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GEORGE W. BODENGER, LLC

Telehealth & Telemedicine - Key Legal and Business Issues

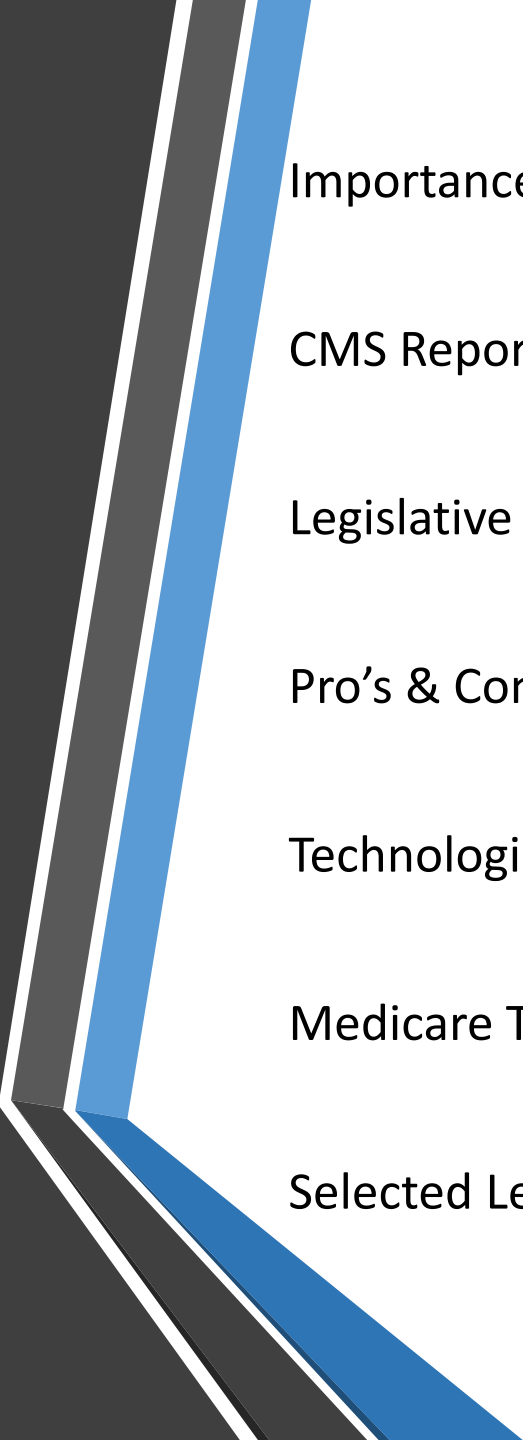
First Healthcare Compliance Webinar

April 23, 2020

Key Takeaways of CMS Response to COVID19 Public Health Emergency

- Medicare will make payment for Medicare telehealth professional services on a nationwide basis. Telehealth visits considered the same as in-person visits; paid at same rate.
- Medicare will make payment for Medicare telehealth services furnished to beneficiaries in any healthcare facility and in their home.
- OIG is providing flexibility for healthcare providers to reduce or waive cost-sharing for telehealth visits paid by federal healthcare programs.
- To the extent the 1135 waiver requires an established relationship, HHS will not conduct audits to ensure that such a prior relationship existed for claims submitted during this public health emergency.

Topics to be Covered Today



Importance of Telehealth

CMS Report (2018) – Information on Telehealth

Legislative History of Telehealth

Pro's & Con's of Telehealth

Technologies in Telehealth Services

Medicare Telehealth Reimbursement

Selected Legal & Compliance Matters

Importance of Telehealth



**Telehealth Addresses
Fundamental Issues of Access
and Cost**



**20% of U.S. Population in Rural
Areas – only 9% of Physicians
Practice in Rural Areas**

**Allows Patients to Access Care
through Real-Time Appointments
and Specialists Consultations with
Less Costs**

CMS “Information on Telehealth” Report 2018

21st Century Cures Act Requires CMS to Provide Written Report and Data on Certain Aspects of Telehealth Services Provided to Medicare Beneficiaries on Annual Basis

Population of Medicare Beneficiaries Whose Care May Be Improved by Expansion of Telehealth Services

Activities by Center for Medicare and Medicaid Innovation that Measure Impact of Increased Access to Telehealth Services

Types of High-Volume Services Which can be Furnished Using Telehealth

Barriers That Might Prevent Expansion of Telehealth

2018 CMS Report

Use of Telehealth by Demographic, Eligibility & Disease Status 2014 - 2016

*In 2016, Almost 90,000 Medicare Beneficiaries
Received Almost 280,000 Covered Telehealth Services*

Total Population - 65.3% Increase

<65 Yrs 65.3% Increase

65-84 Yrs 43.3% Increase

>85 Yrs 135.7% Increase

Eligibility

Dual Eligibility 64.4% Increase

Non-Duals 67.1% Increase

ESRD

Not ESRD 65.1% Increase

ESRD 74.5% Increase

Chronic Condition Status

Non-Primary 36.8% Increase

Primary 67.5% Increase

Telehealth

Legislative History

ACA Mandated Telehealth Medicare Reimbursement (2010)

MACRA (2015) Included Several Telehealth Provisions

21st Century Cures Act (2016)

Interstate Medical Licensure Compact (2017)

2019 Medicare Physician Fee Schedule Final Rule

2020 Medicare Physician Fee Schedule Final Rule

Pro's and Con's of Telehealth

Pro's

Accessibility & Convenience
Affordability & Time-Saving
Access to Specialists for Complex Cases
Improvement of Patient Interactions
Increased Quality of Care

Con's

Technological Know-How
Reduction of In-Person Interactions
Reimbursement Challenges
Professional Liability
Licensing
Prescriptions

Technologies in Telehealth Services

Synchronous Telemedicine

Real Time Virtual Delivery of Healthcare Services

Asynchronous Telemedicine

“Store and Forward”

Allows Providers to Share Data and the Recorded Visit

Medicare Reimbursement Available Only for Demonstration Projects

Remote Patient Monitoring

Used for Patients with Chronic Conditions

Allows Provider to Check on Patient Periodically to Observe Changes in Patients Condition

Mobile Health (mHealth)

Smartphone Apps Designed to Foster Improved Health and Wellness

Capturing Vital Signs to Bridge to RPM

Types of Telehealth Services



Teleconsultations



Remote Patient
Monitoring



Intraoperative
Monitoring



Telehomecare



Medical Diagnosis &
Treatment at "Point of
Care"



New Developments in Telehealth Services

End-Stage Renal Disease-Related Services

Medical Nutrition Therapy

Smoking Cessation Counseling

Diabetes Outpatient Self-Management Training Services

Alcohol/Substance Abuse Structured Assessments – non-govt
and private payors

Advance Care Planning

Sites of Service in Telehealth

DISTANT SITE

ORIGINATING SITES

Physician or Practitioner Offices

Acute Care Hospitals

Critical Access Hospitals

FQHCs &
Rural Health Clinics

Skilled Nursing Facilities

Community Mental Health Centers

Medicare Telehealth Reimbursement



Medicare Beneficiaries
Eligible for Telehealth
Services Only in Certain
Locations



A County Outside an MSA



HPSA in A Rural Census
Tract



Federal Demonstration
Project Area



HRSA Offers Medicare
Telehealth Payment
Eligibility Analyzer -
<https://data.hrsa.gov/tools.medicare/telehealth>



Originating Site
Eligibility Established
Annually

Legal Issues in Telehealth

HIPAA

Fraud & Abuse

Licensure

Privileging & Credentialing

Information Resources on the Internet

American Telemedicine Association
(www.americantelemed.org)

Telemedicine Resource Center
(www.telemedicineresourcecenter.org)

Medicare Telehealth Payment Eligibility Analyzer
(<https://data.hrsa.gov/tools.medicare/telehealth>)

Questions?



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