Health Care Alert

PULLMAN & COMLEY

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Telemedicine-Medicaid Billing and Compliance: Not Just a Matter of Picking Up the Phone

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by Michael A. Kurs and Daniel P. Scholfield

What should new and old Connecticut telemedicine and telehealth providers know about billing for Connecticut Medicaid services now that Connecticut's Governor Ned Lamont again has expanded the ability of providers to offer services remotely? See Executive Orders 7DD issued April 22, 2020, and 7G issued March 19, 2020. For starters, they should know that failure to properly document telemedicine encounters will expose providers to overpayment liabilities and potentially worse. The "worse" can encompass false claims, whistleblower and fraud liability.

Earlier this month the United States Department of Health and Human Services Office of the Inspector General (OIG) reported on the almost uniform failure of South Carolina providers of Medicaid fee for services telemedicine services audited by the OIG to properly document services in accordance with their state's requirements.

To avoid similar documentation debacles, the careful telehealth provider will want to make sure to pay close attention to the billing and documentation requirements specific to their practices. For instance, the federal Center for Medicare and Medicaid Services (CMS) notes that certain services may only be billed when the billing practice has an established relationship with a patient. (CMS has published a "toolkit" for states to use in evaluating and implementing their telemedicine reimbursement policies during the COVID-19 public health emergency, which providers may also find useful to review).

Providers should also appreciate that even though they may be eligible to bill for certain categories of behavioral health tele-services under the Connecticut Medical Assistance Program (CMAP), eligibility for payment can depend in some

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instances upon having in place and implementing procedures to verify provider and patient identity. The CMAP Provider Bulletin that incorporates the identity verification requirements includes the direction that providers must adhere to all coding requirements and federal and state regulations that govern provision of the services billed. Also, "providers must document completely for the service billed including a notation that the service was rendered via the telephone and follow current documentation requirements for the type of service being billed."

The OIG report on documentation shortcomings by South Carolina Medicaid providers included failures related to requirements to document the times expended for certain services.

Connecticut providers have similar obligations when documenting services for Medicaid covered patients. Physicians and psychiatrists, for example, must document the length of an encounter if a provider bills for a service based on the time spent during the encounter. Connecticut's Department of Social Services (DSS) may disallow and recover amounts for which the required documentation is not maintained.

With Connecticut DSS having issued some eight provider bulletins since March on the subject of telehealth, there is much to monitor to avoid non-compliance. Providers should know that DSS expects them to be attentive to all its provider bulletins (PBs). DSS advises: all providers must follow the guidelines published by DSS related to the provision of telemedicine and telephone services including specified ones and "all other subsequent PBs and provider communications that address CMAP's temporary telemedicine and telephonic coverage in response to COVID-19.

Ignoring DSS provider bulletins and communications invites future disallowances of reimbursements already received and risks overpayments, false claims, and other liabilities problems, including potentially, the termination of provider agreements, all events to avoid by careful compliance with program requirements. Something all providers should undertake to do.