The recent coronavirus outbreak is gaining world attention as it spreads, with increasing focus on outbreaks and containment efforts throughout the United States. On March 6, 2020, President Trump signed into law an emergency $8.3 billion spending bill passed by Congress that would give the Secretary of the Department of Health and Human Services (HHS) the authority to temporarily lift certain restrictions on Medicare telehealth coverage to assist in the efforts to contain the virus. Companies in the telehealth industry should consider the following key takeaways and insights on how the recent legislation could impact their industry.

The Telehealth Services During Certain Emergency Periods Act of 2020 (the TSDCEPA) is part of the larger bipartisan Coronavirus Preparedness and Response Supplemental Appropriations Act 2020, and provides authority to HHS to waive certain existing limitations on Medicare coverage and payment for telehealth
services furnished to Medicare beneficiaries—clearing the way for vulnerable Medicare beneficiaries to receive care in their homes. The care can relate to any condition, not just coronavirus-related conditions, and all currently approved telehealth codes can be utilized, as appropriate. This means that telehealth could be utilized not only for initial evaluations to determine if coronavirus testing is necessary, but also for ongoing health care treatment related to other conditions so patients can remain in their homes.

The key takeaways are as follows:

1. **Waiver of Originating Site Requirement**. Medicare’s originating site requirement—requiring telehealth services be performed in a qualifying rural area at one of eleven qualifying originating sites—may be lifted, allowing for telehealth services to be provided to patients at any location within the emergency area and during the emergency period. Most other requirements under existing Medicare telehealth statutes and regulations, as well as applicable state law telehealth requirements (e.g., licensure), will remain in place unless further waivers are implemented. Thus, for example, facility fees cannot be charged unless the patient receives the service at one of the eleven qualified originating sites. For various reasons, operationalizing the billing for services under the waiver and determining beneficiary eligibility may be challenging for some provider types.

2. **Who Can Perform the Telehealth Services?** The eligible telehealth services can only be performed by a “qualified provider” as defined by the TSDCEPA. Qualified provider is defined to include the same list of permitted physicians and practitioners authorized under existing telehealth statutes and regulations. However, the physician or practitioner rendering telehealth services to a patient under the waiver, or someone within the rendering physician or practitioner’s practice (under the same tax identification number), must have furnished an item or services to the patient at issue for which payment was made under Medicare in the preceding 3-year period for the service to be reimbursable under the waiver.

3. **Telehealth Can Be Provided via a Smartphone**. The TSDCEPA clarifies that telehealth services can be provided via phone, but only if the phone has audio and video capabilities that can be used for two-way, real-time interactive communication.

4. **When Will the Waiver Be Effective?** As of now, HHS has not made a certification to Congress activating the waiver of the aforementioned telehealth requirements. If the waiver is certified, HHS has the option of implementing the waiver retroactive to the commencement of the declaration of the emergency period. The declaration of a public health emergency was made on January 31, 2020, when HHS declared that a national public health emergency relating to coronavirus existed as of January 27, 2020.

5. **Uncertainty as to Duration and Narrow Scope.** The duration of the waiver period is uncertain. Providers will need to closely track any changes to the availability of the waiver and take this into consideration when deciding whether to offer telehealth services under the waiver. Additionally, the
TSDCEPA only provides authority to HHS to certify the TSDCEPA waiver with respect to the current Coronavirus Public Health Emergency and any extension of its covered period. Thus, the telehealth waiver under the TSDCEPA could not be activated in response to other public health emergencies or disaster declarations.

For additional web-based resources available to health care providers regarding evolving changes to Medicare policies, you may wish to visit Medicare’s current emergencies webpage, which includes important billing FAQs. Also, to assist you in monitoring the spread of the coronavirus on a global basis, you may wish to visit the sites provided by the CDC and the World Health Organization.

Companies in the health care industry should take additional steps now to mitigate the risk of suffering negative impacts from the coronavirus. Foley will continue to keep you apprised of relevant coronavirus-related developments.

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