SNP Alliance

The National Voice for Special Needs and Medicare-Medicaid Plans

A National Nonprofit Leadership Organization

Telehealth Services and Risk Adjustment Issues for MAOs:
Before and During the Covid-19 Public Health Emergency

Pre-Public Health Emergency Telehealth Policy for MAOs

1. Effective in 2020, CMS implemented provisions of the BBA allowing expanded telehealth services to be provided under MAOs.
2. CMS codified the statutory requirement of 1852(m) that providers of additional telehealth benefits are limited to ''physician'' as defined in section 1861(r) of the Act and the term ''practitioner'' described in section 1842(b)(18)(C).
    a. Both the statute and the 2019 MA final rule limit MA additional telehealth benefits to services furnished by physicians and practitioners as so defined. (The same limitations apply to FFS.)
3. Neither the statute nor the 2019 MA final rule include geographic or originating site limitations as part of defining or authorizing MAO additional telehealth benefits. However, FFS retains these restrictions.
4. CMS codified the requirement that MAO plans furnishing MA additional telehealth benefits only do so using contracted providers.
5. MAO additional telehealth benefits can be accounted for in the basic benefit bid and therefore "will be accounted for in the capitated payment."
6. CMS also allows remote access technology such as cellular data and electronic devices as a Medicare Advantage supplemental benefit.
7. MAOs can offer telehealth services not on the FFS Medicare lists if they deem them clinically beneficial to the beneficiary.
    a. ***Question: When MAOs take advantage of that flexibility and offer a telehealth service and a diagnosis results from that visit, can that diagnosis be included in the HCCs?***

Public Health Emergency Modifications to MAO Telehealth Policy

1. The April 10, 2020 memo from CMS "Applicability of diagnoses from telehealth services for risk adjustment" outlined three provisions for allowing diagnoses from telehealth visits to be counted for risk adjustment during the PHE:
    a. Being from an allowable inpatient, outpatient, or professional service;
    b. From a face-to-face encounter; and
    c. Services provided using an interactive audio and video telecommunications system that permits real-time interactive communication.

2. CMS has also allowed certain **audio only** telehealth services to meet the requirements of telehealth visits during the PHE. ***However, they have not allowed diagnoses for these to count towards risk adjustment, therefore reducing the capture of chronic care diagnoses during the PHE.*** Many SNP members do not have access to or cannot access video resources.
    a. Question: Will the risk adjustment policy outlined in the April 10, 2020 memo be extended post PHE? (excluding new HCCs diagnoses)

    b. ***Question: Will the audio telehealth be allowed for MAOs after the PHE expires?***
        i. ***If so, can they be included for risk adjustment?***
3. During the PHE, CMS has allowed additional providers (such as physical therapists, occupational therapists, speech language pathologists, and others) to receive payment for Medicare telehealth services.
    a. ***Question: Should allowing these additional providers to receive payment for telehealth encounters after the PHE apply to MAOs?***
        i. ***If so, which providers?***

4. CMS also allowed MAOs to identify and propose mid- year changes in telehealth related supplemental benefits, such as provision of tablets or other interactive technologies to facilitate virtual modalities including audio based and asynchronous technologies.
    a. ***Question: Should the SNP Alliance advocate for CMS to retain mid-year flexibility post PHE?***

Resources

1. April 10, 2020 CMS Memo: Applicability of Diagnoses from Telehealth Services for Risk Adjustment
2. May 13, 2020 CMS Memo: Updated Guidance for Medicare Advantage Organizations (See Item 6 on supplemental benefits and telehealth related devices.)
3. Appendix 1 (See Below): Medicare Telehealth Summary from 2019 Statute and Rule and BBA MA Requirements

Appendix 1.

Telehealth Benefits From Medicare Advantage 2019 Final Rule

Original Medicare Telehealth Requirements Apply to Medicare Advantage Plans
Medicare Advantage (MA) telehealth services begin with the original Medicare telehealth benefit that exists under Section 1834(m) of the Social Security Act (SSA).

Telehealth services that are allowed in Original Medicare and therefore on the approved list of services for Medicare Parts A and B, are permitted telehealth services for MA plans. Section 1834(m) places some restrictions on Parts A and B benefits that can be furnished via telehealth. The primary 1834(m) restrictions are:

1. Telehealth services can only be furnished by a physician (as defined in section 1861(r)) or a practitioner (as described in section 1842(b)(18)(C))
2. Telehealth services can only be furnished at the following originating sites:
    a. In an area that is designated as a rural health professional shortage area
    b. In a county that is not included in a Metropolitan Statistical Area
    c. From an entity that participates in a Federal telemedicine demonstration project that has been approved by the Secretary.
3. Physician or practitioner providing the telehealth service cannot be at the same location as the beneficiary.
4. There is parity in payment of in-person and telehealth visits.

All telehealth services and other non-face-to-face services furnished via communication technology covered and paid under original Medicare must be covered by MA plans as basic benefits. Any services falling outside the scope of these services that an MA plan wishes to offer may potentially be offered as "MA additional telehealth benefits," effective January 1, 2020, assuming they meet the requirements under section 1852(m).

Additional Telehealth Benefits for MAOs
The BBA of 2018 allows MA plans the ability to provide "additional telehealth benefits" to enrollees starting in plan year 2020. These additional telehealth benefits can and will be treated as basic benefits. Basic benefits are also known as "original Medicare benefits" or "benefits under the original Medicare FFS program option." The BBA limits these authorized additional telehealth benefits to services that are available under Medicare Part B but are not payable under section 1834(m) and have been identified **by the MA plan** as clinically appropriate to furnish through electronic exchange. Section 1852(m) is generally the superseding statute when interpreting additional telehealth benefits for MAOs.

The official CMS definition of "additional telehealth benefits" is services:

1. For which benefits are available under Medicare Part B but which are not payable under section 1834(m); and
2. That have been identified by the MA plan for the applicable year as clinically appropriate to furnish through electronic exchange when the physician (as defined in section 1861(r)) or practitioner (described in section 1842(b)(18)(c)) providing the services is not in the same location as the enrollee.

When determining whether a service may be offered by an MA plan as part of basic benefits requires addressing two questions:

1. Is the service covered and payable under Part A or Part B? ; and
2. If not, is the reason it is not payable under Part B solely because of the limits in section 1834(m)?

If the answer to the first question is “yes,” then the service is already a benefit under the original Medicare FFS program option and, unless it is hospice care or coverage for organ acquisitions for kidney transplants, must be provided under current law at section 1852(a) and the MA regulations in 42 CFR part 422. (2019 MA Final Rule)

If the answer to the second questions is “yes,” then provision of the service through electronic exchange may be covered as an MA basic benefit under section 1852(m), as added by the BBA of 2018 and the regulations at §§ 422.100, 422.135, 422.252, 422.254, and 422.264. (2019 MA Final Rule)