Sweeping CMS Waivers Facilitate Access to Kidney Care

By Nicole Fauteux

Extraordinary times call for extraordinary measures, and at least as far as kidney care is concerned, the federal government is rising to the challenge. In the past month, the Centers for Medicare & Medicaid Services (CMS) has issued an unprecedented set of waivers to facilitate care delivery during the COVID-19 pandemic. The sweeping interim final rule the agency published March 30, 2020, provides a remarkable degree of flexibility in how providers may deliver care to patients insured through Medicare and Medicaid during the current public health emergency (1).

Equally extraordinary, nearly every one of the requests ASN put forward last month in a letter to Health and Human Services (HHS) Secretary Alex Azar is addressed in the new rule (2), paving the way for kidney specialists and the entire kidney care team to continue to provide a high level of care to patients during the pandemic. The government is applying the rule retroactively, as of March 1, 2020, further ensuring continuous care for dialysis patients, who must receive ongoing services despite the need to protect themselves from exposure to SARS-CoV-2.

What's in the rule

The rule aims to mitigate the impacts of the pandemic by giving providers broad flexibility to furnish services in ways that minimize "exposure risks to health care providers, patients, and the community" during the pandemic. To accomplish this goal, the rule:

- authorizes greater use of telehealth and other means of remote communication;
- expands the locations where medical services may be provided;
- changes program requirements that might inadvertently create incentives "to place cost considerations above patient safety;"
- reduces paperwork and other regulatory burdens;
- delays facility inspections;
- removes barriers to health professionals practicing outside the states where they are licensed; and
- extends permission to non-physician licensed practitioners to order home health services.

Expanded telehealth

The expanded use of telehealth could create the biggest change to how providers practice. Under the new rule, nephrologists may conduct all evaluations of in-center and home dialysis patients via telehealth, provided the clinician deems those patients to be in stable condition. Nephrologists may also use telehealth to consult with new patients. To facilitate these virtual encounters while people are self-isolating, CMS specified in the rule that patients and physicians may speak to one another from any location and use non-HIPPA–complaint platforms such as Facetime and Skype.

In its letter to HHS, ASN requested a further relaxation of current telehealth rules in light of the fact that many kidney care patients lack access to two-way video technology. CMS complied, authorizing reimbursement for telephone calls using CPT codes 99441-99443. This is a step in the right direction, but ASN and other physician groups would like to see the agency institute payment parity as well so that telephonic evaluation and management visits are reimbursed at the same level as visits provided in-office or via telehealth. The current policy disproportionately disadvantages physicians who care for the oldest and most vulnerable patients, people who must shelter in place and often lack the technology or know-how to engage in videoconferencing. ASN has also asked CMS to immediately instruct Medicare Administrative Contractors to ensure they follow the latest CMS guidance enabling payment for telephonic visits (3).

Expanded care locations

The rule also authorizes the creation of Special Purpose Renal Dialysis Facilities (SPRDFs) to address access issues and mitigate disease transmission during the pandemic. This authorization allows dialysis centers to establish temporary facilities or provide their services in skilled nursing facilities where patients live in order to reduce the risk of the virus spreading from infected to non-infected individuals. Normally facilities would first need to establish an access need and undergo a federal site survey before establishing an SPRDF. The rule waives these requirements but retains other standards to make sure dialysis provided in alternative locations is both safe and effective. Dialysis facilities must furnish all needed staff, equipment, and supplies in the SPRDF; operate and maintain equipment in accordance with manufacturer recommendations; and follow infection control requirements. Under the rule, physicians who are appropriately credentialed to provide care at a certified dialysis facility may also provide care at designated isolation locations without separate credentials.

Other notable provisions

The CMS rule takes additional steps to streamline care delivery during the pandemic. To provide physicians with greater flexibility, the agency issued a blanket waiver of sanctions under the Stark Law, which prohibits physicians from referring Medicare patients to facilities in which the provider has a financial stake (4). The "on-time" requirement for initial and comprehensive assessments of patients admitted to a dialysis facility has also been waived. Medicare-enrolled providers who hold a valid license in the state where they are enrolled now have the freedom to work across state lines to contribute to relief efforts, assuming they are not affirmatively barred from working in those states.

One issue not covered by the rule: vascular access surgery. In recent weeks, some health systems and insurers have postponed peritoneal dialysis catheter placement in the misplaced belief that it is a non-essential or elective surgery. In reality, vascular access surgery is more essential than ever, as the presence of a peritoneal dialysis catheter allows kidney patients to dialyze at home, reducing their risk of exposure to SARS-CoV-2. ASN and other members of the kidney care community approached CMS regarding this concern, and on March 26, 2020, the agency clarified its guidance on deferring nonessential surgical procedures (5). The agency's statement identified arteriovenous fistulas, arteriovenous grafts, peritoneal dialysis catheters, and intravenous catheters as "essential in that establishing vascular access is crucial for End Stage Renal Disease (ESRD) patients to receive their life-sustaining dialysis treatments."

The words "life-sustaining" reflect a critical understanding. While COVID-19 may pose a more immediate threat to life, the disruption of health services caused by the pandemic also poses a serious threat to kidney patients. CMS has taken extraordinary steps to mitigate that disruption, and ASN will urge the agency to continue along this path. As nephrologists are discovering, COVID-19 causes acute kidney injury in a significant number of hospitalized patients who need intensive care (6). That suggests that even more individuals may require renal replacement therapy and other forms of kidney care in the near future. ■

Please note: The information in this article is accurate as of April 20, 2020, but federal regulations and policies are changing on a daily basis. Consult Kidney News *Online and the ASN website for updates.*

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