

Medicare Advantage Organizations Provided New Opportunities to Offer Telehealth Benefits

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Health Care

Earlier this year, President Trump signed into law the Bipartisan Budget Act of 2018 (BBA), which incorporates provisions from the Creating High-Quality Results and Outcomes Necessary to Improve Chronic (CHRONIC) Care Act of 2017 and improves access to telehealth services in Medicare Advantage. Pub. L. No. 115-123. Among [other provisions](#) impacting Medicare Advantage Organizations (MAOs), the BBA authorizes MAOs to offer additional telehealth benefits as basic benefits beyond original Medicare (Part A and Part B) limitations. *Id.* at Div. E., Title III, Subtitle C, § 50323.

Background

Despite the significant promise telehealth technology holds for improving access to care, very few Medicare beneficiaries actually receive any services through telehealth technology. The Medicare Payment Advisory Commission (MedPAC) reported earlier this year that less than 1% of Medicare beneficiaries made use of any telehealth services between 2014 and 2016. Prior to the enactment of the BBA, MAOs could offer only limited telehealth benefits as basic benefits under Section 1834(m) of the Social Security Act (SSA). Telehealth services would be reimbursed only if they were provided by a physician or practitioner through telecommunications to an enrollee located “at an originating site” (e.g. a physician’s office, clinic) “in an area . . . designated as a rural health professional shortage area . . . ; in a county that is not included in a Metropolitan Statistical Area; or from an entity that participates in a Federal telemedicine demonstration project [that had been previously approved by the Secretary].” SSA § 1834(m). Furthermore, for MAOs to receive payment for telehealth services, an interactive video and audio telecommunications system had to be used. Other telehealth benefits could be provided only as supplemental benefits. (Supplemental benefits are either covered by an additional premium payment from the enrollee, or are funded through “rebates” reflecting the difference between the plan’s bid and Medicare’s determination of a benchmark cost to provide the basic benefits in a given region).

Changes to MAO Telehealth Benefits after the BBA

Section 50323 of the BBA amends Section 1852 of the SSA, by adding subsection (m), “Provision of Additional Telehealth Benefits.” The additional benefits delineated in the new Section 1852(m) are defined as services: (1) “for which benefits are available under part B,

including services for which payment is not made under section 1834(m) due to the conditions for payment under such section;” and (2) “that are identified for such year as clinically appropriate to furnish using electronic information and telecommunications technology when a physician (as defined in section 1861(r)) or practitioner (described in section 1842(b)(18)(C)) providing the service is not at the same location as the plan enrollee.” § 50323. The BBA did not define “not at the same location”, and it is unclear how it will be interpreted. Capital and infrastructure investments and costs relating to these additional benefits are excluded. *Id.* Beginning calendar year (CY) 2020, MAOs may choose to provide these telehealth benefits, “identified as clinically appropriate” by the Secretary, in their annual bids to CMS. If an MAO chooses to provide these additional benefits, the services will qualify as basic benefits, that is, “attributable to the provision of benefits under the original [M]edicare fee-for-service program option,” in the MAOs bid to CMS. § 1854(a)(6)(A)(ii)(I) of the SSA. This means that they do not have to be paid for as a “supplemental” benefit, either by separate premium or by rebate. The BBA also requires that MAOs that choose to offer Section 1852(m) telehealth services also offer an in-person visit benefit, with the enrollee maintaining the discretion to choose either the telehealth or in-person visit service. § 50323.

Next Steps

The BBA mandates that the Secretary of Health and Human Services determine the requirements “for the provision or furnishing of additional telehealth benefits,” such as the requirements for physician or practitioner training and qualifications and the “factors necessary for the coordination of such benefits with other items and services including those furnished in-person.” *Id.* The Secretary is required to solicit comments on these requirements, as well as the types of services that should be considered as additional telehealth benefits, as defined in the statute above, “including those provided through supplemental health care benefits, such as remote patient monitoring, secure messaging, store and forward technologies, and other non-face-to-face communication,” by November 30, 2018. *Id.* The BBA does not expressly specify the next steps required after the Secretary solicits public comments.

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This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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