

5th Annual “Let’s Talk Compliance” Virtual Conference



Session #4

“Compliance Matters in Behavioral Health”

Presented by:

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Presentation Overview

During this session we will provide the following information:

- Key and emerging compliance issues in behavioral health
- The importance of compliance in any behavioral health program
- Compliance in behavioral health – the same but different

Behavioral Health Defined

- Behavioral Health Services covers a broad spectrum of care delivery models, locations, provider types, and patient conditions:
 - Psychotherapy (inpatient, outpatient)
 - Substance Abuse Treatment/Medication Assisted Treatment (MAT)
 - Applied Behavior Analysis (ABA) therapy providers
 - Medication management
 - Partial hospitalization/intensive outpatient programs

Industry Activity

- Breaking news from CMS

2023: The CY 2023 Medicare Physician Fee Schedule has been updated by the annual PFS Final Rule for various new policies and for new and existing CPT/HCPCS codes for this latest calendar year. This includes implementing all recent legislation as directed by Congress and enacted by the Consolidated Appropriations Act (CAA) of 2023, signed into law of December 29, 2022, of which becomes effective starting January 1, 2023, with PFS conversion factor of \$33.8872. The Geographic Practice Cost Index (GPCI) work floor of 1.0 continues to be extended through to the end of CY 2023.

Source: <https://www.cms.gov/medicare/physician-fee-schedule/search?Y=0&T=4&HT=0&CT=1&H1=98978&C=36&M=5>



Industry Activity (*Continued*)

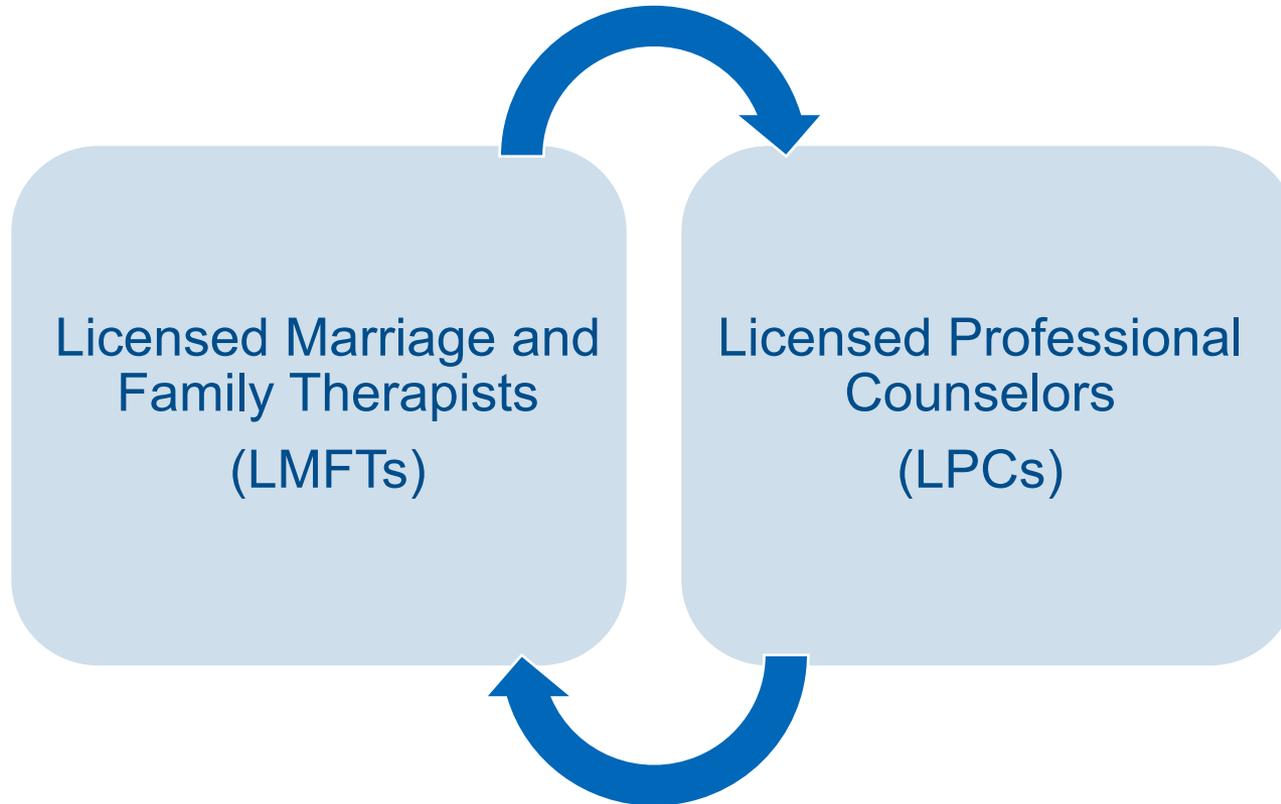
- Increased flexibility and funding during COVID Public Health Emergency (PHE)
- Merger and Acquisition (M&A) activity
- New technology companies focused in this space
- Expanded focus on children's programs



General Behavioral Health Integration (BHI) Code

- **New for CY 2023**
- Describes services personally performed by Clinical Psychologist (CP) or clinical social worker (CSW)
- Covers monthly care integration in situations where mental health services provided by a CP or CSW serves as the focal point of care
- **G2214** – *Initial or subsequent psychiatric collaborative care management, first 30 minutes in a month of behavioral health care manager activities, in consultation with a psychiatric consultant, and directed by the treating physician or other qualified health care professional*
 - Carrier priced code

Eligible Providers



Incident-To/Supervision Changes

- Added an exception to the direct supervision requirement under “incident-to” regulation at 42 CFR 410.26
 - Allows behavioral health services to be provided under the general supervision of a physician or non-physician practitioner (NPP), rather than under direct supervision, when these services or supplies are furnished by auxiliary personnel, such as LPCs and LMFTs, incident to the services of a physician (or NPP).
 - Clarified that any service furnished primarily for the diagnosis and treatment of a mental health or substance use disorder (SUD) can be furnished by auxiliary personnel under the general supervision of a physician or NPP (authorized to furnish and bill for services provided incident to their own professional services).
- **Temporary:** Telehealth supervision for “incident to” services (PHE)



Coverage for LMFTs and LMHCs – Starting Jan. 1, 2024

- Permanent changes to coverage for Medicare Part B services
- Under the CAA 2023 (Omnibus Spending Bill) – new benefit category for LMFTs and LPCs starting Jan. 1, 2024
- Defines “Marriage and Family Therapy” and “Mental Health Counseling” and sets forth provider requirements

CY 2024

- CMS intends to address payment for new codes for caregiver behavioral management training.



Image Source: Shutterstock

PFS 2023 Telehealth Requirements for Medicare

- Permanent changes to the program
 - Patients with a diagnosed SUD or co-occurring mental health disorder can receive telehealth services (including **audio only**) for mental/behavioral health care in their homes
 - Patients can receive telehealth services for other mental/behavioral health care in their homes if certain conditions are met
 - CY 2023 MPFS includes coverage of video-based mental health services for FQHCs and RHCs (permanently)
 - POS indicator that would have been associated with an in-person visit
 - Continued use of modifier -95

Telehealth Requirements for Medicare (*Continued*)

- Transitions post PHE
 - In person visit requirements waived during PHE
 - After PHE (and 151 day waiting period), the following will change:
 - Location flexibilities (patient and originating site) will revert to pre-COVID guidelines
 - Require an in-person visit within 6 months of initial assessment and every 12 months thereafter.
 - Reimbursement for visits by physical therapists, occupational therapists, speech language pathologists, and audiologists will no longer be allowed.
 - Audio-only visits for physical health encounters will no longer be covered
 - FQHCs and RHCs will no longer be reimbursed as distant site telehealth providers (non-mental health).

Source: <https://telehealth.hhs.gov/providers/policy-changes-during-the-covid-19-public-health-emergency/policy-changes-after-the-covid-19-public-health-emergency/>



CAA 2023 Changes

- Medicare's COVID-19 PHE telehealth flexibilities (e.g., geographic restrictions, originating site) relating to telehealth coverage (42 U.S.C. 1395m(m))
 - Instead of ending 151-days post PHE, **extended** for an **additional 2 years (until Dec 31, 2024)**.
- FQHCs, RHCs, delay of mental health in-person requirement, audio-only, removal of face-to-face to certify hospice care
 - Instead of ending 151-days post PHE, the bill replaces the 151-day post PHE coverage deadline to **December 31, 2024**.

Changes to Opioid Treatment Programs (OTPs)

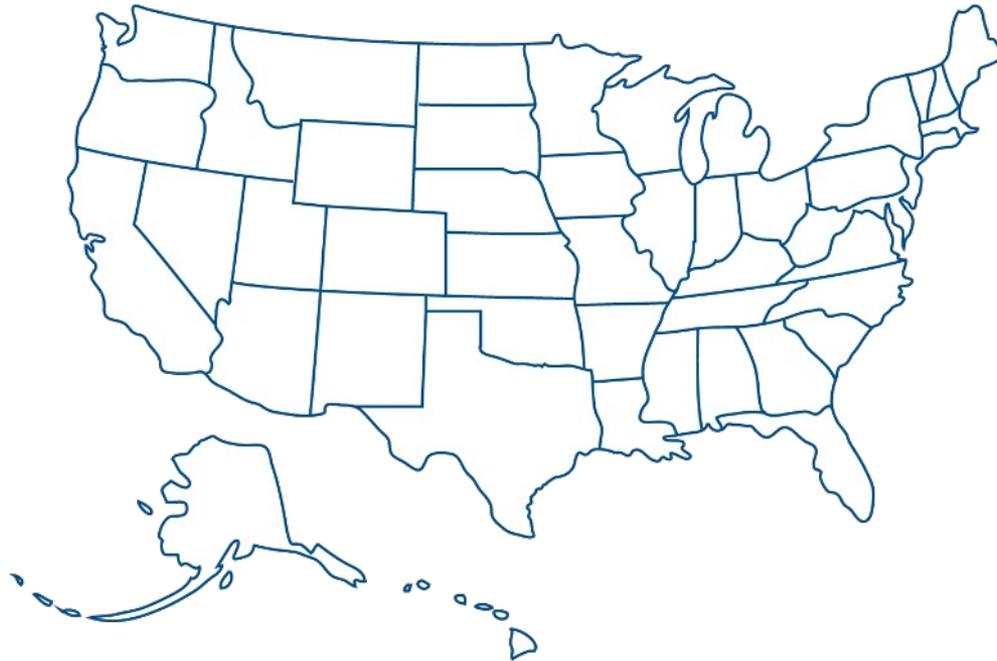
- Expanded Medicare coverage
 - OTPs can use the OTP intake add-on code to bill for the initiation of buprenorphine treatment through two-way interactive audio-video communication technology
 - Audio-only telephone calls can be used to initiate buprenorphine treatment at OTPs when two-way audio-video communications technology is not available to the beneficiary, and all other requirements are met.
 - After the initiation of buprenorphine treatment, OTPs can continue to use audio-only telephone calls for the periodic patient assessments when two-way audio-video is not available. This flexibility will be in place until the end of CY 2023.
- **SAMHSA Proposed Rule** – audio-only or audio-visual telehealth to prescribe buprenorphine

Remote Therapeutic Monitoring

- Cognitive Behavioral Therapy
 - CPT code 98978
 - Remote therapeutic monitoring (e.g., therapy adherence, therapy response); device(s) supply with scheduled (e.g., daily) recording(s) and/or programmed alert(s) transmission to monitor cognitive behavioral therapy, each 30 days
 - New for 2023
 - Carrier priced
 - Do not report for less than 16 days of monitoring for each 30-day period

Medicaid Considerations

- Coding, billing, and provider eligibility requirements may vary by state
- Meet state-specific requirements



Common Pitfalls

- Certification/recertification supporting that treatment is improving or stabilizing the patient
- Time documentation (same or lack thereof)
- Overuse of templates/copy-paste
- Supervision documentation
- Use of nonspecific diagnosis documentation across patients
- Lack of internal auditing and monitoring

Common Pitfalls (*Continued*)

- Psychotherapy services and E/M services
 - The two services should be separately identifiable.
 - Providers may try to bill the E/M level based upon time (and include the psychotherapy); they should bill E/M on the MDM when providing both services.
 - Lack of documentation for treatment plans, patient progress/reassessments, goals of the treatment plan, etc.
 - Diagnosis is not always clearly documented – insufficient specificity which is required to select an accurate ICD-10 code – sometimes leading to an unspecified code or use of S/S codes.

Importance of Compliance in Behavioral Health

- High-risk patient population
- Often largely governmental payer mix
- Resource constraints

The Same, but also Different

- Frequency of visits and monitoring often differs from other ambulatory services
- CMS targeted for expanded access and improvement
 - Lots of regulatory change
 - Lots of regulatory focus

References

- <https://www.cms.gov/newsroom/fact-sheets/calendar-year-cy-2023-medicare-physician-fee-schedule-final-rule>
- <https://telehealth.hhs.gov/providers/policy-changes-during-the-covid-19-public-health-emergency/policy-changes-after-the-covid-19-public-health-emergency/>
- <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf>



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Sarah is a proven healthcare executive with operational process redesign and leadership expertise. Working as a subject-matter expert, she provides advisory services in the areas of revenue integrity, revenue management, and regulatory compliance.

Within the revenue integrity space, her work often involves the integration of coding and reimbursement into physician/hospital financial and strategic modeling, business valuations, physician compensation, and productivity assessments. She routinely assists clients with regulatory compliance matters related to the 340B program and proxy work RVU analyses.

In the revenue management space, she leads initiatives related to black box reimbursement and commercial payer contracting.





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Sunny J. Levine is a health care lawyer and member of Foley & Lardner's Telemedicine & Digital Health Industry Team. Sunny's practice includes regulatory compliance issues associated with telemedicine, digital health and health innovation. She helps emerging companies and entrepreneurs navigate state and federal laws governing virtual care offerings across multi-state footprints. Her work involves the intersection of medical practice rules, business structures and the corporate practice of medicine, professional licensure, telemedicine prescribing and informed consent. Sunny is a member of the American Telemedicine Association's Telemental Health Special Interest Group.

Within the industry, she has a particular focus and reputation on advising technology-enabled behavioral health and substance use disorder treatment companies, serving as Co-Chair of the firm's Behavioral Health group. Sunny is actively involved in ways to expand treatment for opioid use disorder and other substance use disorders. She seeks to gain a holistic understanding of her clients' areas of practice to best assist with their goals.



Thank you

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