Medicaid Coverage of Family Planning Services Delivered via Telehealth

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Introduction

The COVID-19 public health emergency has shown the need to increase access to health services through telehealth, including for Medicaid beneficiaries. Almost nine months into the pandemic, millions of people have accessed services via telehealth.[1] However, the need and desire for telehealth will persist after the public health emergency ends, particularly for individuals seeking time-sensitive reproductive and sexual health care. Access to family planning services is essential to the health and well-being of women, particularly the sixteen million women who are on Medicaid and in their reproductive years.[2] Even before the pandemic hit the United States, the American College of Obstetricians and Gynecologists (ACOG) emphasized the importance of telehealth for patients in rural settings.[3] In light of the pandemic, ACOG has encouraged all providers to strategize how they could integrate telehealth into their services.[4] The Centers for Disease Control (CDC) and the Office of Population Affairs (OPA) have done the same for family planning providers.[5] This fact sheet will address Medicaid coverage of family planning services delivered via telehealth.

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[1] *See* CDC, *Trends in the Use of Telehealth During the Emergence of the COVID-19 Pandemic — United States, January–March 2020* (Oct. 30, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6943a3.htm.

[2] *See* Kaiser Family Found., *Medicaid's Role for Women* (Mar. 28, 2019), https://www.kff.org/womens-health-policy/fact-sheet/medicaids-role-for-women/. This fact sheet occasionally uses the words "woman" or "women." This is not intended to be exclusionary, as NHeLP recognizes that cisgender and transgender women, and gender non-conforming and nonbinary individuals need access to family planning services. We have tried to limit the use of "woman" or "women" when necessary to explain the language used in policy, and in conformity with cited research or data.

[3] *See* Am. C. of Obstetricians & Gynecologists, *Implementing Telehealth in Practice, Committee Opinion 798* (Feb. 2020), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/02/implemeting-telehealth-in-practice.

[4] *See* Am. C. of Obstetricians & Gynecologists, *COVID-19 FAQs for Obstetrician–Gynecologists*, Gynecology, https://www.acog.org/clinical-information/physician-faqs/covid19-faqs-for-ob-gyns-gynecology.

[5] *See* CDC, *Ensuring access to family planning services during COVID-19: A summary of CDC's family planning recommendations for healthcare providers*,

I. What is telehealth and how does it work?

Telehealth is the use of digital technologies to deliver health care, information, and other services by connecting two or more users—principally the patient and the provider—in separate locations. The patient is located at the "originating site" and the provider is located at the "distant site." Diagnosis, treatment, assessment, monitoring, communications, and education services can all be provided through telehealth.

Telehealth can be delivered in different ways:

1. Live Video (Synchronous): This is the most commonly-used telehealth modality. Also known as video-conferencing, the patient and provider are seeing each other in real time.

2. Store-and-forward (Asynchronous): This modality involves the electronic transmission of health information—such as digital images, documents, and pre-recorded videos—between providers in order to aid in diagnoses and medical consults. Asynchronous transmissions typically do not occur in real-time. One type of asynchronous communication is an e-consult, where health care providers engage in email consultations with each other regarding a particular patient through a secure email system. A patient's treating health care provider may request the opinion and/or treatment advice of another health care practitioner to assist in the diagnosis and/or management of a patient's health care needs, or two providers may share a patient's medical records. For example, a primary care provider could receive a patient's records from an Ob-Gyn, or that Ob-Gyn could request a consultation with a cancer specialist.

3. Remote Patient Monitoring (RPM): RPM involves the use of telehealth technologies to collect medical data, such as vital signs and blood pressure, from a patient in one location in order to electronically transmit that information to a health care provider in a different location. In the context of reproductive health care, a provider could monitor a patient's blood pressure via remote patient monitoring before prescribing a hormonal contraceptive.

4. Telephonic or audio-only communications: In situations where patients lack good internet service or lack access to smartphones, tablets, or similar devices, telephones

https://www.cdc.gov/reproductivehealth/contraception/covid-19-family-planning-services.html; Office of Population Affairs, Family Planning Nat'l Training Ctr., What Family Planning Providers Can Do to Meet Client Needs During COVID-19, https://www.fpntc.org/resources/what-family-planning-providers-can-do-meet-client-needs-during-covid-19 (last updated July 16, 2020).

are often the only way that a patient can receive some form of care. Audio-only communications allow providers to quickly check in with patients or ask a question that requires a simple answer.

II. Can telehealth be used to deliver family planning services?

Telehealth can be used to provide many family planning services. Health care providers, in their professional judgment, along with their patients, should be trusted to determine when it is appropriate to offer a specific service via telehealth.

The U.S. Medical Eligibility Criteria for Contraceptive Use (US MEC), U.S. Selected Practice Recommendations for Contraceptive Use (US SPR), and Providing Quality Family Planning Services (QFP) provided collective recommendations for providing quality family planning services.[6] The guidelines make clear that when a patient wishes to delay or prevent pregnancy, the provider should work with the patient to select an effective and appropriate contraceptive method.[7] That education and counseling can take place over the phone, video-conferencing, and even through text messages.

In addition, most contraceptive methods can be prescribed without physical examinations or laboratory tests.[8] For example, injectable contraception can be prescribed for self-administration. Patients can receive instructions on how to perform self-injections via video-conferencing or over the phone.[9] ACOG has also confirmed that telehealth can be used to screen new clients requesting contraceptives that can be self-administered.[10]

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[6] *See* CDC, *Ensuring Access to Family Planning Services During COVID-19: A Summary of CDC's Family Planning Recommendations for Healthcare Providers* (Aug. 17, 2020), https://www.cdc.gov/reproductivehealth/contraception/covid-19-family-planning-services.html.

[7] *See, e.g.,* CDC, *Providing Quality Family Planning Services, Recommendations of CDC and the U.S. Office of Population Affairs, Morbidity and Mortality Weekly Report* (Apr. 25, 2014), https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf.

[8] Physical examinations or laboratory tests are required for: (1) Intrauterine devices; (2) combined hormonal contraception (if the patient needs to have their blood pressure assessed); and (3) diaphragms and cervical caps. *See* CDC, *Ensuring access to family planning services during COVID-19*, *supra note* 6.

[9] *See, e.g.,* Nat'l Family Planning & Reprod. Health Assoc., *Self-Administration of Injectable Contraception* (Apr. 20, 2020), https://www.nationalfamilyplanning.org/file/documents---service-delivery-tools/NFPRHA---Depo-SQ-Resource-guide---FINAL-FOR-DISTRIBUTION.pdf. California is temporarily allowing pharmacies to dispense Depo-SubQ Provera for self-administration in both Medi-Cal managed care and fee-for-service. *See* Cal. Dep't Health Care Servs., *Information Regarding the Use of Subcutaneous Depot Medroxyprogesterone Acetate During the 2019 Novel Coronavirus Public Health Emergency,* https://www.dhcs.ca.gov/Documents/COVID-19/Medi-Cal-FFS-Depo-Provera-SQ-Temp-Policy.pdf.

[10] *See* Am. C. of Obstetricians & Gynecologists, s*upra* note 4.

III. Are states required to provide Medicaid coverage for services delivered via telehealth?

States are required to provide coverage of family planning services in their Medicaid programs.[11] While federal Medicaid law does not specifically address coverage of family planning services delivered via telehealth, recent CMS guidance encourages the use of telehealth in Medicaid to increase access to care, particularly during the pandemic.[12] CMS has further recommended that states amend managed care contracts to extend the same telehealth flexibilities authorized under fee-for-service.[13]

The guidance makes clear that states generally have a great deal of flexibility with respect to covering Medicaid services provided via telehealth.[14] They have the option to determine:

- Whether (or not) to utilize telehealth;
- What types of services and modalities to cover;
- Where in the state it can be utilized;
- How it is implemented;
- What types of providers may deliver services via telehealth (as long as such practitioners or providers are "recognized" and qualified according to federal and state Medicaid statutes and regulations); and
- Reimbursement rates.

States only need to submit a State Plan Amendment when they seek to establish reimbursement rates or payment methodologies for telehealth services that differ from those applicable to the same services furnished in an in-person setting.[15]

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[11] 42 USC §§ 1396a(a)(10)(A), 1396d(a)(4)(c).
[12] *See* CMS, State Medicaid & CHIP Telehealth Toolkit Policy Considerations for States Expanding Use of Telehealth- COVID-19 Version, https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit.pdf; State Medicaid & CHIP Telehealth Toolkit Policy Considerations for States Expanding Use of TelehealthCOVID-19 Version: Supplement #1 (Oct. 14 2020), https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit-supplement1.pdf; NEW FAQs – Released June 30, 20201 COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children's Health Insurance Program (CHIP) Agencies (June 30, 2020), https://www.medicaid.gov/state-resource-center/downloads/covid-19-new-faqs.pdf; Medicaid State Plan Fee-for-Service Payments for Services Delivered Via Telehealth, https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-telehealth-services.pdf.
[13] *Id.*
[14] *Id.*
[15] *Id.*

Even before the COVID-19 public health crisis, all fifty states and Washington, D.C. covered some form of live video telehealth in Medicaid fee-for-service. Eighteen states reimbursed for store-and-forward modalities, and twenty-one reimbursed for remote patient monitoring modalities.[16] During the pandemic, many states have moved to also reimburse audio-only telephone services, though unfortunately they might eliminate that flexibility when the public health emergency ends.[17]

IV. What have state Medicaid agencies done to promote coverage of or access to family planning services provided via telehealth?

A few states have adopted specific measures to ensure Medicaid coverage of family planning services and supplies delivered via telehealth.

Before the COVID-19 pandemic, California had already issued guidance on Medicaid coverage of family planning services provided via telehealth.[18] California's Medicaid Family Planning, Access, Care, and Treatment program (FPACT), which covers family planning and family planning-related services for people not eligible for full-scope Medicaid, has traditionally reimbursed for telehealth modalities to deliver FPACT services.

During the public health emergency, other states have released specific guidance on telehealth and family planning. North Carolina issued temporary guidance that enables providers to deliver a broad range of family planning services via telehealth or virtual patient communication (which North Carolina defines as telephones calls) to Medicaid enrollees.[19] Texas has also authorized the use of telehealth for its family planning expansion program during the pandemic.[20] Similarly, Washington has issued a billing guide on family planning and

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[16] *See* Ctr. for Connected Health Pol'y, State Telehealth Laws & Reimbursement Policies (Fall 2020), https://www.cchpca.org/sites/default/files/2020-10/CCHP%2050%20STATE%20REPORT%20FALL%202020%20FINAL.pdf.

[17] *Id.*

[18] *See* Cal. Dep't Health Care Servs., Revised Medi-Cal Telehealth Manual (Jan. 2020) (Telehealth Manual).

[19] *See* NC Medicaid Division of Health Benefits, *Special Bulletin COVID-19 #86: Telehealth and Virtual Patient Communications Clinical Policy Modifications - Family Planning Services for MAFDN Beneficiaries* (May 11, 2020), https://medicaid.ncdhhs.gov/blog/2020/05/11/special-bulletin-covid-19-86-telehealth-and-virtual-patient-communications-clinical.

[20] *See* Texas Health & Human Servs., *COVID-19:Updates for Healthy Texas Women and Family Planning Program,* https://www.healthytexaswomen.org/sites/htw/files/documents/htw-fpp-covid-updates.pdf.

telehealth during the public health emergency, specifying the codes for services that can be delivered via telehealth.[21] Ideally these flexibilities can remain after the pandemic ends.

It is important to note that states cannot impose any cost-sharing on family planning services, whether those services are delivered in-person or via telehealth.[22] As noted above, telehealth is not a distinct service, but a modality or way that the service is delivered.

V. What can CMS and states do to improve access to family planning via telehealth?

The National Health Law Program believes that CMS should issue additional guidance for providing family planning services and supplies via telehealth. At the same time, more states should move to permanently reimburse health providers who offer family planning services through telehealth, not just for the duration of the pandemic. Covering audio-only services, like virtual check-ins or counseling sessions, should also be part of permanent policy solutions. Finally, these flexibilities should be guaranteed both for fee-for-service as well as managed care. For additional recommendations on how Medicaid should cover services provided via telehealth, please see NHeLP's Medicaid Principles on Telehealth.

[21] *See* Washington State Health Care Auth., *Family Planning Only (FPO) Program Billing Guide for telemedicine/telehealth services offered during the COVID-19 outbreak, Frequently Asked Questions*, https://www.hca.wa.gov/assets/billers-and-providers/Family-Planning-Only-COVID-19.pdf

[22] 42 U.S.C. §§1396o(a)(2)(d), (b)(2)(d), 1396o-1(b)(3)(B)(vii).