

Expanded coverage of telehealth

March 1, 2018

The recently enacted Bipartisan Budget Act of 2018 expands Medicare's coverage for telehealth services in several ways. Inclusion of these provisions, which had been part of a Senate bill called the CHRONIC Care Act, is another indication of Congress' interest in expanding the use of alternative care delivery models and using technology to help rein in health care costs, particularly for the growing number of Medicare beneficiaries with multiple chronic conditions who would benefit from better care coordination. While the sophistication and number of technologies available for providing telehealth have increased dramatically in recent years, growth in the actual use of telehealth services has been hampered by limited reimbursement and Medicare's restrictions on the geographic areas and care settings in which it is covered.

The new telehealth provisions in the Bipartisan Budget Act include:

Coverage of telehealth to expand access to home dialysis therapy

Medicare covers home dialysis for certain beneficiaries with End Stage Renal Disease (ESRD). Beginning in January 2019, these patients will be given the option of receiving their monthly ESRD-related clinical assessments furnished via telehealth while they are at home or at independent renal dialysis facilities. And these patients will not have to be located in rural health professional shortage areas or counties outside Metropolitan Statistical Areas (MSAs) in order for telehealth coverage to be available, as is currently a requirement for Medicare coverage. But the patients who choose the new telehealth option will still be required to receive a face-to-face clinical assessment during the initial three months of home dialysis, and at least once every three months thereafter.

The law also specifies that provision of telehealth technologies to an ESRD patient receiving home dialysis services is not illegal remuneration which otherwise could violate fraud and abuse laws, provided certain requirements are met.

Allowing Medicare Advantage (MA) plans more flexibility in covering telehealth

While MA plans can cover telehealth services as a supplemental benefit currently, beginning in the 2020 plan year, they will be able to include "clinically appropriate" telehealth services in their annual bid amounts for services covered under Medicare Part B. However, the types of items and services that should be considered "clinically appropriate" telehealth services, and the training or other requirements for providing them, is scheduled to be addressed by the Centers for Medicare & Medicaid Services (CMS) following a solicitation of public comments no later than November 30, 2018. MA plans that provide services as an additional telehealth benefit also must provide Medicare beneficiaries with access to those services through an in-person visit. Given that over

30 percent of Medicare beneficiaries already are enrolled in MA plans and the number is expected to continue to grow, increased use of telehealth services by such plans could give a significant boost to the telehealth industry.

Providing Accountable Care Organizations with the ability to expand use of telehealth

Traditionally, Medicare has covered telehealth services only when the beneficiary is physically present at a specific type of “originating site,” such as a hospital, physician office or skilled nursing facility. Beginning in 2020, for beneficiaries assigned to an Accountable Care Organization (ACO) that is participating in a two-sided risk model, the beneficiary’s place of residence can be an originating site, and no geographic restrictions will apply. This means the ACO patient need not be in a rural health professional shortage area or a county outside an MSA in order for Medicare to cover telehealth services. In such cases no “facility fee” will be paid to the originating site, as is currently done, and the services cannot be inappropriate to furnish in a home setting, such as those typically provided in a hospital.

Expanded use of telehealth for individuals with stroke symptoms

Given increased recognition of the importance of quickly diagnosing and initiating appropriate treatment for strokes, Medicare will expand coverage for patients to be evaluated by stroke experts via telehealth. Currently under Medicare, as noted above, telehealth services are covered only if the patient is being seen at certain types of “originating sites,” and is in a rural health professional shortage area or an area not included in an MSA. However, beginning January 1, 2019, telehealth services for the purposes of diagnosing, evaluating or treating symptoms of an acute stroke will be covered by Medicare when the “originating site” (where the patient is located) is any hospital, critical access hospital, or any mobile stroke unit or other site determined eligible by the Secretary of Health and Human Services. However, the originating site will not be eligible to receive a facility fee unless it is one of the types of sites currently eligible for such fees.

If you have questions about these new telehealth provisions, or if you want to be kept informed of CMS’s efforts to implement them, including solicitations for comment, please contact one of the lawyers listed on this client alert, or the Hogan Lovells lawyer with whom you normally work.

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