

Insights

CMS and OIG Temporarily Clear Regulatory Obstacles to Expand Telehealth Coverage to Address COVID-19

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The Centers for Medicare and Medicaid Services (“CMS”) and the Health and Human Services Office of Inspector General (“OIG”) announced new telehealth coverage policies as a short-term solution to mitigating the impact and spread of COVID-19. The authority to expand telehealth services lies within a 1335 waiver and the Coronavirus Preparedness and Response Supplemental Appropriations Act. These changes are designed to clear existing regulatory obstacles to telehealth services to provide more delivery options to maintain access to health care services, while containing the spread of the virus.

CMS’s guidance dated March 17, 2020 specifies that, effective March 6, 2020, Medicare coverage for telehealth will be expanded to allow (subject to state law) physicians, nurse practitioners, physician assistants, nurse midwives, certified nurse anesthetists, clinical psychologists, clinical social workers, registered dietitians, and nutrition professionals to treat their patients via telehealth. Providers must use interactive audio and video communications that allow for real-time communication with patients. Prior to this waiver, Medicare only covered telehealth services provided in certain rural settings and under limited conditions. Under this waiver, these providers may now deliver telehealth services to a patient from the patient’s home in many more areas.

According to CMS, Medicare beneficiaries will be able to receive certain services through telehealth, including “evaluation and management visits (common office visits), mental health counseling and preventive health screenings,” without putting themselves or health care providers at risk. CMS published additional information in a related Frequently Asked Questions publication.

The OIG simultaneously announced that, during the time period stated in the COVID-19 Declaration, its office would give greater flexibility to health care providers to waive or reduce beneficiary cost-sharing for telehealth visits. Ordinarily, health care providers who routinely waive cost-sharing amounts risk violating the Anti-Kickback Statute and Civil Monetary Penalty Law’s (“CMPL”) beneficiary inducement prohibition. However, the OIG has chosen not to enforce these statutes while this public health emergency exists, provided all CMS payment and coverage rules are met.

An additional OIG policy statement clarified the following:

1. Physicians or other practitioners are not required to reduce or waive any cost-sharing obligations Federal health care program beneficiaries may owe for telehealth services while the COVID-19 Emergency Declaration is in effect.
2. For any free telehealth services furnished during the period subject to the COVID-19 Emergency Declaration, OIG will not view the provision of free telehealth services alone to be an inducement or as likely to influence future referrals, normally a violation of the CMPL.
3. CMS's programmatic rules and regulations remain in effect.
4. Physicians and practitioners must continue to comply with billing requirements and applicable Federal and State laws, regulations, and requirements.

If you have any questions regarding these policy changes for telehealth services or related fraud, waste and abuse laws, please contact Brandon W. Shirley or Alexandria M. Foster.