Fact Sheet on Telehealth and Medicaid during COVID-19

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Introduction to Medicaid Coverage of Telehealth Services

The Centers for Medicare and Medicaid Services (CMS) define telehealth as the use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision, and information across distances.[1] The patient is located at the "originating site," and the provider is located at the "distant site."

States have broad authority to decide how to cover telehealth for the delivery of Medicaid-covered services, including the methods of communication, such as telephonic, video technology commonly available on smartphones and other devices.[2] Consequently, telehealth reimbursement policies in Medicaid vary from state to state. If the State Medicaid program has managed care, telehealth reimbursement can also vary from plan to plan.

No federal approval is needed for state Medicaid programs to reimburse providers for telehealth services if the same rate is applied to pay for face-to-face services.[3] A State Plan Amendment (SPA) would only be necessary to establish rates or payment methodologies for telehealth services that differ from those applicable for the same services when provided in person.[4]

HHS guidelines on telehealth during COVID-19

CMS has recently reminded states that they have broad flexibility to cover telehealth through Medicaid.[5] This extends to managed care arrangements. CMS also encouraged states to amend managed care contracts to extend the same telehealth flexibilities authorized under their state plan, waiver, or demonstration to services covered under their contracts.[6] According to CMS guidance, these services must be "authorized by the state as being a medically appropriate and cost-effective substitute for the covered service or setting under the state plan; authorized and identified in the managed care contract; and not required to be used by the enrollee in lieu of the state plan-covered service."[7]

As a result of the COVID-19 public health emergency, HHS has waived in-state licensure requirements for Medicaid as long as the provider is licensed in another state and not otherwise barred from practice. State licensure requirements may still apply.[8] By the same token, HHS has relaxed HIPAA requirements during the COVID-19 emergency, but states' privacy laws may still be in force.[9]

Examples of State Medicaid Developments on Telehealth

The majority of states are working to increase Medicaid coverage of services delivered via telehealth so patients' health care can be maintained to the greatest extend possible while physical distancing and stay-at-home policies are in place. Below are a few notable and innovative changes:

- The Maryland Department of Health Medical Assistance Program updated its telehealth program to permit the delivery of telehealth services to an individual in their home. During the COVID-19 emergency, Maryland Medicaid will not require prior authorization for telehealth services.[10] New guidance also instructs Maryland telehealth providers to make every effort to use the following technology in order of priority: (1) Traditional telehealth technology, such as a two-way audiovisual telecommunications system , (2) If Medicaid participants are unable to access originating sites possessing fully qualified technology (ability to pan/focus camera, multiple views, etc.) they can use notebook computers, smartphones, or audio-only phones; (3) If Medicaid participants cannot access cell-phone-based video technology, audio-only telephone calls will be permitted. In addition, certain providers, like psychotherapists, do not have to take these additional steps and can offer services using audio-only technology.[11]

- In California, Governor Gavin Newsom issued an executive order suspending certain state law privacy and consent requirements during the COVID-19 emergency to enable providers to more readily provide services by telehealth. While California already had a robust set of policies that advance telehealth for Medi-Cal enrollees, the State reiterated that the services delivered via telehealth must be medically necessary for the patient and medically appropriate to be delivered via a telehealth interaction. Like Maryland, California is allowing Medi-Cal reimbursement of services provided via telephone without video—both in Fee-for-Service Medi-Cal as well as in Managed Care Plans. In addition, Medi-Cal must provide the same amount of reimbursement for a service rendered via telephone or virtual communication. California's Medi-Cal family planning program, known as Family PACT, is also now allowing the use of telephonic communications modalities to enroll and recertify people who are eligible for Family PACT.[12]

- Colorado's Medicaid program is reimbursing a telehealth service at the same rate as a comparable in-person service. In Colorado, standard of care requirements continue to apply to health benefits provided via telehealth, and the provider must still document the Medicaid enrollee's consent to the health service verbally or in writing. As a result of the COVID-19 emergency, Colorado is allowing Medicaid payment for services delivered via telephone as well as chat modalities.[13]

- A New Hampshire executive order requires all health insurance carriers, including Medicaid MCOs, to allow all in-network providers to deliver clinically appropriate, medically necessary Medicaid-covered services to members via telehealth. Such move prevents insurers to require the utilization of third-party telehealth services, like Teladoc, before seeking care from their in-network plan providers.[14]

Conclusion - Good Moves on Telehealth and a Word of Caution

The developments in Medicaid and telehealth—principally allowing Medicaid enrollees to receive care at home or any other secure location, paying the same rates for services delivered via telehealth as in-person service, and reimbursing for audio-only, telephonic or chat services—are steps in the right direction. However, it will be critical to not fully substitute in-person services for those rendered via telehealth and to continue protecting patient rights, including privacy and consent. Furthermore, Medicaid enrollees should have access to resources to facilitate a telehealth interaction, namely high-speed Internet connection, devices and equipment, as well as digital education. One way to address this is through a new Federal Communications Commission initiative that will distribute $200 million to providers to provide care services to low-income patients at their homes or mobile locations.[15]

ENDNOTES

[1] CMS, Coverage and Benefits Related to COVID-19 Medicaid and CHIP at 3 (Mar 5, 2020), https://www.cms.gov/files/document/03052020-medicaid-covid-19-fact-sheet.pdf.
[2] *Id*; CMS, COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies, Question F1 at 19 (last updated April 2, 2020), https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf.
[3] CMS, Medicaid State Plan Fee-for-Service Payments for Services Delivered Via Telehealth, https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-telehealth-services.pdf.
[4] COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies, Question C2 at 7 (last updated April 2, 2020), https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf.
[5] *Id.*
[6] *Id.*
[7] *Id.*

[8] HHS, Waiver or Modification of Requirements Under Section 1135 of the Social Security Act (Mar. 13, 2020) https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx. The Federation of State Medical Board has a working list of states that are modifying in-state licensure requirements for telehealth in response to COVID-19: https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf.
[9] HHS, Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency (Mar. 30, 2020), https://www.hhs.gov/about/news/2020/03/17/ocr-announces-notification-of-enforcement-discretion-for-telehealth-remote-communications-during-the-covid-19.html.
[10] Md. Dept. Health, Follow-up Guidance on Telephone Telehealth Services and Expansion of Medicaid Telehealth Regulations, https://mmcp.health.maryland.gov/SiteAssets/SitePages/Telehealth/MEMO_Maryland Medicaid IEP IFSP Telehealth Clarification Guidance.pdf.
[11] Md. Dept., Health, Re: COVID-19 #4b: Temporary Authorization of Audio-Only Health Care Services to Mitigate Possible Spread of Novel Coronavirus ("COVID-19") Executive Order No. 20-03-20-01(Mar. 21, 2020), https://mmcp.health.maryland.gov/Medicaid COVID19/COVID-19 4b_Telephonic Services Guidance_3.21.20 Final.pdf.
[12] *See* Fabiola Carrión & Abigail Coursolle, California Responds to COVID-19 By Expanding Telehealth (Apr. 8, 2020), https://healthlaw.org/california-responds-to-covid-19-by-expanding-telehealth/.
[13] Colo. Dept. Heath Care & Financing, Letter to Providers, https://www.cchpca.org/sites/default/files/2020-03/Colorado Mandate including PT %28002%29.pdf.
[14] NH Governor, Emergency Order #8 Pursuant to Executive Order 2020-04, Temporary expansion of access to Telehealth Services to protect the public and health care providers (Mar. 28, 2020), https://www.governor.nh.gov/news-media/emergency-orders/documents/emergency-order-8.pdf.
[15] FFC, FCC Fights COVID-19 with $200M; Adopts Long-Term Connected Care Study, DA/FCC #: FCC-20-44 (Apr. 2, 2020), https://www.fcc.gov/document/fcc-fights-covid-19-200m-adopts-long-term-connected-care-study.