



HLB

HOOPER, LUNDY & BOOKMAN, PC
HEALTH CARE LAWYERS & ADVISORS

Telehealth and Long-Term Care During the COVID-19 Pandemic

Presented by:

- Mark Reagan
- Jeremy Sherer

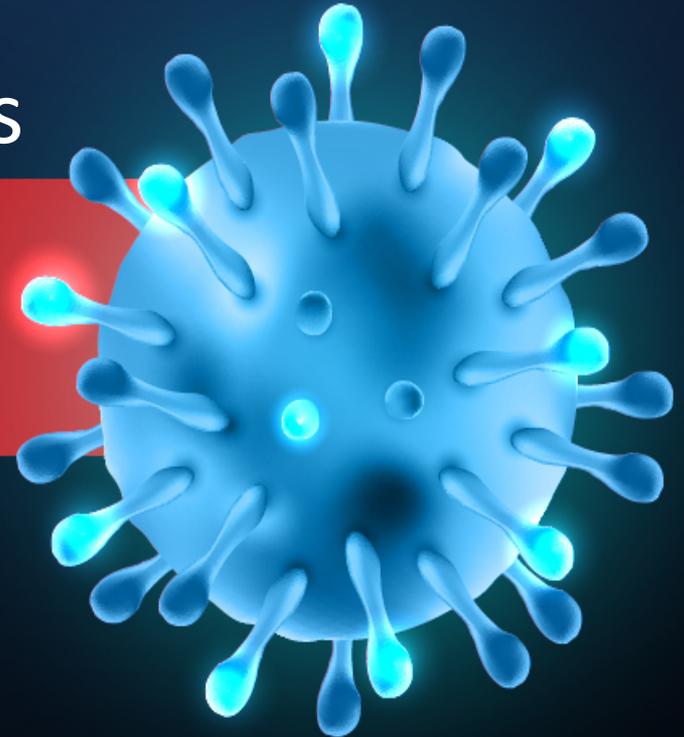
April 15, 2020

Hooper, Lundy & Bookman's

Coronavirus COVID-19

Updates and Resources

For links to guidance from various state and federal agencies regarding COVID-19 go to <http://www.health-law.com/newsroom-news-166.html>



Agenda

- Telehealth, Long-Term Care and COVID-19
- Challenges currently facing Long-Term Care Providers

HLB

HOOPER, LUNDY & BOOKMAN, PC
HEALTH CARE LAWYERS & ADVISORS

Telehealth and Long Term Care During the COVID-19 Pandemic

Medicare Telehealth Services

Originating Site Requirement: Waived

During the COVID-19 PHE, “Medicare telehealth services” can be provided to patients wherever they are located, even in the home.

→ Rural/urban issue most important to LTC providers.

Covering More Than “Medicare Telehealth Services”

In addition to the “Medicare telehealth services” normally covered, CMS is covering 80 new services during the COVID-19 PHE.

(Non) Medicare Telehealth Services

Initial Nursing Facility Visits – Normally prohibited via telehealth.

CPT Codes 99304, 99305, 99306

Discharge Day Management – Normally prohibited via telehealth.

CPT Codes 99315, 99316

(Non) Medicare Telehealth Services

Frequency Limitations on Subsequent Care Services in SNFs

→ Typically can only be provided via telehealth once every 30 days, WAIVED during COVID-19 PHE.

CPT codes 99307, 99308, 99309, 99310

Frequency Limitations on Critical Care Consults

→ Typically permitted once a day via telehealth, WAIVED during COVID-19 PHE.

(Non) Medicare Telehealth Services

Telehealth and the Medicare Hospice Face-to-Face Requirement

- Hospice benefits require a written certification in the first 90-day period, and a re-certification every 60 days thereafter. Normally, this requires a face-to-face encounter.
- During the COVID-19 PHE, hospice certifications can be provided via telehealth.

(Non) Medicare Telehealth Services

Communication Technology Based Services (Virtual check-ins, e-consults)

- CTBS are still available to SNF patients.
- However, “established patient” requirement is waived for duration of the COVID-19 PHE.

HHS Office for Civil Rights (OCR) Discretion

HHS OCR is exercising enforcement discretion and waiving penalties for HIPAA violations against providers that “serve patients in good faith through everyday communication technologies, such as FaceTime and Skype” during the PHE.

→ This is particularly important to SNFs, many of whom lack the infrastructure to facilitate telehealth services.

→ What about when the PHE ends?

Reimbursement

Typically, the telehealth value proposition in SNFs is about reduced readmissions and reduced costs, not reimbursement. COVID-19 has changed that.

How does Medicare telehealth billing work?

- Professional Fee. Billed by the clinician who delivers services via telehealth. If services would normally be provided at the SNF, provider may bill accordingly, even if providing services remotely.
- Facility Fee. Billed by the SNF – Q3014.

Reimbursement

Payment Parity Legislation

- Beyond Medicare, many states have enacted emergency executive orders for the duration of the COVID-19 PHE requiring insurers to pay the same amount for services provided via telehealth as they would if the services were provided in person.

Reimbursement

SNF patients are most commonly Medicare beneficiaries or “dual eligibles.”

But don't forget Medicare Advantage. MA plans can now cover telehealth services as “basic benefits.”

However:

- **They aren't subject to state level “payment parity” requirements; and**
- **They aren't subject to Medicare fee-for-service reimbursement policies.**

Where does that leave SNFs?

Licensure

Licensure (Medicare and Medicaid).

- Providers must be licensed in the state where the patient is located to bill Medicare or Medicaid, normally. This requirement has waived.
- *However, state law still applies.* When treating a patient via telehealth, the provider must be licensed in the state where the patient is located.

Licensure

Many states have waived licensure requirements in response to COVID-19.

- In California, physicians licensed in other states but not in California can treat California patients, as long as the facility with which they are working has received approval from California's Emergency Medical Services Authority.
- In Massachusetts, Gov. Baker issued an order calling for out-of-state physicians to be granted emergency licenses to treat Massachusetts patients.

CMS Long Term Care Toolkit

1135 Waiver Information

CMS Telehealth Guidance

State Guidance

Setting up Telehealth

Technical Assistance

Vendor Selection

Nursing Home Resources

HLB

HOOPER, LUNDY & BOOKMAN, PC
HEALTH CARE LAWYERS & ADVISORS

Long-Term Care Operational and Policy Challenges During the COVID-19 Pandemic

Policy Challenges: Federal Landscape

Making Sense of the Continuously Changing Federal Landscape

- Increases to Medicaid FMAP (requires state involvement)
- New Medicare Money
- More Medicaid Money
- Advance Payments, SBA loans, etc.
- Federal Waivers – Blanket Waivers and State/Provider Waivers, Sec. 1135

Policy Challenges: State Landscape

State Issues

- Medicaid expenditures
- State waivers – blanket and/or individual
- Liability

Operational Challenges

- Shutdown of non-essential visitation
- Staffing – managing quarantines of exposed/infected staff, supporting morale and addressing fear
- Infection Control – most predominant sources of infection
- Insufficient access to Personal Protective Equipment (PPE) for staff
- Overlapping Oversight – Federal, State, County, Local
- Direction from states/counties to admit patients from hospitals
- Often inconsistent guidance and direction

Reimbursement Challenges: Medicare

Medicare

- Impact of prohibition of elective procedures to Medicare Part A census
- Impact of waivers of 3-day qualifying stay requirements and spell of illness (FFS)
- Establishment of Medicare FFS rate for COVID-19 positive post-acute residents
- Establishment of COVID-19 positive SNFs or wings/units
- Alternative Care Sites – SNF care provided elsewhere

Reimbursement Challenges: Medicaid, MA, Managed Care

Medicaid

- Medicaid rate increases ranging from 10% to 25%
- Some states have done nothing
- More about bolstering SNF capabilities than treatment of COVID-19 positive residents (exception being Medicaid-only beneficiaries)

Unique issues involving Medicare Advantage and Managed Care

Questions?



Mark Reagan

Managing Partner
mreagan@health-law.com
415-875-8501
San Francisco



Jeremy Sherer

Digital Health Co-Chair
jsherer@health-law.com
617-532-2705
Boston