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MEMORANDUM

TO: Powers Clients

FROM: Mark Fitzgerald and Natalie Dobek

DATE: May 12, 2020

SUBJECT: Hospital Billing of Telehealth Visits During COVID-19

In an Interim Final Rule published on March 31, CMS authorized physicians to bill for telehealth visits as if they were office visits in response to the COVID-19 public health emergency (“PHE”). Since then, many hospitals have pointed out that there was no mechanism for a hospital to bill an originating facility fee for a telehealth service performed by a physician from a hospital outpatient department or other provider-based clinic. Consequently, these services were reimbursed less when performed from a hospital site, as compared to a physician office site. (The UB92 hospital outpatient billing form does not provide for billing of a telehealth originating site facility fee because the patient is not physically present at the hospital.) This issue was raised repeatedly by providers during the CMS “Office Hours” teleconferences, during which CMS acknowledged the inconsistency and promised to release additional guidance.

In a new Interim Final Rule published on April 30, CMS provided hospitals with a solution to the telehealth billing problem. The solution provides payment parity for telehealth services whether the services are performed at a physician’s office or at a hospital’s provider-based clinic. CMS’ explanation for permitting hospitals to bill an originating site fee is that its “blanket waivers” for the PHE include a waiver of all of the requirements of the regulation governing provider-based status (42 CFR § 413.65) as well as the Medicare conditions of participation for hospitals governing physical facility requirements (42 CFR §§ 482.41 [PPS hospitals] and 485.623 [critical access hospitals]). These waivers are meant to facilitate the availability of temporary expansion sites. Consequently, a hospital may designate a patient’s home as a temporary provider-based facility and begin billing the originating site fee. The patient must be registered as a hospital outpatient and the patient will be considered present in the hospital’s facility when the telehealth service is performed for billing purposes.

But hospitals must qualify a patient’s home as provider-based in order to take advantage of the new billing mechanism. A hospital must send an email to its CMS Regional Office, for each patient, asking for an “extraordinary circumstances relocation exception.” The email must include the following information:

1. The hospital's CMS Certification Number (CCN);
2. The address of the hospital's current provider-based department (PBD);
3. The address of the "relocated PBD." (Technically, CMS will consider the patient's home to be a relocated component of the hospital's outpatient department or "excepted" provider-based facility [see discussion below]);
4. The date the hospital began furnishing services at the new PBD. (In other words, the date the hospital started providing telehealth services to patients at their homes.);
5. A brief justification for the relocation and the role of the relocation in the hospital's response to the PHE (*e.g.*, to minimize the risk of infection to healthcare workers and other patients);
6. An attestation that the relocation is not inconsistent with the hospital's state emergency preparedness or pandemic plan.
7. A statement as to why the new PBD location (*i.e.*, the patient's home) is an appropriate setting for furnishing covered outpatient items and services.

Hospitals are permitted to submit these email requests retrospectively within 120 days, and CMS expects for hospitals to submit requests in batches.

The new policy comes with a few conditions: it only applies during the PHE; it is available only to hospital on-campus and "excepted" off-campus PBDs (which are those that are not subject to the reduced fee schedule amount under Section 603 of BBA 2015); and if the Regional Office rejects the application, the hospital will need to reprocess the claims as having been billed by a non-excepted provider-based department. The rule instructs hospitals to append modifier "PO" to the claims.

This new policy only applies during the PHE. Hospitals may bill the originating site fee using HCPCS code Q3014. For CY 2020, the payment amount for HCPCS code Q3014 (Telehealth originating site facility fee) is 80 percent of the lesser of the actual charge, or \$26.65.

For further questions regarding this or other COVID-19 matters, please contact Mark Fitzgerald or Natalie Dobek, or the Powers professional with whom you normally work.

For the latest news, information, and insights on COVID-19, please visit our resource hub at <https://www.powerslaw.com/covid-19/>.