

Health Information Compliance Alert

Telehealth Services: Feds Focus on the Evolution of Telehealth Post-COVID

Expect more changes in the coming months, too.

If your organization has relied heavily on telehealth services during the pandemic, you're not alone. Many practices have utilized these helpful technologies to assist patients and have taken advantage of federal waivers to make ends meet. Read on for some policy updates the feds propose for next year.

Context: On July 29, the Centers for Medicare & Medicaid Services (CMS) published its calendar year (CY) 2023 Medicare Physician Fee Schedule (MPFS) proposed rule in the Federal Register, continuing its pandemic-inspired focus on health equity and access to safe, affordable healthcare. Among the proposals are critical updates on the expansion of Medicare telehealth services.



"At CMS, we are constantly striving to expand access to high quality, comprehensive health care for people served by the Medicare program," says CMS Administrator **Chiquita Brooks- LaSure** in a release on the proposed rule. "Today's proposals expand access to vital medical services like behavioral health care, dental care, and cancer treatment options, all while promoting access, innovation, and cost savings in the Medicare program."

Factor in These Key Telehealth Proposals

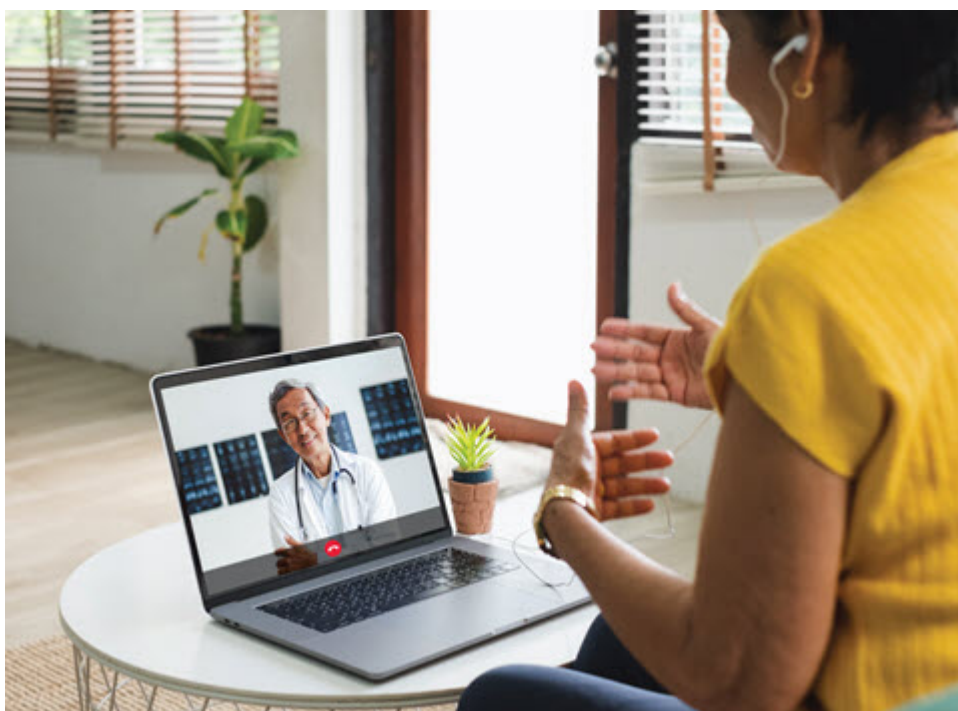
Know that telehealth services policymaking continues to evolve. First, CMS proposes to extend coverage of the temporary codes it didn't add to its Medicare telehealth services list under Categories 1, 2, or 3 during the public health emergency (PHE), until 151 days after the PHE ends, the proposed rule indicates.

Plus: CMS proposes to add 54 codes to Category 3 of the Medicare telehealth services list. Remember, however, that the agency had originally earmarked the Category 3 codes to "expire at the end of the year in which the PHE ends, but

CMS extended coverage of those codes through December 31, 2023," remind attorneys **Rachel B. Goodman**, **Nathaniel M. Lactman**, and **Thomas B. Ferrante** with Foley & Lardner LLP.

"In this year's proposed PFS rule, CMS declined any further extension, so all Category 3 codes will expire at the end of 2023. In the event the PHE extends well into 2023, CMS said it will consider a further extension of the Category 3 codes at that time," explain Goodman, Lactman, and Ferrante in online legal analysis.

CMS aims to implement telehealth provisions that were outlined in the Consolidated Appropriations Act, 2022, too - and prepare Medicare clinicians for a post-COVID landscape.



"Of note is CMS' request for comments on what types of services could be provided under direct supervision with virtual availability of the supervising practitioner," note attorneys **Carrie Nixon**, **Rebecca Gwilt**, **Kaitlyn O'Connor**, and **Casey Papp** with Nixon Gilt Law in online legal analysis. "Much real estate in the 2023 Proposed Rule is devoted to preparing providers for the eventual end of the PHE, and how this will impact billing and reimbursement," caution the Nixon Gilt attorneys.

Bottom line: With the PHE extended again, you'll have at the very least a few more months of federal waivers and flexibilities (see story, p. 3). Plus, Congress is also working behind the scenes to make the Medicare telehealth expansion permanent. But that doesn't mean you shouldn't prepare for the future and regulatory changes. Consider reviewing both Medicare's policies on telehealth services as well as those related to privacy and HIPAA.

Public input: CMS is accepting commentary on the proposals through Sept. 6 at www.regulations.gov/document/CMS-2022-0113-0001.

Resource: Review the proposed rule at www.govinfo.gov/content/pkg/FR-2022-07-29/pdf/2022-14562.pdf.