EDPMA News Alert:
CMS Releases COVID-19 Interim Final Rule impacting Telehealth and EMTALA

On Monday, March 30th, the Centers for Medicare and Medicaid Services (CMS) issued an interim final rule implementing a number of telehealth and EMTALA changes in response to the ongoing COVID-19 public health emergency (PHE) as EDPMA requested in its 3/20/20 letter. The changes in the rule are only effective while the public health emergency is in place. Of note, CMS included several of the following provisions:

**Telehealth:**

- As requested by EDPMA, CMS has temporarily added the emergency department evaluation and management (E/M) codes (CPT 99281 - 99285) to the list of approved telehealth services for the duration of the public health emergency (PHE). In addition, for the PHE, CMS has added to the list of approved telehealth services: critical care services (CPT 99291 - 99292), inpatient neonatal and pediatric critical care services (CPT 99468 - 99469; CPT 99471 - 99473; CPT 99475 - 99476), and initial and continuing intensive care services (CPT 99477-99480).

- CMS has instructed physicians and practitioners who bill for Medicare telehealth services to report the POS code that would have been reported had the service been furnished in person, rather than POS 02, which is currently used to denote a Medicare telehealth service. Instead, to identify telehealth services, CMS has finalized that the CPT telehealth modifier, modifier 95, should be applied for claim lines that describe services furnished via telehealth.

- CMS will continue to require that telehealth services are provided via an "Interactive telecommunications system" defined as "multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner." However, CMS has also temporarily allowed the use and payment of CPT’s non-face-to-face telephone service codes, CPT 99441-99443 and that these codes are available for use with either "established" or "new" patients.

"Virtual Visits." CMS already recognized and paid for the following services:
G2010 (Remote evaluation of recorded video and/or images submitted by an established patient (e.g., store and forward), including interpretation with follow-up with the patient within 24 business hours, not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment); and

G2012 (Brief communication technology-based service, e.g. virtual check-in, by a physician or other qualified health care professional who can report evaluation and management services, provided to an established patient, not originating from a related E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment; 5-10 minutes of medical discussion).

While the descriptors limit applicability to "established patients," CMS has finalized use of these codes for "new" and "established" patients as requested by EDPMA. CMS reminds stakeholders that the code can only be reported if they do not result in a visit, which includes a telehealth visit. CMS also finalized that while consent to receive the service must continue to be obtained, that during the PHE, consent may be obtained at the same time that a service is furnished.

Critical Care: In addition to the addition of the critical care CPT codes to the list of Medicare approved telehealth services, CMS is removing the restriction that critical care consultation codes may only be furnished to a Medicare beneficiary once per day.

Expanded COVID-19 Testing Access: CMS also issued guidelines for hospitals, health care systems, and other entities to set up COVID-19 testing and screening sites. CMS also provide guidance on how hospital emergency departments can utilize drive through and off-campus sites to test and screen patients for COVID-19.

Ground Ambulance Origin and Destination Requirements: For the PHE, under the Ambulance Fee Schedule, CMS has expanded the list of destinations Medicare will cover ambulance transport to include "all destinations, from any point of origin, that are equipped to treat the condition of the patient consistent with Emergency Medical Services (EMS) protocols established by state and/or local laws where the services will be furnished."

EMTALA: CMS provided additional information in a Fact Sheet on Emergency Declaration Waivers. CMS reiterated that even under waiver authority, actions are alone allowed if they do not discriminate on source of payment or ability to pay. As part of this fact sheet, CMS repeats that it is waiving the enforcement of EMTALA so that hospitals, psychiatric hospitals, and critical access hospitals (CAHs) can screen patients at offsite locations.

Additional details can be found in the CMS Press Release, CMS Additional Background Document, and the CMS Waivers & Flexibilities Web Page.

We will continue to provide additional information as it becomes available.