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Telehealth Expansion: CMS' Response to The Covid-19 National Emergency

As businesses across all industries respond to the national emergency, the Center for Medicare and Medicaid Services ("CMS") took an unprecedented response in an attempt to combat the spread of COVID-19. [CMS announced](#) that it was exercising its 1335 waiver authority under the [Coronavirus Preparedness and Response Supplemental Appropriations Act](#) to expand access to, and reimbursement for, telehealth under Medicare.

In particular, [CMS will waive geographic and originating site restrictions](#) that were originally in place under Medicare. Effective March 6, 2020, Medicare will pay for office, hospital, and other visits furnished via telehealth across the country, including in the patient's home. Previously, reimbursement was generally limited to patients in rural areas who visit certain health care facilities, such as clinics or hospitals. Now, the location of the patient is no longer restricted, and Medicare will pay for services in all settings across the country for the duration of the public health emergency.

Further, the [Office of Inspector General](#) (the "OIG") will now allow health care providers the discretion to reduce or waive copays and other cost-sharing measures for telehealth visits. Ordinarily, if physicians or practitioners routinely reduce or waive costs owed by federal health care program beneficiaries, including cost-sharing amounts such as coinsurance and deductibles, they would potentially implicate the federal anti-kickback statute, the civil monetary penalty and exclusion laws related to kickbacks, as well as the civil monetary penalty law prohibition on inducements to beneficiaries. However, the OIG made clear that physicians and practitioners do not risk enforcement action if they waive any cost-sharing for telehealth visits during the COVID-19 public health emergency. The OIG also stated that it would not bring an enforcement action, under either the federal anti-kickback statute or the beneficiary inducements civil monetary penalty statute, for waiving or reducing such cost-sharing, provided all applicable CMS payment and coverage rules are met.

This response is in addition to CMS' action earlier this week that waived the requirement for health care professionals to be licensed in the state in which they provide service, if they have an equivalent license from another state. However, it is unclear how this will be implemented.

To health care providers who already incorporate telehealth into their practice, this development from CMS is welcome news. To those who do not have a telehealth program, this news may prompt the question of whether to create such a program. Regardless of the circumstances, our [Health Care Innovation Team](#) and [Coronavirus Response Team](#) have experienced attorneys ready to help [navigate telehealth reimbursement](#) and other unique challenges presented by the COVID-19 pandemic. Please contact [Andrew Johnson](#) (aojohnson@fbtlaw.com or 513-651-6814) for more information.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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