Uncertainty Looms Despite New CMS Guidance On Outpatient Therapy Telehealth

Clinician associations are only further confused by CMS' guidance in recent days on whether hospital outpatient therapists and therapists working at skilled nursing facilities, rehabilitation agencies and home health agencies can continue billing Medicare for telehealth services after the public health emergency ends, saying they are frustrated and alarmed by the lack of clarity considering the end of the PHE is just over 48 hours away.

CMS told *Inside TeleHealth* on Tuesday (May 9) it is reviewing the questions it received from stakeholders over the potential telehealth cliff, potentially signaling a workaround is in the works.

However, the agency has not yet responded to a letter it received from the American Physical Therapy Association, the American Speech-Language-Hearing Association and the American Occupational Therapy Association May 3. As a result, the associations say they have nothing new to tell their member clinicians.

At this point, CMS seems to be using Part A and Part B billing, and associated billing forms, to determine which outpatient therapists can bill for telehealth.

CMS previously told APTA that hospital outpatient therapists who bill using form UB04 cannot continue to bill for telehealth services, but those who bill using form 1500 can.

Now, APTA wonders whether the UB04 and 1500 distinction applies to all settings. "Although traditionally, outpatient providers use a 1500 and institutional providers use a UB, some institutional providers bill Part B services on a UB. But CMS won't answer our questions on this," an APTA representative said.

While CMS seems to be saying that providers who bill on form 1500 (Part B, under the physician fee schedule) can continue telehealth while those who bill on UB04 (Part A, under OPPS) cannot, they will not clarify their position, APTA says. APTA says that many outpatient settings that are unaffiliated with hospitals and the sunsetting Hospital Without Walls waiver bill under Part B on a UB04 form, including rehab agencies, skilled nursing facilities and home health agencies.

CMS clarified in a May 5 FAQ, and separately to *Inside TeleHealth,* that the Hospital Without Walls waiver, which allowed hospital outpatient therapists to bill telehealth services for beneficiaries in their homes during the PHE, is ending May 11. However, CMS still says that the omnibus spending law allows eligible providers billing professional services to continue telehealth through December 2024.

"In context of the anticipated end of the PHE, we have received a number of inquiries from interested parties regarding the expiration of this policy, including questions about whether policies other than the expiring waivers are relevant. We recognize the urgency of the questions and they are currently under review," the CMS official told *Inside TeleHealth*, echoing CMS' sentiments in the FAQ.

Furthermore, CMS told *Inside TeleHealth* that "eligible distant site physicians and practitioners may still be able to bill as a Medicare telehealth service under the Medicare physician fee schedule for professional services furnished via telehealth to individuals in their homes through December 31, 2024."

APTA, ASHA and AOTA argued in their recent letter to CMS that the Consolidated Appropriations Act of 2023, Medicare Physician Fee Schedule and Medicare Benefit Manual give hospital outpatient therapists the ability to continue providing telehealth services through December 2024.

Now, the associations are confused about what CMS means by "professional services."

"I think our confusion is around CMS continually referring to 'professional services.' There are outpatient settings, unaffiliated with hospitals and completely removed from the Hospitals Without Walls waiver, that bill the Part B fee

schedule for run-of-the-mill outpatient therapy services on a UB-04. These include rehab agencies, skilled nursing facilities and home health agencies. While the latter two sometimes bill Part A, they frequently bill Part B as well. Rehab agencies are totally under the fee schedule, so they should be included in the telehealth extension that was in last summer's rule. But the same logic applies to hospital outpatient departments, and it seems like CMS is set on the determining factor being 'professional services' on a 1500 versus on a UB-04," an APTA representative told *Inside TeleHealth.*

ASHA and AOTA both are concerned over what a telehealth billing cliff would do to their member clinicians and their patients.

"ASHA's chief concerns are that Medicare beneficiaries maintain access to needed telehealth services until at least 2024 -- and that Medicare staff are developing regulations for telehealth implementation that align with Congress' intent. At this point, neither is happening. Medicare beneficiaries are being told by speech-language pathologists that coverage for their outpatient telehealth services will expire after May 11 simply because the service is provided by a hospital rather than a private practice, leaving them understandably frustrated and confused. However, CMS' written guidance does not indicate that the place of service impacts telehealth coverage -- and ASHA's efforts to clarify this issue have not been addressed despite numerous outreach attempts," Sarah Warren, director of health care policy and Medicare at the American Speech-Language-Hearing Association, told *Inside TeleHealth.*
"The fact that we're two days away from the end of the public health emergency and this matter hasn't been settled is alarming," she added.

Sharmila Sandhu, vice president of regulatory affairs at the American Occupational Therapy Association, echoed those sentiments.

"Ultimately, this policy creates significant risk for reduced beneficiary access to medically necessary therapy services, especially in rural and underserved areas where telehealth has been effectively utilized. For CMS to fail to provide clarification for therapy practitioners and the beneficiaries they serve by this late date is unacceptable," Sandhu said.
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