

Memorandum (March 31, 2020)

To: Potentially Interested Clients

From: The Moran Company

Subject: First Take Overview of the Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency (PHE)

On March 30, 2020, the Centers for Medicare and Medicaid Services (CMS) released an interim final rule with comment period with regulatory revisions to Medicare and Medicaid in response to the coronavirus pandemic and the associated public health emergency (PHE). The rule was put on display this afternoon following yesterday's release on the CMS website. There is a 60-day comment period, with comments due June 1. This memo provides our first take on the rule after an initial review, focusing particularly on issues related to Part B drugs and biologicals. If you have questions or would like a deeper or more thorough read of specific sections, please let us know.

Highlights of the Rule

- CMS makes a number of adjustments to allow physicians and hospitals to provide care to patients in their homes, including expansions to the services that can be provided via telehealth and higher payments for those services.
- Notably, the rule makes temporary changes to physician supervision requirements that could—for some patients—allow for drugs covered incident to physician services to be provided in a patient's home.
- The rule also expands the definition of homebound to allow for additional patients to receive services under the Home Health Benefit.
- Another provision would relax requirements of coverage decisions for infusion coverage under the Durable Medical Equipment benefit.
- The rule also provides for increased advance payments to providers and allows for provision of evaluation and management services by phone.
- Other changes include relief from certain quality reporting and star rating requirements.

Expanded Access to Telehealth Services

CMS makes substantial additions to the list of services that can be provided via telehealth and eliminates some limitations on the frequency that these services can be provided. The agency also allows telehealth services to be billed at higher non-facility rates, under the theory that while telehealth services have historically required lower levels of physician overhead (with separate payment to facilities where the services are received), during the PHE physicians providing telehealth will still be maintaining their office structure and nursing and other staff.

Direct Supervision by Interactive Telecommunications Technology

CMS notes that current Medicare direct supervision requirements could “limit access to procedures and tests that could be appropriately supervised by a physician isolated for the purpose of limiting exposure to COVID-19.” The agency notes physician administered drugs and biologics as an example of the potential for a loss of access where the physician or patient needs to be isolated. CMS states that “depending on the unique circumstances of individual patients and billing physicians...telecommunications technology could be used” to provide supervision of certain services.

CMS does not list specific services where telehealth supervision would or wouldn't be appropriate, noting that even given the current crisis, “in many cases furnishing services without physical presence of the physician in the same location would not be appropriate” but in some cases technology would allow appropriate supervision. CMS states that “individual practitioners are in the best position to make decisions based on their clinical judgement in particular circumstances” in which remote supervision is appropriate. The agency seeks comment on guardrails needed and what risk the policy might introduce. The rule emphasizes that it is changing supervision requirements only and not attempting to change the scope of Medicare benefits.

In describing how the policy might be implemented, CMS states that physicians may work with “auxiliary personnel” to leverage staff and technology to provide care, including:

- Home health providers;
- Infusion therapy suppliers; or
- Ambulance services firms.

The auxiliary providers would seek payment from the billing practitioner and would not bill Medicare. The billing practitioner would continue to bill under the physician fee schedule (or in the case of hospital outpatient departments, the OPDS) and not home health or other benefits. CMS will be monitoring claims to ensure services are not being “inappropriately unbundled from payments under the home health PPS.” They assume that the services described would not be provided at the same time as home health.

CMS believes that similar supervision changes are reasonable for hospitals, including outpatient departments and Critical Access Hospitals, and will allow similar flexibility for these institutions.

Clarification of “Homebound”

CMS notes that the home health prospective payment system requires physicians to certify that patients receiving services are homebound. In the rule, CMS is clarifying the definition of homebound in situations related to the COVID-19 crisis. The agency states that the definition centers on situations where the physician determines that it is meaningfully contraindicated for the patient to leave home and notes that this is clear in the case of a confirmed or suspected COVID-19 diagnosis—or where the patient has a condition that may make them more susceptible to COVID-19. While a patient self quarantine would not qualify, CMS notes that physicians could determine based on CDC guidance that older adults stay home that many beneficiaries would be considered homebound. However, whether

home health services are reasonable and necessary “must be based on an assessment of each beneficiary’s individual condition and care needs.” In addition, to receive home health services, a patient must also be in need of skilled services.

Temporary Removal of DME Coverage Restrictions

Another provision of the rule would temporarily remove clinical indications of coverage for a variety of national and local coverage decisions, including the NCD for infusion pumps and the LCD for external infusion pumps, potentially expanding the number of patients eligible to receive drugs at home under the DME benefit.

Telephone Evaluation and Management (E/M) Services

CMS finalizes, on an interim basis for the duration of the PHE for the COVID-19 pandemic, separate payment for telephone E/M services (CPT codes 98966-98968 and CPT codes 99441-99443). Previously, these codes were assigned a “N” status indicator (noncovered) because they were not face-to-face and the descriptors allowed for the provision of services to non-Medicare beneficiaries (such as the guardian of a Medicare beneficiary).

CMS finalizes the work RVUs as recommended by the AMA Health Care Professional Advisory Committee (HCPAC) and the direct PE inputs as recommended by the AHCPAC and RUC.

Although the codes refer to established patients, during the PHE, CMS will exercise enforcement discretion and not conduct review to consider whether the patients are new or established. Additionally, CMS notes that CPT codes 98966-98968 describe assessments performed by practitioners who cannot separately bill for E/Ms. CMS notes that these services “may be furnished by, among others, LCSWs, clinical psychologists, and physical therapists, occupational therapists, and speech language pathologists when the visit pertains to a service that falls within the benefit category of those practitioners.”

Advance Payments to Suppliers Furnishing Items and Services under Part B

CMS revises the definition of advance payment as a conditional payment by the contractor (previously the carrier) in response to a claim that it is unable to process within the established time limits. CMS also adds a new section to address emergency situations. Under that section, the payment is increased from 80% of the anticipated payment to 100% of the anticipated payment for the claim based upon the historical assigned claims payment data for claims paid to that supplier. CMS also states that suppliers in bankruptcy would not be eligible for advance payments.