduce these disparities," explains CMS Administrator **Chiquita Brooks-LaSure** in a release on the proposed rule. "CMS aims to take the lessons learned during this time and move forward toward a system where no patient is left out and everyone has access to comprehensive quality health services."

As part of its efforts to ensure fair and equal healthcare for all Medicare beneficiaries, CMS aims to expand telehealth for behavioral and mental health, bolster and update the Medicare Diabetes Prevention Program, and boost quality, affordable options through Quality Payment Program (QPP) changes.

Check Out What's on the Table

CMS wants to harness recent legislation to allow patients access to "telehealth services for diagnosis, evaluation, and treatment of mental health disorders" anywhere, including in the privacy of their own homes, a CMS fact sheet indicates.

The proposed changes would enable "mental and behavioral health providers to furnish audio-only telehealth services to established patients in their homes if such patients either have technical limitations or choose not to use interactive video," point out attorneys **Gregory Tanner** and **Jennifer Whitton** with Baker & Hostetler LLP in Atlanta in online legal analysis.



Why? The pandemic highlighted access issues for rural and underserved populations, so CMS also intends to pay for mental health visits at Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs), according to the proposed rule.

"For telemental health services, CMS is considering making permanent an audio-only option for certain patients who are

unwilling or unable to receive services through audio-video means," explains Washington, D.C.-based attorney **Jacob Harper** with Morgan, Lewis & Bockius LLP in online legal analysis. "CMS appears to be exploring the boundaries of what virtual healthcare can offer," Harper says.

CMS also plans to add "a new category of digital health services - Remote Therapeutic Monitoring (RTM) - to complement the existing suite of Remote Physiological Monitoring (RPM) codes covered under Medicare," note Tampa, Florida-based attorneys **Nathaniel M. Lacktman** and **Thomas B. Ferrante** with Foley & Lardner LLP in online legal analysis.

"These codes may very well bridge existing policy gaps in RPM services by enabling CMS to cover monitoring of data collected in various means not available under RPM," Harper points out.

Medicare telehealth list: According to the rule, CMS is still figuring out whether to make certain codes that it temporarily added to the Medicare telehealth services list during the pandemic permanent. The agency indicates that providers and other stakeholders may need extra time to weigh in on the additions, especially as the pandemic rages on.

"CMS is proposing to allow certain services added to the Medicare telehealth list to remain on the list to the end of December 31, 2023, so that there is a glide path to evaluate whether the services should be permanently added to the telehealth list following the COVID-19 PHE," the fact sheet says.

CMS is accepting comments on the proposed rule through Sept. 13.

Resource: Find the CY 2022 MPFS proposals in the Federal Register and comment at www.federalregister.gov/documents/2021/07/23/2021-14973/medicare-program-cy-2022-payment-policies-under-the-physician-fee-schedule-and-other-changes-to-part.