



COMMENTARY
DECEMBER 2018

CMS Proposed Rule Would Expand Coverage of Telehealth Benefits Under Medicare Advantage

IN SHORT

The Situation: Earlier this year, Congress passed the Bipartisan Budget Act of 2018 ("BBA"), which expands coverage for telehealth in Medicare Advantage ("MA") plans beginning in 2020.

The Update: The Centers for Medicare & Medicaid Services ("CMS") released a proposed rule implementing the BBA that would permit MA plans to offer "additional telehealth benefits" notwithstanding prior statutory limitations on Medicare coverage for services delivered via telehealth methods.

Anticipated Effects: MA plans will have the option to expand their current telehealth offering and to structure new arrangements with telehealth providers and digital health companies.

MA plans currently are required to offer all benefits under Medicare Parts A and B and can cover telehealth services as basic Medicare benefits only if the telehealth services meet the same requirements for telehealth services as traditional Medicare Part B benefits. Specifically, to be eligible for traditional Medicare Part B telehealth benefits, telehealth services must meet particular geographic, patient location, and interactive audio-and-video technology requirements. Medicare beneficiaries must receive telehealth services from an originating site located in a rural Health Professional Shortage Area or in a county outside of a Metropolitan Statistical Area.

Providers must use an interactive audio and video telecommunications system that permits real-time communication between the provider at the distant site and the beneficiary at the originating site. Asynchronous store-and-forward technology does not qualify for Medicare telehealth benefits (except in federal telemedicine demonstration programs in Alaska or Hawaii). Other telehealth services that do not meet the requirements under Medicare Part B can be offered only as supplemental benefits by MA plans, which will be paid by MA plans (through rebates from CMS) or by enrollees (through supplemental premiums).



The proposed rule would allow MA plans to offer telehealth services that do not meet the traditional Medicare Part B requirements as basic Medicare benefits if the services are 'clinically appropriate' to furnish through 'electronic exchange.'



Features of the Proposed Rule

On November 1, 2018, CMS published a proposed rule that would implement key parts of the BBA by providing coverage for "additional telehealth benefits" offered by MA plans beginning in 2020. The proposed rule would allow MA plans to offer telehealth services that do not meet the traditional Medicare Part B requirements as basic Medicare benefits if the services are "clinically appropriate" to furnish through "electronic exchange." MA plans would need to include these telehealth benefits in their annual bid submissions in order for them to be paid for by Medicare.

Additionally, telehealth services that do not qualify as "additional telehealth benefits" can continue to be offered as supplemental benefits.

Rather than specifying where care delivery must occur, the proposed rule gives MA plans the flexibility to offer a telehealth service as a basic benefit to MA plan enrollees who do not live in rural areas. The proposed rule also does not delineate an exhaustive list of "electronic exchange" services that will be considered "clinically appropriate" or insist upon the interactive communication currently required under the traditional Medicare Part B. Instead, CMS leaves the decision of whether an electronic exchange is clinically appropriate to MA plans and, in the preamble to the proposed rule, identifies secure messaging, telephone, store-and-forward technologies, and videoconferencing as examples of services that are considered to be furnished through "electronic exchange."

Like traditional Medicare telehealth services, MA plans that offer telehealth services in compliance with the proposed rule must offer enrollees the option of receiving such telehealth services through an in-person visit. This requirement could be difficult to satisfy for services such as remote patient monitoring, which collects ongoing data from patients outside of conventional clinical settings. Considerable industry input will be necessary to facilitate meaningful implementation of this particular provision.

MA plans offering additional telehealth benefits also would have to meet the traditional provider selection and credentialing requirements and furnish telehealth benefits only through contracted providers. Any telehealth services provided by noncontracted providers may be covered only as a supplemental benefit by MA plans. Telehealth providers also must comply with state licensing requirements, which can be complex and vary state by state. MA plans that intend to offer telehealth services under the proposed rule likely will need to review and modify, if necessary, their provider credentialing and contracting requirements and procedures. In addition, MA plans will need to pay special attention to diligence practices regarding unique and evolving state telehealth requirements before entering into agreements with telehealth providers.

The proposed rule is expected not only to provide greater accessibility to medical services and promote patient-centered care, but also to generate \$4.5 billion of savings over 10 years. While MA plans are able to offer telehealth benefits that do not satisfy the criteria for traditional Medicare benefits as supplemental benefits, the change in funding for these benefits is anticipated to increase telehealth offerings by MA plans and further incentivize MA plans and telehealth providers (as well as technology companies) to partner and explore creative and innovative arrangements.

Comment Period is Open

CMS is soliciting comments on its proposed implementation of the BBA until December 31, 2018. In particular, CMS is requesting comments on the types of telehealth benefits that should be covered, whether to impose any additional qualification requirements for providers, and what impact (if any) services should have on MA network adequacy policies. Additionally, CMS requested specific comments in its accompanying [fact sheet](#) regarding the potential implementation of its requirement for an MA plan to offer enrollees the option of receiving telehealth services through an in-person visit.

Telehealth industry input on many of these provisions will be key to any meaningful expansion of telehealth benefits provided by MA plans that improve access and quality and limit costs.

TWO KEY TAKEAWAYS

1. If the proposed rule is finalized, MA plans will have broad flexibility to offer telehealth services through a wide variety of electronic means, as long as the benefits are "clinically appropriate." This standard presumably is consistent with applicable state law, given that CMS suggests it aligns with the requirement that MA plans provide benefits "in a manner consistent with professionally recognized standards of health care," but further clarification by CMS is warranted.



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2. The proposed changes also reduce prior barriers to government-funded coverage of telehealth benefits, which will likely incentivize MA plans to partner with telehealth providers and organizations to accommodate enrollee demand.

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