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ResearchReport

Recent Changes to Connecticut's Telehealth Laws

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Issue

This report describes recent changes to Connecticut's requirements for the delivery and insurance coverage of telehealth services, as enacted in PA 22-81. It updates OLR Report 2021-R-0198.

Summary

Connecticut law establishes requirements for the delivery of telehealth services and insurance coverage of these services (CGS §§ 19a-906, 38a-499a, & 38a-526a). In response to the COVID-19 pandemic, in the spring of 2020 the governor issued several executive orders modifying these telehealth requirements to ensure residents had continued access to care. (For more information on these executive orders, see OLR Report 2020-R-0138.) In July 2020, the legislature enacted a law that temporarily codified several provisions of the governor's orders until March 15, 2021 (PA 20-2, July Special Session).

PA 21-9 temporarily replaced these requirements with similar, but more expansive requirements until June 30, 2023. In 2022, the legislature extended these more expansive requirements until June 30, 2024 (PA 22-81), after which the telehealth requirements revert back to the existing telehealth law.

Among other things, these temporary requirements (1) expand the types of health providers authorized to provide telehealth services and service delivery methods, (2) establish requirements for telehealth providers seeking payment from uninsured or underinsured patients, (3) allow out-of-state authorized providers to practice telehealth in Connecticut, and (4) generally provide health insurance service and payment parity for telehealth.

In addition to these temporary requirements, the legislature also made permanent (1) the ability of certain out-of-state mental or behavioral health providers to practice telehealth in Connecticut and (2) expansions to Connecticut Medical Assistance Program (CMAP) telehealth coverage, including payment parity for providers and coverage for audio-only services under certain conditions.

Telehealth Service Delivery Requirements Until June 30, 2024

PA 21-9 temporarily replaced telehealth requirements for authorized providers who are (1) in-network providers for fully-insured health plans or (2) CMAP (i.e., Medicaid and HUSKY B) providers until June 30, 2023. Legislation enacted in 2022 extended the more expansive requirements described below until June 30, 2024, and applied them to all authorized telehealth providers (PA 22-81).

Telehealth Definition

Under PA 22-81, "telehealth" is a way of delivering health care services through information and communication technologies to facilitate the diagnosis, consultation and treatment, education, care management, and self-management of a patient's physical, oral, and mental health. It excludes fax, texting, and email but allows audio-only telephone. (Existing law, which PA 22-81, expands upon, excludes all audio-only telephone from the definition.)

Telehealth includes:

1. interaction between a patient at an originating site and the telehealth provider at a distant site and

2. synchronous (real-time) interactions, asynchronous store and forward transfers (transmitting medical information from the patient to the telehealth provider for review at a later time), or remote patient monitoring.

Authorized Telehealth Providers

The act temporarily expands the list of providers authorized to conduct telehealth services under existing law by including art therapists, athletic trainers, behavior analysts, dentists, genetic counselors, music therapists, nurse mid-wives, and occupational or physical therapist assistants.

Thus, the act authorizes the following certified, licensed, or registered health care providers to provide health care services using telehealth: advanced practice registered nurses (APRNs), alcohol and drug counselors, art therapists, athletic trainers, audiologists, behavior analysts, chiropractors, clinical and master social workers, dentists, dietician-nutritionists, genetic counselors, marital and family therapists, music therapists, naturopaths, nurse mid-wives, occupational or physical therapists, occupational or physical therapist assistants, optometrists, paramedics, pharmacists, physicians, physician assistants (PAs), podiatrists, professional counselors, psychologists, registered nurses, respiratory care practitioners, and speech and language pathologists.

The act also temporarily allows out-of-state authorized telehealth providers to practice telehealth in Connecticut until June 30, 2024. These providers must (1) be appropriately certified, licensed, or registered in another U.S. state or territory, or the District of Columbia; (2) be authorized to practice telehealth under any relevant order issued by the Department of Public Health (DPH) commissioner; and (3) maintain professional liability insurance or other indemnity against professional malpractice liability in an amount equal to or greater than that required for Connecticut health providers.

Connecticut entities or providers who contract with an out-of-state telehealth provider must verify that the provider meets the professional credential and liability insurance requirements listed above.

As under existing law, authorized telehealth providers must provide telehealth services within their profession's scope of practice and standard of care.

Telehealth Service Delivery

Under existing law, a telehealth provider can provide telehealth services to a patient only when the provider has met certain requirements, such as (1) having access to, or knowledge of, the patient's medical history and health record and (2) conforming to his or her professional standard of care expected for in-person care appropriate for the patient's age and presenting condition. PA 22-81 requires that the provider also determine whether the (1) patient has health coverage that is fully insured, not fully insured, or provided through CMAP and (2) coverage includes telehealth services.

The act also allows telehealth providers to provide telehealth services from any location, regardless of any state licensing standards and in compliance with all applicable federal requirements.

Initial Telehealth Interactions

Existing law requires a telehealth provider, at the first telehealth interaction with a patient, to document in the patient's medical record that the provider obtained the patient's consent after

informing him or her about telehealth methods and limitations. Under PA 22-81, this must also include information on the limited duration of the act (e.g., that using audio-only telephone is only permitted through June 30, 2024).

Using Additional Communication Technologies

By law, telehealth services and health records must comply with the Health Insurance Portability and Accountability Act (HIPAA). PA 22-81 modifies this requirement by allowing telehealth providers to use additional information and communication technologies in accordance with HIPAA requirements for remote communication as directed by the federal Department of Health and Human Services' Office of Civil Rights. Thus, the act authorizes telehealth providers to use certain third-party video communication applications, such as Apple FaceTime, Skype, or Facebook Messenger.

Payment for Uninsured and Underinsured Patients

The act requires telehealth providers to determine whether the patient has health coverage for any telehealth services provided. Providers must accept the following as payment in full for telehealth services until June 30, 2024:

1. for patients who do not have health insurance coverage for telehealth services, an amount equal to the Medicare reimbursement rate for telehealth services or
2. for patients with health insurance coverage, the amount the carrier reimburses for telehealth services and any cost sharing (e.g., copay, coinsurance, deductible) or other out-of-pocket expense imposed by the health plan.

For the latter, if the plan uses a provider network, this amount cannot exceed the in-network amount, regardless of the telehealth provider's network status.

Under the act, a telehealth provider who determines that a patient cannot pay for telehealth services must offer the patient financial assistance to the extent required under federal or state law.

DPH Regulatory Requirements

Regardless of existing law, PA 22-81 authorizes the DPH commissioner to waive, modify, or suspend regulatory requirements adopted by DPH or state licensing boards and commissions regarding health care professions, health care facilities, emergency medical services, and other specified topics. Until June 30, 2024, she may take these actions as she deems necessary to reduce the spread of COVID-19 and protect the public health.

Telehealth Insurance Requirements Until June 30, 2024

Coverage Required

As in existing law, PA 22-81 requires certain commercial health insurance policies to cover medical advice, diagnosis, care, or treatment provided through telehealth to the extent that they cover those services when provided in person. It generally subjects telehealth coverage to the same terms and conditions that apply to other benefits under a health policy. Insurers, HMOs, and related entities may conduct utilization reviews for telehealth services as they do for in person services, including using the same clinical review criteria. (Telehealth excludes audio-only telephone for policies that use a provider network and when the telehealth provider is out-of-network.)

Prohibitions

Under PA 22-81, health insurance policies cannot exclude coverage (1) just because a service is provided through telehealth, so long as telehealth is appropriate, or (2) for a telehealth platform that a telehealth provider selects. Also, telehealth providers who receive reimbursement for providing a telehealth service may not seek any payment from the insured patient except for cost sharing (e.g., copay, coinsurance, deductible) and must accept the amount as payment in full.

Health carriers (e.g., insurers and HMOs) are also prohibited, until June 30, 2024, from reducing the amount of reimbursement they pay to telehealth providers for covered services appropriately provided through telehealth instead of in person.

Applicability

The temporary expanded insurance coverage requirements apply to fully insured individual and group health insurance policies in effect any time from May 10, 2021, until June 30, 2024, that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; or (4) hospital or medical services, including those provided under an HMO plan. (Because of the federal Employee Retirement Income Security Act (ERISA), state insurance benefit mandates do not apply to self-insured benefit plans.)

The requirements also apply to high deductible health plans (HDHPs) to the maximum extent federal law allows. If the HDHP is used to establish a health savings, or similar, account, the act applies to the maximum extent federal law allows that does not affect the account's tax preferred status.

Permanent Telehealth Changes

In addition to the temporary expanded changes in effect until June 30, 2024, the legislature also made permanent (1) the ability of certain out-of-state mental or behavioral health providers to practice telehealth in Connecticut and (2) payment parity for telehealth services provided to CMAP beneficiaries and the ability of these providers to use audio-only services under certain conditions.

Mental and Behavioral Health Providers

Starting July 1, 2024, PA 22-81 permanently authorizes out-of-state mental or behavioral health service providers to practice telehealth in Connecticut if the provider:

1. is appropriately licensed, certified, or registered in another U.S. state or territory, or the District of Columbia, as a physician, naturopath, registered nurse, APRN, PA, psychologist, marital and family therapist, clinical or master social worker, alcohol and drug counselor, professional counselor, dietician-nutritionist, nurse midwife, behavior analyst, or music or art therapist;

2. provides telehealth services under a relevant DPH order (see below);

3. provides mental or behavioral health services within his or her professional scope of practice and professional standards of care; and

4. maintains professional liability insurance or other indemnity against professional malpractice liability in an amount that at least equals what is required in Connecticut for these providers.

Under the act, the DPH commissioner may issue an order authorizing out-of-state telehealth providers to practice in Connecticut that (1) limits the duration of this practice or the types of telehealth providers allowed to do so and (2) imposes conditions, such as requiring the providers to apply for Connecticut credentials (i.e., licensure, certification, or registration).

The commissioner may suspend or revoke an out-of-state telehealth provider's authorization to practice in Connecticut if he or she violates any condition the commissioner imposes or any applicable statutory requirements.

Expanded CMAP Coverage

By law, the Department of Social Services must provide CMAP coverage for categories of telehealth services, if the commissioner determines they are (1) clinically appropriate to be provided via telehealth, (2) cost effective for the state, and (3) likely to expand access in certain circumstances (CGS § 17b-245e). Legislation enacted in 2021 also requires the commissioner to provide CMAP

reimbursement for telehealth services to the same extent as services provided in person (PA 21-133).

Additionally, PA 21-133 requires the commissioner to cover audio-only telehealth services under CMAP (without a sunset date) when (1) she determines doing so is clinically appropriate; (2) providing comparable covered audiovisual telehealth services is not possible; and (3) audio-only services are provided to people who are unable to use or access comparable, covered audiovisual services. (Both requirements apply to the extent federal law allows.)

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