Telehealth Post-pandemic

The Genie Will Go Back in the Bottle, Unless . . .

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Many predict that one lasting impact of the COVID-19 pandemic will be expanded use of telehealth. As more patients and providers come to appreciate the convenience of virtual home visits, the traditional office visit will become the exception, not the rule. Right?

Not so fast. Absent statutory and regulatory changes, we'll be right back where we were with telehealth.

PRE-PANDEMIC

Pre-pandemic, telehealth comprised a fraction of a percentage of Medicare spending. The story wasn't much different for state Medicaid programs and commercial health plans. According to an October 2019 report from JD Power, "Nationwide consumer adoption of telehealth services has been stubbornly low, with just 10% of healthcare consumers having used such services."

The root cause of the problem was Section 1834(m) of the Social Security Act, which defines the scope of the Medicare telehealth benefit. The statute imposes five requirements for coverage:

1. **The geographic requirement.** The beneficiary must reside in a rural area.
2. **The location requirement.** The beneficiary must be physically present at a healthcare facility when the service is provided.
3. **The service requirement.** The service provided must be listed as an approved telehealth service (as defined by CPT® or HCPCS code).
4. **The technology requirement.** The service must have audio and video capabilities that permit real-time interactive communication.
5. **The provider requirement.** The service must be furnished by an eligible provider (physicians, non-physician practitioners, clinical psychologists, clinical social workers, registered dieticians, and nutrition professionals).

PANDEMIC

In its initial response to the COVID-19 pandemic, Congress gave CMS authority to waive Section 1834(m)'s geographic and location requirements for the duration of the public health emergency. With this waiver authority, and through the publication of two interim final rules, CMS has significantly expanded telehealth Medicare fee-for-service reimbursement. PYA's complete, up-to-date summary of these temporary rules is available at https://bit.ly/360F1Xo.

State Medicaid programs and commercial plans have followed suit, temporarily providing expanded telehealth coverage and reimbursement. And the Federal Communications Commission is making available $200 million in grant funding to support providers' acquisition of telehealth technology and monitoring devices.

Essentially overnight, physician practices pivoted from clinic visits to virtual visits. According to a Merritt Hawkins survey released on April 22, 48% of physicians were, at that time, treating patients with telehealth. On the consumer side, new market research shows that 59% of patients are more likely to use telehealth services now than previously, and more

than a third would switch their physician to have access to virtual care.

POST-PANDEMIC

When the declaration of the national COVID-19 public health emergency expires, Medicare's temporary expansions of telehealth coverage and reimbursement will expire with it. Significant legislative and regulatory changes will be required to recapture any gains made during the pandemic.

First and foremost, Congress will need to act on Section 1834(m), overcoming concerns about cost, fraud, and privacy. Most likely, that will require the CBO to revise its cost estimates to account for Medicare savings generated by expanded use of telehealth.

Industry leaders will need to make a compelling case that fraud can be adequately controlled, and privacy can be properly protected. More in-depth research regarding provider and patient experience with telehealth during the COVID-19 crisis will bolster the case for expanded Medicare coverage.

Legislative action may also be required if commercial payers retreat to their pre-pandemic positions regarding telehealth reimbursement. In fact, legislation was introduced in late April to require ERISA-regulated plans to provide coverage and reimbursement parity for telehealth services, and it appears to be garnering support. Similarly, state legislatures will need to expand existing telehealth parity laws to include reimbursement parity.

In addition to actively engaging in these lobbying efforts, providers should consider expanding their use of communication technology-based services (CTBS) now covered by Medicare and other payers. In the 2019 Medicare Physician Fee Schedule Final Rule, CMS recognized a distinction between telehealth services subject to Section 1834(m) and CTBS, which are not subject to the statute's requirements. While the agency had previously interpreted the Section 1834(m) geographic and location requirements as applying to any virtual service, CMS decided these requirements apply only "to a discrete set of physicians' services that ordinarily involve, and are defined, coded, and paid for as if they were furnished during an in-person encounter between a patient and a healthcare professional."

By contrast, "services that are defined by, and inherently involve the use of, communication technology" are not subject to Section 1834(m). In making this distinction, CMS opened the door to new payment for CTBS, including remote patient monitoring, virtual check-ins, and interprofessional internet consultations, as well as ambulatory care management.

"I think the genie's out of the bottle on this one... it's taken this crisis to push us to a new frontier, but there's absolutely no going back."

SEEMA VERMA, ADMINISTRATOR OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, WHITE HOUSE CORONAVIRUS TASK FORCE

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While not a substitute for full coverage for telehealth services, CTBS reimbursement offers a means to maintain some of the gains made in virtual care during the COVID-19 pandemic. Also, remote patient monitoring supplements visual-only telehealth services by providing physicians with patients' physiologic data.

It's hard to find any silver lining to the COVID-19 cloud under which we now live, but a real-life experiment demonstrating the value of virtual care may be one. However, any gains made will be fleeting unless providers and patients push policymakers to cement them into law. President Trump's recent Executive Order on Improving Rural Health and Telehealth Access keeps the regulatory telehealth expansion in place post-pandemic, but only makes permanent the types of services that can be furnished by telehealth, and which providers can furnish them. The most significant restrictions—geography and location—require congressional action.

If you have questions related to telehealth reimbursement, contact PYA at (800) 270-9629. PR

Disclaimer: To the best of our knowledge, this information was correct at the time of publication. Given the fluid situation, and with rapidly changing new guidance issued daily, be aware that some or all of this information may no longer apply. Please visit PYA's COVID-19 hub frequently for the latest updates, as we are working diligently to put forth the most relevant and helpful guidance as it becomes available.

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