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FRIDAY 3.20.2020

COVID-19 OUTBREAK SPURS LOOSENING OF TELEHEALTH RESTRICTIONS

Hospitals nationwide are bracing for a surge in patients as the outbreak of the novel coronavirus, or COVID-19, continues to spread. To provide relief, Congress and the Administration have loosened or waived a number of telehealth restrictions to provide hospitals additional flexibilities and prevent vulnerable populations from being exposed to the virus.

On March 6, the President signed into law the first emergency COVID-19 funding bill, the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 ([H.R. 6074](#)), which waives numerous telehealth requirements for Medicare beneficiaries. Providers may now offer telehealth services to beneficiaries they have treated within the last three years for the duration of the national emergency. Originating site requirements that restrict the geographic areas where beneficiaries are able to use telehealth are also waived, and telehealth may be provided via a smartphone, as long as the phone has both audio and video capabilities.

Following the President's [declaration of a national emergency](#) on March 13, the Centers for Medicare and Medicaid Services (CMS) announced it will expand Medicare's telehealth benefits under its 1135 waiver authority and the Coronavirus Preparedness and Response Supplemental Appropriations Act. Specifically, CMS is waiving [several telehealth restrictions](#) that previously prevented providers from expanding telehealth services. This means Medicare will now pay for telehealth services for beneficiaries in all states beginning retroactively on March 6. Additionally, new types of clinicians may provide telehealth services, including nurse practitioners, clinical psychologists, and licensed social workers. Beneficiaries will also be able to receive a broad range of services via telehealth, including preventative health screenings, mental health counseling, and common office visits. CMS additionally stated that Medicare will reimburse for visits conducted via telehealth at the same rate for in-person visits.

State Medicaid programs also have enormous potential to expand the use of telehealth by following Medicare's example. While the CMS announcement on payment parity does not extend to Medicaid, CMS did issue on March 17 a [guidance document](#) to remind states that they are not required to submit a State Plan Amendment to offer payment parity for both in-person and telehealth visits. Additionally, the document offered suggestions on ways states can expand access to telehealth, such as eliminating site restrictions and allowing multiple forms of telehealth to be covered such as video and secure messaging.

Other agencies within the U.S. Department of Health and Human Services (HHS) have likewise responded to the President and Congress's directive. The HHS Office of the Inspector General (OIG) [announced](#) on March 17 that

it will allow providers to reduce or waive cost-sharing obligations that beneficiaries of federal health care programs may owe for telehealth services. Normally, the reduction or elimination of cost-sharing would be considered a violation of the Anti-Kickback Statute and the civil monetary penalty. To allow cost-sharing to be waived, OIG stipulated that telehealth services must be provided during the national emergency and that coverage and payment rules must be followed.

Furthermore, the HHS Office of Civil Rights (OCR) [announced](#) on March 17 that it will refrain from imposing penalties for HIPAA violations on providers “in connection with the good faith provision of telehealth” for the length of the emergency. OCR also stipulated that it will allow providers to use communication technologies such as FaceTime, Skype, and Facebook Messenger video chat to connect with patients.

The Federal Communications Commission (FCC) also took action to expand the use of telehealth by [temporarily lifting rules](#) on March 18 that bar schools, libraries, and health care providers that receive federal discounts on telecommunication services from accepting gifts from broadband providers. [According to the FCC](#), this will allow health care providers to obtain additional tools to address the ongoing pandemic.

Restrictions on telehealth for prescriptions obtained through online services have been loosened as well. Recently, the Drug Enforcement Administration (DEA) released [guidance](#) to allow DEA-registered providers to issue prescriptions for controlled substances to patients who have not undergone an in-person evaluation. According to the DEA, this may only be permitted as long as the telehealth communication is conducted through a real-time, audio-visual platform and that the prescription is issued for a legitimate medical need.

However, it is important to note that federal efforts to expand the use of telehealth, particularly through the waiver of medical licensures, are generally limited to programs such as Medicare, Medicaid, and the Children’s Health Insurance Program. By themselves, these waivers do not eliminate the requirement for clinicians to maintain licensure in states in which they practice to provide both telehealth and in-person services. As a result, many states have begun to waive their own in-state licensing requirements to help address the growing pandemic. These include Arizona, California, Florida, Louisiana, Mississippi, North Carolina, Tennessee, and Washington. Additionally, the Federation of State Medical Boards is offering [guidance](#) to help states verify licenses and credentials for health care professionals who wish to practice across state lines.

Private payers also have a role to play, and many have since stepped up as the outbreak has taken its course. Aetna [announced](#) on March 6 that it will waive copayments for telehealth visits nationwide for the next 90 days for all commercial plans, and other insurers including Humana, Horizon Blue Cross Blue Shield of New Jersey, and Blue Cross Blue Shield of Massachusetts have made similar announcements.

As the scope of the COVID-19 pandemic continues to grow, the US health care system is poised to confront an unprecedented level of challenges. While telehealth may not be a panacea, its unique ability to allow for remote screening, triage, and treatment is likely to play an important role in protecting both patients and providers from transmission of the virus.