Telehealth and Virtual Care in Post-PHE World
February 2, 2023

Allison M. Cohen, J.D., LLM
Shareholder
Baker Donelson
Gayle Lee, J.D.
Director, Physician Payment and Quality
AAMC
Overview of Topics Covered

- When do various telehealth waivers and flexibilities expire?
- What practical steps can my organization take to help prepare for expiring emergency flexibilities?

Focus Areas
- Reimbursement
- Fraud & Abuse
- State Law Issues
- Operational Considerations and Exemplary Arrangements
- Privacy
- Enrollment and Claims Submission
Pre-PHE Telehealth Laws and Regulations
## Pre-PHE Medicare Coverage

Medicare Part B Coverage of Telehealth Services

### STATUTORY REQUIREMENT

<table>
<thead>
<tr>
<th>Originating Site Geographic Location Requirements</th>
<th>LIMITATION ON COVERED TELEHEALTH SERVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare only covers telehealth services furnished to patients in certain locations (&quot;originating sites&quot;):</td>
<td>• A county outside a metropolitan statistical area</td>
</tr>
<tr>
<td>• A rural HPSA (exception for telestroke)</td>
<td></td>
</tr>
<tr>
<td>• Physician/practitioner office</td>
<td></td>
</tr>
<tr>
<td>• Hospital</td>
<td></td>
</tr>
<tr>
<td>• CAH</td>
<td></td>
</tr>
<tr>
<td>• RHC</td>
<td></td>
</tr>
<tr>
<td>• FQHC</td>
<td></td>
</tr>
<tr>
<td>• Hospital-Based or CAH-Based Renal Dialysis Center</td>
<td></td>
</tr>
<tr>
<td>• CMHC</td>
<td></td>
</tr>
<tr>
<td>• SNF</td>
<td></td>
</tr>
<tr>
<td>• Patient’s home only for purposes of treatment of a substance use disorder or co-occurring mental health disorder or home dialysis ESRD-related clinical assessments</td>
<td></td>
</tr>
</tbody>
</table>

### Originating Site Provider Site Requirements

- Generally, Medicare only covers certain services furnished via telehealth, including:
  1. professional consultations,
  2. office medical visits,
  3. office psychiatry services, and
  4. any additional service specified by the HHS Secretary when furnished via an interactive telecommunications system. These services are all included on a list that is amended and published annually in the MPFS (the Medicare Telehealth List).
### Pre-PHE Medicare Coverage

**Medicare Part B Coverage of Telehealth Services**

<table>
<thead>
<tr>
<th>STATUTORY REQUIREMENT</th>
<th>LIMITATION ON COVERED TELEHEALTH SERVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Distant Site Requirements</strong></td>
<td>Distant Site Practitioner must be a:</td>
</tr>
<tr>
<td></td>
<td>• Physician</td>
</tr>
<tr>
<td></td>
<td>• Physician Assistant</td>
</tr>
<tr>
<td></td>
<td>• Nurse Practitioner</td>
</tr>
<tr>
<td></td>
<td>• Clinical Nurse Specialist</td>
</tr>
<tr>
<td></td>
<td>• Certified Registered Nurse Anesthetist</td>
</tr>
<tr>
<td></td>
<td>• Nurse-Midwife</td>
</tr>
<tr>
<td></td>
<td>• Clinical Social Worker*</td>
</tr>
<tr>
<td></td>
<td>• Clinical Psychologist*</td>
</tr>
<tr>
<td></td>
<td>• Registered Dietitian or Nutritional Professional</td>
</tr>
<tr>
<td></td>
<td>*Clinical psychologists and clinical social workers cannot bill for psychotherapy services that include E/M services under Medicare.</td>
</tr>
</tbody>
</table>

| Qualifying Technology Requirements | Technology must be an "interactive telecommunications system," which means multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. |
**Virtual Check-in**

Brief (5-10 minutes) interaction with the practitioner via telephone or other telecommunications device to decide whether an office visit or other service is needed.

**Remote Evaluation**

Evaluation of recorded video and/or images submitted by an established patient.

**E-Visit**

A non-face-to-face, patient-initiated, evaluation and management (E/M) communication between a patient and provider through an online patient portal.
Care Management and RPM

**Chronic Care Management (CCM)**

Management of all care for patients with two or more serious chronic conditions, timed per month.

**Transitional Care Management (TCM)**

Management of transition from acute care or certain outpatient stays to a community setting for a 30-day period post-discharge.

**Remote Physiologic Monitoring**

Monitoring patient physiologic data transmitted through telecommunications systems.
Care Management and RPM

Psychiatric Collaborative Care Model (CoCM)

An evidence-based approach to behavioral health integration to enhance primary care by adding care management support and regular psychiatric inter-specialty consultation.

Interprofessional Consultation

Inter-practitioner consultation (not an interaction with the patient).
Medicare Advantage Coverage

- May offer telehealth services as part of their basic benefit or supplemental benefits
- Must cover services covered by Medicare FFS for in-network providers
- May negotiate cost sharing for most telehealth services

© AAMC. May not be reproduced without permission.
Medicaid Coverage

Medicaid Laws and Regulations Vary by State

Can be broader than Medicare

Some states Medicaid FFS and some states Medicaid managed care
**Pre-PHE: Telehealth Privacy & Security Issues**

**HIPAA:** In most cases, platform used will be considered a "service provider" that is a business associate of the provider under HIPAA (see definition at 45 C.F.R. § 160.103). (Note: There is a very narrow exception for platforms that are strictly conduits that cannot access the PHI.)

- The telehealth platform must (i) be HIPAA compliant (i.e., comply with all HIPAA security requirements that apply to business associates) and (ii) enter into a BAA with the provider.

- Data transmitted through the telehealth platform should be encrypted (see 45 C.F.R. § 164.312(e))—but encryption is not sufficient to make the platform HIPAA compliant.

**State Law:** Many state laws have restrictions on disclosures of PHI that would impact or limit a telehealth program.
Public Health Emergency (PHE)
Timing Considerations

• Most recent renewal extended the PHE through April 11, 2023
• HHS has repeatedly – if informally – committed to give 60 days’ notice prior to the end of the PHE
• Renewal determinations have each been for the default 90-day statutory period but could be shorter
• President Biden announced PHE will end May 11, 2023
What Temporarily Changed During COVID-19
# Telehealth Waivers and Flexibilities

<table>
<thead>
<tr>
<th>Pre- PHE</th>
<th>PHE Waivers/ Flexibilities</th>
<th>At Least Until 12/31/24</th>
<th>After PHE/Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originating Site Restrictions</td>
<td>No Originating Site Restrictions</td>
<td>No Originating Site Restrictions</td>
<td>Originating Site Restrictions are Back</td>
</tr>
<tr>
<td>More Limited Medicare Telehealth List</td>
<td>Many Additions to Medicare Telehealth List</td>
<td>Expanded Telehealth List</td>
<td>Some Services Removed from Telehealth List</td>
</tr>
<tr>
<td>Distant Site Restrictions</td>
<td>Adding Distant Site Practitioners</td>
<td>Therapists, FQHCs, RHCs Still Distant Site Practitioners</td>
<td>Distant Site Restrictions Are Back</td>
</tr>
<tr>
<td>Qualifying Technology Requirements</td>
<td>Coverage of Audio-only</td>
<td>Coverage of Audio-Only When Appropriate</td>
<td>No Audio-Only Coverage</td>
</tr>
<tr>
<td>Licensure as a Condition of Payment</td>
<td>Waiver of In-State Licensure as a Condition of Payment</td>
<td>No Periodic In-Person Visits for Mental Health</td>
<td>No at Home Mental Health Telehealth w/o In-Person Visits</td>
</tr>
<tr>
<td>Facility Rate for Telehealth Services (POS 02)</td>
<td>No Update to Medicare Enrollment to List Home Address</td>
<td>Licensure as a Condition of Payment</td>
<td>Facility Rate for Telehealth Services</td>
</tr>
</tbody>
</table>

- **In-Person POS/Payment Rate**
## Waivers and Flexibilities

**Virtual Services, Audio-Only, and CTBS**

| **CTBS** | Virtual check-ins and e-visits can be provided to new patients  
| Consent can be obtained at the time of the service  
| Can be provided by NPPs including LCSWs, PTs, OTs, and SLPs |

| **RPM** | • Virtual check-ins and e-visits can be provided to new patients  
| • Consent can be obtained at the time of the service  
| • Can be provided by NPPs including LCSWs, PTs, OTs, and SLPs |

| **Audio-Only E/Ms** | Became separately payable by Medicare during COVID-19  
| NPPs have their own codes to bill for these services  
| CMS aligned payment with A/V E/Ms |
OCR Enforcement Discretion

During the COVID-19 PHE, the Department of Health and Human Services Office for Civil Rights (OCR) has issued a Notification of Enforcement Discretion for telehealth remote communications

• OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the emergency.

• All providers must take steps to reasonably ensure privacy during all patient-practitioner interactions.
OIG Enforcement Discretion

- **Under a COVID-19-related Policy Statement**, the HHS-OIG has temporarily allowed flexibility for health care providers to:
  - Not bill Medicare,
  - To reduce or waive cost-sharing for telehealth visits paid for by federal healthcare programs during the COVID-19 PHE.

- **Outside this enforcement discretion**:
  - Not billing Medicare for covered telehealth services can violate mandatory claims submission requirements
  - Not charging cost-sharing can violate the Beneficiary Inducement CMP and the AKS.
Physician Fee Schedule Final Rule: CMS Will Pay Less for Telehealth than In-person: Effective Jan. 1, 2024

**Effective Date in Rule (end of 2023)- but this date could change**

CMS will pay the facility-based practice expense rates (instead of non-facility practice expense rates) for telehealth services provided in an office setting.

The facility-based practice expense payment amount is lower than the non-facility payment amount.
Modeled Reimbursement Loss Non-Facility Activity at Facility Rates for New and Established Telehealth Office Visits

Difference in reimbursement post-PHE
Q1 2022 Activity
N = 52

Average quarterly loss per organization
$118k

Annualized loss per organization
$471k

Calculation assumes proposed 2023 CF
Projected loss between volume of units billed in facility vs. non-facility setting x 2023 CF x NF/FA TRVU
Prescribing Controlled Substances and Telehealth

- **Ryan Haight Act:** Establishes that controlled substances require a prescription from person with doctor-patient relationship with patient (meaning in-person evaluation).

- **During the PHE, DEA waived the in-person medical evaluation that is required before administering schedule II-V controlled substances.**
  - New patients currently can get a controlled substance prescription via telemedicine (without a prior in-person examination) if the telemedicine communication is through audio-visual, real-time, two-way interactive communication.

- **Outside this waiver:**
  - Prescribers must conduct an in-person medical evaluation of the patient before administering controlled substances.

- **State Laws:** Remote prescribing is also subject to state laws. Some states may require face to face visit.
Telehealth and Coverage of Opioid Use Disorder (OUD) Services By Opioid Treatment Programs (OTPs)

Medicare: After the PHE, periodic assessment may be performed via audio-video technology, but NOT via audio-only technology.

Medicare: Buprenorphine treatment initiation services may be furnished via audio-video AND audio-only technology (if compliance with other requirements - consider SAMHSA and DEA).

Dec. 13: SAMHSA Issued proposed rule allowing payment for buprenorphine following a telehealth evaluation (no initial in person visits) – still subject to DEA rules. Possibility DEA will create telehealth registration.
Telehealth Waiver/Flexibility Distinctions

**Varying End Dates**: Telehealth federal statutes, regulations, and requirements vs. state level/professional board requirements vs. temporary enforcement discretion.

**Federal Legislation**: Medicare coverage expanded through legislation plus a recent extension of certain legislative flexibilities until the later of the end of the PHE or 12/31/24.

**States**: Allowed broader use of telehealth by lifting in-state licensure requirements/easing professional board requirements/expanding Medicaid coverage. These sunset when individual state executive orders terminate (many already have), or states change their laws/regulations permanently.

**Enforcement Discretion**: Permits reducing/waiving cost-sharing for telehealth services and allows telehealth on more technology platforms during the PHE.
Rapid Growth of Telehealth During PHE
Telehealth Utilization Across All Telehealth Eligible Services (Faculty Practice Plan)

Count of Total Services

© AAMC. May not be reproduced without permission.
Variations Across Specialties

Source: AAMC analysis of physician and non-physician claims billed by Faculty Practice Plan members of the Clinical Practice Solutions Center. The Clinical Practice Solutions Center (CPSC) is a product of the Association of American Medical Colleges (AAMC) and Vizient that collects billing data from member practice plans to provide benchmarks and help them improve performance.

Note: 79 CPSC members had shared their claims data through December 2021 at the time of this analysis (May 2022). Encounters include all in-person and telehealth claims payable under the Medicare Physician Fee Schedule when furnished via telehealth, as outlined by CMS for the COVID-19 Public Health Emergency, effective March 1, 2020 last updated 1/5/2022: https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes. Telehealth encounters were identified based on place of service = 02 and/or modifiers 95, GT, GQ, G0 on the claim; CPT codes for messaging, remote patient monitoring, and e-consults were also counted as telehealth. Claims are from all ambulatory sites of service (place of service not equal to Inpatient - 21), payers, and specialties, unless otherwise specified.

© AAMC. May not be reproduced without permission.
Psychiatry & Psychology: In-Person

Source: AAMC analysis of physician claims billed by Faculty Practice Plan members of the Clinical Practice Solutions Center. The Clinical Practice Solutions Center (CPSC) is a product of the Association of American Medical Colleges (AAMC) and Vizient that collects billing data from member practice plans to provide benchmarks and help them improve performance.

Note: 82 CPSC members had shared their claims data through December at the time of this analysis (July 2021). “Total encounters” includes all in-person and telehealth claims payable under the Medicare Physician Fee Schedule when furnished via telehealth, as outlined by CMS for the COVID-19 Public Health Emergency, effective March 1, 2020 and updated 4/30/2020: https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes. Telehealth encounters were identified based on place of service = 02 or modifiers 95, GT, GQ, G0 on the claim; CPT codes G2010, G2012, 99451, 99452, 99446-99449, 99421-99423, 99091, 99457, 99458, 99473, 99474, and 99493-99495 were also counted as telehealth. Claims are across all payers and from service sites 02 – Telehealth, 11 – Office, 19 – Off Campus Outpatient Hospital, 21 – Inpatient Hospital, and 22 – On-Campus Outpatient Hospital.
As the COVID-19 pandemic has shifted the landscape for faculty practice services, telehealth has become an essential means for delivering care, providing an opportunity to increase access for all patients. Audio-only visits have been particularly crucial for the Medicare patient population, with 62% of E/M telehealth visits conducted via audio at the peak of the pandemic, compared to 32% and 25% for Medicaid and Commercial patients, respectively. As telehealth volumes leveled off over the course of the pandemic, audio visits have remained at a steady average of 36% for Medicare patients. This demonstrates the clear importance of maintaining coverage of audio-only visits in order to maintain access to care for older patient populations.

Source: AAMC analysis of physician and non-physician claims billed by Faculty Practice Plan members of the Clinical Practice Solutions Center. The Clinical Practice Solutions Center (CPSC) is a product of the Association of American Medical Colleges (AAMC) and Vizient that collects billing data from member practice plans to provide benchmarks and help them improve performance.

Note: 83 CPSC members had shared their claims data through June 2021 at the time of this analysis (February 2022). "E/M Telehealth Visits" include all telehealth claims with CPT codes 99201-5, 99211-5, or 99441-3 across all applicable places of service and specialties. Telehealth visits were identified based on modifiers 95, GT, GQ, G0 on the claim, place of service = 02, and/or CPT code 99441-3 for audio-only.

© 2021 AAMC. May not be reproduced without permission.
Health Equity and Telehealth

Audio Only Important for Equity

More often used by:

Older,
Black,
Hispanic,
and Spanish speaking populations

## Examples: Improving Health Equity and Telehealth

<table>
<thead>
<tr>
<th>Problem</th>
<th>Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of Access to Software Platforms used in Virtual Care</td>
<td>Translate information into other languages most commonly spoken</td>
</tr>
<tr>
<td>Limited Digital Literacy</td>
<td>Digital Access Coordinators/ Navigators train patients in use</td>
</tr>
<tr>
<td>Lack of Access to Technology or Internet Access</td>
<td>Provide loaner iPads and Internet Access (thorough hot spots) Self guided telehealth kiosks located at local community centers, places of worship, pharmacies, retail locations for patients with limited access to technology / broadband Partnering with others in community to provide technology (e.g., iPads)</td>
</tr>
</tbody>
</table>
Nondiscrimination in Telehealth


- Telehealth provider required to provide reasonable accommodations (e.g. additional time for appointments, free communication aids and services needed to communicate effectively, such as language interpreters, platforms)

Nondiscrimination regulations proposed by DHHS (August 4, 2022) for ACA protections under Section 1557.

- Provision would prohibit covered entities from discriminating based on race, color, national origin, age, disability, or sex in providing telehealth
Residents, Virtual Supervision, and Telehealth
## Supervision of Residents and Telehealth

<table>
<thead>
<tr>
<th>During the PHE</th>
<th>After the PHE (permanently)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presence of teaching physician during key portion of service furnished by resident can be met using audio/visual real-time communications technology. Teaching physician must be observing real time.</td>
<td>Supervision policy in effect during pandemic will be made permanent for <strong>rural sites only</strong>.</td>
</tr>
<tr>
<td><strong>Primary Care Exception</strong>: Teaching physicians may remotely direct primary care furnished by residents, and remotely review resident-provided services during or after visit, using audio/visual real-time communications technology.</td>
<td>Supervision policy in effect during pandemic will be made permanent for <strong>rural sites only</strong>.</td>
</tr>
<tr>
<td><strong>Residents and Telehealth</strong>: Permits use of audio/visual real-time communications technology to establish presence of a teaching physician when resident furnishes telehealth services to beneficiaries.</td>
<td>Policy during the pandemic will be made permanent for <strong>rural sites only</strong>. Audio only services will not be covered by Medicare.</td>
</tr>
</tbody>
</table>
Primary Care Exception

Under the Primary Care Exception, Medicare makes payment for lower level (1-3) E/M services furnished by a resident without the physical presence of a teaching physician. During the PHE, CMS added additional services to the primary care exception.

- E/M level 4-5
- 99495-96 (transitional care management)
- 99421-23 (online digital E/M services)
- 99452 (interprofessional internet consult)
- G2010, G2012 (virtual check-in)

After the PHE, CMS expands the permanent array of services under primary care exception to include CTBS and interprofessional consults.
Expiration of PHE Flexibilities for Direct Virtual Supervision

During the PHE direct supervision of diagnostic tests, services incident to physician services, and other specified services may be done virtually.

After the PHE ends, the services would require “in-person” supervision.

CMS requested comments on whether virtual direct supervision should be extended after the PHE and if extended, whether or not virtual direct supervision should be limited to a subset of services. No decision yet.
State Issues and Telehealth
Most States Passed Legislation/Regulations allowing practice across state lines temporarily during PHE.

State Medicaid programs allowed coverage of Telehealth services during public health emergency.

Federation of State Medical Boards: Tracking of state activity
https://www.fsmb.org/advocacy/covid-19/

Practitioner must comply with requirements of state where patient is located

Different approaches to enabling delivery across state lines

• Full and active license required
• Licensure waiver under state of emergency
• Interstate Licensure Compacts: (streamline licensing process for physicians and health care professionals so they can practice medicine in multiple states)
• Telehealth Registration (e.g. Florida and New Jersey)
• Reciprocity (for adjoining states, e.g Pennsylvania)
Interstate Medical Licensure Compacts

Source:
https://www.imlcc.org/
(as of January 2023)
## Interstate Licensure Compacts

<table>
<thead>
<tr>
<th>Profession</th>
<th>Compact Website</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical therapists</td>
<td><a href="https://ptcompact.org/ptc-states">https://ptcompact.org/ptc-states</a></td>
</tr>
<tr>
<td>Nurses</td>
<td><a href="https://www.ncsbn.org/compacts/nurse-licensure-compact.page">https://www.ncsbn.org/compacts/nurse-licensure-compact.page</a></td>
</tr>
<tr>
<td>Psychologists</td>
<td><a href="https://psypact.org/page/psypactmap">https://psypact.org/page/psypactmap</a></td>
</tr>
<tr>
<td>Speech Language Pathologists</td>
<td><a href="https://aslpcompact.com/compact-map/">https://aslpcompact.com/compact-map/</a></td>
</tr>
</tbody>
</table>
Other State Issues to Consider

Determine whether professional liability insurance coverage applies in other states

Determine if state has informed consent requirements for telehealth

Determine if a special license is needed (e.g. prescribing controlled substances)

Determine if state allows out of state practice in limited circumstances (e.g. follow-up care allowed in Ohio)
Physicians who engage in the provision of telehealth medical services to any individual in this state must possess a full and active license to practice medicine or osteopathy issued by the Medical Licensure Commission.

Notwithstanding the section above, a physician who engages in the provision of telehealth medical services to any individual in this state is not required to possess a license issued by the Medical Licensure Commission, if either of the following apply:

- The services are provided on an irregular or infrequent basis. The term “irregular or infrequent” refers to telehealth medical services occurring less than 10 days in a calendar year or involving fewer than 10 patients in a calendar year.

- The services are provided in consultation, as further provided by Section 34-24-74, with a physician licensed to practice medicine or osteopathy in this state.
Map of States With Laws Requiring Insurers to Implement Payment Parity (as of November 2022)

- **Implemented Payment Parity**
- **Payment Parity in Place, with caveats:**
  - Massachusetts: Payment parity for mental health services, only
  - Nebraska: Payment parity for certain mental health and substance use disorder services, only
  - New Jersey: Through December 31, 2023
  - Vermont: Through January 1, 2026
  - West Virginia: Payment parity for established patients and patients in acute care facilities, only
State Medicaid and Interprofessional Consults

**Issue:** Several states have been informed that interprofessional consults would not receive federal matching under Medicaid because the services are not provided to the “individual.”

**President Biden State of the Union:** (March 2022): *HHS will test payment models that support the delivery of whole-person care through behavioral health integration and authorize Medicaid reimbursement of inter-professional consultations so that primary care providers can consult with a specialist and provide needed care for patients.*

**CMS Issued Jan. 5 letter** to state health officials clarifying it is permissible for Medicaid and CHIP to provide reimbursement for interprofessional consults to specialists and treating physicians. Specialist must be enrolled in Medicaid in state where patient is located.
Other State Law Telehealth Issues
Corporate Practice of Medicine

The corporate practice of medicine (CPOM) is a legal doctrine that prohibits companies from profiting from the practice of medicine or directly employing a physician to provide professional medical services.

- CPOM doctrines vary from state to state, with differing degrees of stringency and interpretation.
- For example, California, one of the states with stringent CPOM provisions, prohibits corporations and other artificial legal entities from having any professional rights, privileges, or powers on the practice of medicine, except in very limited cases. See Cal. Bus. & Prof. Code § 2400.
Enrollment, Reassignment & Claims Submission
COVID Waivers Related to Licensure and Enrollment

1. Waiver of licensure requirement as a condition of payment.
2. Distant site practitioners practicing from home don’t have to update their Medicare enrollment to list the home address.
Claims for telehealth services must be submitted to the MAC that processes claims for the "performing" physician's service area.

Billing with POS 02 certifies it is a covered telehealth procedure code, and the beneficiary was present in an eligible originating site.

Interjurisdictional reassignment guidance requires reassignee (e.g., Group Practice) to enroll in the MAC jurisdiction where the reassignor (physician/NPP) is located.

- MD/NPP must be properly licensed/authorized to perform services in the state in which he/she has his/her practice location.
- If MD/NPP reassigning to a group practice in another state performs services in the other state, the MD/NPP must be licensed/authorized to practice in that state.
- Additionally, the Group Practice (reassignee) must enroll in the following MAC jurisdictions:
  - MAC jurisdiction where the Group has its practice
  - MAC jurisdiction where the MD/NPP performing the telehealth services and reassigning to where the Group has his/her practice
  - In Sec. 4A of the Form CMS-855B, Group Practice should select practice location type as "Other health care facility" and specify "Telemedicine Location"
Interjurisdictional Reassignment Example

A/B MAC Jurisdictions as of June 2021
Interjurisdictional Reassignment Example

- Dr. Smith is physically located in Arizona.
  - Contractor Jurisdiction JF (Noridian)
- Group Practice is in Texas
  - Contractor Jurisdiction JH (Novitas)
- Dr. Smith performs telehealth services for Group Practice patients in Texas and reassigns to Group Practice.
- Group Practice must enroll with both Novitas and Noridian. In section 4 of the CMS-855 B that Group Practice submits to Noridian, it should list Dr. Smith’s location as its practice location.
- Dr. Smith should be licensed in Arizona and Texas.
Fraud and Abuse Issues
Telehealth Enforcement Trends & Considerations

- Fraud & Abuse Implications Associated with Reimbursement Requirements
- HHS-OIG Work Plan Items Involving Telehealth
- HHS DOJ/OIG Investigations
- OIG Advisory Opinions
- OIG Special Fraud Alert - Telefraud
- HHS OIG Telehealth Webpage: https://oig.hhs.gov/reports-and-publications/telehealth/
What the OIG Thinks is High Risk…

Additional Questions for Out-of-State Arrangements

OIG is focused on targeted oversight of telehealth, but in its recent Report, OIG identified 1,714 out of approx. 742,000 providers whose billing for telehealth poses a high risk to Medicare. Are a few bad apples putting everyone else under scrutiny??

From this OIG identified what it views to be measures for concerning billing practices:
1. Billing both a telehealth service and a facility fee for most visits;
2. Billing telehealth services at the highest, most expensive level every time;
3. Billing telehealth services for a high number of days in a year;
4. Billing both Medicare fee-for-service and a Medicare Advantage plan for the same service for a high proportion of services;
5. Billing a high average number of hours of telehealth services per visit;
6. Billing telehealth services for a high number of beneficiaries; and
7. Billing for a telehealth services and ordering medical equipment for a high
Post-PHE Planning and Compliance
It’s time to get your ducks in a row….

- Assemble a PHE wind-up task force (including compliance, legal, operations, etc.)
- Review existing telehealth arrangements
- Determine whether they were structured using waiver authority
- Plan for the future by addressing telehealth action
Telehealth Action Items

- Use of PHE Waivers: Review All Telehealth Arrangements to Determine if Waivers Were Relied Upon
- Reimbursement: Review Telehealth Coverage Requirements for Various Payors and Be Aware of Limitations that Go Back into Effect After PHE or 12/31/24 (e.g., Medicare Originating Site Requirements)
- Enrollment: Make Sure Telehealth Practitioners, Physician Practices, and Hospitals are Properly Enrolled, Particularly for Remote Practitioners
- HIPAA Compliance: Ensure All Telehealth Platforms are HIPAA Compliant
- AKS/Beneficiary Inducement Compliance: Review Billing Practices and Determine if Coinsurance is Being Waived for Any Federal Health Care Program Beneficiaries
- Training: Review AAMC Telehealth Competencies Across the Learning Continuum
Questions

Allison M. Cohen
Shareholder
Washington, D.C.
202.508.3429
acohen@bakerdonelson.com

Gayle Lee
Director, Physician Payment and Quality
AAMC
galee@aamc.org
Register Now – Upcoming Events!

Webinar: Hiring, Supporting and Incentivizing Department Chiefs in Today’s Dynamic Environment

Wednesday, February 15, 2023
2:30 pm-3:30 pm EST

Chief Medical Officers’ Group (CMOG) & Group on Faculty Practice (GFP) Joint Spring Meeting

March 16-17, 2023
AAMC Headquarters in Washington, DC

Questions? Contact Shawn Rosen-Holtzman at gfp@aamc.org