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Notice re: Telehealth During COVID-19 State of Emergency

March 30, 2020

Throughout the declared [COVID-19 state of emergency](#), the California Department of Insurance (CDI) expects health insurers to continue to provide access to medically necessary care.¹ For the duration of the current COVID-19 emergency declaration, consumers should be able to access medically necessary health care without physically visiting their provider in person, when clinically appropriate. Therefore, CDI expects that health insurers will provide increased access to health care services through telehealth delivery platforms and encourage patients to use telehealth delivery options, so as to limit the amount of in-person health care they seek while continuing to receive the essential care that they need during this challenging time.² In addition, increased telehealth will lessen the strain on the supply chain, reduce the need to utilize scarce stocks of provider personal protective equipment, and protect the ability of the health care workforce to provide care by limiting physical exposure to potential sources of infectious disease.

1) Network Providers³

- a. Insurers should allow all network providers to use all available and appropriate modes of telehealth delivery including, but not limited to, synchronous video, and telephone-based service delivery. (The federal government will exercise enforcement discretion as to HIPAA privacy

¹ California Insurance Code § 10112.95.

² "telehealth" as used in this Notice has the same meaning as in California Business & Professions Code §2290.5(a).

³ The term "provider," as used in this notice, refers to a "health care provider" as defined under Business and Professions Code section 2290.5(a). Both Insurance Code sections 10123.85(a) and 10123.855(e) incorporate by reference the definition of "health care provider" under Business and Professions Code section 2290.5(a), which defines "health care provider" as any person licensed under Division 2 ("Healing Arts") of the Business and Professions Code, as well as associate marriage and family therapists and family therapist trainees, qualified autism service providers, and qualified autism service professionals.

requirements, permitting services such as Google Hangouts, FaceTime, and Skype to be used during this crisis)⁴.

- b. To facilitate care with physical separation, insurers should immediately implement reimbursement rates for telehealth services that mirror payment rates for an equivalent office visit. This is consistent with the Governor's March 4, 2020 Declaration of a State of Emergency⁵, his subsequent March 19, 2020 Executive Order and Order of the State Public Health Officer⁶, and his administration's March 18 All Plan Letter⁷. The reimbursement should align with the requirements set forth in Insurance Code § 10123.855 (AB 744, Chapter 867, Statutes of 2019) which goes into effect January 1, 2021 and requires parity between in-person and telehealth reimbursement.
- 2) **Health insurance networks and barriers to access**
- a. Networks must provide consumers access to medically appropriate care from a qualified provider.⁸ During the COVID-19 outbreak state of emergency, all consumers should have access to medically necessary, clinically appropriate health care in a manner that minimizes the risk or spread or transmission of COVID-19.
 - b. Health insurers should eliminate barriers to providing medically and clinically appropriate care using appropriate telehealth delivery models by:
 - i. Waiving the requirement that certain services be available only to established patients;
 - ii. Enabling providers to provide services from their own home;
 - iii. Removing restrictions related to patient location as a prerequisite to receiving services (e.g. home, nursing home, or where they are physically present and can receive the service);
 - iv. Allowing authorizations to receive online, video, or telephone services to be given verbally, as long as cost-sharing is clearly disclosed;
 - v. Waiving requirements related to encryption.⁹

⁴ <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

⁵ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

⁶ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

⁷ [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)

⁸ 10 CCR § 2240.1(e).

⁹ See <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

- c. Insurers should use telehealth service delivery methods to enable consumers to have access to behavioral health services, where clinically appropriate.¹⁰

3) Access for consumers

- a. Insurers should allow existing and new patients access to medically necessary health care, including behavioral health and substance use disorder treatment, while minimizing the risk of spread or transmission of COVID-19.
- b. Telehealth services delivered by in-network providers should replace in-person visits whenever possible and clinically appropriate.
- c. Telehealth services should be available for all conditions, not just COVID-19 or suspected COVID-19 cases, as clinically appropriate.
- d. Cost-sharing requirements for services delivered via telehealth should be consistent with, or no greater than, the cost-sharing requirement established in the insurance policy documents for services delivered through in-person settings.
- e. Insurers should communicate to their consumers about options to receive health care services via appropriate telehealth delivery modes, especially for at-risk and vulnerable populations.

Networks must provide access to medically appropriate care from a qualified provider.¹¹ Failure to adapt insurer networks during the COVID-19 state of emergency, including revision of existing telehealth requirements, and/or increased access through telehealth, may result in an inadequate network and a finding that an insurer’s network discriminates against consumers based upon age, disability, present or predicted disability, expected length of life, degree of medical dependency, health status or medical condition, etc.¹² Further, in light of the need to minimize face-to-face interactions when telehealth can substitute in a clinically appropriate manner, failure to maintain functional network availability through telehealth will constitute a failure to provide “medically appropriate care...within the network” within the meaning of title 10, Cal. Code Regs. § 2240.1(e), which would trigger the insurer’s obligation to “arrange for required care with available and accessible providers outside the network, with the patient responsible for paying only cost-sharing in an amount equal to the cost-sharing they would have paid for provision of that or a similar service in-network.”

¹⁰ Examples of these services include, but are not limited to the following: psychotherapy, team psychotherapy, team conferences, crisis psychotherapy, group therapy, mental health assessments, service plan development, substance use disorder services, peer-delivered services, etc.

¹¹ 10 CCR § 2240.1(e).

¹² 10 CCR § 2240.1(h). See also California Insurance Code §§ 10965.5, 10753.05, etc.

For questions regarding this notice, please contact Bruce Hinze at
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