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## MEMORANDUM

April 3, 2020

TO: TRIBAL HEALTH CLIENTS

FROM: HOBBS, STRAUS, DEAN & WALKER, LLP

RE: *Centers for Medicare & Medicaid Services's Informational Bulletin on Medicaid Telehealth Flexibilities*

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On April 2, 2020, Centers for Medicare and Medicaid Services (CMS) issued a Center for Medicaid and CHIP Services Informational Bulletin (CIB) to help states find ways to use and expand telehealth—generally, the provision of a full range of health care services delivered remotely—to facilitate increased access to Medicaid services. CMS reports that all 50 states and the District of Columbia have some form of Medicaid reimbursement for telehealth, the majority of which are for services delivered by live video. The CIB also guides states regarding federal reimbursement for telehealth services for substance use disorder (SUD) treatment as required by the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act. The CIB is also generally informative about the use of telehealth beyond SUD treatment, such as during the COVID-19 public health emergency. A copy of the CIB is attached.

### *Rural Health Care and Medicaid Telehealth Flexibilities*

While the Medicare program specifically addresses telehealth delivery methods and criteria for implementing those methods, the Medicaid program does not. States thus have a lot of latitude to design the parameters of telehealth delivery methods for furnishing services considered “medical assistance” under Section 1905(a) of the Social Security Act. For example, states may set different rates for services provided by telehealth, reimburse providers at the distant site and reimburse a facility fee to the originating site, and cover additional telehealth costs, if they choose. States do not need a State Plan Amendment (SPA) in order to incorporate telehealth delivery methods “if there are no changes to the 1905(a) benefit descriptions, limitations, or payment methodologies,” but a SPA is required to add “specific distinctions for coverage or different reimbursement methodologies.” CIB at 4.

### *Medicaid SUD Treatment Via Telehealth*

The SUPPORT Act requires CMS to provide guidance to states on their options for Medicaid reimbursement for telehealth SUD services. These can include assessments, medication-assisted treatment (MAT), counseling, medication management, and patient

compliance with their prescriptions, as such services are generally covered under Section 1905(a) Medicaid benefits.

For MAT, controlled substances may be prescribed via communication by audio and video equipment that allows two-way, real-time interactive communication by practitioners who have had a least one in-person medical evaluation of the patient, though there are some exceptions. Pertaining to MAT prescribing through tribes and tribal organizations, CMS also explains:

The practice of telemedicine under the [federal Controlled Substances Act] also includes telemedicine prescribing by a practitioner who is an employee or contractor of the Indian Health Service, or is working for an Indian tribe or tribal organization under its contract or compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act, acting within the scope of the employment, contract, or compact, and who is designated as an Internet Eligible Controlled Substances Provider by the Department of Health and Human Services.

CIB at 6. CMS further recognizes that because of the “high rates of substance use disorders and behavioral health conditions in AI/AN populations, opioid treatment to AI/ANs could include MAT, which may be delivered via telehealth delivery methods.” CIB at 10.

States also have options for covering and reimbursing certain types of provider education, as well as disease management services like care coordination and behavior modification, as well as collecting, recording, and reporting on health outcomes, though disease management programs that are limited to administrative activities provided by a state and its designated contractors are not covered.

The CIB also addresses School Based Health Centers (SBHCs), defined to include clinics located in or near a school facility of a school district or board, or of an Indian tribe or tribal organization, if other conditions are met. While SBHCs are not a recognized Medicaid facility benefit, they may qualify as a Medicaid facility if they “meet the requirements of the clinic benefit or the Federally Qualified Health Center (FQHC) benefit.” Medicaid can also cover services under Section 1905(a) of the Social Security Act furnished by a SBHC, and states have authority to elect to cover SUD treatment services provided by SBHCs, like assessments, counseling, MAT, and medication management, under Medicaid benefits such as physician services, other licensed practitioner services, or rehabilitative services. Some states have enrolled SBHCs as Medicaid providers. CMS will provide technical assistance to states regarding reimbursement of Medicaid-covered services and treatment via telehealth for SUD treatment delivered by a SBHC.

Finally, the CIB mentions that CMS will be submitting a report to Congress identifying best practices and possible solutions for limiting barriers to using telehealth for pediatric SUD treatment, as required by the SUPPORT Act. Once complete, CMS will post the report online at [Medicaid.gov](https://www.medicaid.gov).

***Conclusion***

If you have any questions about the CIB or this memorandum, please contact Elliott Milhollin ([emilhollin@hobbsstrauss.com](mailto:emilhollin@hobbsstrauss.com) or 202-822-8282), Geoff Strommer ([gstrommer@hobbsstrauss.com](mailto:gstrommer@hobbsstrauss.com) or 503-242-1745), or Starla Roels ([sroels@hobbsstrauss.com](mailto:sroels@hobbsstrauss.com) or 503-242-1745).