Telehealth (Massachusetts): COVID-19 Inspires Relaxed Telemedicine Technology Requirements and Mandates Payment Parity

Foley & Lardner LLP

Article By Kyle Y. Faget
Foley & Lardner LLP
Health Care Law Today

- Communications, Media & Internet
- Coronavirus News
- Health Law & Managed Care
- Massachusetts

Wednesday, March 18, 2020

On March 15, 2020, in response to the a state of emergency due to the outbreak of the 2019 novel Coronavirus (COVID-19), Massachusetts Governor Charlie Baker executed an Order Expanding Access To Telehealth Services And To Protect Health Care Providers (the Order) requiring the state’s Group Insurance Commission (GIC), all Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations (Carriers) regulated by the Division of Insurance (Division) to allow all in-network providers to deliver clinically appropriate, medically necessary covered services to members via telehealth and mandating reimbursement for such services.

Under the Order, the GIC and all Carriers may establish reasonable requirements for telehealth services, in accordance with guidance issued by the Division, including—with respect to documentation and recordkeeping requirements that may not be more restrictive than those requirements established by the MassHealth program through MassHealth All-Provider Bulletin 289 (the Bulletin), which directly refrained from imposing specific requirements for technologies that may be used to deliver
services via telehealth. Consistent with the Bulletin, the Order mandates that the
GIC and all Carriers shall not impose any specific requirements on the technologies
used to deliver telehealth services (including any limitations on audio-only or live
video technologies). This flexibility is a shift from the statutory requirement that
telemedicine not include the use of audio-only telephone, facsimile machine, or e-

The requirements established by the MassHealth program for telehealth encounters
include:

1. Providers must properly identify the patient using, at a minimum, the patient’s
   name, date of birth, and MassHealth ID.

2. Providers must disclose and validate the provider’s identity and credentials,
   such as the provider’s license, title, and, if applicable, specialty and board
   certifications.

3. For an initial appointment with a new patient, the provider must review the
   patient’s relevant medical history and any available medical records with the
   patient before initiating the delivery of the service.

4. For existing provider-patient relationships, the provider must review the
   patient’s medical history and any available medical records with the patient
   during the service.

5. Prior to each patient appointment, the provider must ensure that the provider is
   able to deliver the service to the same standard of care and in compliance with
   licensure regulations and requirements, programmatic regulations, and
   performance specifications related to the service (e.g., accessibility and
   communication access) using telehealth as is applicable to the delivery of the
   services in person. If the provider cannot meet this standard of care or other
   requirements, the provider must direct the patient to seek in-person care. The
   provider must make this determination prior to the delivery of each service.

6. To the extent feasible, providers must ensure the same rights to confidentiality
   and security as provided in face-to-face services. Providers must inform
   members of any relevant privacy considerations.

7. Providers must follow consent and patient information protocol consistent with
   those followed during in person visits.

8. Providers must inform patients of the location of the provider rendering
   services via telehealth (i.e., distant site) and obtain the location of the patient
   (i.e., originating site).

9. The provider must inform the patient of how the patient can see a clinician in-
   person in the event of an emergency or as otherwise needed.

The Bulletin allows reimbursement of MassHealth covered services for services
delivered through telehealth, provided such services are medically necessary,
clinically appropriate, and comport with the guidelines set forth above. The Bulletin
also explains that providers delivering services via telehealth must meet all health
record standards required by the applicable licensing body as well as any applicable regulatory and program specifications required by MassHealth, including storage, access, and disposal of records. Additionally, providers must include a notation in the medical record that indicates that the service was provided via telehealth, the technology used, and the physical location of the distant and the originating sites. The provider must also include the CPT code for the service rendered via telehealth in the patient’s medical record.

The Order requires payment parity for services delivered via telehealth. The GIC and all Carriers must ensure that rates of payment to in-network providers for services delivered via telehealth are not lower than the rates of payment established by the Carrier for services delivered via traditional (i.e., in-person) methods. To effectuate this provision of the Order, the GIC and all Carriers are required to notify providers of any instructions necessary to facilitate billing for such telehealth services. This is an important step for Massachusetts, particularly if payment parity continues indefinitely, because Massachusetts law currently allows insurers to limit coverage of telemedicine services to those health care providers in a telemedicine network approved by the insurer. See Mass. Gen. Laws. Ann. Ch. 175 § 47BB.

Finally, the Order requires the GIC and all Carriers to cover, without any cost-sharing (i.e., copayments, deductibles, or coinsurance), medically necessary treatment delivered via telehealth related to COVID-19 at in-network providers, and prohibits imposition of prior authorization requirements on medically necessary treatment delivered via telehealth related to COVID-19 at in-network providers.

© 2020 Foley & Lardner LLP

National Law Review, Volume X, Number 78