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Novel Coronavirus Hastens the Expansion of Remote Care in Connecticut

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By Stephen Cowherd and Amy Murray

Yesterday the Trump Administration announced a sweeping expansion of Medicare coverage for telehealth services in response to the COVID-19 pandemic while separately the Connecticut Department of Social Services (“DSS”) published a State Plan Amendment (“SPA”) providing Medicaid coverage for telephone visits. These are among the many actions being taken at both the federal and the state level to assist Connecticut providers and patients in the face of potentially mammoth access to care and safety issues stemming from the current public health emergency.

Medicare: With yesterday’s announcement, Medicare will now pay for visits furnished via telehealth to patients in all areas of the country, and in all settings, including in patients’ homes. Telehealth visits will be covered at the same rate as in-person visits, and health care providers have been given the ability to reduce or waive copays and deductibles.[i] A Fact Sheet issued by CMS covers these expansions of coverage, which will remain in place throughout the national public health emergency that was declared on March 13, 2020 in response to the novel coronavirus.

In order to facilitate telehealth visits through the use of communication tools such as FaceTime and Skype, the U.S. Department of Health and Human Services Office for Civil Rights (“OCR”) simultaneously announced that it will waive potential penalties for HIPAA violations against providers that serve patients in good faith through “everyday communications technologies.” This waiver is intended to last for as long as the current public health emergency exists and applies regardless of whether the telehealth service relates directly to COVID-19. OCR is expected to offer further guidance on how providers can offer telehealth to patients responsibly.

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Medicaid: At the state level, State Plan Amendment (20-R), which is effective as of today, amends the Medicaid State Plan to allow reimbursement for the following remote services: 5 or more minutes of a virtual communication between an FQHC provider and FQHC patient, or 5 or more minutes of remote evaluation of recorded video and/or images by an FQHC provider (G0071); certain evaluation and management (“E/M”) services provided via telephone by physicians, non-physician providers, medical clinics, and other specified provider and clinic types (HCPCS 99441-99443); and certain psychotherapy services provided via telephone by specified non-physician providers (HCPCS 99866-99868). These services will only be reimbursable to the extent that DSS communicates them in writing to providers through provider bulletins or other written guidance.

The SPA follows on the heels of Provider Bulletin 2020-09, which became effective on March 13, 2020, which describes a number of services, including behavioral health and certain E/M services provided to homebound Medicaid patients, that the DSS Commissioner has deemed to be clinically appropriate and cost effective for the state to be provided via telehealth.[ii] Additionally, in Provider Bulletin 2020-10, effective on the same date, DSS took the E/M services provided via telehealth to homebound Medicaid patients and expanded them to cover the non-homebound population, and also expanded the reimbursable E/M services to include new patient services, for the duration of the current public health emergency.

Connecticut Requirements: While all of this recent and rapid activity is seemingly good news for Connecticut providers looking to expand or accelerate the range of services they provide to patients remotely, it is also important to factor in existing state laws. For example, C.G.S. §19a-906 sets forth the basic requirements for Connecticut-licensed health care providers[iii] to serve patients located in the state via telehealth and includes the following:

- Communications with the patient must be through real-time, interactive, two-way communication technology or store and forward technologies;
- The provider must have access to/knowledge of the patient’s medical history, as provided by the patient, and the patient’s health record;
- The provider must conform to the standard of care applicable to his or her profession;
- The patient must be given the provider’s license number and contact information;
- The provider must inform the patient of the telehealth treatment methods and limitations and obtain the patient’s consent to receive services via telehealth;[iv] and
- The provider must inquire whether the patient consents to the disclosure of records concerning the telehealth interaction to the patient’s primary care provider.[v]

Providers should also be mindful that, subject to an exception related to the treatment of psychiatric and substance use disorders, current state law does not allow for schedule I, II and III controlled substances to be prescribed via telehealth. However, due to the ongoing developments in fighting the novel coronavirus at

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both the federal and state levels, additional legislative initiatives and executive orders hastening changes to these and other areas impacting telehealth in Connecticut would not be surprising. We will continue to provide updates in this evolving area of the law while questions on any of the above may be directed to Pullman & Comley's Health Care attorneys.

[i] <https://oig.hhs.gov/fraud/docs/alertsandbulletins/2020/policy-telehealth-2020.pdf>

[ii] The DSS Commissioner was afforded this power under Public Act 19-76, *An Act Expanding Medicaid Coverage of Telehealth Services*, which became effective as of July 1, 2019.

[iii] The following Connecticut-licensed professionals may provide services via telehealth: physicians, physical therapists, chiropractors, naturopaths, podiatrists, occupational therapists, optometrists, registered nurses/advanced practice registered nurses, physician assistants, psychologists, marital and family therapists, clinical social workers/master social workers, alcohol and drug counselors, professional counselors, dietitian-nutritionists, speech and language pathologists, respiratory care practitioners, audiologists, pharmacists, and paramedics.

[iv] This occurs during the first telehealth interaction and must be documented in the medical record.

[v] If consent is obtained, the provider must provide records of all telehealth interactions to the patient's primary care provider.

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