



Telehealth Guidance for California Private Plans During the COVID-19 Emergency

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In California, most private health coverage plans are regulated by one of two regulators.¹ California's Department of Managed Health Care (DMHC) licenses most fully-insured health maintenance organization (HMO) plans in California, including most Covered California plans, and many private individual, small, and large group plans. The DMHC also regulates Blue Cross and Blue Shield fully-insured preferred provider organization (PPO) products in the state. The California Department of Insurance (CDI) regulates most fully-insured PPO products in California, other than the Blue Shield and Blue Cross PPOs regulated by DMHC, which includes some Covered California plans as well as other private individual market, small-group, and large-group plans. Both regulators have instructed their health plans to allow enrollees to access services by telehealth during the COVID-19 emergency in California. Their guidance is described in more detail below.

Guidance on Telehealth for DMHC Plans

Plans licensed by DMHC are subject to a set of consumer protection laws called the California Knox-Keene Act (KKA).² The KKA prohibits plans from refusing to reimburse for covered services provided by telehealth when appropriate.³ In 2019, the DMHC issued guidance to plans clarifying that plans may use various methods of telehealth to deliver covered services when appropriate, and requiring plans to describe their use of telehealth in filings to DMHC.⁴

On March 12, DMHC directed its licensed plans to implement "social distancing" procedures in response to COVID-19 for the duration of the emergency declared by the Governor.⁵ This guidance directed plans to relax prior authorization and pre-certification requirements for telehealth and waive any cost-sharing associated with telehealth that would not apply to in-person service delivery. DMHC issued further guidance on March 18, providing more specific instruction to plans on making services available by telehealth.⁶ Under that guidance, DMHC-licensed plans are required to:

- Reimburse for services provided by telehealth at the same rate as services provided in-person;

- Charge the same amount of cost-sharing for a service provided by telehealth that would be charged if the service were delivered in-person; and
- Reimburse for services provided by telephone and video as long as the method of communication is appropriate for the service being delivered.

DMHC then issued additional guidance on April 7, 2020.⁷ That guidance clarified that telehealth may be offered for all services as appropriate, including Applied Behavior Analysis, physical therapy, and speech therapy, with no limits that would not apply to services delivered in person. In addition, the April 7 guidance clarified that plans must allow their network providers to deliver services by telehealth, and may not direct enrollees to only use a third-party telehealth service such as Teladoc. The April 7 and an accompanying FAQ also set forth the billing requirements for services provided by telehealth.⁸ The FAQ also noted that plans may not require their providers to use particular telehealth platforms to deliver services as long as they are compliant with state and federal law, as relaxed during the COVID-19 emergency.

Guidance on Telehealth for CDI Plans

CDI Plans are subject to the California Insurance Code.⁹ Like the KKA, the Insurance Code prohibits plans from refusing to reimburse for covered services provided by telehealth when appropriate.¹⁰ CDI had not previously issued guidance to its plans on telehealth.

On March 18, CDI directed its licensed plans to file an emergency plan with the department. In that emergency plan, each CDI-licensed plan must describe how it will “maximize telehealth” for all providers, including by expediting provider credentialing or certification requirements, and waiving pre-authorization and cost-sharing for telehealth.¹¹ On March 30, CDI issued guidance to its licensed plans, directing them to deliver services by telehealth through their network providers for all health conditions whenever possible and clinically appropriate.¹² The guidance directs its plans to:

- Allow their network providers to deliver services by telehealth (plans may not direct enrollees to only use a third-party telehealth service such as Teladoc, but must allow enrollees to receive telehealth services from their regular plan providers);
- Allow all network providers to use any clinically appropriate method of telehealth, including video and phone;
- Reimburse for services provided by telehealth at the same rate as services provided in-person;
- Waive any requirements limiting telehealth to established patients;
- Remove any limits on the location of provider or patient to participate in telehealth;
- Allow verbal authorizations to receive services by telehealth, as long as cost-sharing is clearly disclosed;
- Charge the same amount of cost-sharing for a service provided by telehealth that would be charged if the service were delivered in-person; and
- Waive certain encryption requirements.

Conclusion

California regulators have made clear that plans have an obligation to ensure that Californians have access to the services they need during the COVID-19 pandemic, and that plans should work with their provider networks to ensure that services are available by telehealth to the extent appropriate. Californians who are unable to access needed services should file a grievance with their plan, and appeal to the plan’s regulator if the plan does not comply with these requirements.

ENDNOTES

¹ Some employers and unions fund their own health care plans for their employees or members. These plans are known as “self-funded” or “self-insured” plans and are exempt from state regulation, falling under the federal Employee Retirement Income Security Act of 1974 (ERISA) instead. See Molly R. Berkery, U.S. Ctrs. Disease Control, *Selected Issues regarding ERISA, Health Benefit Plans, and State Laws that Address Health System Transformation* (2014), <https://www.cdc.gov/phlp/docs/erisa-brief.pdf>. To date, the federal agencies that regulate ERISA plans have not issued any guidance on telehealth.

² See generally Cal. Health & Safety Code §§ 1340-1399.818.

³ See *id.* § 1374.13.

⁴ DMHC, All Plan Letter 19-004 (Jan. 23, 2019), <https://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2019-004%20%28OPL%29%20-%20Telehealth%20and%20Teledentistry%20Sample%20Questions%20%281-23-19%29.pdf>.

⁵ DMHC, All Plan Letter 20-007 (Mar. 12, 2020), [http://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-007%20\(OPL\)%20Social%20Distancing%20Measures%20in%20Response%20to%20COVID-19%20\(3_12_20\)_pdf%20\(3_12_20\).pdf](http://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-007%20(OPL)%20Social%20Distancing%20Measures%20in%20Response%20to%20COVID-19%20(3_12_20)_pdf%20(3_12_20).pdf).

⁶ DMHC, All Plan Letter 20-009 (Mar. 18, 2020), [http://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-009%20\(OPL\)%20-%20Reimbursement%20for%20Telehealth%20Services%20\(3_18_20\).pdf?ver=2020-03-18-105612-547](http://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-009%20(OPL)%20-%20Reimbursement%20for%20Telehealth%20Services%20(3_18_20).pdf?ver=2020-03-18-105612-547).

⁷ DMHC, All Plan Letter 20-013 (Apr. 7, 2020), [http://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-013%20-%20Telehealth%20Services%20\(4_7_2020\).pdf](http://www.dmhc.ca.gov/Portals/0/Docs/OPL/APL%2020-013%20-%20Telehealth%20Services%20(4_7_2020).pdf).

⁸ See *id.* at 1; see also DMHC, *Delivery of Services via Telehealth During the COVID-19 State of Emergency Frequently Asked Questions 2* (2020), <http://www.dmhc.ca.gov/Portals/0/Docs/DO/TelehealthAPL-FAQ.pdf>.

⁹ See Cal. Ins. Code §§ 10110-10214.

¹⁰ See *id.* § 10123.85.

¹¹ CDI, *COVID-19 State of Emergency Filing Requirements* (Mar. 18, 2020), <http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/CDI-Emergency-Notification-Filing-Requirements-COVID-19-3-18-2020.pdf>.

¹² CDI, *Notice Re: Telehealth During COVID-19 State of Emergency* (Mar. 30, 2020), <http://www.insurance.ca.gov/0400-news/0100-press-releases/2020/upload/nr034TelehealthCOVID-19-03302020.pdf>.