

Attorneys:

- **Stephen M. Cowherd**
scowherd@pullcom.com
203.330.2280

Telehealth Opportunities Worth Watching in 2018

December 12, 2017

Continued physician shortages, reduced reimbursement from government and private insurance plans and the ever-increasing health care needs of an aging population are forcing payors and providers alike to increase the utilization of telehealth services to improve access and maintain the affordability of care. As 2017 draws to a close, Connecticut providers should be aware of the following recent developments in this rapidly evolving area:

Coming Expansions of Medicare Coverage

Although the Medicare program still restricts the utilization and payment of telehealth services largely to rural health professional shortage areas (HPSAs), the 2018 Physician Fee Schedule Final Rule (the “Final Rule”) that becomes effective January 1 expands coverage for telehealth services and increases efficiencies in billing for them. Specifically, the Final Rule adds a number of new codes to the list of covered telehealth services, including psychotherapy services and the assessment of and care planning for patients requiring chronic care management. This expansion comes approximately one year after passage of the 21st Century Cures Act, which required the Medicare Payment Advisory Commission (MedPAC) and CMS to study populations of Medicare beneficiaries whose care may be most improved by telemedicine.

VA Rule Challenges State Licensure Laws

Another major health care player at the federal level, the Department of Veterans Affairs (the “VA”), has been a trailblazer in using telemedicine to increase access to care for veterans. In one of its boldest initiatives to date, the VA proposed a rule on October 2, 2017, that would allow VA-employed health care providers licensed in any state to provide telehealth services to VA beneficiaries, *regardless of the physical location of the provider or the veteran*. In order to avoid violations

Telehealth Opportunities Worth Watching in 2018

of state licensure laws that generally require the health care provider to be licensed in the state where the patient is receiving the services, the VA said it would exercise federal preemption of state licensure, registration and certification requirements that run contrary to the rule. Comments to the proposed rule were due by November 1, 2017, and a final rule is expected to be issued sometime in the coming year.

Where Does Connecticut Stand?

Connecticut law requires a telehealth provider to: (1) communicate with patients through real time interactive, two-way technology or store and forward technology; (2) have access to or knowledge of the patient's medical history, as provided by the patient and the patient's health record, including the name and address of the patient's primary care provider; (3) conform to the standard of care applicable to the provider and expected for in-person care appropriate to the patient's age and presenting condition; and (d) provide the patient with the telehealth provider's license number and contact information. C.G.S. § 19a-906(b)(1).

On the reimbursement side, laws that went into effect January 1, 2016 require a commercial payor in Connecticut to provide coverage for telehealth services to the same extent that the insurer would cover such services if provided through an in-person visit (though not necessarily at the same rate). With regard to Medicaid, Public Act 16-198, which became effective on July 1, 2016, placed Connecticut's Department of Social Services under a legislative mandate to provide coverage for telehealth services within available appropriations. In furtherance of this law, the Department issued Provider Bulletin 2017-47 which, effective for dates of service beginning July 1, 2017, reimburses select enrolled specialists (defined as physicians, APRNs, PAs and CNMs with a specific specialty) for electronic consultations (known as "e-consults") to assist the primary care or treating practitioner in the diagnosis and/or treatment of the beneficiary's presenting issue.

To learn more about how providers can expand their services through the utilization of telehealth, please contact Stephen Cowherd or Amy Murray of our Health Care Department.

[Click here to view our blog, Connecticut Health Law.](#)

This publication is intended for educational and informational purposes only. Readers are advised to seek appropriate professional consultation before acting on any matters in this update. This report may be considered attorney advertising. To be removed from our mailing list, please email unsubscribe@pullcom.com with "Unsubscribe" in the subject line. Prior results do not guarantee a similar outcome.