


FMVantage Point™

HealthCare Appraisers' Industry Insight

TELEMEDICINE ADOPTION TO COMBAT NOVEL CORONAVIRUS AND FAIR MARKET VALUE

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DISCLAIMER:

This FMVantage Point contains a general discussion of current issues and developments regarding Coronavirus disease 2019 ("COVID-19"). The information provided in this article does not, and is not intended to, constitute legal advice; instead, all content in this article is for general informational purposes only.

NEW DEVELOPMENTS:

Much remains unknown about COVID-19, but one thing is clear: telemedicine has emerged as a key tool to combat the disease and ensure continuity of care during periods of "social distancing." On March 13, 2020, President Trump declared a national emergencyⁱ under the Stafford Act.ⁱⁱ Using the powers granted by the declaration,ⁱⁱⁱ the Centers for Medicare & Medicaid Services ("CMS") has broadened access to Medicare telehealth services. On March 17, 2020, CMS published a fact sheet clarifying the changes regarding reimbursement for telehealth services that would be adopted. In this fact sheet, CMS acknowledged that "...with the emergence of the virus causing the disease COVID-19, there is an urgency to expand the use of technology to help people who need routine care, and keep vulnerable beneficiaries and beneficiaries with mild symptoms in their homes while maintaining access to the care they need."^{iv} Below, we have summarized a few of the key changes that were discussed in the fact sheet:

- ▶▶ Medicare beneficiaries originally were eligible to receive telehealth services as a Medicare covered service if they were located at one of eight types of qualifying originating sites (e.g., hospital or physician office). Furthermore, the beneficiaries needed to be in a rural area or health care professional shortage area. Now, beneficiaries can receive telehealth as a covered service regardless of marketplace and regardless of setting (e.g., a beneficiary's place of residence).
- ▶▶ The Department of Health and Human Services ("HHS") Office of Inspector General ("OIG") is providing flexibility for healthcare providers to reduce or waive cost-sharing for telehealth visits paid by federal healthcare programs.

ⁱ Adam Edelman, Peter Alexander and Kristen Walker, "Trump Declares National Emergency to Combat Coronavirus, Authorizes Waiving of Laws and Regulations," NBCNews, March 13, 2020; last accessed March 19, 2020 from: <https://www.nbcnews.com/politics/donald-trump/trump-hold-friday-afternoon-press-conference-coronavirus-n1157981>

ⁱⁱ 42 U.S.C. 68, §5121 et seq.

ⁱⁱⁱ C.f., Center for Medicare and Medicaid Services, *1135 Waiver - At A Glance*, last accessed March 19, 2020 from: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertEmergPrep/Downloads/1135-Waivers-At-A-Glance.pdf>

^{iv} Center for Medicare and Medicaid Services, *Medicare Telemedicine Health Care Provider Fact Sheet*, March 17, 2020; last accessed March 19, 2020 from: <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>



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- ▶▶ HHS is announcing a policy of enforcement discretion for Medicare telehealth services. For example, HHS will not conduct audits to ensure that patients receiving telehealth services had a prior relationship with a particular practitioner with respect to claims submitted during the public health emergency.
- ▶▶ Medicare will still require telehealth services to be delivered through the means of technology with live audio and visual capabilities. Providers are now authorized to use telephones that have audio and video capabilities for the furnishing of Medicare telehealth services during the COVID-19 public health emergency. In addition, effective immediately, the HHS Office for Civil Rights will exercise enforcement discretion and waive penalties for HIPAA violations against health care providers that serve patients in good faith through everyday communications technologies, such as FaceTime or Skype, during the COVID-19 nationwide public health emergency.^v

The guidance above applies to telehealth services and does not apply to the new virtual visits (CPT codes G2012 and G2010) established as part of the Medicare Physician Fee Schedule Final Rule for Calendar year 2019. Outside of the efforts undertaken by Medicare, some private insurers announced they would waive fees for virtual visits of people who may have the virus and may eliminate cost-sharing for telemedicine visits in general, over the short term.^{vi}

FAIR MARKET VALUE PERSPECTIVE

Based on these recent developments, we anticipate that the demand for telemedicine services will increase along with increased reimbursement for such services. The following considerations may impact the fair market value (“FMV”) of telemedicine arrangements:

- ▶▶ We have valued many telemedicine contracts where healthcare providers are compensated at cost (plus a reasonable margin) for their services given the shortfall in professional services revenue to offset costs. With the increased ability to bill and collect, the original payment rates contained in telemedicine services arrangements may result in compensation that exceeds FMV.
- ▶▶ Given the efforts to promote “social distancing,” the demand for telemedicine services of all modalities is likely to increase at a very fast pace. Current providers of telemedicine services may see spikes in demand that may impact the market rates for such services.
- ▶▶ Technology costs often function as a deterrent for medical practices to adopt telemedicine as a modality of care. By enabling the use of phones and free software (such as FaceTime or Skype) to perform telemedicine services, Medicare is temporarily reducing a key barrier to entry. This may increase the supply of telemedicine providers.

While most of the changes proposed by Medicare and private insurers are intended to be temporary, a short-term transition into telemedicine services may result in the long-term adoption as a modality of care.^{vii}

Having valued hundreds of telemedicine services arrangements, HealthCare Appraisers stands ready to assist clients with any telemedicine services needs. A brief list of essential resources for staying up to date regarding the telemedicine industry and its reaction to COVID-19 can be found below:

- ▶▶ HealthCare Appraisers – Telemedicine Insights: <https://healthcareappraisers.com/category/telemedicine-insight/>

^v Center for Medicare and Medicaid Services, *Medicare Telehealth Frequently Asked Questions (FAQs)* March 17, 2020; last accessed March 19, 2020 from: <https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>

^{vi} Ress, David, “Insurers waiving testing, telemedicine fees,” *Daily Press*, March 19, 2020; last accessed March 19, 2020 from: <https://www.dailypress.com/coronavirus/dp-nw-health-plan-fees-20200319-rr5r6j5evnaivpcss6ciktad44-story.html>

^{vii} Jackson, Nancy Mann, “Coronavirus offers opportunity for physicians to try telemedicine,” *Medical Economics*, March 18, 2020; last accessed March 19, 2020 from: <https://www.medicaleconomics.com/news/coronavirus-offers-opportunity-physicians-try-telemedicine>



- ▶▶ American Telemedicine Association - COVID-19 Portal: <https://info.americantelemed.org/covid-19-news-resources>
- ▶▶ CMS - Current emergencies landing page: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>
- ▶▶ Southwest Telehealth Resource Center - Telemedicine COVID-19 Resources page: <https://southwesttrc.org/resources/covid19> and Service Provider Directory: <https://telemedicine.arizona.edu/servicedirectory>

