WHY TELEMEDICINE?

• Behavioral health is in a funding crisis. Parity laws on state and national levels have required payors to fund behavioral health treatment in the same way other healthcare is funded, but the shrinking healthcare dollar makes that difficult.
• Barriers to care are:
  Cost
  Access
  Stigma
• Telemedicine is a cost-effective alternative to the more traditional face-to-face way of providing behavioral health care.

BENEFITS OF TELEMEDICINE

Benefits include:
1. Faster care delivery
2. Expanded staff capacity
3. Cost savings for payors
4. Crisis management
5. Daily “check-in”/remote patient monitoring

Definitions

Use of electronic information and telecommunications technologies to support and promote distance clinical health care, patient and professional health-related education, public health and health administration

The practice of medicine using electronic communication, information technology or other means between licensee in one location, and a patient in another location with or without an intervening healthcare provider

Telehealth Eligibility Considerations under Medicare

• Eligible Locations
• Eligible Services
• Eligible Providers
• Eligible Technology

Eligible Locations

Originating Site: Location of an eligible beneficiary at the time of telehealth service.

• Physician Offices
• Hospitals / Critical Access Hospitals
• Rural Health Clinics / Federally Qualified Health Centers – Hospital-based or CAH-based renal dialysis center
• SNF
• Site where the patient is
• Community Mental Health Center (CMHC)
Locations NOT MedicareEligible
(Not All-Inclusive)

Medicare Payment Policy Changes

- Bipartisan Budget Act of 2018
- Rural area (MSA/HPSA) limitations lifted for stroke, ESRD, and ACO providers
- Expands telehealth originating site locations to include patient’s home and independent renal dialysis centers for ESRD patients
- Expands telehealth originating site locations to include patient’s home when treated by ACO provider
- Changes to take effect 2019-2020

Eligible Technology (“Modality”)

Interactive audio and video tele-communications must be used, permitting real-time communication between physician and beneficiary. Asynchronous “store and forward” technology is eligible for telehealth services, except where Medicare is the payor.

Tele-presenters: A medical professional is NOT required to present the beneficiary to physician at distant site unless medically necessary. Decision of medical necessity will be made by distant site physician

Eligible Providers

- CMS permits the following practitioners to provide telehealth services
  - Physician
  - Nurse practitioner
  - Physician assistant
  - Nurse-midwife
  - Clinical nurse specialist
  - CRNA
  - Registered dietician or nutrition professional
  - Providers of any type registered with Medicaid*

* Limitations apply for clinical psychologists and clinical social workers

Eligible Providers

Provider must be licensed to perform service in state where patient is located

Providers receive reimbursement based on where practitioner is located

Requirements to Bill

Parity with in-person services

- Ongoing services vs. new relationship
- Emergencies
- Documentation/medical necessity
- Patient consent
- Patient choice
How to bill

Billing rules vary by:
• Eligible Providers
• Patient location
• Modality
• Payment rates

Other Payers

Approximately 30 states have “parity” laws
• Require private insurers to cover telehealth as they would in-person care.
States which don’t have parity laws allow private insurers to cover telehealth at their discretion
• Private insurer requirements vary

State Laws & Definitions

SB 112
• Signed into Kentucky Law on April 26, 2018 – Effective July 1, 2019
• Significant changes in Telehealth for Kentucky

STATE TELEHEALTH LAWS

• KRS 311.557 – E-prescribing
• KRS 311.5975 – Informed consent and confidentiality
• KRS 320.390 – Informed consent
• KRS 319.140 – Patient record confidentiality
• 201 KAR 36.005 – Documentation
• 201 KAR 36:045 – Confidentiality
• 907 KAR 1:370 – Medicaid coverage

Telemedicine Prescribing in Kentucky

KRS 311.597(1)(e)
• Clearly establish identity of patient
• Detailed documentation of evaluation and resulting prescription is maintained
• Safety considerations when prescribing in the absence of physical exam
• Telemedicine visit prescriptions carry same professional accountability
• Physicians may exercise judgement and prescribe medications as part of telemedicine encounters
• All other relevant regulations still apply

PRESCRIBING

• Remote prescribing is at the discretion of the prescribing physician and is held to equivalent standards for in-person encounters, with no limits on non-controlled substances. Prescribing of controlled substances is affected by the Ryan Haight Act.
• Some state laws allow telehealth providers to prescribe controlled substances if certain conditions are met:
  The health professional is a prescriber acting within the scope of his or her practice
  Licensure and credentialing requirements are met
  Medical necessity requirements are met
  Referral to local care requirements are met (counseling as a requirement for addiction treatment medications, etc.)
  Follow up care is provided by that provider or a referral provider
• States allowing that include: Kentucky, Michigan, Ohio, Delaware, Florida, New Hampshire, West Virginia.
Prescribing

Ryan Haight Online Pharmacy Consumer Protection Act of 2008

- Requires at least one in-person medical evaluation of patient within previous 24 months before prescribing controlled substances
- Telemedicine satisfies this requirement
- Reiterates telephones, faxes, email do not meet definition of telemedicine

REIMBURSEMENT

Medicare Coverage

Medicare Part B covers virtual visits and consultations that are provided:

- Using an interactive 2-way telecommunications system (real-time video and audio)
- In a rural area if located at:
  - Doctor's office
  - Hospital
  - Critical access hospital
  - Federally qualified health center
  - Hospital-based or critical access hospital-based dialysis facility
  - Skilled nursing facility
  - Community mental health center

Geographic Restrictions:

- "Originating site" is in:
  - A Health Professional Shortage Area
  - Outside a Metropolitan Statistical Area (MSA)
  - Within a MSA rural census tract determined by HHS's Office of Rural Health Policy
  - Rural areas as defined by HHS

Medicaid Coverage

- 50 states and DC = 51 different coverage and reimbursement policies
- 48 states and DC reimburse for live video through Medicaid
- 36 states and DC have active private payer laws
- 23 states limit the type of facility that can serve as an originating site
- 21 states reimburse for remote patient monitoring
- 15 states reimburse for store and forward
- 6 states have some form of geographic restriction

HIPAA AND PATIENT PRIVACY

Software, records, and what to do with them

HIPAA Privacy and Security

HIPAA applies to all telemedicine encounters:

- Transmission and storage (encryption)
- Business Associate (BA) agreements with vendors
- Risk Assessments
HIPAA

• HIPAA Security Rule requires covered entities to put technical safeguards in place to protect against unauthorized access to PHI that is transmitted over an electronic network.
• Text, email and video are not inherently HIPAA compliant (because the transmission isn’t encrypted), leaving the healthcare organization and its business associates open to a data breach and HIPAA violation.
• Any system of communicating ePHI at distance must be set up so that communications can be monitored and remotely deleted if necessary.
• States often have their own laws. Example: California’s Confidentiality of Medical Information Act (“CMIA”) dictates rules for permissible uses and disclosures of medical information.

REQUIREMENTS

• Licensure – Providers must be licensed and credentialed in the state in which services are provided
• Referral – Some states require that an initial in-person visit be conducted or that a provider who has physically spent time with the patient refer the patient for care. There are emergency room exceptions
• Consultation requirements – Some states only allow “consultations”, not ongoing care

TYPES OF USE

• School clinic/nurse care: Kentucky programs allow videoconferencing technology to treat and assess elementary, middle and high school students remotely while the children remained in school. The goals were to reduce costs to the Medicaid program while simultaneously reducing absenteeism and increasing access for the young patients.
• Immediate access to care: Alaska allows use of telemedicine to evaluate/treat behavioral health.
• Patient directed care: Humana nationwide using telehealth between patient/provider to allow immediate access to care by patients while encouraging reduced use of hospital emergency departments.
• Remote patient monitoring/chronic condition care: Remote patient monitoring/video check-in s. Telemedicine allows providers to videoconference with the patients daily and use remote patient monitoring to capture health data to evaluate. The goal is to reduce in-patient costs or readmission.

Compliance Considerations

• Varying State Laws and Definitions
• Prescribing
• Billing and Coding
• Regulations and Enforcement
• Documentation/medical necessity

Internal Auditing & Monitoring

Compliance with Medicare guidelines
• Eligible Providers, Locations, Technology, & Services
• Billing guidelines (POS), correct CPT/HCPCS codes
HIPAA Compliance
Medicare CoP and Joint Commission compliance
State law compliance (consent, licensing, etc.)
FRAUD AND ABUSE CONCERNS

• Fraud Concerns include services being rendered by unqualified providers, services being billed that are not actually rendered, HIPAA breaches, and business arrangements that breach federal fraud and abuse laws, including the Anti-Kickback Statute and the Stark Law.

• Also see: Billing without approved modifiers; billing where the payor contract does not allow coverage; failure to follow referral or other mandates in state law or insurance policy

• 42 U.S.C. § 1320a-7b. 42 U.S.C. § 1395nn

References

• Bipartisan Budget Act of 2018 retrieved from https://www.congress.gov/bill/115th-congress/house-bill/1892?q=%7B%22search%22%3A%5B%22Bipartisan+Budget+act+of+2018%22%5D%7D&r=1


• §482.22(a)(3) Medicare Conditions of Participation

References


• SB 112, KRS 311.597(1)(e) and 907 KAR 3:170