Morgan Lewis

FAST BREAK: TELEHEALTH AND MEDICARE'S NEW VIRTUAL CHECK IN

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Agenda

- Telehealth: where have we been?
- Virtual check-ins: where are we going?
  - Important CMS terminology
  - Elements of the proposed rule
- Other proposed "telehealth" services in the PFS
- Questions CMS is still considering
- Other pending telehealth legislation

Telehealth: Where Have We Been

- Statutory allowance for Medicare telehealth coverage – SSA 1834(m)

- Defines "telehealth service" as professional consultations, office visits, and office psychiatry services as defined by the Secretary, HHS

(m) PAYMENT FOR TELEHEALTH SERVICES.—

(1) IN GENERAL.—The Secretary shall pay for telehealth services that are furnished via a telecommunications system by a physician (as defined in section 1861(r)) or a practitioner (described in section 1842(b)(18)(C)) to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner providing the telehealth service is not at the same location as the beneficiary.

Telehealth: Where Have We Been

- Several critical limitations:
  - A patient must be at an "originating site" which includes locations such as a physician's office, hospitals, SNFs, CAHs, RHCs and FQHCs, or CMHCs.
    - Does not include the patient's home
    - The distinct site practitioner cannot be at their own office with the patient in another room!
    - The originating site must be located in a rural HPSA or in a county that is not included in an MSA
  - Limited use of anything other than interactive audio/video communications
  - Limited (but expanding annually) available code set
  - Distinct site practitioner must be credentialed by Medicare

Virtual Check-ins: Where Are We Going?

- In mid-July, CMS issued its annual updates to the Physician Fee Schedule
- CMS proposes to cover "Brief Communication Technology-based Service," which it informally refers to as "Virtual Check-ins"
- VCI is not intended to substitute for any existing face-to-face service but instead supplement existing services and determine if services are necessary
- Potentially similar in design to existing telehealth solutions available in commercial markets
- None of the existing telehealth statutory bars would apply

Virtual Check-ins: Where Are We Going?

- Terminology important
  - CMS cannot refer to this as "telehealth" or else risk the service being subject to existing statute and limitations
  - Creative solution to existing limitations
  - CMS had heretofore been hesitant about engaging in telehealth on large scale
  - Existing "telehealth" benefit will continue

Virtual Check-ins: Where Are We Going?

- What does the Proposed Rule include for VCI?
  - Methodology remains unclear – audio-only vs. live A/V
  - Only available for established patients – must have been seen in the past three years to meet "established" standard
  - Potential bundling – if the VCI results in a visit within 24 hours or is within 7 days of a previous visit, it is not separately billable
  - Specific informed consent requirements

Virtual Check-ins: Where Are We Going?

- What does the Proposed Rule include for VCI?
  - $?
    - This is the important question
    - CMS proposed to pay about $14 for the service, assuming it didn't get bundled
    - Anticipates a "low work time and intensity"
    - Avoid incentives to keep patients at home if an office visit is truly needed
  - Will this pay off for any physician group?

Other Telehealth Features of the PFS Proposal

- CMS has proposed to establish coverage for a variety of communications-based services, including:
  - "Remote evaluation of pre-recorded patient information" (i.e. store-and-forward)
  - Remote interprofessional consultations
  - Acute stroke telehealth services
  - Web-based counseling for substance use/abuse disorders

- Substantial evolution in telehealth coverage for both chronic and acute conditions

Outstanding Questions and Concerns

- Dollars is currently the most important outstanding question
  - CMS needs to find a balance that makes this worthwhile for providers while ensuring that patients are still seen as needed – consider larger focus of CMS on reducing physician visits generally (CCM, TCM, etc.)
  - Patient co-pays is another issue – many physicians have expressed concern that this is something they are already doing. While they are happy to be paid for it, it results in a charge to the patient that otherwise would not exist (~20% of the $14)
- Technological capabilities
  - In most cases, audio-only is the only reasonably cost effective way to implement this process but many State Medical Boards have concerns or even direct prohibition about providing services via "audio-only" methodologies

Outstanding Questions and Concerns

- Who Loses?
  - CMS anticipates that the VCI will, at least initially, increase Medicare costs but must be budget-neutral
  - CMS proposes a 0.2% cut to other Medicare physician payment streams
  - Potential litigation?

Recent/Pending Legislation

- Telehealth coverage expanding rapidly
  - MA plans will no longer be subject to statutory bar for telehealth in 2020
  - Telestroke program access expansion under Medicare
  - For VA patients, a licensed physician can practice in any state using telemedicine
  - For IHS, the Indian Health Care Improvement Fund provides a fund for healthcare services including telehealth
  - Increased coverage for home based monitoring of chronic conditions
  - CONNECT Act of 2017 to provide for reduction in restrictions in 1834(m)

- As consumer demand increases, revisions to current SSA inevitable

Join us next month!

Please join us for next month's webinar:

"*Fast Break*: Stark Lessons II: Hospital-Physician Arrangements"

Featuring Donna Clark and Banee Pachuca

- Thursday October 18, 3:00 PM (EST)

Thanks!

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Click Here for full bio

Jake Harper advises stakeholders across the healthcare industry, including hospitals, health systems, large physician group practices, practice management companies, hospices, chain pharmacies, manufacturers, and private equity clients, on an array of healthcare regulatory, transactional, and litigation matters. A frequent speaker on telehealth topics, his practice focuses on compliance, fraud and abuse, and reimbursement matters, self-disclosures to and negotiations with OIG and CMS, internal investigations, and Medicare payment appeals.