

## CMS Final Rule Offers the Promise of Additional Telehealth Services for MA Plan Enrollees

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The Centers for Medicare & Medicaid Services (“CMS”) has published a [final rule](#) that will expand access to telehealth services for Medicare Advantage (“MA”) plan enrollees.<sup>[1]</sup> CMS Administrator Seema Verma [characterized](#) the agency’s latest policymaking efforts as “a historic step in bringing innovative technology to Medicare beneficiaries” and a way for the agency to provide “greater flexibility to Medicare Advantage plans, [so] beneficiaries can receive more benefits, at lower costs and better quality.”<sup>[2]</sup>

Traditionally, MA plans have been limited to providing, as part of their Medicare benefit packages, solely those telehealth services covered under original Medicare, as defined at Section 1834(m) of the Social Security Act (“Act”). MA plans seeking to offer a broader scope of telehealth services only could do so as MA supplemental benefits, which were funded through use of rebate dollars or supplemental premiums paid by enrollees. Section 1834(m) of the Act limits payments for Medicare telehealth services to specified services provided using a real-time, interactive audio and video telecommunications system between the Medicare beneficiary and practitioner. Also, this section of the Act limits the locations where beneficiaries may receive Medicare-covered telehealth services (e.g., rural and authorized health care facilities).

Under the [Bipartisan Budget Act of 2018](#) (P.L. 115-123) (“BBA”), which was signed into law by President Trump in February 2018, Congress amended the Act to enable MA plans to offer telehealth services beyond the Part B-covered telehealth services traditionally covered as part of the MA basic benefit package. Section 50323 of the BBA created a new Section 1852(m) of the Act which allows MA plans to provide “additional telehealth benefits” starting in 2020 and to treat them as basic benefits (also known as “original Medicare benefits” or “benefits under the original Medicare FFS program option”). The term “additional telehealth benefits” is defined in the final rule as “services—(1) for which benefits are available under Part B, including services for which payments not made under section 1934(m) of the Act due to the conditions for payment under such section; and (2) that are identified for the applicable year as clinically appropriate to furnish using electronic information and telecommunications technology when a physician or practitioner providing the service is not at the same location as plan enrollee.”<sup>[3]</sup> This change will benefit both plans and enrollees by enabling plans to fund much of the cost of such benefits through the government-paid capitation without relying on rebate dollars or additional premium charges.

MA plans choosing to offer additional telehealth benefits may maintain different cost sharing for specified Part B services furnished through in-person visit and those Part B services furnished via electronic exchange.<sup>[4]</sup> CMS has required that for every MA additional telehealth benefit, the MA plan also must provide access to the same service via an in-person visit, thereby giving the MA plan enrollee the ultimate choice in how to access such services. CMS has chosen not to define which services will be considered “clinically appropriate” to offer in this manner, instead extending to the provision of such additional telehealth benefits the existing requirement at Section 422.504(a)(3)(iii) that the MA organization to agree to provide all benefits covered by Medicare “in a



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manner consistent with professionally recognized standards of health care.” CMS will defer to MA plans to independently determine, for each plan year, which services are clinically appropriate to furnish using electronic information and telecommunications technology. MA plans that choose to cover additional telehealth benefits must do so through contracted providers; such benefits as provided by non-contracted providers would need to be covered as MA supplemental benefits.

The final rule also will allow MA plans to continue to separately offer as “MA supplemental benefits” those telehealth services that do not meet the requirements for coverage under original Medicare or to be considered MA additional telehealth benefits. For example, an MA plan may offer, as an MA supplemental benefit, a videoconference dental visit to assess dental needs because services primarily provided for the care, treatment, removal, or replacement of teeth or structures directly supporting teeth are not currently covered Part B benefits and thus would not be allowable as MA additional telehealth benefits.

Importantly, the final rule will allow MA enrollees to receive certain health care services via telehealth (e.g., ESRD-related, stroke-related) from places other than an authorized health care facility, such as beneficiaries’ homes.

While the final rule ensures that MA plans will have greater flexibility in providing a broader range of telehealth-delivered services and services in more locations, a plan’s choice to offer such benefits remains optional. The final rule may create widely varying offerings between otherwise comparable MA plans, as well as hesitation among MA plans to offer these additional telehealth benefits, for example, due to the requirement that only certain provider-types may provide these services. For plan year 2017, CMS reported that 219 MA plans (or 8 percent of plans) covered remote patient monitoring services and that 2,115 MA plans (or 77 percent of plans) covered “remote access technologies” (a term broadly describing services such as e-mail, two-way video, and nurse call-in telephone lines).<sup>[5]</sup> How many MA plans will take advantage of this new flexibility, how far they will go, and how these utilization numbers may change, remains to be seen. CMS’s hope is that the change in how MA additional telehealth benefits are financed will encourage MA plans to offer them which, in turn, will improve access for more MA enrollees in need of such benefits.

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[1] See 84 Fed. Reg. 15680 (Apr. 16, 2019).

[2] Centers for Medicare & Medicaid Services, Press Release, CMS Finalizes Policies to Bring Innovative Telehealth Benefit to Medicare Advantage (Apr. 5, 2019).

[3] 84 Fed. Reg. 15680, 15684 (Apr. 16, 2019).

[4] However, MA plans may not use differential cost sharing to limit enrollee choice by steering or inhibiting enrollee access to services.

[5] The Medicare Payment Advisory Commission, *Report to the Congress: Medicare Payment Policy*, ch. 16 (Mar. 2018), at 483, available at <http://www.medpac.gov/>. In this March 2018 report, MedPAC stated that the Commission “supports expanding telehealth coverage in MA beyond the current level” and made recommendations related to a proposed two-phase plan for expansion. *Id.* at 499.

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