Connecticut Governor Lamont Expands Access to Telehealth Services In Response to COVID-19 Pandemic

Robinson+Cole

Article By
Conor O. Duffy
Peter H. Struzzi
Robinson & Cole LLP
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On March 19, Connecticut Governor Ned Lamont issued Executive Order No. 7G, which is intended to expand access to telehealth services for Connecticut residents amidst the COVID-19 pandemic. Notably for health care providers, the Order waives or modifies provisions of Conn. Gen. Stat. § 19a-906 and any associated regulations, rules and policies regarding the delivery of telehealth services as follows:

- Allows telehealth providers enrolled in Medicaid or in-network in fully-insured commercial plans to provide covered telehealth services via audio-only telephone to established patients (i.e., those with an existing provider-patient relationship).

  - Health care providers interested in taking advantage of audio-only technologies to furnish telehealth services should be mindful that CMS continues to require the use of audio and video technology to furnish telehealth services to Medicare patients, but CMS does allow the use of audio-only communications via telephone to perform limited “virtual check-ins” with patients.

  - See here for our review of CMS guidance issued on telehealth in connection with COVID-19.

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- Suspends the licensure/certification/registration requirements in § 19a-906(a)(12) – which establishes who may qualify as a “telehealth provider” in Connecticut – for telehealth providers enrolled in Medicaid or in-network in fully-insured commercial plans, in accordance with orders issued by the Commissioner of the Department of Public Health (DPH).

  - As of March 20, DPH had not yet issued an order implementing this aspect of the Executive Order, but in Governor Lamont’s announcement of the Executive Order he indicated that it is intended to allow “patients to access out-of-state telehealth providers.”

- Modifies the requirement within § 19a-906(f) that the provision of telehealth services and health records maintained and disclosed as part of a telehealth interaction comply with HIPAA, to permit telehealth providers enrolled in Medicaid or in-network in fully-insured commercial plans to “utilize additional information and communication technologies consistent and in accordance with any direction, modification or revision of requirements for HIPAA compliance” of the U.S. Department of Health and Human Services (HHS) related to telehealth during the COVID-19 pandemic.

  - This aspect of the Executive Order is likely intended to refer to the Notification of enforcement discretion (and future guidance) issued by HHS on March 17, which notified covered health care providers that they “may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to provide telehealth without risk that [the Office for Civil Rights] might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency.”

  - The HHS Notification encourages providers to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.

  - It should be noted that the HHS Notification advises that Facebook Live, Twitch, TikTok, and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers.

- Requires that, prior to engaging in telehealth services, providers who furnish telehealth services to a patient not covered by Medicaid or a fully-insured commercial plan determine if the patient has coverage for the telehealth services by a health plan. Providers who receive payment under such health plans cannot balance bill the patient for additional charges, and providers who furnish telehealth services to patients who they determine do not have any insurance coverage for the telehealth services (either under a health plan or because the patient is uninsured) must accept the amount Medicare reimburses for the service as payment in full. If a provider determines that a patient is
uninsured or otherwise unable to pay for the services, the provider is obligated to offer financial assistance to the extent required under state or federal law.

- Waives any regulations that require that telehealth services be provided from a provider’s licensed facility.

The Executive Order follows on guidance from the state Department of Social Services issued earlier this week that allows the provision of telehealth services via audio-only technologies in certain circumstances (see here for our previous analysis of DSS guidance). Health care organizations would be well-advised to keep in mind the potential tension between the state-level waivers and CMS requirements under its waiver that are applicable to Medicare patients when implementing new telehealth care delivery models.

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