Increased Utilization of Telehealth During the COVID-19 Pandemic:

Long-Term Impact on Care Delivery Models

June 18, 2020

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Faegre Drinker Biddle & Reath LLP

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Agenda

- **Telehealth federal policy landscape**
- **Telehealth policy flexibilities during the COVID-19 emergency**
  - https://www.faegredrinker.com/en/insights/topics/coronavirus-covid-19-resource-center
  - https://www.faegredrinker.com/en/insights/publications/2020/5/tracking-telehealth-policies-implemented-during-the-covid-19-public-health-emergency
- **Increased Telehealth Adoption in Medicare Advantage**
  - Utilization
  - Risks and rewards
- **Telehealth Compliance Considerations**
- **Telehealth in a Post-Pandemic world**
- **Q & A**
  - Raise your hand in control panel if you have a question

Telehealth Utilization in a Post-Pandemic World

- **Poll Question: What worries you most about making telehealth a permanent and significant part of your care management program and provider network?**
  - Potential to raise utilization unnecessarily
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  - Difficulty integrating telehealth providers into your operations
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Poll Question Answers

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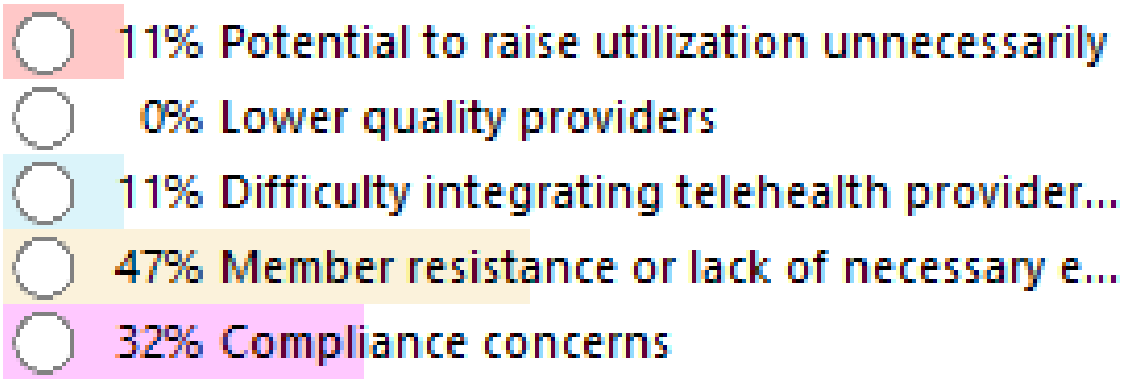

Speakers

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Telehealth Federal Policy Landscape

What is Telehealth?

- Definitions vary, including in state and federal policy and across different payers (Medicare, Medicaid, commercial insurance)
- Generally, today, options are:
  - Virtual care visits = synchronous visit
  - Store-and-forward = asynchronous review of patient information such as radiology/diagnostics
  - Remote patient monitoring (RPM)
  - E-consults provider-to-provider
- There are also yet-to-be defined new technologies like digital therapeutics and AI-based applications and services

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Federal Policy – Medicare Fee-for-Service

- Medicare fee-for-service telehealth is governed by Social Security Act Section 1834(m)
- The Secretary shall pay for telehealth services that are furnished via a telecommunications system by a practitioner… notwithstanding that the practitioner providing the telehealth service is not at the same location as the beneficiary.
  - Face to face synchronous video (except in Alaska and Hawaii, where it includes asynchronous store-and-forward)
  - The remote practitioner receives reimbursement for the service
  - The “originating site” where the patient presents receives a nominal facility fee
  - The originating site must be a specific type of rural location
  - The service provided remotely is one of a small set of codes identified in July 2000, plus additional services specified by the Secretary of HHS

Federal Policy – Medicare Advantage

- MA plans have been able to provide telehealth services as a supplemental benefit since plan year 2013
  - Telemonitoring
  - Remote access technologies
- Starting plan year 2020, MA plans are allowed to provide “additional telehealth benefits” not otherwise allowed under 1834(m) to enrollees as basic benefits
- However, CMS has previously not allowed visits conducted via telehealth to count toward risk adjustment
- CMS has updated network adequacy requirements to allow plans to credit telehealth providers

Telehealth Policy Flexibilities During the COVID-19 Emergency

Federal COVID-19 Response

- Thus far, Congress has passed four pieces of legislation to address the COVID-19 pandemic:
  - March 6: Coronavirus Preparedness and Response Supplemental Appropriations Act
  - March 18: Families First Coronavirus Response Act
  - March 27: CARES Act
  - April 24: Paycheck Protection Program and Health Care Enhancement Act

- Agencies have been given authority under these bills to provide funding and change policy to address the pandemic
  - Telehealth policy has primarily been implemented by the Centers for Medicare and Medicaid Services (CMS)
  - CMS made major policy announcements under emergency authority throughout March and April

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Medicare Advantage (MA) Flexibilities

During the pandemic…

- CMS is allowing MA plans and other organizations that submit diagnoses for risk-adjusted payment to submit diagnoses for risk adjustment that were obtained during telehealth visits

  https://www.cms.gov/files/document/applicability-diagnoses-telehealth-services-risk-adjustment-4102020.pdf

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Increased Telehealth Adoption in Medicare Advantage

Telehealth in MA During COVID-19 Emergency

- Kaiser Family Foundation survey: 48% “have postponed or skipped medical care due to the coronavirus outbreak”
- CMS: Medicare telehealth utilization is up 1300% since COVID-19 Emergency Declaration
- CMS has permitted MAOs to offer midyear benefit enhancements for the length of the COVID-19 Emergency
  - Telehealth can be added
  - Telehealth cost sharing can be reduced
  - SNP Models of Care can be amended to permit telehealth to substitute for in-person visits

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Telehealth Adoption in Medicare Advantage

- Prior to COVID-19 Emergency, telehealth was growing rapidly in MA
- For 2020, 58% of MA plans (around 2,500) will offer additional telehealth benefits to a projected 13.7 million MA enrollees.
  - Primary care, urgent care, and behavioral health are the most common type of care via telehealth
  - 700 plans moved Remote Access Technologies benefits from supplemental to base
  - 300 plans added Remote Access Technologies benefits
  - These are benefits only – does not include additional telehealth services being provided through care management programs

Expanding Boundaries of Telehealth – A Few Examples

New services are emerging that are proximate to telehealth as it is typically understood…

- Blue Shield California rolled out an app-based COVID-19 screening tool to screen members against CDC guidelines and refer to physicians as needed.
- Cigna established a virtual tele-dentistry triage program to screen oral health needs and direct patients to ER or dental offices.
- UPMC is giving members access to health coaching, personal care managers, and virtual fitness activities. Abridge: "a new telehealth tool that sends patients a smart after-visit summary" of physicians' instructions.
- Regence Blue is offering "members free access to COVID-19 and Mental Wellness resources powered by [Livongo's] myStrength, a digital behavioral health app."

The Risks and Rewards of Telehealth on MA

- The benefits of telehealth are obvious…
  - Meets member needs at a time when travel to traditional providers is inadvisable
  - Offers members convenient care
- But what about the risks?
  - Early research suggests that quality and patient satisfaction are comparable, but that was before the surge
  - Will explosion in telehealth demand lessen quality?
  - Will telehealth convenience lead to over-utilization?
  - Even excellent telehealth providers will need to integrate into care management and network management strategies

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Telehealth Compliance Considerations

Telehealth Raises New Compliance Considerations

- CMS is Waiving Provider credentialing requirements
  - Waiving limitations on the types of clinical practitioners that can furnish telehealth services
  - Waiving Criminal background checks
  - Almost every state requires credentialing for providing telehealth and the provider must be licensed in the state of the patient receiving care
- Network Access requirements
  - Waiver gave MA plans the flexibility to count certain telehealth specialists toward network adequacy requirements
  - Changes were designed to encourage plans to give members access to telehealth and increase plan choice for those living in rural areas
- Network/Delegated Entity oversight requirements
  - Performance deadlines and timetables may be adjusted (but not waived)
  - Waives requirements of the medical records department, content of medical records, and record retention requirements
  - Waives requirements related to medical records to allow flexibility in completion of medical records within 30 days following discharge from a hospital

Telehealth Raises New Compliance Considerations

- Uniformity requirements
  - MA plans have been allowed flexibilities by CMS to offer additional telehealth benefits, waiving the coverage and cost sharing if plans do this uniformly for all similarly situated enrollees.
  - This is voluntary and plans will vary in their responses to this new flexibility.
- Payment parity requirements
  - Most payment requirements are waived, and telehealth services are charged at the same rate of in-person medical services.
  - This will be important even after the emergency ends, as payment parity provides an incentive for providers who must deal with hefty start-up costs to adopt telehealth platforms.
- Licensure requirements
  - Waived requirements that physicians and other health care professionals be licensed in the state in which they are providing services.
  - State law governs whether a provider can provide services in the state without state licensure and state laws vary; this is the biggest barrier to interstate telehealth expansion after COVID19.
- Site origination requirements
  - Prior to this waiver, claims were submitted based on an approved list of telehealth services received at a designated rural originating site such as a physician's office, SNF or hospital.
  - Waiver extends telehealth to any geographic area allowing office, hospital, and other visits furnished via telehealth across the country, including in patient's places of residence.

Telehealth Compliance, Enforcement, and Recent Guidance

- April 2018
  - OIG determined practitioners billed $3.7M for telehealth services that did not meet Medicare requirements
- August 2019
  - OIG to Audit States' Telehealth Use for Behavioral Health Care
- March 2020
  - OIG Policy Statement Regarding Physicians and Other Practitioners That Reduce or Waive Amounts Owed by Federal Health Care Program Beneficiaries for Telehealth Services During the 2019 Novel Coronavirus (COVID-19) Outbreak

OIG Strategic Plan: Oversight of COVID-19 Response & Recovery - May 2020 Statement

- **Goal 1:** Protect People
  - Assist in and support ongoing COVID-19 response efforts, while maintaining independence
  - Fight fraud and scams that endanger HHS beneficiaries and the public
  - Assess the impacts of HHS programs on the health and safety of beneficiaries and the public
- **Goal 2:** Protect Funds
  - Prevent, detect, and remedy waste or misspending of COVID-19 response and recovery funds
  - Fight fraud and abuse that diverts COVID-19 funding from intended purposes or exploits emergency flexibilities granted to health and human services providers

OIG Strategic Plan: Oversight of COVID-19 Response & Recovery - May 2020 Statement- Continued

- **Goal 3:** Protect Infrastructure
  - Protect the security and integrity of IT systems and health technology
- **Goal 4:** Promote Effectiveness
  - Support the effectiveness of Federal, State, and local COVID-19 response and recovery efforts
  - Leverage successful practices and lessons learned to strengthen HHS programs for the future

Telehealth in a Post-Pandemic World

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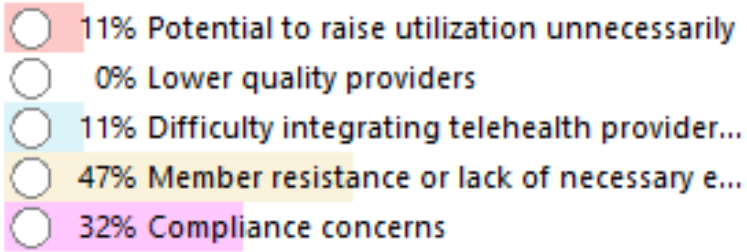
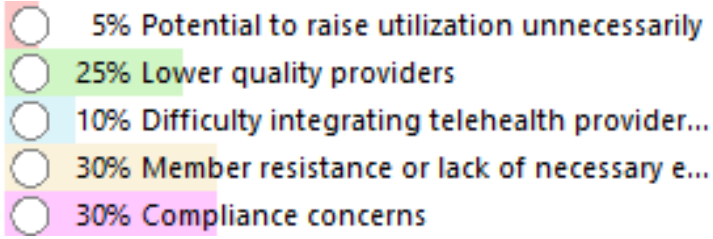


1st Response

2nd Response



Telehealth Policy in a Post-Pandemic World

Can we "put the genie back in the bottle???"

- Nearly all of the policy changes are temporary during the emergency
- Some are statutory (require Congress to change), while others are regulatory (the agency has the authority to update)
  - Executive Order on Regulatory Relief to Support Economic Recovery
- Congress is still focusing on COVID-19 response
  - HEROES Act
  - Paycheck Protection Program
  - Liability protections for businesses as people return to work
- But numerous telehealth bills introduced in recent months and the Telehealth Caucus has stressed the importance to leadership

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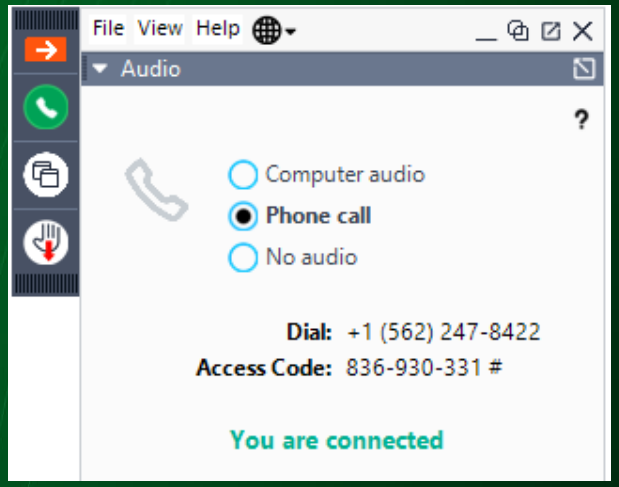
Questions?

Raise your hand in control panel if you have a question



Thank You!

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