

Memorandum

To: Drafting Committee on Telehealth

From: Michele Radosevich, Chair
Quinn Shean, Vice Chair
Kristin Madison, Reporter

Date: November 12, 2021

Re: November 18, 2021 Meeting

The Drafting Committee on Telehealth is scheduled to meet via Zoom on November 18, 2021 from 1pm to 4pm Central Time. At that meeting, the Committee will review the current draft of the proposed telehealth act (attached) and return to our previous discussion about the inclusion of provisions related to insurance coverage for telehealth services.

During our last meeting, we discussed the potential benefits and drawbacks of including telehealth coverage provisions. After considering a few types of provisions that typically appear in state statutes, we decided to explore the possibility of drafting uniform provisions of three types:

- A coverage parity provision,
- A provision requiring parity in patient cost-sharing, and
- A provision requiring coverage of remote patient monitoring, a common telehealth service that may not have an on-ground equivalent and so might not be captured by a coverage parity provision.

However, after having reviewed examples of these provisions in order to identify appropriate models, we would like to re-examine the question of whether it is advisable to proceed with drafting in these areas, and if it is, what approaches to take.

Coverage parity

The example of a coverage parity provision we considered in the last meeting was relatively straightforward:

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.

Similarly, a provision requiring parity in patient cost-sharing can be relatively straightforward, such as:

A deductible, copayment or coinsurance requirement for a telehealth service shall not exceed the deductible, copayment or coinsurance applicable to a comparable service provided in person.

However, a review of the statutes containing coverage and cost-sharing parity provisions suggests that such provisions are typically embedded in more comprehensive regulatory regimes for insurance coverage, with differences in terminology used and differences in the integration of related provisions. (See Appendix A for examples.) The question, then, is whether it makes sense to draft parity provisions with a sharply constrained focus, without considering related issues, or whether it would be important to draft a more comprehensive set of requirements that accommodates differences in terminology and

insurance regulatory structures while capturing the universe of issues addressed by current statutes. Alternatively, we could omit insurance coverage issues from the model act, in recognition both of the already widespread adoption of coverage parity, and of the concern raised by observers during drafting sessions that adding piecemeal provisions related to coverage or reimbursement would likely draw scrutiny and opposition to implementation from groups that would otherwise be neutral or supportive of the act's language on practice standards.

Remote patient monitoring

In our last meeting, we discussed the possibility of including in the model act a provision requiring coverage of remote patient monitoring, a service that might not fall within existing coverage parity statutes. A review of some statutes that mandate coverage for such services, however, highlights the challenges of defining the nature of the mandate in the context of a uniform law. Some states that have chosen to adopt such a mandate have included considerable detail in their laws. As with coverage parity, this raises the question of whether it is worthwhile to proceed with a simpler version of a mandate, or whether it is advisable not to include a provision like this in the act. See Appendix B for examples of patient monitoring provisions.

Appendix A: Selected Examples of Provisions Related to Coverage Parity

Delaware's statute says in part:

Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each health service corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health-care plan for health-care services shall provide coverage for the cost of such health-care services provided through telemedicine.

Maine's statute says in part:

A carrier offering a health plan in this State may not deny coverage on the basis that the health care service is provided through telehealth if the health care service would be covered if it were provided through in-person consultation between an enrollee and a provider. Coverage for health care services provided through telehealth must be determined in a manner consistent with coverage for health care services provided through in-person consultation. If an enrollee is eligible for coverage and the delivery of the health care service through telehealth is medically appropriate, a carrier may not deny coverage for telehealth services. A carrier may offer a health plan containing a provision for a deductible, copayment or coinsurance requirement for a health care service provided through telehealth as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to a comparable service provided through in-person consultation. A carrier may not exclude a health care service from coverage solely because such health care service is provided only through a telehealth encounter, as long as telehealth is appropriate for the provision of such health care service.

California's statute says in part:

(b) (1) A policy of health insurance issued, amended, or renewed on or after January 1, 2021, that provides benefits through contracts with providers at alternative rates of payment shall specify that the health insurer shall provide coverage for health care services appropriately delivered through telehealth services on the same basis and to the same extent that the health insurer is responsible for coverage for the same service through in-person diagnosis, consultation, or treatment. Coverage shall not be limited only to services delivered by select third-party corporate telehealth providers.

(2) This section does not alter the existing statutory or regulatory obligations of a health insurer to ensure that insureds have access to all covered services through an adequate network of contracted providers, as required by Sections 10133 and 10133.5 and the regulations promulgated thereunder.

(3) This section does not require a health insurer to deliver health care services through telehealth services.

(4) This section does not require a health insurer to cover telehealth services provided by an out-of-network provider, unless coverage is required under other provisions of law.

(c) A health insurer may offer a policy containing a copayment or coinsurance requirement for a health care service delivered through telehealth services, provided that the copayment or coinsurance does not exceed the copayment or coinsurance applicable if the same services were delivered through in-person diagnosis, consultation, or treatment. This subdivision does not require cost sharing for services provided through telehealth.

(d) Services provided through telehealth and covered pursuant to this chapter shall be subject to the same deductible and annual or lifetime dollar maximum as equivalent services that are not provided through telehealth.

Appendix B: Selected Examples of Remote Patient Monitoring Coverage Provisions

From Maine:

4. Telemonitoring requirements. A carrier shall provide coverage for telemonitoring if:
 - A. The telemonitoring is intended to collect an enrollee's health-related data, including, but not limited to, pulse and blood pressure readings, that assist a provider in monitoring and assessing the enrollee's medical condition;
 - B. The telemonitoring is medically necessary for the enrollee;
 - C. The enrollee is cognitively and physically capable of operating the mobile health devices the enrollee has a caregiver willing and able to assist with the mobile medical devices; and
 - D. The enrollee's residence is suitable for telemonitoring. If the residence appears unable to support telemonitoring, the telemonitoring may not be provided unless necessary adaptations are made.

From Mississippi, selected provisions:

- (e) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including:
- (i) Monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry and other condition-specific data, such as blood glucose;
 - (ii) Medication adherence monitoring; and
 - (iii) Interactive video conferencing with or without digital image upload as needed.

(4) Remote patient monitoring services aim to allow more people to remain at home or in other residential settings and to improve the quality and cost of their care, including prevention of more costly care. Remote patient monitoring services via telehealth aim to coordinate primary, acute, behavioral and long-term social service needs for high-need, high-cost patients. Specific patient criteria must be met in order for reimbursement to occur.

(5) Qualifying patients for remote patient monitoring services must meet all the following criteria:

- (a) Be diagnosed, in the last eighteen (18) months, with one or more chronic conditions, as defined by the Centers for Medicare and Medicaid Services (CMS), which include, but are not limited to, sickle cell, mental health, asthma, diabetes, and heart disease; and
- (b) * * *

The patient's health care provider recommends disease management services via remote patient monitoring.

(6) A remote patient monitoring prior authorization request form * * * may be required for approval of telemonitoring services. If prior authorization is required, the request form must include the following:

- (a) An order for home telemonitoring services, signed and dated by the prescribing physician;
- (b) A plan of care, signed and dated by the prescribing physician, that includes telemonitoring transmission frequency and duration of monitoring requested;
- (c) The client's diagnosis and risk factors that qualify the client for home telemonitoring services;
- (d) Attestation that the client is sufficiently cognitively intact and able to operate the equipment or has a willing and able person to assist in completing electronic transmission of data; and
- (e) Attestation that the client is not receiving duplicative services via disease management services.

- (7) The entity that will provide the remote monitoring must be a Mississippi-based entity and have protocols in place to address all of the following:
- (a) Authentication and authorization of users;
 - (b) A mechanism for monitoring, tracking and responding to changes in a client's clinical condition;
 - (c) A standard of acceptable and unacceptable parameters for client's clinical parameters, which can be adjusted based on the client's condition;
 - (d) How monitoring staff will respond to abnormal parameters for client's vital signs, symptoms and/or lab results;
 - (e) The monitoring, tracking and responding to changes in client's clinical condition;
 - (f) The process for notifying the prescribing physician for significant changes in the client's clinical signs and symptoms;
 - (g) The prevention of unauthorized access to the system or information;
 - (h) System security, including the integrity of information that is collected, program integrity and system integrity;
 - (i) Information storage, maintenance and transmission;
 - (j) Synchronization and verification of patient profile data; and
 - (k) Notification of the client's discharge from remote patient monitoring services or the de-installation of the remote patient monitoring unit.
- (8) The telemonitoring equipment must:
- (a) Be capable of monitoring any data parameters in the plan of care; and
 - (b) Be a FDA Class II hospital-grade medical device.
- (9) Monitoring of the client's data shall not be duplicated by another provider.
- (10) To receive payment for the delivery of remote patient monitoring services via telehealth, the service must involve:
- (a) An assessment, problem identification, and evaluation that includes:
 - (i) Assessment and monitoring of clinical data including, but not limited to, appropriate vital signs, pain levels and other biometric measures specified in the plan of care, and also includes assessment of response to previous changes in the plan of care; and
 - (ii) Detection of condition changes based on the telemedicine encounter that may indicate the need for a change in the plan of care.
 - (b) Implementation of a management plan through one or more of the following:
 - (i) Teaching regarding medication management as appropriate based on the telemedicine findings for that encounter;
 - (ii) Teaching regarding other interventions as appropriate to both the patient and the caregiver;
 - (iii) Management and evaluation of the plan of care including changes in visit frequency or addition of other skilled services;
 - (iv) Coordination of care with the ordering health care provider regarding telemedicine findings;
 - (v) Coordination and referral to other medical providers as needed; and
 - (vi) Referral for an in-person visit or the emergency room as needed.
- (11) The telemedicine equipment and network used for remote patient monitoring services should meet the following requirements:
- (a) Comply with applicable standards of the United States Food and Drug Administration;
 - (b) Telehealth equipment be maintained in good repair and free from safety hazards;
 - (c) Telehealth equipment be new or sanitized before installation in the patient's home setting;
 - (d) Accommodate non-English language options; and
 - (e) Have 24/7 technical and clinical support services available for the patient user.
- (12) All health insurance and employee benefit plans in this state must provide coverage and reimbursement for the asynchronous telemedicine services of store-and-forward telemedicine services

and remote patient monitoring services based on the criteria set out in this section. Store-and-forward telemedicine services shall be reimbursed to the same extent that the services would be covered if they were provided through in-person consultation.