

CMS 2021 Proposed Home Health Payment Rule May Make Certain Telehealth Changes Introduced During COVID-19 Pandemic Permanent

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As we previously reported, the Centers for Medicare & Medicaid Services (CMS) issued temporary rules to allow increased use of telehealth services. On June 25, 2020, CMS issued a proposed rule for calendar year 2021 that includes a proposal to make permanent the regulatory changes related to telehealth beyond the expiration of the public health emergency due to COVID-19.

Under the proposed rule, home health agencies (HHAs) can continue to utilize telehealth in providing care to beneficiaries under the Medicare home health benefit beyond the COVID-19 public health emergency, as long as:

1. the telehealth is related to the skilled services being furnished;
2. is outlined on the plan of care; and
3. is tied to a specific goal indicating how such use would facilitate treatment outcomes.

The use of telehealth may not substitute for an in-person home visit that is ordered on the plan of care and cannot be considered a visit for the purpose of patient eligibility or payment; however, the use of telehealth may result in changes to the frequencies and types of in-person visits as ordered on the plan of care. This rule also proposes to allow HHAs to continue to report the costs of telehealth as allowable administrative costs on the home health agency cost report beyond the public health emergency for the COVID-19 pandemic. These proposed changes are one of the first flexibilities provided during the COVID-19 public health emergency that CMS is proposing to make a permanent part of the Medicare program. These proposals would ensure patient access to the latest technology and give HHAs predictability that they can continue to use telehealth as part of patient care beyond the public health emergency. We will continue to monitor and report on CMS' guidance on telehealth flexibilities.

If you have questions or would like additional information, contact Andy Hamelsky (hamelskya@whiteandwilliams.com; 212.631.4406), Mike Horner (hornerm@whiteandwilliams.com; 856.317.3658), Zaara Nazir (nazirz@whiteandwilliams.com; 973.604.5681) or another member of the Healthcare Group.

As we continue to monitor COVID-19, White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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