



## ALERTS

### Coronavirus Prompts Telehealth Changes For Medicare

March 17, 2020

In response to the COVID-19 pandemic the federal government has taken important steps to expand telehealth coverage for Medicare beneficiaries. The changes allow Medicare beneficiaries to receive a broader range of healthcare services through interactive telehealth communication with a healthcare provider – thus promoting social distancing to protect both patients and healthcare providers from unnecessary exposures.

The Coronavirus Preparedness and Response Supplemental Appropriations Act, which provides \$500 million for an emergency waiver expanding Medicare coverage for telehealth services, implements three important changes to existing Medicare telehealth coverage:

- **Telehealth services are covered regardless of where beneficiaries are located.** Previously, Medicare only covered telehealth services for those who were located in a health professional shortage area or a non-urban area. Coverage now extends to telehealth services provided anywhere a beneficiary is located, even if it is not in a health professional shortage area or non-urban area.
- **Telehealth services may be initiated from any location via smartphones with “audio and video capabilities that are used for two-way, real-time interactive communication.”** Previously, beneficiaries were required to go to a medical facility and use an interactive communication device in order for telehealth visits with a remote provider to be covered. Telehealth coverage now extends to services provided via smartphone in a beneficiary’s own home.

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- **Telehealth covered services now include all types of visits, including specialized office visits, mental health counseling, and preventive health screenings.**

Previously, covered telehealth visits were limited to routine office visits in special circumstances. Importantly, the expanded telehealth coverage is not restricted to visits regarding COVID-19 diagnosis or treatment.

While the act states that covered telehealth services must be delivered by a provider or member of the provider's practice who has treated the patient within the past three years, the Centers for Medicare & Medicaid Services (CMS) has issued guidance stating that the Department of Health and Human Services will not conduct audits to ensure that such a previous relationship existed for claims submitted during the COVID-19 pandemic.

Healthcare providers and practitioners will also not be subject to sanctions for reducing or waiving cost-sharing for telehealth services provided to federal health program beneficiaries during the COVID-19 pandemic. The HHS Office of Inspector General (OIG) has confirmed in a [March 17, 2020 memorandum](#) that if a provider or practitioner chooses to waive or reduce cost-sharing for telehealth services, the OIG will not bring an enforcement action under either the federal anti-kickback statute or the beneficiary inducements civil monetary penalty statute for waiving or reducing such cost-sharing.

In addition, the HHS Office for Civil Rights will exercise enforcement discretion and waive penalties for HIPAA violations against healthcare providers that perform telehealth visits via non-encrypted technology such as smartphones, FaceTime, or Skype, during the COVID-19 pandemic.

Several private payers have already announced similar expansions to coverage of telehealth services. Many of these payers have waived co-pays for telehealth visits. Some states' Medicaid programs may soon choose to follow suit by easing restrictions on telehealth service coverage.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or Laura Seng at 574-237-1129 or [laura.seng@btlaw.com](mailto:laura.seng@btlaw.com), Julie Veldman Harris at 614-628-1414 or [julie.harris@btlaw.com](mailto:julie.harris@btlaw.com), Heather Delgado at 312-338-5905 or [heather.delgado@btlaw.com](mailto:heather.delgado@btlaw.com), or Sarina Glick at 614-628-1437 or [sarina.glick@btlaw.com](mailto:sarina.glick@btlaw.com).

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