

Telehealth, Hospital At Home Program Lapses Sow Chaos For Providers

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Providers are responding differently to Wednesday's lapses in Medicare telehealth flexibilities and the CMS Acute Hospital Care at Home (AHCAH) program, with some canceling services while others are continuing to offer them with the hopes of imminent retroactive pay and regulatory clarity.

But with no end in sight for the government shutdown, it's unclear when Congress will give providers relief by restoring the two historically bipartisan initiatives. The lapse affects both the AHCAH program as well as key aspects of telehealth services, including geographic and originating site requirements, provider eligibility, and coverage of audio-only telehealth services.

For now, providers still offering telehealth services are worried that a prolonged shutdown -- particularly if it lasts longer than Medicare Administrative Contractors' (MACs) 10-business-day hold on telehealth claims -- will challenge their ability to sustain virtual care.

The American Telemedicine Association's lobbying arm wrote to President Donald Trump and congressional leaders on Wednesday that telehealth providers were reacting to the Oct. 1 shutdown in real time, and said it was urgent to restore flexibilities.

"Some providers and systems have decided to continue to provide telehealth services in hopes that Congress will enact a retroactive reimbursement provision - recognizing the critical care outweighs the risk," ATA Action wrote. "Others are prioritizing patient care immediately for the next few days (continuing telehealth visits), while preparing to take additional operational or financial actions if the shutdown continues."

The lobbying group continued that some hospitals are absorbing costs while other providers and hospital systems are already blocking the ability for beneficiaries to schedule virtual visits. The prolonged uncertainty may lead to significant financial strain and, in some cases, force closures, ATA Action wrote.

Cynthia Morton, CEO of long-term, post-acute care (LTPAC) provider advocacy group ADVION, told *Inside Health Policy* some of her members have scaled back telehealth services while others are continuing to deliver them.

"The longer the shutdown wanes on, it will get beyond that 10-[business]-day claim hold that CMS has got and we go into two, three, four weeks, and things are really dicey for" LTPAC providers still providing telehealth services, Morton said.

LTPAC providers have largely used telehealth to allow for registered physical, occupational, speech and other therapists to evaluate patients since the end of the pandemic, Morton said.

Helen Hughes, director for the Johns Hopkins Office of Telemedicine, told *IHP* that her office is not planning to cancel or reschedule telehealth appointments yet, since it is early in the shutdown.

"The longer the shutdown goes, the harder it will be to know how to proceed," she said. "I think the CMS guidance [yesterday] was helpful in our temporary short-term planning. But if it appears the shutdown will go on for a number of weeks or months, it will be harder to know exactly how to proceed."

The CMS guidance included a 10-business-day hold on telehealth claims.

Should the shutdown last longer than the 10-business-day hold on telehealth claims, providers may see their claims denied and have to resubmit them for possible reimbursement, Jacob Harper, a partner at Morgan Lewis, explained to *IHP*.

But reimbursement for telehealth claims would only come if lawmakers in Congress retroactively apply Medicare telehealth flexibilities, Harper and other digital health lawyers say.

Jeff Davis, the author of McDermott+'s regulatory affairs blog, said CMS' guidance issued yesterday (Sept. 29) highlighted that holding claims during the shutdown should not face immediate disruption from the usual claim process unless the shutdown continues for more than two weeks.

CMS also recommended in the memo that telehealth providers offer an advanced beneficiary notice ahead of a telehealth appointment during the shutdown, which disturbs the traditional workflow of issuing a beneficiary notice after an appointment. If Congress doesn't act to extend telehealth flexibilities and include retroactive reimbursement, beneficiaries would be responsible for the entire cost of the appointment that occurs during the shutdown.

Davis said the agency is making this recommendation because this is the first time in five years these services are not covered by Medicare.

"They're letting beneficiaries know that if they're going to provide a telehealth service and one of the restricted ones is no longer covered under Medicare, then it may not be a covered service," Davis said. "They're banking on the fact that Congress is eventually going to retroactively restore these services."

A physician told *IHP* that it would be helpful if HHS' Office of Inspector General or the Department of Justice issued a non-enforcement letter about Medicare inducement penalties, which penalize providers who provide free medical services to beneficiaries.

Davis said it is unlikely that the Trump administration would issue another letter.

"It's not a covered service under Medicare, so CMS and HHS' hands are pretty much tied," he said. "What can they do? It's totally in Congress's court."

The expiration of telehealth flexibilities emphasizes the need for a permanent solution, said Hughes, the Johns Hopkins official.

If a permanent solution is not possible, decoupling expiration of telehealth flexibilities from funding deadlines would be helpful, she added, citing prior extensions that funded services for two weeks after the government funding deadline.

"The chaos of the expiration of the telehealth flexibilities and the government shutdown occurring on the same day is enormously stressful and hard for everyone," Hughes said.

Health systems participating in the AHCAH program, meanwhile, are grappling with having to discharge or transfer patients back to in-hospital care now that the pandemic-era initiative has lapsed.

"Like many other health care organizations across the country, all of our patients who were receiving hospital-at-home care have been either appropriately discharged to outpatient status or transferred to brick-and-mortar inpatient care," said Advocate Health, a health system whose North Carolina hospitals have long participated in the AHCAH program, in a statement to *IHP*.

"We have worked with all of our health system partners to escalate patients who were in impacted-based care programs back to the brick-and-mortar hospital," wrote Dave Kerwar, CEO of Inbound Health, to *IHP* on Wednesday (Oct. 1). Inbound Health has helped health systems, including ones that participated in the AHCAH program, offer hospital-at-home services.

But on Thursday (Oct. 2), an automated email from Inbound Health said the company is now "currently pausing operations due to the government shutdown and expiry of key programs allowing for Hospital Care at Home to be supported."

On Wednesday (Oct. 1) afternoon, CMS issued guidance that a source in communication with agency officials says is effectively a 60-day non-enforcement policy for hospitals continuing to offer hospital-at-home services.

The guidance itself does not clearly state that it is a 60-day non-enforcement policy. Instead, it says: "During a potential lapse in government funding and authorization of

this waiver, if a hospital is found to be out of compliance with the Physical Environment condition of participation (including Acute Hospital @ Home waivers that will no longer be waived), CMS -- after receiving the survey -- would make the hospital's compliance with this requirement part of a "plan of correction." (See 42 C.F.R. 488.28(a)) Typically, hospitals have 60 days to respond to CMS with an acceptable plan of correction."

The source explained that with some CMS staff now furloughed, agency officials plan to work with state survey agencies to make clear CMS does not plan to target hospitals offering hospital-at-home services with surveys.

The source added it's hard to say what a 60-day non-enforcement policy will practically mean for hospitals since many of them have already discharged or returned patients to hospitals.

Amid the regulatory uncertainty for the AHCAH program, Lee Fleisher, CEO of Rubrum Advising, and Krista Drobac, executive director of Moving Health Home, are calling for the program to be extended for five years.

In the run-up to the AHCAH program lapse, "hospitals had already started transitioning patients and not admitting new patients, which is exactly why we need a five-year extension," Drobac said. "We can't do this every time a short-term extension expires."

A five-year extension would allow policymakers to evaluate the AHCAH program and determine whether updating some program rules, such as a requirement that hospitals can respond to patients within 30 minutes of an emergency, is appropriate, Fleisher, who helped establish the program during a stint at CMS, added.

Last month, House Ways & Means lawmakers advanced bipartisan legislation extending the AHCAH program for five years.