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Telehealth Language Causes Confusion for DMEPOS Suppliers

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By Wayne van Halem, President, The van Halem Group, a division of VGM & Associates

There's been a lot of questions and confusion surrounding telehealth services and how they relate to DMEPOS claims. Before going further, I would like to clarify that this article is pertaining to whether or not telehealth services can be used to qualify a patient for an item of DMEPOS during the public health emergency (PHE). This article will not address whether or not a DMEPOS supplier can utilize telehealth services for visits with their patients. Suppliers are not reimbursed for telehealth services, so there are very few limitations (from a CMS perspective) on suppliers who would like to utilize telehealth services. There are some state laws that suppliers need to be familiar with, but the **telehealth waivers that CMS has granted are solely for providers who get reimbursed for providing telehealth. Therefore, it is relevant to DMEPOS only for the face-to-face evaluation requirements.**

In a **fact sheet** released by CMS on March 17, they used the broader term, "Virtual Services." Under the virtual services umbrella, they described three types of services:

1. Telehealth
2. Virtual Check-Ins
3. E-Visits

In this document, they noted that "telehealth" visits must have both audio ***and*** video capability while virtual check-ins could be done via audio or video technology. The third category, e-visits, are communications managed through a patient portal.

In a second **fact sheet** dated March 30, under the section called *Further Promote Telehealth in Medicare*, it has a sentence that reads, "Providers also can evaluate beneficiaries who have audio phones only." This caused a significant amount of confusion. Is CMS saying that a telephone call with the beneficiary qualifies as a telehealth visit?

On the same date, the first of two Interim Final Rules with Comment Period (IFC) **(CMS 1744 IFC)** was released, and CMS indicated the following:

> Our regulation at § 410.78(a)(3) states that telephones, facsimile machines, and electronic mail systems do not meet the definition of an interactive telecommunications systems for purposes of Medicare telehealth services. As we interpret it, this regulation does not apply to mobile computing devices that include audio and video real-time interactive capabilities, even though such devices are now referred to colloquially as "phones" since they can also be used for audio-only telecommunications. In light of the PHE for the COVID-19 pandemic, we believe it is important to avoid the potential perception that this language might prohibit use of any device that could otherwise meet the interactive requirements for Medicare telehealth, especially given that leveraging use of such readily available technology may be of critical importance.
>
> Therefore, we are revising § 410.78(a)(3) to add an exception to this language on an interim basis for the duration of the PHE for the COVID-19 pandemic. We are adding the following language at § 410.78(a)(3)(i): "Exception. For the duration of the public health emergency as defined in § 400.200 of this chapter, **Interactive telecommunications system means 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.**"

Since then, they clarified this more in a **FAQ** on April 9, 2020 with the following question and answer:

> **Question:** Can practitioners provide Medicare telehealth services using their phones?
>
> **Answer:** Yes, for ***use of certain phones***. Section 1135(b)(8) of the Social Security Act allows the Secretary to authorize use of ***telephones that have audio and video capabilities*** for the furnishing of Medicare telehealth services during the COVID-19 PHE...The Office of Civil Rights has also issued guidance allowing covered health care providers to use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video,

Telehealth Language Causes Confusion for DMEPOS Suppliers continued...

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or Skype, to provide telehealth without risk of penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency.

> *For a physician to bill for a telehealth visit that meets the face-to-face requirement, they must include video **and** audio.*

Based on this information, it was clear that in order for a physician to bill for a telehealth visit that meets the face-to-face requirement, they must include video and audio. They could still provide care using audio only for virtual check-ins and certain evaluation and management (E/M) services outlined in the first IFC, but there was no guidance whether a virtual check-in or "audio only" and E/M services could take the place of a face-to-face, and contractors were educating in some instances that they would not.

On April 30, CMS released their second Interim Final Rule with Comment Period **(CMS 5531 IFC)** which expanded telehealth even further with the following acknowledgment related to the audio only E/M services:

> In the time since we established these payment amounts, stakeholders have informed us that use of audio-only services is more prevalent than we had previously considered, especially because many beneficiaries are not utilizing video-enabled communication technology from their homes. In other words, there are many cases where practitioners would under ordinary circumstances utilize telehealth or in-person visits to evaluate and manage patients' medical concerns, but are instead using audio-only interactions to manage more complex care. While we previously acknowledged the likelihood that, under the circumstances of the PHE, more time would be spent interacting with the patient via audio-only technology, we are now recognizing that the intensity of furnishing an audio-only visit to a beneficiary during the unique circumstances of the COVID-19 pandemic is not accurately captured by the valuation of these services we established in the March 31st COVID-19 IFC.

Recognizing that physicians were having audio-only calls to discuss complex issues that would normally be performed via in-person or telehealth arrangements, CMS said, "Additionally, given our understanding that these audio-only services are being furnished as substitutes for office/outpatient E/M services, we recognize that they should be considered as telehealth services, and are adding them to the list of Medicare telehealth services for the duration of the PHE," and they established new codes with higher reimbursement to reflect the higher complexity for physicians providing these services.

Face-to-Face Waivers

Despite all this discussion about telehealth, however, it is very important to also keep in mind that during the PHE, the IFC also eliminated the face-to-face requirement for any item of DMEPOS that requires one, with the exception of power mobility devices. It is not just limited to respiratory equipment.

> *Get as much documentation as possible up front—CMS has indicated they may audit claims for DME delivered during the PHE.*

We are encouraging our clients to still try to get as much documentation up front, even under these complex circumstances, because CMS has indicated that they may audit claims for DME delivered during the PHE. While they are waiving the requirements currently, there will likely be some process where suppliers must go back and have to requalify patients in order to continue billing. For this reason, if you are able to get the documentation, you should try. If you can't get it, you can proceed, but know you may have to go back at a later date and show that the patient meets the criteria for coverage.

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> *DME MACs have indicated that CMS has not given them guidelines regarding virtual visits, so we may have more clarification on that in the near future.*

Regarding virtual check-ins, the only question that really remains, in my opinion, is for after the PHE declaration is lifted. If CMS requires patients to get requalified in order to continue billing, would a virtual check-in that occurred during the PHE be allowed in lieu of the face-to-face? We know that telehealth visits would be, but we do not know about virtual check-ins. The DME MACs have indicated that CMS has not given them guidelines regarding virtual visits, so we may have more clarification on that in the near future.

> *Get as much documentation as you can to support your claims now to avoid having to go back and requalify later.*

So, quick summary, despite the fact that face-to-face requirements have been waived during the PHE, if you are still trying to get as much documentation as you can to support your claims now to avoid having to go back and requalify later, then a telehealth visit with audio and video capability will be sufficient to satisfy the face-to-face requirement. A phone can be used if it has video capability.

If you have questions, feel free to contact The van Halem Group at 404-343-1815 or **Info@vanHalemGroup.com**.

ABOUT THE AUTHOR

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Wayne van Halem founded The van Halem Group in 2006. The Atlanta-based firm merged with VGM Group in 2014, and Wayne currently serves as its president as they assist providers with navigating complex issues related to audits, appeals, enrollment, and compliance. A former auditor and national Appeals Director with Medicare, Wayne is also a published author and well-known lecturer. He is an Accredited Healthcare Fraud Investigator through the National Health Care Anti-fraud Association (NHCAA), a Certified Fraud Examiner through the Association of Certified Fraud Examiners (ACFE), and an active member of the Health Care Compliance Association (HCCA). He also sits on the American Association for Homecare's Regulatory Council, Medtrade's Educational Advisory Board, Medicare DME MAC Jurisdiction C and D Advisory Councils, and on the Advisory Board for HME Business Magazine. Since 2006, his company has saved suppliers over $70 million in overpayments and denial recoveries. Connect with Wayne on **LinkedIn** or at **wayne@vanhalemgroup.com**.

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