ALLIANCE for CONNECTED CARE

Summary: Final Calendar Year 2022 Physician Fee Schedule

On November 2, 2021, CMS issued the final Calendar Year 2022 (CY2022) Physician Fee Schedule (PFS), which makes payment and policy changes under Medicare Part B.

CMS has finalized its proposal to retain all services added to the Medicare telehealth services list on a Category 3 basis until the end of CY 2023 – December 31, 2023. In addition, CMS is adding CPT codes 93797 and 93798 and HCPCS codes G0422 and G0423 to the Category 3 Medicare telehealth services list. These codes relate to outpatient cardiac rehabilitation and intensive cardiac rehabilitation.

CMS finalized its proposal to amend the current regulatory requirement for interactive telecommunications systems to include audio-only communication technology when used for telehealth services for the diagnosis, evaluation, or treatment of mental health disorders furnished to established patients in their homes. CMS has also finalized policy to limit the use of an audio-only interactive telecommunications system to mental health services furnished by practitioners who have the capability to furnish two-way, audio/video communications, but where the beneficiary is not capable of using, or does not consent to, the use of two-way, audio/video technology. Note that CMS had originally included an additional parameter for patients who do "not wish to use" audio-video, however, CMS has eliminated the patient's choice to refuse audio-video in the final rule.

CMS has also finalized its proposal to require an in-person visit be provided by the physician or practitioner furnishing mental health telehealth services within 6 months prior to the initial telehealth service, and at least once every 12 months – instead of the proposed 6 months – thereafter.

- CMS is allowing for limited exceptions to the 12 month in-person requirement. Specifically, if the patient and practitioner agree that the benefits of an in-person, non-telehealth service within 12 months of the mental health telehealth service are outweighed by risks and burdens associated with an in-person service, and the basis for that decision is documented in the patient's medical record, the in-person visit requirement will not apply for that particular 12-month period.
- CMS notes that there is no exception to the statutory requirement that the physician or practitioner must furnish to the beneficiary an in-person, non-telehealth service within 6 months prior to initiation of mental health services via telehealth.

Finally, in response to comments that CMS implement a broad definition of the term "home" in terms of mental healthcare delivery site, CMS has clarified that the definition of home can include temporary lodging, such as hotels and homeless shelters. Furthermore, CMS notes that in circumstances where the patient, for privacy or other personal reasons, chooses to travel a short distance from the exact home location during a telehealth service, the service is still considered to be furnished "in the home of an individual."

Below is a summary of key payment and policy changes within the rule.

See the Fact Sheet and Final Rule.

II. Provisions of the Final Rule for the PFS

D. Telehealth and Other Services Involving Communications Technology and Interim Final Rule with Comment Period for Coding and Payment of Virtual Check-in Services – Payment for Medicare Telehealth Services Under Section 1834(m) of the Act

1. Payment for Medicare Telehealth Services Under Section 1834(m) of the Act

- ***b. Requests to Add Services to the Medicare Telehealth Services List for CY 2022***
    - CMS found that none of the requests received by the February 10th submission deadline met Category 1 or Category 2 criteria for permanent addition to the Medicare telehealth services list. As a reminder, Category 1 that the requested services are similar to professional consultations, office visits, and office psychiatry services that are currently on the Medicare telehealth services list, and that the criterion for adding services under Category 2 is that there is evidence of clinical benefit if provided as telehealth.
- ***c. Revised Timeframe for Consideration of Services Added to the Telehealth List on a Temporary Basis***
    - **CMS finalized its proposal to retain all services added to the Medicare telehealth services list on a Category 3 basis until the end of CY 2023.** This will allow CMS time to collect more information regarding utilization of these services during the pandemic, and provide stakeholders the opportunity to continue to develop support for the permanent addition of appropriate services to the telehealth list on a Category 1 or Category 2 basis, and for consideration in the CY 2024 PFS rule.
    - **CMS added CPT codes 93797** (Physician or other qualified health care professional services for outpatient cardiac rehabilitation; without continuous ECG monitoring (per session)) **and 93798** (Physician or other qualified health care professional services for outpatient cardiac rehabilitation; with continuous ECG monitoring (per session)) **and HCPCS codes G0422** (Intensive cardiac rehabilitation; with or without continuous ECG monitoring with exercise, per session) **and G0423** (Intensive cardiac rehabilitation; with or without continuous ECG monitoring; without exercise, per session) to the Medicare telehealth list on a Category 3 basis.
- ***d. Implementation of Provisions of the Consolidated Appropriations Act, 2021 (CAA)***
    - **CMS finalized its proposal to require an in-person visit be provided by the physician or practitioner furnishing mental health telehealth services within 6 months prior to the initial telehealth service, and at least once every 12 months – instead of the proposed 6 months – thereafter.**
        - **CMS has also finalized the alternative policy discussed in the proposed rule to allow a clinician's colleague in the same subspecialty in the same group to furnish the in-person, non-telehealth service to the beneficiary if the original practitioner is unavailable.**
        - CMS notes that the in-person non-telehealth requirements apply ONLY to telehealth services furnished to a patient in a home originating site.

        - CMS is allowing for limited exceptions to the 12 month in-person requirement. Specifically, if the patient and practitioner agree that the benefits of an in-person, non-telehealth service within 12 months of the mental health telehealth service are outweighed by risks and burdens associated with an in-person service, and the basis for that decision is documented in the patient's medical record, the in-person visit requirement will not apply for that particular 12-month period.
        - CMS notes that there is no exception to the statutory requirement that the physician or practitioner must furnish to the beneficiary an in-person, non-telehealth service within 6 months prior to initiation of mental health services via telehealth.
    - **CMS finalized its proposal to identify the home of a beneficiary as an originating site for telehealth services for the diagnosis, evaluation, or treatment of a mental health disorder**, effective for services furnished on or after the first day after the end of the PHE; and to provide that payment will not be made for a telehealth service furnished under this paragraph unless the physician or practitioner has furnished an item or service in person, without the use of telehealth, for which Medicare payment was made within 6 months of the telehealth service.
        - CMS clarified that the definition of home can include temporary lodging such as hotels and homeless shelters. Further, CMS notes that for circumstances where the patient, for privacy or other personal reasons, chooses to travel a short distance from the exact home location during a telehealth service, the service is still considered to be furnished "in the home of an individual."
    - **CMS finalized – with modifications – its proposal to specify that the geographic restrictions do not apply to telehealth services furnished for the diagnosis, evaluation, or treatment of a mental health disorder**, effective for services furnished on or after the first day after the end of the PHE.
        - CMS is clarifying that payment will not be made for a telehealth service unless the physician or practitioner has furnished an item or service in-person within 6 months prior to the initial telehealth service; at least once within 6 months of each subsequent telehealth services; and that the in-person requirements may be met by another physician or practitioner of the same specialty and subspecialty in the same group as the physician or practitioner who furnishes the telehealth service, if the physician or practitioner who furnishes the telehealth service described under this paragraph is not available.
    - **Rural Emergency Hospital –** CMS finalized its proposal to add a rural emergency hospital as telehealth as a permissible originating site beginning in CY 2023.
- ***e. Payment for Medicare Telehealth Services Furnished Using Audio-Only Communication Technology***
    - **CMS finalized its proposal to revise the regulatory definition of "interactive telecommunications system" to permit use of audio-only communications technology**

for mental health telehealth services under certain conditions when provided to beneficiaries located in their home.

- CMS notes that mental health services are different from most other services on the Medicare telehealth services list in that many of the services primarily involve verbal conversation where visualization between the patient and furnishing physician or practitioner may be less critical to provision of the service.
- CMS further notes that office/outpatient E/M visits furnished via telehealth that are not for the diagnosis, evaluation, or treatment of a mental health disorder are most appropriately furnished via an interactive telecommunications system that includes two-way, audio/video communications technology. CMS clarified that SUD services are considered mental health services for purposes of the expanded definition of "interactive telecommunications system" to include audio-only services.

- **With respect to monitoring utilization and program integrity concerns for audio-only services:**
  - **CMS finalized its proposal to limit payment for audio-only services** to services furnished by physicians or practitioners who have the capacity to furnish two-way, audio/video telehealth services but are providing the mental health services via audio-only communication technology in an instance where the beneficiary is unable to use, ~~does not wish to use~~, or does not have access to two-way, audio/video technology. Note that CMS had originally included an additional parameter for patients who do "not wish to use" audio-video, however, CMS has eliminated the patient's choice to refuse audio-video in the final rule.
  - **CMS is finalizing as proposed creation of a service-level modifier for use to identify mental health telehealth services furnished to a beneficiary in their home using audio-only communications technology.** CMS notes that a physician or practitioner must document in patient's medical record the reason for using audio-only technology to furnish a telehealth service.
- CMS finalized its proposal to specify that an interactive telecommunications system can include interactive, real-time, two-way audio-only technology for telehealth services furnished for the diagnosis, evaluation, or treatment of a mental health disorder **under the following conditions:**
  - the patient is located in their home at the time of service;
  - the distant site physician or practitioner has the technical capability at the time of the service to use an interactive telecommunications system that includes video;
  - and the patient is not capable of, or does not consent to, the use video technology for the service.

2. Other Non-Face-to-Face Services Involving Communications Technology under the PFS

a. Expiration of PHE Flexibilities for Direct Supervision Requirements

- CMS will consider addressing the issues raised by commenters in future rules or guidance.

b. Interim Final Provisions in the CY 2021 PFS Final Rule

- CMS finalized its proposal to permanently establish separate coding and payment for the longer virtual check-in service described by HCPCS code G2252 for CY 2022 using a crosswalk to the value of CPT code 99442.

c. Telehealth Originating Site Facility Fee Payment Amount Update

- For telehealth services furnished on or after January 1 of each subsequent calendar year, the telehealth originating site facility fee is increased by the percentage increase in the Medicare Economic Index (MEI).
- The MEI increase for CY 2022 is 2.1 percent. Therefore, for CY 2022, the payment amount for HCPCS code Q3014 (Telehealth originating site facility fee) is $27.59.

E. Valuation of Specific Codes

(37) Remote Therapeutic Monitoring (CPT codes 989X1, 989X2, 989X3, 989X4, and 989X5)

- **CMS finalized a policy that permits therapists and other qualified healthcare professionals to bill the RTM codes.** However, where the practitioner's Medicare benefit does not include services furnished incident to their professional services, the items and services described by these codes must be furnished directly by the billing practitioner or, in the case of a PT or OT, by a therapy assistant under the PT's or OT's supervision.

III. Other Provisions of the Proposed Rule

B. Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs) - Telecommunications Technology

1. Revising the Definition of an RHC and FQHC Mental Health Visits

a. Revising the Definition of an RHC and FQHC Mental Health Visit

- **For CY 2022, CMS finalized its proposal to revise the current regulatory language for RHC or FQHC mental health visits to include visits furnished using interactive, real-time telecommunications technology and for RHCs and FQHCs to report and be paid for mental health visits furnished via real-time, telecommunication technology in the same way they currently do when these services are furnished in-person.**
  - **i.** CMS believes that they do not currently have the authority to pay RHCs and FQHCs for services that would be paid under the AIR or PPS at the PFS rates outside of the PHE. Therefore, CMS is finalizing for CY 2022 that RHCs and FQHCs will be paid for mental health visits furnished via telecommunications technology at the same rate they are paid for in-person mental health visits (that is, the AIR or FQHC PPS).

- Furthermore, in order to align with the finalized proposals related to use of audio-only telecommunications technology to furnish similar mental health services under the PFS, CMS will allow RHCs and FQHCs to furnish mental health visits using audio-only interactions in cases where beneficiaries are not capable of, or do not consent to, the use of devices that permit a two-way, audio/video interaction.
- **CMS also finalized its proposal to append a service-level modifier in cases where the service was furnished audio-only.** CMS states that this will allow the agency to track utilization of mental health visits furnished using telecommunication technology at RHCs and FQHCs in order inform future rulemaking.
- **CMS finalized its proposal to include a similar 6-month in-person requirement prior to the furnishing of a telecommunications service. Furthermore, CMS is requiring that an in-person mental health service (without the use of telecommunications technology) must be provided at least every 12 months** while the beneficiary is receiving services furnished via telecommunications technology for diagnosis, evaluation, or treatment of mental health disorders.
    - **i.** Consistent with policies finalized for mental health services furnished via telehealth under the PFS, the in-person service requirements apply only to telehealth services furnished to a patient receiving the service at home.