

## Publications

### *Health Care Alert: CMS Rules Expand Use of Telehealth And Remote Patient Monitoring Under Medicare*

#### Related Professionals

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The Centers for Medicare and Medicaid Services (CMS) recently published two rules designed to promote the use of telehealth and remote patient monitoring (RPM) under the Medicare program.

#### Telehealth Benefits under Medicare Advantage

On November 1, 2018, CMS published a **proposed rule** that (among other things) implements provisions of the Bipartisan Budget Act of 2018 (the BBA) authorizing reimbursement of additional telehealth services as basic benefits under Medicare Advantage (MA) plans.

Generally, MA plans are health insurance policies offered by private companies that contract with CMS to provide coverage to Medicare beneficiaries. The benefits these plans offer fall into two categories: (1) basic benefits, which are paid through a government-funded capitation rate, and (2) supplemental benefits, which are funded using rebate dollars and/or additional enrollee premiums. Currently, MA plans may cover as basic benefits only those specific telehealth services available under traditional Medicare, which must be rendered using telecommunications systems that permit real-time communication between a beneficiary and the provider and are subject to location or “originating site” limitations. Any telehealth benefits beyond those provided under traditional Medicare must be offered only as supplemental benefits.

In accordance with Section 50323 of the BBA, the proposed rule would allow MA plans to provide, starting in plan year 2020, “additional telehealth benefits” payable by CMS. Under the BBA, these “additional telehealth benefits” must be (1) for services generally available under Medicare Part B, but not payable (under traditional Medicare) as telehealth services, and (2) identified by the MA plan in the applicable year’s Evidence of Coverage document as clinically appropriate to furnish via telecommunications technology. MA plans may continue to cover telehealth services that do not meet these requirements as supplemental benefits.

Importantly, in order to protect patient choice, the proposed rule provides that any service that is covered by a MA plan as a telehealth benefit must also be covered if provided in a face-to-face encounter. Additionally, as required by the BBA, the rule prohibits payment for any capital and/or infrastructure costs relating to the additional telehealth benefits. **Comments on the proposed rule are due by 5:00 p.m. on December 31, 2018.**

### RPM in Home Health

On October 31, 2018, CMS issued a [final rule](#)<sup>[1]</sup> allowing home health agencies to include the costs of RPM among their reimbursable administrative expenses beginning in calendar year 2019. This rule defines RPM for purposes of the Medicare home health benefit as “the collection of physiologic data (for example, ECG, blood pressure, glucose monitoring) digitally stored and/or transmitted by the patient and/or caregiver to the HHA.”<sup>[2]</sup> Although the Social Security Act prohibits payment for services furnished via a telecommunications system if such services are substituted for in-person home health services required under a patient’s plan of care, CMS concludes in its discussion of the rule that this prohibition does not apply to RPM because RPM does not involve any direct interaction between patient and provider. Accordingly, RPM does not replace in-person services required under the plan of care, but rather may be used by an HHA to more quickly identify changes in a patient’s condition and appropriately *update* the plan of care.

If you have questions about the new rules, the comment submission process, or Medicare telehealth and RPM services in general, please contact Jolie Havens, Lisa Reisz, Liam Gruz, Mairi Mull, or your Vorys attorney.

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<sup>[1]</sup> This rule is scheduled to be published in the Federal Register on November 13, 2018.

<sup>[2]</sup> While this definition is generally consistent with the description for CPT Code 99091, note that it does not include the *interpretation* of the physiologic data collected.