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Practice Update

The Future of Telehealth in 2019

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Towards the end of 2018, several developments in the area of telehealth signalled significant changes on the horizon for 2019. The following provides a summary of these developments and implications for 2019 and beyond.

Medicare Advantage Payment for Telehealth

In the November 1, 2018, proposed policy and technical changes to Medicare Advantage (MA) for fiscal year 2020, the Centers for Medicare & Medicaid Services (CMS) signaled potential payment for Part B telehealth services for participant plans. Sec. 50323 of the Bipartisan Budget Act permits MA plans to provide "additional telehealth benefits" beginning in 2020 and to "treat them as basic benefits for purposes of bid submission and payment by CMS" – a game changer. Currently, telehealth coverage is optional, a bonus that MA plans may offer to attract beneficiaries. Even more important is CMS' liberalization of the site of service for eligibility – namely, all enrollees are eligible irrespective of whether they live in urban, suburban or real areas AND can receive these service in the home versus in an office or other setting.

This development is a significant change from traditional Medicare fee-for-service geographic and site of service requirements for reimbursed telehealth services. In the regulation, CMS said the providers' costs of infrastructure for telehealth, including extra computers and wireless services, cannot be included in payments, which would

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essentially shift the costs to MA plans. MA enrollees also have to be informed about the telehealth option in the evidence of coverage document and identify any providers offering services for additional telehealth benefits and in-person visits or offering services exclusively for additional telehealth benefits. 42 C.F.R. § 422.135(c).

Healthcare prognosticators see these changes as a monumental shift in thinking from prior skepticism that telehealth services were inherently predisposed to fraud and abuse and that the services are not as good as an in-person evaluation.

Telehealth Rumblings on Capitol Hill

Over the past two years, Congress has introduced 41 bills that, if passed, would require Medicare to reimburse providers for their use of telehealth to treat numerous health conditions. Leading up to the 116th Congress, lawmakers seem poised to continue to expand telemedicine payments to providers, particularly with respect to telemedicine delivered to rural communities.

The Bipartisan Budget Act of 2018 (Pub. L. 115-123) modified or removed the limitations related to geography and patient setting for certain telehealth services, including certain home dialysis end-stage renal disease-related services, services furnished by practitioners in certain Accountable Care Organizations, and acute stroke-related services

In November 2018, Representative Bill Johnson (R-OH), a member of the House Energy and Commerce, said he plans to advance legislation that could remove geographic and site restrictions on reimbursement for all Medicare codes. A version of this bill passed as part of the bipartisan opioid legislation enacted into law in October, but it only waives restrictions for care related to a substance use disorder. In discussing the reimbursement expansion, Johnson explained that the “providers want it [and] the technology is there.” Representative

Anna Eshoo (D-CA), a member of House Energy and Commerce's telecommunications subcommittee, echoed these comments, indicating legislators should focus on shrinking the gap between telemedicine coverage on MA plans and the fee-for-service model. Eshoo believes this effort can be aided by increasing broadband activity – a sentiment supported by other lawmakers, including Representative Roger Wicker (R-MS), a member of the Commerce Committee and its telecommunications subcommittee.

Agency Rule-Making & Commentary Regarding Telehealth

On November 23, 2018, CMS published the 2019 Physician Fee Schedule Final Rule (PFS). The common thread in the PFS can be described as focusing on the physician-patient relationship by reducing administrative burden. In its commentary, CMS elaborated on a new and forward looking interpretation of its statutory limitations for reimbursement of telehealth by describing a new vision wherein those restrictions only apply to the kinds of professional services explicitly enumerated in the statutory provisions, like professional consultations, office visits, and office psychiatry services and other services that are furnished remotely via communications technology are not to be considered "Medicare telehealth services" subject to the statutory restrictions. As such, CMS finalized the following:

- Reimbursement for "virtual check-ins" at a rate of approximately $14 with some limitations.
- A new code for remote professional evaluation of information transmitted by the patient via pre-recorded "store & forward" video or image technology.
- Codes for interprofessional internet consultations.

In the PFS, CMS also implemented certain changes required by the BBA, including adding original site and geographic exemptions for end stage renal disease and acute stroke; new codes for services to be included in its list of Medicare telehealth services; new codes for remote physiologic monitoring and chronic care management; and exemptions for treatment of substance use disorders.

This latter addition is reflective of the President's Commission on Combating Drug Addiction and the Opioid Crisis' recommendation to utilize telehealth in the effort to combat the opioid crisis, especially in geographically isolated regions and underserved areas where people with opioid use disorders and other substance use disorders may benefit from remote access to needed treatment. Each of these changes further chisels away at the restrictive parameters of Medicare telehealth services.

Fraud & Abuse Enforcement on the Radar for Telehealth

Notwithstanding this progress in telehealth coverage, the specter of fraud still looms in the background of telehealth services. As coverage expands under Medicare, heightened scrutiny from Medicare is to be expected. In April of 2018, the Department of Health & Human Services (HHS) Office of Inspector General issued an audit report focusing on originating and distant site claims. It reviewed 191,118 distant site telehealth claims (totaling $13.8 million) from 2014 and 2015 that did not have corresponding originating-site claims. Further, a stratified random sample of 100 claims found 31 claims did not meet Medicare requirements for reimburseable telehealth services. Of those claims, 24 received services at non-rural originating sites; seven were submitted by ineligible institutions; 3 were for services provided at unauthorized originating sites; two involved unauthorized means of communication; one claim was for a noncovered service; and one claim was for

services provided by a physician outside the United States.

This scrutiny also is reflected in active litigation. Telehealth services saw its first False Claims Act case settlement in 2016 involving a Connecticut psychiatrist who billed Medicare for telephone consults that did not meet Medicare reimbursement requirements for telehealth. In late 2018, a high dollar indictment was filed in U.S. District Court for the Eastern District of Tennessee for allegations of a complicated telehealth fraud model involving claims for prescription drug benefits. The potential for abuse with telehealth is not going unnoticed by the government, and we expect to see this continued messaging throughout 2019 and beyond.

Private Equity & Transactions Involving Telehealth

Telehealth has become and will continue to be a driver of mergers and acquisitions and investment activity in 2019. We note that the common thread on the investment and acquisition front is diversification of platforms to provide an integrated continuum of care (e.g., not just urgent care, but across spectrum--direct-to-consumer, acute care setting, post-acute care setting). For example:

- In January of 2018, InTouch Health purchased TruClinic, which specializes in direct-to-consumer telehealth services.
- In April of 2018, RubiconMD (a telehealth company that connects PCPs to specialist for consults) secured a $13.8 million Series B round of financing from venture capitalists.
- On April 30, 2018, InTouch Health announced its acquisition of REACH Health, a telemedicine software company based in Alpharetta, GA (started in Augusta at Medical College of Georgia based on stroke neurologists pushing for stroke patients access to stroke specialists) for an undisclosed amount. The acquisition allows

InTouch Health to expand its telehealth offerings across the continuum of care, not only in emergent care, but in post-acute, ambulatory, and direct-to-consumer on demand care.

- On June 1, 2018, American Well acquired Avizia, a telehealth company that specialized in acute care capabilities and provides telehealth technologies to hospitals and health systems, for an undisclosed amount. The acquisition allows American Well to offer a single platform for multiple services, including specialty services.
- On June 4, 2018, Teledoc announced its acquisition of Advance Medical, a company based in Barcelona, Spain, for $352 million. The acquisition would allow for Teledoc to expand its platform into Latin America and Asia and, specifically, to multinational employers.
- In July of 2017, Teledoc purchased a medical consulting company, Best Doctors (network of medical experts) for $440 million.
- On August 1, 2018, MDLIve (Telehealth service provider) closed a $50 million Series E financing with strategic partners including Health Velocity Capital, Cigna Corporation, and Health Care Service Corporation, with participation from Novo Holdings A/S and Industry Ventures.
- August 20, 2018, SOC Telemed (formerly Specialist On Call) acquired behavior health telemedicine company JSA Health. Terms of the deal were not disclosed. The acquisition expands the reach of the companies into a broader scope of settings and services areas (e.g., telepsychiatry and neurology). With this acquisition, JSA is the largest U.S. acute telepsychiatry provider.

Additionally, across 2018, investors poured nearly $8.1 billion into digital health, surpassing 2017's contributions by 42 percent. More than 350 digital health deals were completed in 2018, a slight increase from 2017's numbers, reflecting an average deal increase to $21.9 million. Many of these digital health investments include remote monitoring

innovations, which are an important component of the telehealth progress.

Stay tuned for investment to increase further in 2019 with more liberalized reimbursement and patient/consumer driven healthcare on telehealth and beyond.
