The Big T: Staying on the Telehealth Midway & Avoiding Sideshows

Revenue Integrity, Compliance, & Credentialing Opportunities, Risks, and Tips for FQHCs

BerryDunn

HFMA Northern New England & Connecticut Chapter Event Presentation
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About BerryDunn

- Full-service assurance, tax, and consulting firm headquartered in Portland, ME, and serving clients nationwide.
- Offices in Maine, New Hampshire, Massachusetts, Connecticut, West Virginia, and Arizona.
- BerryDunn has served the healthcare industry for 40+ years with a distinctive range of healthcare consulting and auditing services, from healthcare data analytics to Medicaid and technology consulting.
- Merged with Connecticut-based healthcare compliance, consulting, and credentialing firm VantagePoint Healthcare Advisors (VantagePoint), effective January 1, 2021.
- NCQA certified Credentials Verification Organization (CVO).

Presenters

- **BerryDunn Healthcare Practice Group**
- **Healthcare Compliance and Credentialing Team**
- **Joined BerryDunn as part of merger with VantagePoint HealthCare Advisors**
- **VantagePoint is now the New Haven Office of BerryDunn**

Christa Bernacchia

Director of Credentialing

cbernacchia@berrydunn.com

Regina Alexander

Director of IRO Services

ralexander@berrydunn.com

Cheryl Krusch

Director of Clinical Documentation Improvement

ckrusch@berrrydunn.com

Presentation Objectives

Step right up!

- Identify unique telehealth-related provider credentialing considerations for FQHCs.
- Understand how payer contract language impacts telehealth services operations. (who/what/when/where/how much)
- Review best practices and opportunities related to telehealth services clinical documentation & coding.
- Define regulatory and government program enforcement trends related to telehealth impacting FQHCs.

Midways & Sideshows

Midway

- The *midway* is a where carnival games, amusement rides, entertainment, themed events, exhibitions, and food booths are clustered.

Sideshows

- A *sideshow* is a less important or less significant event or situation related to a larger, more important one that is happening at the same time on the midway or circus.

Credentialing

Telehealth specific credentialing & privileging considerations

Payer contract language

Avoiding credentialing/enrollment related denials

Credentialing

Where admission is never free but is always worth the investment for stops along the midway

- Credentialing is like the spokes on a Ferris Wheel – intertwined and critical to your FQHC's success; don't get stuck at the top!
- Requirements variable by state, payer, accrediting bodies and organizational standards.
- Impacts many areas including compliance, revenue integrity and patient care delivery.
- Be sure to follow all rules and requirements to avoid missed revenue.

- Do you have a defined enrollment process?
- Are enrollments submitted in a timely manner?
- What's in your contracts?
- Delegated or facility agreements?

Payer Enrollments

- Enrollment applications
- Medicaid considerations
- CAQH component
- Commercial carriers - take advantage of the price of admission and don't get caught swinging in the breeze
  - Commercial insurances and advantage plans are becoming more prevalent in FQHCs

Privileging

- Defined as the process by which an entity authorizes a provider to perform a specific type or types of patient care activity
- Every FQHC has a defined internal privileging process (DOP, SOP, etc.); have you incorporated telehealth in your delineation documents?
- Are bylaws and other policy documents current and reflective of telehealth practices?

Watch Your Step

- Requirements:
  - HRSA
  - CMS
  - Accrediting bodies (i.e., Joint Commission)
- Support Structure:
  - Governing body
  - Medical Staff
  - Credentialing Committee

CMS Considerations & COVID-19 Shifts

Monitoring changes – be mindful of enrollment guidance

- CMS enrollment related pauses are unwinding
- Beginning October 2021, CMS will resume several enrollment processes:
  - collecting application fees
  - conducting fingerprint-based criminal background checks as applicable
  - revalidating providers and supplies (i.e., DMEs)
- MFA in PECOS is coming soon

- ***Policies and procedures***
- ***Defined workflows***
- ***Dedicated staff***
- ***Identified stakeholders***
- **Communication is CRITICAL to keep the process moving**

Telehealth Coding & Clinical Documentation

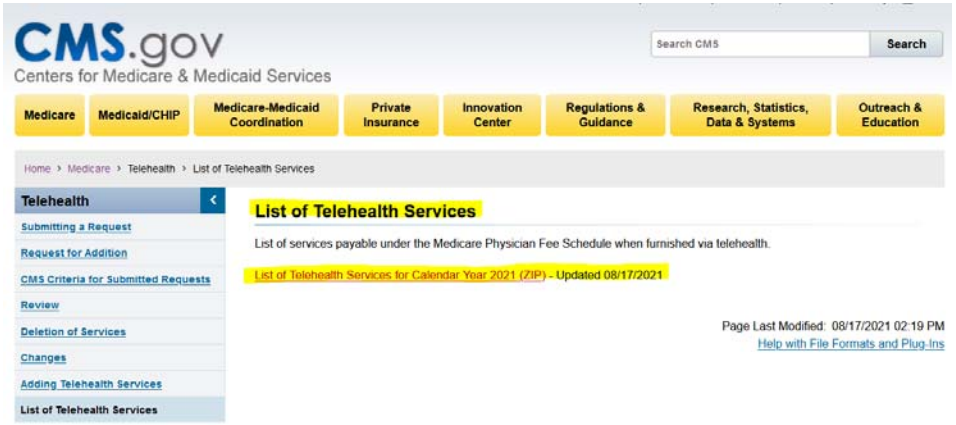
Tips for Avoiding the Tricks

A look back at the sideshows

- *<u>March 30th, 2020</u>: CMS publishes their Interim Final Rule:*
  - Permits use of telephone services
- *<u>April 30th, 2020:</u> More from CMS!*
  - List of eligible provider types who could provide telehealth services expanded (e.g., PT, OT etc.)
  - Increased number of reimbursable codes for telehealth via telephone only from what was initially approved in March

Staying on the Midway Tip

Avoid sideshows by regularly monitoring CMS updates to covered telehealth services



Medicare Telehealth Services eff. 1/1/21, last updated 8/17/21

Code	Short Descriptor	Status	Can Audio-only Interaction Meet the Requirements?	Medicare Payment Limitations
90785	Psytx complex interactive		Yes	
90791	Psych diagnostic evaluation		Yes	
90792	Psych diag eval w/med srvcs		Yes	
90832	Psytx w pt 30 minutes		Yes	
90833	Psytx w pt w e/m 30 min		Yes	
90834	Psytx w pt 45 minutes		Yes	
99202	Office/outpt visit - new			
99203	Office/outpt visit - new			
99204	Office/outpt visit - new			

https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes

New & Expanded Flexibilities for RHCs & FQHCs during the COVID-19 PHE

- G2025
- Modifier CS

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New & Expanded Flexibilities for RHCs & FQHCs during the COVID-19 PHE

MLN Matters Number: SE20016 Revised
Article Release Date: February 23, 2021
Related CR Transmittal Number: N/A
Related Change Request (CR) Number: N/A
Effective Date: N/A
Implementation Date: N/A

Tossing the Ring on Documentation!!

- Method of telehealth
- Listing all participants
- Member location (home, etc.)
- Time spent
- Patient consent
- Other documentation requirements same as a face-to-face encounter

EM Documentation

- New guidelines as of 1/1/2021 for code set 99212 -99205
- Levels are based on Medical Decision Making (MDM) or time.
- Careful the times have changed slightly
- Time documented is for all activities performed on the date the patient is seen

Document! Document!

Elements of MDM

- Level of MDM
- Number and Complexity of Problems Addressed at the Encounter
- Amount and/or Complexity of Data to be Reviewed and Analyzed
- Risk of Complications and/or Morbidity or Mortality of Patient Management

Let's *Not* Go Fishing!

- Non-face to face physician telephone service – 99442 – 99443
- Psych therapy visits 90832, 90834, 90837
- Evaluation and Management Services: 99202 – 99215
- Documentation of Chief Complaint
- Telehealth documentation was lacking or missing

Telehealth Regulatory Compliance

HIPAA, Cures, ADA, Section 1557
State Laws & more

State Laws Matter!

The Deep-Fried Something on a Stick of Telehealth Compliance

Northern New England Pre-COVID Prescribing Examples

- **Maine:** Static questionnaire is insufficient to form the basis of a prescription. Encounter must be an "adaptive, interactive, and responsive online interview,"
- **New Hampshire:** Providers must establish a provider-patient relationship via an audiovisual encounter in order to prescribe.
- **Vermont:** Physician may prescribe after conducting an examination via telemedicine (defined to require a live audiovisual encounter) or with "*the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically*." An electronic, online, or telephonic evaluation is inadequate for the patient's initial evaluation.

Tip to avoid sideshows (& heartburn): Ensure policies & procedures are designed to comply with most stringent regulations, consider additional payer-specific requirements, & maintain a time capsule of all COVID-19 memos describing flexibilities to use audio-only and non-synchronous method of delivering telehealth services.

Health Insurance Portability & Accountability Act of 1996 (HIPAA)

The funnel cake of the telehealth compliance midway

COVID-19 PHE & OCR Notice of HIPAA Enforcement Discretion

"OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency."

- Under Sec. 13410(e) of the HITECH Act, State Attorney Generals are permitted to obtain civil monetary penalties on behalf of state residents for HIPAA violations. *Did your State AG waive these penalties during the PHE? Are specific extensions in place for this type of waiver.*
  - *NH PHE expired June 11, 2021; ME expired June 30, 2021; VT expired June 15, 2021, CT expired July 20, 2021*
- **Tip to avoid sideshows:** The good faith provision exception for telehealth *is/was not going to cover enforcement liability for underlying, long-standing non-compliance with the HIPAA Privacy and Security Rule!*

Telehealth, 21st Century Cures & Information Blocking

The compliance equivalent of a State Fair vendor selling raw veggies on a stick with no ranch dressing

- *No COVID PHE exceptions to enforcement!*
- Under HIPAA, patients already have a legal right to access their data electronically.
- Common operational processes such as requiring a specific patient authorization to share medical records with other outside providers involved in the patient's care were never a requirement of HIPAA and under Cures, may be considered Information Blocking.
- Delaying release of most diagnostic test results until provider reviews is also generally considered information blocking.
- Delaying release of a telehealth visit note until the provider authenticates the document may be OK if the FQHC has a **formal policy** citing patient harm exception and a visit note only considered complete and accurate upon signature.

Telehealth, Patient Access, & Antidiscrimination Laws

- Rehabilitation Act of 1973 - Section 504
- Americans with Disabilities Act (ADA) of 1990
- Patient Protection and Affordable Care Act of 2010 – Section 1557

Like making a creamee available on a cone or in a cup,

FQHC telehealth services must be accessible.

Telehealth Accessibility Tips

Dip tops, nuts, waffle cones, rainbow AND chocolate sprinkles with a cherry on top!

Make sure website and online tools are accessible, i.e.: compatible with screen readers and offer large text sizing.

Robustly compliant and accessible telehealth platforms include ability to include an interpreter on the call, live captions, high-contrast display, automatic transcription.

Staff should be trained to use the accessibility functions of the platform.

Video format patient education materials should have closed captioning.

Telecommunication Relay Services (TTY) alternatives to video conferencing.

If telehealth platform provides built-in privacy and security, consider identifying free internet hotspots (such as libraries, parks, and community centers) and provide this information to patients .

Documents considered "vital" must be available in other languages for patients with Limited English Proficiency. Make sure patient-facing telehealth platform components are reviewed for LEP compliance.

Consider support options to meet needs of older adults with hearing and/or vision challenges, low skill or comfort level with technology, or cognitive impairment.

Summary

- Some COVID PHE flexibilities and CMS/HRSA policy changes allowing FQHCs to offer expanded telehealth services are here to stay in one form or another.
- Avoid the knock-out punch of missing a change in guidelines and enforcement flexibilities by designating an interested internal stakeholder to regularly monitor the credentialing, reimbursement, and regulatory landscape relative to telehealth.

References & Additional Resources

- HRSA Telehealth Training & Technical Assistance Hub: https://www.hrsa.gov/library/telehealth
- HRSA Office for Advancement of Telehealth: https://www.hrsa.gov/rural-health/telehealth
- HRSA FQHC Compliance Manual: https://bphc.hrsa.gov/programrequirements/compliancemanual/index.html
- U.S. Department of Health and Human Services Telehealth Best Practices Guides: https://telehealth.hhs.gov/
- State Health Law Searchable Resource: https://statelaws.findlaw.com/health-care-laws.html
- CCHP Telehealth Policy Finder: https://www.cchpca.org/
- National Consortium of Telehealth Resources: https://telehealthresourcecenter.org/
- HHS OCR HIPAA Enforcement Notice of Discretion: https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html
- ONC Telehealth Resources & Support: https://www.healthit.gov/topic/health-it-health-care-settings/telemedicine-and-telehealth
- Federation of State Medical Boards COVID-19 PHE Licensing Waivers by State: https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf

References & Additional Resources

- 21st Century Cures Act ONC Final Rule & Resources on Information Blocking: https://www.healthit.gov/curesrule/
- Section 508 Resources – Creating Accessible Digital Products: https://www.section508.gov/create
- NACHC Accessibility Compliance Resources - https://www.nachc.org/health-center-issues/emerging-issues-resources/website-accessibility-people-disabilities/
- CMS COVID-19 Medicare FAQ's – updated August 2021 - 2019-Novel Coronavirus (COVID-19) Medicare Provider Enrollment Relief Frequently Asked Questions (FAQs) (cms.gov)
- CMS List of Telehealth Services - https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes
- Medicare Learning Network: New & Expanded Flexibilities for RHCs & FQHCs during the COVID-19 PHE (rev. February 23, 2021) https://www.cms.gov/files/document/se20016.pdf
- Connecticut Emergency Orders: https://portal.ct.gov/Coronavirus/Pages/Emergency-Orders-issued-by-the-Governor-and-State-Agencies
- New Hampshire Medicaid COVID-19 Notices: https://www.dhhs.nh.gov/ombp/medicaid/covid19.htm
- Vermont Executive Orders: https://governor.vermont.gov/document-types/executive-orders

Questions?

Cheryl Krusch
203.288.6860
ckrusch@berrydunn.com

Christa Bernacchia
203.288.6860
cbernacchia@berrydunn.com

Regina Alexander
802.365.7554
ralexander@berrydunn.com

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