



Takeaways from MHA Webinar:

COVID-19 and the Rise of Telemedicine:

A Discussion with Amy Joseph, Esq. and Jeremy Sherer, Esq. | May 6, 2020

Overview

It is now clear that health care has drastically changed to accommodate the many challenges that the COVID-19 pandemic has posed for our country. Telemedicine is on the rise as our national quarantine has extended. Listen in as Amy Joseph, Partner, and Jeremy Sherer, Associate, at Hooper, Lundy and Bookman, PC advise us on topics such as Medicare coverage of telehealth and Massachusetts guidance, as well as answer some frequently asked questions regarding telehealth and COVID-19.

Changes in Telehealth:

Medicare Coverage of Telehealth. There have been many changes to Medicare telehealth coverage over the duration of this pandemic. Below is a synopsis of the temporary changes made to the reimbursement requirements for “Medicare telehealth services,” “Communication Technology Based Services,” and audio-only professional services during the public health emergency (PHE).

- Medicare Telehealth Services

1. The patient must be located at an eligible “originating site” facility.
 - **WAIVED:** Medicare telehealth services can be provided to patients wherever they are located. This includes the comfort of their own homes.
2. The patient must be located in a rural health professional shortage area (a rural “HPSA”).
 - **WAIVED:** Patients no longer need to be located in rural areas to receive Medicare telehealth services.
3. The service rendered must be on the list of “Medicare telehealth services” maintained by CMS, and updated annually through the Physician Fee Schedule rulemaking process.
 - **EXPANDED:** CMS has added 80 new services that are covered when delivered via telehealth for the duration of the PHE, despite not being “Medicare telehealth services.”
4. The service must be rendered by an approved type or provider.

- **EXPANDED:** Allied professionals, such as PTs, OTs and SLPs, can now bill clinically appropriate Medicare telehealth services.

5. The service must be furnished via an “interactive telecommunications system,” which is statutorily defined to include synchronous audio-video communication.

- **STILL IN PLACE WITH EXCEPTIONS:** There are now very limited exceptions applicable to opioid treatment programs and certain audio-only CPT codes.
- Communication Technology Based Services (CTBS): Despite being within the scope of what stakeholders colloquially refer to as “telehealth,” these services – specifically e-consults and virtual check-ins through live communication (audio only or audio video) or store and forward messaging – are not “Medicare telehealth services.” As a result, they do not need to meet the reimbursement requirements set forth above. While CTBS are normally only covered when provided to existing patients, that requirement has been **WAIVED** for the duration of the PHE.
- Audio-Only Professional Services: Normally, audio-only professional services furnished by physicians are not covered under the Physician Fee Schedule. CPT codes 99441, 99442 and 99443 are now covered as “Medicare telehealth services” for the duration of PHE without any video requirement. This service is covered at the same rate as outpatient, audio-video telehealth visits.

Massachusetts Guidance. MassHealth has expanded telehealth coverage and now covers telephone or audio/video services, and will cover those services at the same rate as when such services are furnished in-person. Commercial payers and others regulated by the Mass. Dept. of Insurance must allow in-network providers to furnish services via telehealth, cannot have coverage policies more restrictive than MassHealth, and must observe payment parity. Consistent with federal guidance from the DEA, the Massachusetts Department of Public Health is allowing registered practitioners to prescribe controlled substances via telehealth without a prior in-person examination, subject to certain limitations. Lastly, the Massachusetts Board of Registration in Medicine (“BORIM”) has implemented a Physician Emergency Temporary License Application, which physicians licensed in other states can submit to obtain a limited license to treat Massachusetts patients, including via telehealth and telephonic communication, for the duration of the PHE.

FAQs.

Q: *Can we bill originating site fees?*

A: Originating site fees can be billed for telehealth services by the facility where the patient is located when receiving treatment via telehealth. As many patients are now receiving treatment from home, and hospitals are providing administrative services akin to those that they would provide if the patient were actually receiving treatment at their facility, CMS is permitting hospitals to bill an originating site fee when the patient is receiving covered outpatient department services while at

home, provided the home is considered an extension of the outpatient hospital department at such time.

Q: *What POS Code should we use?*

A: All “Medicare telehealth services” and non-Medicare telehealth services now covered for the duration of the PHE should be billed with the POS which *would have applied* and the 95 modifier. For example, if a physician would normally be treating a patient from an outpatient clinic, but both the physician and the patient are located at home because of the PHE, the physician should bill the POS for the clinic. The 95 modifier must be used to indicate that the service at issue was furnished via telehealth.

Q: *What about the Ryan Haight Act and Controlled Substances?*

A: The DEA has waived the prior in person evaluation requirement in the CSA for prescribing controlled substances via telehealth, subject to certain limitations. Practitioners still need to be “DATA Waived” when prescribing buprenorphine.

Q: *Are these changes permanent?*

A: At the moment, federal and state waivers are in place for the duration of the PHE declared by federal and state authorities, respectively. In short, *we don't know*. However, there is important advocacy to be done here, under the leadership of Adam and others at MHA.