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Bulletin 459

Insurance Coverage for Services Provided Through Telehealth

On June 21, 2021, “An Act Regarding Telehealth Regulations” took effect as emergency legislation,¹ amending the laws relating to provider licensure, insurance coverage, and MaineCare coverage for telehealth services. This Bulletin summarizes the new telehealth law and its impact on insurance coverage.

What is telehealth? Telehealth is a method of delivering health care services remotely. Telehealth is not a separate type of health care service or practice.

Telehealth Defined: The new law defines “telehealth services” as health care services delivered through the use of information technology.² The law refers to “information technology” generally, rather than specifying which particular technologies constitute telehealth, in order to anticipate technological advancements. The law updates the statutory definitions of telehealth and makes them more uniform across different titles of the Maine Revised Statutes.

The new definition removes the former distinction in the Insurance Code between “telehealth” and “telephonic services.”³ Thus, a health service delivered by telephone is now a subset of “telehealth.” This does not mean that all phone calls between patients and providers are now considered “telehealth” for the purposes of provider reimbursement. However, the phone can be a modality for “the delivery of health care services,” to the extent consistent with other applicable laws, standards of practice, and any rules enacted by the respective licensing boards. The law continues to define telehealth services as including “telemonitoring,” but the definition has been broadened to include use of information technology to remotely monitor any patient’s health status via electronic means, wherever the patient is located.

Compliance with other applicable laws: The new telehealth law does not create any new insurance coverage mandates, and does not place any requirements on providers to deliver health care services through the use of information technology. It is important to keep in mind that

¹ P.L. 2021, ch. 291 (L.D. 791).

² The version of the definition in the Insurance Code is found at 24-A M.R.S. § 4316(1)(C).

³ See former 24-A M.R.S. § 4316(5), repealed by Chapter 291.



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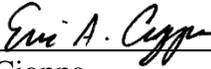
insurance laws do not expand or restrict what services health care providers may provide, or dictate how those services may be delivered. When providing telehealth services, health care providers may only act within the scope of their respective licenses, and must comply with applicable standards of practice and board rules regarding telehealth, if any. Health care providers must also comply with all state and federal confidentiality laws, such as the privacy regulations adopted under the Health Insurance Portability and Accountability Act (HIPAA).

Parity in insurance coverage: The Maine Insurance Code has mandated telehealth coverage for more than ten years. The recent legislation did not change the requirement that health insurance carriers in Maine may not deny coverage when “an enrollee is eligible for coverage and the delivery of the health care service through telehealth is medically appropriate.”⁴ Carriers must still determine coverage for telehealth services “in a manner consistent with coverage for health care services provided through in-person consultation,” and may not require enrollees to pay higher cost sharing for telehealth services. As noted earlier, the separate, more restrictive standards for coverage of “telephonic services” has been repealed. In addition, the law now expressly states that coverage is only required when providers delivering telehealth services are acting within the scope of their licenses and following any applicable rules of practice.⁵ The only other material change to the coverage parity requirement is that the new law prohibits any carrier-imposed restrictions on coverage for prescribing medication through telehealth that are more restrictive than the requirements imposed by law for prescribing medication in person.

Provider compensation: The telehealth coverage law requires parity for enrollee cost sharing, but it is silent about provider compensation. There are many factors that go into a fair, reasonable, and equitable charge. Strict parity could be appropriate in some cases but not others, and the Legislature did not impose any uniform formula or methodology. During the COVID-19 health insurance emergency, when it was necessary to substitute telehealth services for many in-person services, the Superintendent ordered payment parity for telehealth as a temporary measure. However, that order expired when the state of insurance emergency terminated on July 31, 2021.

Network Adequacy: Finally, the recent legislation adds a requirement that a health plan’s network adequacy must be determined on the basis of the availability of in-person services. Telehealth can be a valuable supplement to in-person health care, but at this time, Maine law does not permit carriers to use it to replace the option to access health care in an in-person setting.

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NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.

⁴ 24-A M.R.S. § 4316(2).

⁵ *Id.*, as amended by Chapter 291.