

To: Attendees at June 17, 2021 Informal Session for ULC Drafting Committee on Telehealth

From: Michele Radosevich, Chair, Drafting Committee on Telehealth  
Quinn Shean, Vice Chair, Drafting Committee on Telehealth  
Kristin Madison, Reporter, Drafting Committee on Telehealth

Date: June 7, 2021

Re: June 7, 2021 Draft Telehealth Act

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The draft of the Telehealth Act provided for review at the June 17, 2021 Informal Session contains a placeholder for “Section 9.” The Drafting Committee is considering adding a section related to insurance coverage for telehealth services. Given the challenges of developing a uniform law in this still-evolving area, however, the Drafting Committee would appreciate further input and guidance before determining how to proceed.

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The Executive Committee authorized the Drafting Committee to consider issues related to insurance coverage and payment parity. Many states have now adopted statutes that address private insurance plans’ practices with respect to telehealth coverage and provider payment for telehealth services. However, as indicated by this 2021 [50-state survey](#) prepared by Nathaniel Lacktman and colleagues at Foley & Lardner, as well as by the Center for Connected Health Policy’s [ongoing tracking of laws](#) related to telehealth, state statutes vary considerably in their scope and approach. The remainder of this memo describes some common elements in these laws, identifying some questions we would need to answer to begin to develop uniform or model act provisions that address these topics.

### **Issue 1: Coverage of telehealth services**

One of the most common insurance-related provisions in state telehealth laws is a provision requiring that insurers provide coverage for services delivered through telehealth if they would have covered the services, had they been delivered in person. We could integrate a coverage parity provision into the proposed uniform/model act. For example:

A health insurance contract that is issued, delivered, or renewed in this state shall provide coverage for health care services delivered via telehealth on the same basis and to the same extent the services would be covered if delivered in person.

***(1) Should the uniform law include a coverage parity like the one above?*** If the answer to this question is yes, there are further questions to consider about how coverage requirements apply to telehealth. For example:

***(2) Should the uniform law preclude insurers from providing coverage only through specialized telehealth providers?*** Some health care providers in an insurer’s network may deliver services via telehealth in addition to delivering services in person. However, an insurer may prefer to include in its network providers that specialize in telehealth and may in some circumstances want to limit coverage to

those providers. Some states have chosen to restrict such practices. For example, California states that “[c]overage shall not be limited only to services delivered by select third-party corporate telehealth providers.” Kentucky states that a health benefit plan shall not “[r]equire a provider to be part of a telehealth network” or “be employed by another provider or agency in order to provide telehealth services that would not be required if that service were provided in person.” By contrast, Missouri states that “a health carrier or health benefit plan may limit coverage for health care services that are provided through telehealth to health care providers that are in a network approved by the plan or the health carrier.”

***(3) Should the uniform law address specialized services such as remote patient monitoring or store and forward services?*** Coverage parity provisions ensure that insurers will cover telehealth services just as they cover in-person services. However, there are health-related services that leverage telecommunication technologies without having a clear on-ground equivalent. Remote patient monitoring is one example. The Foley 2021 report finds that 17 states required commercial health plans to cover these services. For example, Maine (Title 24-A, §4316) requires carriers to cover telemonitoring if it is medically necessary for the enrollee. To what extent should a uniform law on telehealth mandate coverage of services that by their nature can only be delivered through telehealth?

***(4) What other questions should a uniform law address if it speaks to the issue of insurance coverage for telehealth?***

### **Issue 2: Patient cost-sharing**

According to the Foley 2021 report, 30 states limit patient cost-sharing in the telehealth context. Cost-sharing is often limited through a parity provision that might resemble this one:

A health care service provided through telehealth shall not be subject to a deductible, co-payment, or coinsurance amount that exceeds the amount that would be charged if the health care service were delivered in person.

***(5) Should the uniform law include a provision like the one above that caps patient cost-sharing?*** This provision ensures that coverage for telehealth is similar to coverage for in-person services, but limits insurer flexibility to make adjustments that reflect differences in telehealth costs or service use patterns.

### **Issue 3: Payment policies**

The number of states that have adopted statutes addressing provider reimbursement for telehealth services is increasing. According to the Foley 2021 report, 22 states address reimbursement, and of those, 14 require payment parity. This is California’s approach to payment parity:

A contract issued, amended, or renewed on or after January 1, 2021, between a health care service plan and a health care provider for the provision of health care services to an enrollee or subscriber shall specify that the health care service plan shall reimburse the treating or consulting health care provider for the diagnosis, consultation, or treatment of an enrollee or subscriber appropriately delivered through telehealth services on the same basis and to the same extent that the health care service plan is responsible for

reimbursement for the same service through in-person diagnosis, consultation, or treatment.

**(6) Should the uniform law require payment parity?** If the answer to this question is no, the uniform law could be silent, or it could adopt an alternative provision defining parameters for negotiations between private payers and providers. North Dakota (Chapter 26.1-36-09.15) , for example, states that “[p]ayment or reimbursement of expenses for covered health services delivered by means of telehealth under this section may be established through negotiations conducted by the insurer with the health services providers in the same manner . . . as the insurer establishes payment or reimbursement of expenses for covered health services that are delivered by in-person means.” If the answer to this question is yes, then there are further questions to be answered to determine the scope of the payment provision.

**(7) Should the uniform law expressly address alternative payment models?** Payment parity provisions are most easily applied in a fee-for-service context, where it is straightforward to match a telehealth service to an in-person service to determine the appropriate reimbursement. However, insurers negotiate a variety of payment arrangements with providers. The California statute addresses this issue by saying, “this section does not require telehealth reimbursement to be unbundled from other capitated or bundled, risk-based payments.”

**(8) Should the uniform law allow an exception to parity for negotiated alternative arrangements?** Some states may require equivalent payment policies generally, but then allow for exceptions. Kentucky law (304.17A-138) states that “Telehealth coverage and reimbursement shall be equivalent to the coverage for the same service provided in person unless the telehealth provider and the health benefit plan contractually agree to a lower reimbursement rate for telehealth services.” Washington (48.43.735) states that “a health carrier shall reimburse a provider for a health care service provided to a covered person through telemedicine at the same rate as if the health care service was provided in person by the provider,” but then says that “[h]ospitals, hospital systems, telemedicine companies, and provider groups consisting of eleven or more providers may elect to negotiate a reimbursement rate for telemedicine services that differs from the reimbursement rate for in-person services.”

**(9) Are there other payment-related issues that a uniform law should address?**