

The Reimbursement Environment for Telemedicine Services (Part Two of a Four-Part Series)

As highlighted in Part One of this four-part series, the *Centers for Medicare and Medicaid Services* (CMS) is increasingly recognizing the value associated with the provision of telemedicine services.¹ For calendar year 2016, CMS is reimbursing more than 20 different telehealth services, including the practice of telemedicine in *pharmacologic management, behavioral neurology, and end-stage renal disease*.² This trend toward heightened reimbursement for telemedicine services is also occurring among commercial payors, in contexts such as video diagnoses and remote monitoring for chronic conditions.³ The second installment in this Health Capital Topics' four-part series on telemedicine will examine the telemedicine reimbursement environment in light of legislative trends and economic conditions impacting health care delivery.

In order for a telemedicine service to be reimbursed by Medicare, the service must be: (1) on the list of eligible services; (2) "furnished via an interactive telecommunications system;" (3) "furnished by a physician or other authorized personnel;" (4) "furnished to an eligible telehealth individual;" and, (5) the "individual receiving the service must be located in a telehealth originating site."⁴ Each year, CMS publishes updates to the list of reimbursable telemedicine services in the Medicare Physician Fee Schedule (MPFS).⁵ When determining which services to add to the list each year, CMS organizes telemedicine services into two categories: (1) services similar to professional consultations and office visits that are currently listed as reimbursable and (2) services that are not similar to any other services listed as reimbursable.⁶

CMS continues to expand the list of reimbursable telemedicine services each year. For example, from 2015 to 2016, CMS increased the number of reimbursable services from 75 to 81.⁷ These codes consist of psychiatry; psychotherapy; end-stage renal disease visits (2016 added home dialysis also); a variety of evaluation and management services for outpatient care and subsequent hospital care; prolonged service in the outpatient setting (2016 added inpatient as well); alcohol intervention services; skilled nursing facility subsequent services; smoking cessation treatment; and many others.⁸ CMS considered input from commenters, but ultimately rejected providing reimbursement for telemedicine services for: rehabilitation services,

palliative care, pain management, and patient navigation services for cancer patients.⁹ CMS came to this determination because it found no clinical benefits in allowing telecommunications for these services.¹⁰

As of July 2015, 47 states mandated that their Medicaid programs provide reimbursement for some form of healthcare service furnished via live video (up 7% from 44 states in 2014).¹¹ A recent study conducted by three health policy experts analyzing the Great Lakes region found that state level changes to Medicaid and commercial payer policies have a significant effect on Medicare utilization.¹² In Illinois, Medicaid utilization grew by 173% in 2012 after the state expanded Medicaid coverage in 2011, and in Michigan, Medicare utilization grew by 78% in 2013 after the state's commercial payer telemedicine parity law went into effect in 2012.¹³ By contrast, surrounding states with no significant telemedicine policy demonstrated varied annual Medicare telemedicine utilization growth with no discernible pattern.¹⁴ In summation, the study suggested that state telemedicine reimbursement policies appear to have notable impacts on the practical viability of telemedicine programs that bill Medicare for telemedicine solutions.¹⁵

The complexity of the current telemedicine financial landscape is complicated by reimbursement structures that vary widely from state to state.¹⁶ Fifteen states have enacted laws requiring commercial insurers to reimburse for telemedicine services if the same service would be eligible for reimbursement when provided in person.¹⁷ Thirty-two states and the District of Columbia have passed some form of parity law requiring commercial insurers to cover telemedicine services.¹⁸ Federal lawmakers have taken note, and several congressional efforts to add uniformity and expand the Medicare reimbursement of telemedicine are underway.¹⁹

In 2015, Congress introduced a number of bills that would expand coverage of telemedicine to all beneficiaries of Medicare, not just those in rural or semi-rural areas as currently allowed; however, none of the bills were approved by either congressional chamber.²⁰ Although recent bills reflect increasing support of expanding the Medicare reimbursement of telemedicine, a lack of consensus has prevented lawmakers from passing such bills.²¹ The latest effort to

expand Medicare telemedicine reimbursement was introduced on February 3, 2016 as the *Creating Opportunities Now for Necessary and Effective Care Technologies for Health Act* (CONNECT for Health Act), which is a bipartisan, bicameral bill²² that would remove several of the current constraints on Medicare telemedicine reimbursement,²³ including clinical video conferencing and remote patient monitoring.²⁴ The legislation will result in higher quality of care while decreasing federal spending by \$1.8 billion.²⁵ More than 60 organizations, including professional associations such as the *American Medical Association* (AMA) and *Federation of State Medical Boards* (FSMB), have come out in support of the CONNECT for Health Act.²⁶

The reimbursement environment for telemedicine services is expected to continue to evolve in future years. The FSMB has issued a *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine* which calls for clear disclosure of both “fees for services and how payment is to be made.”²⁷ In addition, the AMA has adopted a list of guiding principles for ensuring the appropriate coverage of, and payment for, telemedicine services in connection with several demonstration projects already underway with CMS,²⁸ however, the AMA has expressed concerns about the *return on investment* (ROI) providers would receive by investing in telemedicine services.²⁹ Although commercial insurance companies currently reimburse for a wide variety of telemedicine services, there is still no widely-accepted standard for reimbursement of telemedicine services from private payors.³⁰

The next article in this four-part series will discuss the competitive environment in the telemedicine industry, including challenges and potential initiatives that may influence the larger telemedicine market.

1 “Use of Telemedicine Can Reduce Hospitalizations of Nursing Home Residents and Generate Savings for Medicare” By David C. Grabowski & A. James O’Malley, *Health Affairs*, Vol. 33, No. 2, February 2014, p. 248-49; “Telemedicine” *Medicaid.gov*, <https://www.medicare.gov/MedicareCHIPProgramInformation/ByTopics/DeliverySystems/Telemedicine.html> (Accessed 1/4/16); *See*, part one of this series at page one concerning the telemedicine/telehealth distinction noting the frequent confusion of the terms. “Telemedicine” refers to the use of remote clinical services to support patient care and delivery whereas “telehealth” is a broader term for clinical and non-clinical remote services, such as provider training, meetings, continuing medical education, and other electronic healthcare communication.

2 “Telehealth Services” Centers for Medicare and Medicaid Services, 2015, <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcfsctsht.pdf> (Accessed 2/8/2016) p. 3-4; “CY 2016 PFS Final Rule List of Medicare Telehealth Service” Centers for Medicare and Medicaid Services, <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Federal-Regulation-Notices-Items/CMS-1631-FC.html?DLPage=1&DLEntries=10&DLSort=2&DLSortDir=descending> (Accessed 2/26/16).

3 “Private payers look to telemedicine” By Chris Anderson, *Healthcare IT News*, May 7, 2013,

<http://www.healthcareitnews.com/news/private-payers-look-telemedicine> (Accessed 2/26/16).

4 “Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2016; Final Rule” *Federal Register*, Vol. 80, No. 220 (November 16, 2015), p. 71029.

5 *Ibid.*, p. 71060.

6 *Ibid.*

7 “List of Medicare Telehealth Services CY 2015 & CY 2016” Centers for Medicare and Medicaid Services, <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Federal-Regulation-Notices-Items/CMS-1612-FC.html?DLPage=1&DLEntries=10&DLSort=2&DLSortDir=descending> (Accessed 2/26/16); “CY 2016 PFS Final Rule List of Medicare Telehealth Service” Centers for Medicare and Medicaid Services, <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Federal-Regulation-Notices-Items/CMS-1631-FC.html?DLPage=1&DLEntries=10&DLSort=2&DLSortDir=descending> (Accessed 2/26/16).

8 *Ibid.*

9 *Ibid.*, p. 71061.

10 *Ibid.*, p. 71062.

11 “State Telehealth Laws and Medicaid Program Policies” Center for Connected Health Policy, July 2015, <http://cchpca.org/sites/default/files/resources/STATE%20TELEHEALTH%20POLICIES%20AND%20REIMBURSEMENT%20REPORT%20FINAL%20%28c%29%20JULY%202015.pdf> (Accessed 1/4/16).

12 “State Policies Influence Medicare Telemedicine Utilization” By Jonathan D. Neufeld, et al., *Telemedicine and e-Health*, Vol. 22, No. 1 (January 13, 2016), p. 71-72.

13 *Ibid.*, p. 72.

14 *Ibid.*

15 *Ibid.*, p. 72-73.

16 “Crossing the Telemedicine Chasm: Have the U.S. Barriers to Widespread Adoption of Telemedicine Been Significantly Reduced?” By Cynthia LeRouge, et al., *International Journal of Environmental Research and Public Health*, Vol. 10 (November 2013), p. 6477; *See also*, “What are the reimbursement issues for telehealth?” U.S. Department of Health and Human Services, <http://www.hrsa.gov/healthit/toolbox/RuralHealthITtoolbox/Telehealth/whatarethereimbursement.html> (Accessed 2/8/2016) noting “different states have various standards by which their Medicaid programs will reimburse for telehealth expenses.”

17 *See*, “Reimbursement Overview” Center for Telehealth and e-Health Law, <http://ctel.org/expertise/reimbursement/reimbursement-overview/> (Accessed 2/2/2016) listing California, Colorado, Georgia, Hawaii, Kentucky, Louisiana, Maine, Maryland, Michigan, New Hampshire, Oklahoma, Oregon, Texas, Vermont, and Virginia.

18 “Telemedicine – 2015 Year in Review” By Ellen Jaros & Carrie Roll, *Health Law & Policy Matters*, December 22, 2015, <https://www.healthlawpolicymatters.com/2015/12/22/telemedicine-2015-year-in-review/> (Accessed 1/4/16).

19 *See*, “CONNECT for Health Act” H.R. 4442 114th Cong. (introduced Feb. 3, 2016); “CONNECT for Health Act” S. 2484 114th Cong. (introduced Feb. 2, 2016); “Medicare Telehealth Parity Act of 2015” H.R. 2948, 114th Cong. (introduced July 7, 2015); and “Telehealth Modernization Act of 2015” H.R. 691, 114th Cong. (introduced Feb. 3, 2015).

20 Jaros & Roll, Dec. 22, 2015; “Telehealth Modernization Act of 2015” H.R. 691, 114th Cong. (introduced Feb. 3, 2015); “Telehealth” *Medicare.gov*, <https://www.medicare.gov/coverage/telehealth.html> (Accessed 1/4/16).

21 “Congress Wows With Medicare Telehealth Parity Act of 2015, But Will It Succeed?” *Health Care Law Today*, July 15, 2015, <https://www.healthcarelawtoday.com/2015/07/15/congress-wows-with-medicare-telehealth-parity-act-of-2015-but-will-it-succeed/> (Accessed 2/4/2016).

22 H.R. 4442 114th Cong., sponsored by Democratic Representatives Mike Thompson and Peter Welch—with

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- Republican Representatives Diane Black and Gregg Harper in the U.S. House of Representatives (Note: Thompson, Welch, Black, and Harper made up the same bipartisan coalition which sponsored last year's Medicare Telehealth Parity Act bill); and "CONNECT for Health Act" S. 2484 114th Cong., sponsored by Republican Senators Roger Wicker, Thad Cochran, and John Thune—with Democratic Senators Brian Schatz, Ben Cardin, and Mark Warner in the U.S. Senate.
- 23 "CONNECT for Health Act" U.S. Senator Brian Schatz, et al., 2016, http://www.schatz.senate.gov/imo/media/doc/CONNECT%20for%20Health%20Act_One-Pager_02-10-16.pdf/ (Accessed 2/17/2016).
- 24 *See, Ibid*, noting five provisions in 42 U.S.C § 1834(m) that constrain telehealth reimbursement; "Senate Bill Would Expand Medicare's Telehealth Coverage" By Ken Terry, Medscape Medical News, February 6, 2016, <http://www.medscape.com/viewarticle/858506> (Accessed 2/26/2016).
- 25 *Ibid*.
- 26 *Ibid*.
- 27 *See* "Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine" Federation of State Medical Boards, 2014, https://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/FSMB_Telemedicine_Policy.pdf (Accessed 2/17/2016).
- 28 *See*, "H-480.946 Coverage of and Payment for Telemedicine" American Medical Association, June 11, 2014, <https://www.ama-assn.org/ssl3/ecom/PolicyFinderForm.pl?site=www.ama-assn.org&uri=/resources/html/PolicyFinder/policyfiles/HnE/H-480.946.HTM> (Accessed 2/8/2016) point five noting: "*Our AMA supports demonstration projects under the auspices of the Center for Medicare and Medicaid Innovation to address how telemedicine can be integrated into new payment and delivery models.*"
- 29 *See*, LeRouge, (November 2013) at p. 6477 noting "the [...] ROI from the perspective of the health care organization is unclear."
- 30 HHS, <http://www.hrsa.gov/healthit/toolbox/RuralHealthITtoolbox/Telehealth/whatarethereimbursement.html> (Accessed 2/8/2016).



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