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## Title 42 – Public Health

### Chapter IV – Centers for Medicare & Medicaid Services, Department of Health and Human Services

#### Subchapter B – Medicare Program

#### Part 410 – Supplementary Medical Insurance (SMI) Benefits

#### Subpart B – Medical and Other Health Services

**Authority:** 42 U.S.C. 1302, 1395m, 1395hh, 1395rr, and 1395ddd.

**Source:** 51 FR 41339, Nov. 14, 1986, unless otherwise noted.

**Editorial Note:** Nomenclature changes to part 410 appear at 62 FR 46037, Aug. 29, 1997.

#### § 410.78 Telehealth services.

(a) **Definitions.** For the purposes of this section the following definitions apply:

- (1) **Asynchronous store and forward technologies** means the transmission of a patient's medical information from an originating site to the physician or practitioner at the distant site. The physician or practitioner at the distant site can review the medical case without the patient being present. An asynchronous telecommunications system in single media format does not include telephone calls, images transmitted via facsimile machines and text messages without visualization of the patient (electronic mail). Photographs visualized by a telecommunications system must be specific to the patient's medical condition and adequate for furnishing or confirming a diagnosis and or treatment plan. Dermatological photographs, for example, a photograph of a skin lesion, may be considered to meet the requirement of a single media format under this provision.
- (2) **Distant site** means the site at which the physician or practitioner delivering the service is located at the time the service is provided via a telecommunications system.
- (3) **Interactive telecommunications system** means, except as otherwise provided in this paragraph, multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. For services furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder to a patient in their home, interactive telecommunications may include two-way, real-time audio-only communication technology if the distant site physician or practitioner is technically capable to use an interactive telecommunications system as defined in the previous sentence, but the patient is not capable of, or does not consent to, the use of video technology. A modifier designated by CMS must be appended to the claim for services described in this paragraph to verify that these conditions have been met.
- (4) **Originating site** means the location of an eligible Medicare beneficiary at the time the service being furnished via a telecommunications system occurs. For asynchronous store and forward telecommunications technologies, the only originating sites are Federal telemedicine demonstration programs conducted in Alaska or Hawaii.

(b) **General rule.** Medicare Part B pays for covered telehealth services included on the telehealth list when furnished by an interactive telecommunications system if the following conditions are met, except that for the duration of the Public Health Emergency as defined in § 400.200 of this chapter, Medicare Part B pays

for office and other outpatient visits, professional consultation, psychiatric diagnostic interview examination, individual psychotherapy, pharmacologic management and end stage renal disease related services included in the monthly capitation payment furnished by an interactive telecommunications system if the following conditions are met:

- (1) The physician or practitioner at the distant site must be licensed to furnish the service under State law. The physician or practitioner at the distant site who is licensed under State law to furnish a covered telehealth service described in this section may bill, and receive payment for, the service when it is delivered via a telecommunications system.
- (2) The practitioner at the distant site is one of the following:
  - (i) A physician as described in § 410.20.
  - (ii) A physician assistant as described § 410.74.
  - (iii) A nurse practitioner as described in § 410.75.
  - (iv) A clinical nurse specialist as described in § 410.76.
  - (v) A nurse-midwife as described in § 410.77.
  - (vi) A clinical psychologist as described in § 410.71.
  - (vii) A clinical social worker as described in § 410.73.
  - (viii) A registered dietitian or nutrition professional as described in § 410.134.
  - (ix) A certified registered nurse anesthetist as described in § 410.69.
- (3) The services are furnished to a beneficiary at an originating site, which is one of the following:
  - (i) The office of a physician or practitioner.
  - (ii) A critical access hospital (as described in section 1861(mm)(1) of the Act).
  - (iii) A rural health clinic (as described in section 1861(aa)(2) of the Act).
  - (iv) A Federally qualified health center (as defined in section 1861(aa)(4) of the Act).
  - (v) A hospital (as defined in section 1861(e) of the Act).
  - (vi) A hospital-based or critical access hospital-based renal dialysis center (including satellites).
  - (vii) A skilled nursing facility (as defined in section 1819(a) of the Act).
  - (viii) A community mental health center (as defined in section 1861(ff)(3)(B) of the Act).
  - (ix) A renal dialysis facility (only for purposes of the home dialysis monthly ESRD-related clinical assessment in section 1881(b)(3)(B) of the Act);
  - (x) The home of an individual (only for purposes of the home dialysis ESRD-related clinical assessment in section 1881(b)(3)(B) of the Act).
  - (xi) A mobile stroke unit (only for purposes of diagnosis, evaluation, or treatment of symptoms of an acute stroke provided in accordance with section 1834(m)(6) of the Act).

- (xii) The home of an individual (only for purposes of treatment of a substance use disorder or a co-occurring mental health disorder, furnished on or after July 1, 2019, to an individual with a substance use disorder diagnosis.
  - (xiii) A rural emergency hospital (as defined in section 1861(kkk)(2) of the Act), for services furnished on or after January 1, 2023.
  - (xiv) The home of a beneficiary for the purposes of diagnosis, evaluation, and/or treatment of a mental health disorder for services furnished on or after the day that is the 152nd day after the end of the PHE as defined in our regulation at § 400.200 except as otherwise provided in this paragraph. Payment will not be made for a telehealth service furnished under this paragraph unless the following conditions are met:
    - (A) The physician or practitioner has furnished an item or service in-person, without the use of telehealth, for which Medicare payment was made (or would have been made if the patient were entitled to, or enrolled for, Medicare benefits at the time the item or service is furnished) within 6 months prior to the initial telehealth service;
    - (B) The physician or practitioner has furnished an item or service in-person, without the use of telehealth, at least once within 12 months of each subsequent telehealth service described in this paragraph, unless, for a particular 12-month period, the physician or practitioner and patient agree that the risks and burdens associated with an in-person service outweigh the benefits associated with furnishing the in-person item or service, and the practitioner documents the reason(s) for this decision in the patient's medical record.
    - (C) The requirements of paragraphs (b)(3)(xiv)(A) and (B) may be met by another physician or practitioner of the same specialty and subspecialty in the same group as the physician or practitioner who furnishes the telehealth service, if the physician or practitioner who furnishes the telehealth service described under this paragraph is not available.
- (4) Except as provided in paragraph (b)(4)(iv) of this section, originating sites must be:
- (i) Located in a health professional shortage area (as defined under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)) that is either outside of a Metropolitan Statistical Area (MSA) as of December 31st of the preceding calendar year or within a rural census tract of an MSA as determined by the Office of Rural Health Policy of the Health Resources and Services Administration as of December 31st of the preceding calendar year, or
  - (ii) Located in a county that is not included in a Metropolitan Statistical Area as defined in section 1886(d)(2)(D) of the Act as of December 31st of the preceding year, or
  - (iii) An entity participating in a Federal telemedicine demonstration project that has been approved by, or receive funding from, the Secretary as of December 31, 2000, regardless of its geographic location.
  - (iv) The geographic requirements specified in paragraph (b)(4) of this section do not apply to the following telehealth services:
    - (A) Home dialysis monthly ESRD-related clinical assessment services furnished on or after January 1, 2019, at an originating site described in paragraphs (b)(3)(vi), (ix) or (x) of this section, in accordance with section 1881(b)(3)(B) of the Act; and

- (B) Services furnished on or after January 1, 2019, for purposes of diagnosis, evaluation, or treatment of symptoms of an acute stroke.
  - (C) Services furnished on or after July 1, 2019 to an individual with a substance use disorder diagnosis, for purposes of treatment of a substance use disorder or a co-occurring mental health disorder.
  - (D) Services furnished on or after the first day after the end of the PHE as defined in our regulation at § 400.200 for the purposes of diagnosis, evaluation, and/or treatment of a mental health disorder. Payment will not be made for a telehealth service furnished under this paragraph unless the physician or practitioner has furnished an item or service in person, without the use of telehealth, for which Medicare payment was made (or would have been made if the patient were entitled to, or enrolled for, Medicare benefits at the time the item or service is furnished) within 6 months prior to the initial telehealth service and within 6 months of any subsequent telehealth service.
- (5) The medical examination of the patient is under the control of the physician or practitioner at the distant site.
- (c) **Telepresenter not required.** A telepresenter is not required as a condition of payment unless a telepresenter is medically necessary as determined by the physician or practitioner at the distant site.
  - (d) **Exception to the interactive telecommunications system requirement.** For Federal telemedicine demonstration programs conducted in Alaska or Hawaii only, Medicare payment is permitted for telehealth when asynchronous store and forward technologies, in single or multimedia formats, are used as a substitute for an interactive telecommunications system.
  - (e) **Limitations.**
    - (1) A clinical psychologist and a clinical social worker may bill and receive payment for individual psychotherapy via a telecommunications system, but may not seek payment for medical evaluation and management services.
    - (2) The physician visits required under § 483.40(c) of this title may not be furnished as telehealth services.
  - (f) **Process for adding or deleting services.** Except as otherwise provided in this paragraph (f), changes to the list of Medicare telehealth services are made through the annual physician fee schedule rulemaking process. During the Public Health Emergency, as defined in § 400.200 of this chapter, we will use a subregulatory process to modify the services included on the Medicare telehealth list during the Public Health Emergency, taking into consideration infection control, patient safety, and other public health concerns resulting from the emergency. CMS maintains the list of services that are Medicare telehealth services under this section, including the current HCPCS codes that describe the services on the CMS website.

[66 FR 55330, Nov. 1, 2001, as amended at 67 FR 80041, Dec. 31, 2002; 69 FR 66423, Nov. 15, 2004; 70 FR 70330, Nov. 21, 2005; 72 FR 66399, Nov. 27, 2007; 73 FR 69934, Nov. 19, 2008; 74 FR 62005, Nov. 25, 2009; 75 FR 73615, Nov. 29, 2010; 76 FR 73470, Nov. 28, 2011; 77 FR 69363, Nov. 16, 2012; 78 FR 74811, Dec. 10, 2013; 79 FR 68002, Nov. 13, 2014; 80 FR 71373, Nov. 16, 2015; 83 FR 60073, Nov. 23, 2018; 85 FR 19286, Apr. 6, 2020; 85 FR 27621, May 8, 2020; 85 FR 85027, Dec. 28, 2020; 86 FR 65666, Nov. 19, 2021; 87 FR 70224, Nov. 18, 2022]