Emerging Telehealth Legislation

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Richelle Marting is an attorney, registered health information administrator, and certified coder who focuses on healthcare coding, billing, and reimbursement issues. She has practical, in-the-trenches experience with coding and billing issues. She has served as an outpatient multi-specialty surgery coder, hospital-based outpatient coder and a compliance coordinator for a large multi-specialty medical group. As an attorney she advises clients proactively on complex reimbursement questions and has guided multiple clients through extensive Medicare and OIG audits and investigations.
Overview

Federal Legislation

Payor Policies

State Laws
• Category 3 Services Covered Through 12/31/2023

• Mental Health

Review of Medicare Physician Fee Schedule Proposals
CONNECT for Health Act 2019

- Bipartisan
- Would give HHS authority to waive telehealth requirements that would not deny or limit coverage; can be expected to reduce spending without compromising quality
- Would waive all geographic restrictions of telehealth for mental health services
- Would add home as eligible originating site for mental telehealth
- Would add RHCs, FQHCs as originating sites regardless of geographic area
- Would make RHCs, FQHCs permanently eligible distant sites
- Would allow hospice recertificate face to face as telehealth
Telemental Health Expansion Act

- Would expand the provisions of the SUPPORT Act for telehealth to ‘certain mental health services’
Introduced in the Senate June 2021
Read twice and referred to the Committee on Finance

Telemental Health Care Access Act
• Would remove current statutory requirement for in-person, non-telehealth visit 6 months before telemental health service
Fair Care Act of 2020

- Would add RT, audiology, PT, OT, SLP services
- Would expand eligible professionals to add RT, audiologist, PT, OT, SLP
- Would add RPM for *chronic conditions
  - Chronic conditions = same definition CCM
  - RPM = auto transmission, vitals “or ADLs”
  - 90-day episodes by physician “who provides CCM”
- Same HHS waivers as CONNECT for Health
- Same waiver of geographic restrictions for mental telehealth; home as originating site
- Same expansions for RHCs, FQHCs
- Hospice recertifications via telehealth
Telehealth Modernization Act

- Would remove originating site restrictions
- Would allow HHS to expand eligible practitioners, but doesn’t mandate any particular professionals
- Would retain category 3 telehealth services permanently
Protecting Access to Post-COVID–19 Telehealth Act of 2021

- Would make permanent changes to SSA for telehealth
- Removal of geographic restriction
- Adding home and any location as determined by the Secretary as originating site
- FQHCs/RHCs as distant sites
Introduced in the Senate June 2021
Read twice and referred to the Committee on Finance

Protecting Rural Telehealth Access

- Would permanently waive geographic restriction
- Would add home as originating site
- Would permanently allow Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs) to serve as distant sites for providing telehealth services
- Would expand coverage for asynchronous (store-and-forward) telehealth services
Permanency for Audio-Only Telehealth Act

• Would allow use of audio-only equipment to furnish services described by the codes for audio-only telephone E/M, mental and behavioral health services, and substance use disorder services
• Would give HHS authority to add coverage of more audio-only services
<table>
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<tr>
<th>Title</th>
<th>Description</th>
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<tr>
<td>Connected Moms Act</td>
<td>Would identify and address barriers to coverage of remote physiologic devices under State Medicaid programs to improve maternal and child health outcomes for pregnant and postpartum Women</td>
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<tr>
<td>EASE Behavioral Health Services Act</td>
<td>Would allow mental health professionals providing telehealth services through Medicare and Medicaid to be reimbursed at the same levels as mental health professionals conducting in-person visits.</td>
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KANSAS TELEMEDICINE ACT

• KSA 40-2,210
• Went into effect January 1, 2019
• Telemedicine can be used to establish provider-patient relationship
• Created coverage (but not payment) parity
• Challenged in 2018 leading up to effective date
  • Judge said section of the Act under review didn’t create standing until previous injunctions were resolved
• Emergency declaration expired
• **Permanent telemedicine license waiver**
  • The permanent telemedicine waiver is available for all healthcare professions regulated by the KSBHA. Those who hold a telemedicine waiver in Kansas will be subject to all the rules and regulations pertaining to the practice of the licensed profession in this state and will be considered a licensee for the purposes of the applicable professional practice act.
  • Must hold a full, active, and unrestricted license in another state or meets the qualifications required under Kansas law to practice your profession
• Medicaid flexibilities still in effect – until rescinded
• 10/1/21 [CMHC Mobile Crisis Intervention](#) use H2011-U1
MISSOURI

• Terminated emergency declaration 8/27/2021
• New emergency due to staff shortages
  • “I do hereby order suspension of certain statutory and regulatory provisions related to telemedicine”
  • Temporarily waives requirement to have provider-patient relationship before prescribing medications
  • Temporarily would allow prescriptions based on internet request or questionnaire
  • Extends to December 31, 2021
  • “All waivers previously authorized under prior Executive Orders 20-04, 20-10, 20–12, 20-19, 21-07, and are currently in effect, are hereby authorized and shall remain in effect until otherwise withdrawn by the agency in coordination with the Governor’s Office or the termination of this Executive Order”
MISSOURI

• “All waivers previously authorized under prior Executive Orders 20-04, 20-10, 20-12, 20-19, 21-07, and are currently in effect, are hereby authorized and shall remain in effect until otherwise withdrawn by the agency in coordination with the Governor’s Office or the termination of this Executive Order”
  • 20-04: Original COVID PHE order giving agencies authority for waivers
  • 20-10, 20-19, 21-07: Extension of 20-04
OKLAHOMA

• Telehealth payment parity passed May 2021
• Effective Jan 1 2022
• "mhealth" also referred to as "mobile health", means patient medical and health information and includes the use of the Internet and wireless devices by patients to obtain or create specialized health information and online discussion groups to provide peer-to-peer support
• "Originating site" means a site at which a patient is located at the time health care services are provided to him or her by means of telemedicine, which may include, but shall not be restricted to, a patient's home, workplace or school
• "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose and other condition-specific data, medication adherence monitoring and interactive video conferencing with or without digital image upload
OKLAHOMA
• “Telemedicine”, “telehealth” includes synchronous mechanisms; asynchronous (including store and forward); remote patient monitoring; mhealth; “other electronic means”
• Any health benefit plan that is offered, issued or renewed in this state by an insurer on or after the effective date of this act shall provide coverage of health care services provided through telemedicine, as provided in this section
• An insurer **shall not exclude** a service for coverage *solely because the service is provided through telemedicine* and is not provided through in-person consultation or contact between a health care professional and a patient when such services are appropriately provided through telemedicine. An insurer **may limit** coverage of services provided by telehealth **consistent with coding and clinical standards** recognized by the American Medical Association or the Centers for Medicare and Medicaid Services as covered if delivered by telehealth or telemedicine, except as agreed to by the insurer and provider
OKLAHOMA

• An insurer **shall reimburse** the treating health care professional or the consulting health care professional for the diagnosis, consultation or treatment of the patient delivered through telemedicine services **on the same basis and at least at the rate of reimbursement** that the insurer is responsible for coverage for the provision of the same, or substantially similar, services through in-person consultation or contact.

• An insurer shall not apply any deductible to telemedicine services that accumulates separately from the deductible that applies in the aggregate to all items and services covered under the health benefit plan; no higher copay/coinsurance for teled; no lifetime max benefits for telemed.

• No utilization review unique to telemedicine.

• An insurer shall not place any restrictions on prescribing medications through telemedicine that are more restrictive than what is required under applicable state and federal law.

• Insurer can’t require use of particular telemed vendors.
Questions?

Available Through Heartland Telehealth Resource Center for Technical Assistance
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