New telemedicine rules give flexibility to hospitals, providers

Technology

By Michelle D. Bayer

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The Centers for Medicare and Medicaid Services (CMS) recently issued a final rule revising the condition of participation requirements for hospitals or critical access hospitals (CAHs) utilizing telemedicine services.

The new rule is designed to make the use of telemedicine a more practical option for hospitals and CAHs by easing credentialing and privileging requirements for providers rendering such services.

CMS defines "telemedicine" as "the provision of clinical services to patients by practitioners from a distance via electronic communications." To be reimbursable, CMS requires that telemedicine services be provided to an "inpatient" in "real time" while the patient is physically present at the originating site.

"Off-site" or "non-simultaneous" services such as after-the-fact interpretation of diagnostic tests do not qualify as telemedicine services.

This reimbursement rule applies only to professional consultation services that include providing medical diagnosis and treatment recommendations to patients after a formal request for such services by the practitioner responsible for the patient's care. This excludes informal or "curbside" consultations with patients or other health care providers.

This rule applies to all Medicare-participating hospitals, regardless of facility size, as well as to all Medicare-participating CAHs.

Former telemedicine requirements

Under the original rule, in order to be eligible for Medicare reimbursement of telemedicine services, hospitals or CAHs were required under the Conditions of Participation (CoP) to undertake their own credentialing and privileging process for each "distant site" physician and practitioner providing telemedicine services as if such practitioners were providing services onsite.

For hospitals, this meant a comprehensive and time-consuming privileging decision-making process based on the recommendations of the medical staff after the medical staff had examined the credentials of applicant-practitioners.

For CAHs, the CoP required every CAH that is a member of a rural health network to have an agreement meeting specific criteria in place for the review of physicians and practitioners seeking privileges at the CAH.

CMS changed these CoP privileging and credentialing requirements for telemedicine services in response to concerns that it was too burdensome and many hospitals and CAHs simply lacked the resources (time, cost, and expertise) to properly privilege all of the specialty physicians and practitioners who provided telemedicine services.

Now, hospitals and CAHs have the option of credentialing providers through a more streamlined process, which is discussed below.

New hospital requirements

Under the new rule, the governing body of hospitals whose patients receive telemedicine services may choose to rely upon the credentialing and privileging decisions made by the "distant site" hospital when making recommendations on privileges for the individual "distant-site" practitioners providing telemedicine services.

To do so, the following conditions must be met:

(1) The telemedicine services must be furnished to the hospital's patients through a written agreement with the "distant site" entity, and the written agreement must contain the following provisions:

The agreement specifies that the distant site entity is a contractor of services to the hospital and furnishes services that permit the hospital to comply with all applicable CoPs and standards for contracted services;

The distant site telemedicine entity must ensure that its medical staff credentialing and privileging process and standards meet or exceed the certain requirements in the Code of Federal Regulations;

The individual distant site practitioner is privileged at the distant site hospital, and the hospital must be provided with a current list of the practitioner's privileges at the distant site entity;

The hospital must be provided access, upon request, to any distant site practitioner's complete credentialing and privileging file; and

The individual distant-site practitioner holds a license issued or recognized by the state in which the hospital whose patients are receiving telemedicine services are located.

(2) The hospital's governing body must ensure that certain other provisions are met, including having evidence of an internal review of the distant site's practitioner's performance and sending the distant-site telemedicine entity such performance information for use in the periodic appraisal of the practitioner's services.

At a minimum, this must include all adverse events that result from the telemedicine services provided and all complaints received about the distant site practitioner. (Note that the regulations do not specify a time frame for this "periodic appraisal" to occur.)

(3) The "distant site" hospital providing the telemedicine services must be a Medicare-participating hospital.

However, the regulations prohibit the "distant site" telemedicine hospital from compelling the hospital to use the more streamlined process for credentialing and privileging process for the telemedicine practitioner. Therefore, hospitals who wish to submit distant-site practitioners to full credentialing scrutiny may still do so.

New privileging requirements

The new privileging CoP requirements are somewhat different for CAHs, but similarly grant CAHs the choice to rely upon the credentialing and privileging decisions made by the distant site entity.

They can do so if the hospital's governing body (or the CAH's governing body or responsible individual) ensures, through its written agreement with the distant site telemedicine entity, that the distant site's medical staff credentialing and privileging standards meet or exceed standards in the Code of Federal regulations.

Additionally, CAH's are no longer required to only contract with Medicare-participating providers for telemedicine services, if a written agreement exists between the CAH and the distant site telemedicine entity to provide telemedicine services and the required conditions are met.

Protecting assets

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Tenants by the entireties (TE)

Fortunately, Michigan is one of the few states that recognize tenants by the entireties. TE is a type of ownership title applicable only to married couples that provides extra protection from creditors. Pursuant to MCL 600.2807(1), "[a] judgment lien does not attach to an interest in real property owned as tenants by the entirety unless the underlying judgment is entered against both husband and wife."

Furthermore, in an old Michigan Supreme Court ruling, *Sanford v. Bertau*, 204 Mich. 244, 246, (1918), the Court held that "Land held by husband and wife as tenants by the entirety, is not subject to levy under execution on judgment rendered against husband or wife alone." Therefore, if you're married and looking for the optimal creditor protection for real property, titling it as a TE may be your best option.

Although the foregoing is not a comprehensive list of asset protection strategies, it is a good starting point. In a profession with strenuous pressure and high-demands, it is always an added benefit to ensure your assets and hard-earned wealth are protected.