Medi-Cal Releases Updates to Telehealth Manual

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PROFESSIONAL

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Last week the California Department of Health Care Services (DHCS) released its long-awaited final update to the Medi-Cal telehealth policy (the "Revised Policy") in an effort to increase flexibility and clarify existing policy around Medi-Cal providers' use of telehealth technology. Although many of the changes were anticipated following DHCS's draft proposal issued last October, the Revised Policy includes notable differences and creates significant telehealth coverage and reimbursement changes for Medi-Cal fee-for service, FQHCs/RHCs, IHS and FPACT.

The Revised Policy technically took effect on July 1, 2019, though DHCS initially published it on its website in draft form only, advising providers to hold all telehealth Medi-Cal claims until the release of the finalized Medi-Cal Provider Manual (which contains the Revised Policy). With the final manual now published, providers should be sure to submit their telehealth Medi-Cal claims in accordance with the Revised Policy, which we summarize below, including the key takeaways and comparisons from the original policy and the October 2018 proposal.

New Definitions

One of the major shortcomings of the prior Medi-Cal telehealth policy was that it did not define many important terms. The Revised Policy introduces definitions for terms including "Telehealth," "Asynchronous Store and Forward," "E-Consults," "Synchronous Interaction," "Distant Site," and "Originating Site," We recommend that Medi-Cal providers review these carefully.

As now defined by the policy, asynchronous store-and-forward means "the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient." Store-and-forward services must be billed using the GQ modifier. DHCS specifically excluded from the Revised Policy any patient-initiated consult via store-and-forward technology, including through mobile phone applications. Note that Medicare covers certain patient-initiated store-and-forward communications as "virtual check-ins."[1]

Another major development in the Revised Policy is the lack of originating site (i.e., where the patient is located when receiving treatment via telehealth) and distant site (i.e., where the health care provider is located while providing treatment to a patient at the Originating Site via telehealth) restrictions. This means that Medi-Cal beneficiaries may receive reimbursable telehealth services even from their own homes, whereas Medicare only covers and reimburses "Medicare telehealth services" if the physician and the patient are located at approved categories of originating and distant sites (generally licensed health

care facilities), unless an exception applies.[2]

Covered Services Generally

The original Medi-Cal telehealth policy outlined specific services that were covered and reimbursed when provided via telehealth, including psychiatric services, asynchronous teleopthalmology, teledetermatology and teledentistry services. The Revised Policy adopts a fundamentally different approach by enabling Medi-Cal beneficiaries to receive a broader array of services delivered via telehealth. Under this new policy, any Medi-Cal covered benefits or services may be provided via telehealth – either by synchronous, i.e., live, audio-video communication or by store-and-forward communication – if the following requirements are satisfied:

1. The treating provider at the distant site believes it is clinically appropriate to deliver the benefits or services by telehealth, based upon evidence-based medicine and applicable best practices;
2. The benefits or services meet the procedural definition and components of the applicable CPT/HCPCS code associated with the service or benefit, and any extended guidelines in the telehealth policy; and
3. The benefits or services satisfy California law regarding the confidentiality of medical information and the patient's right to access such information.

E-Consults

One new benefit that the Revised Policy introduces is "e-consults." E-consults are a type of store-and-forward communication through which the patient's treating provider (attending or primary) can request the opinion or advice of another provider who has specific expertise to assist in diagnosing or treating a patient. E-consults are "designed to offer coordinated multidisciplinary case reviews, advisory opinions and recommendations of care," but must still satisfy Medi-Cal requirements mentioned above regarding CPT and HCPCS codes, and services for the condition being treated must be covered by Medi-Cal. California follows Medicare's lead in introducing this benefit: CMS introduced e-consults as a covered benefit for Medicare beneficiaries in the 2019 Physician Fee Schedule Final Rule. (Aside from Medi-Cal, Connecticut's Medicaid program is the only other state program that covers e-consults). As e-consults fall within "store-and-forward" communication, providers billing for e-consults must use the GQ modifier.

The Revised Policy contains a number of limitations on reimbursement for e-consults. First, e-consults are not separately reportable or reimbursable if the distant site provider saw the patient within the last 14 days, or if the e-consult results in a transfer of care or other face-to-face service with the distant site provider within the next 14 days, or next available appointment date of the distant site provider. While DHCS does not explicitly address the reasons behind these limitations in the Revised Policy, the terms resemble Medicare's limitations on reimbursement for inter-professional consults.[3] Additionally, e-consults must be at least five minutes long in order to be eligible for Medi-Cal reimbursement.

The Revised Policy also lays out specific documentation requirements for originating site and distant site providers involved in e-consults. For example, originating site providers must now record their request for an e-consult and document that it resulted from patient care previously provided and related to patient management. Distant site providers must record their review and analysis of the "transmitted medical information" with documentation of the date of service and time spent providing the e-consult, and create a "written report of case findings and recommendations with conveyance to the originating site."

Provider Requirements

Medi-Cal generally requires the provider with "ultimate responsibility for the care of the patient" and any provider treating patients via telehealth to be licensed in California and enrolled in Medi-Cal. While not in the Provider Manual, DHCS previously opined that an enrolled Medi-Cal provider must "be located within the state's borders." In comparison, the Revised Policy states that the "enrolled Medi-Cal provider group for which the health care provider renders services via telehealth must meet all Medi-Cal program enrollment requirements and must be located in California or a border community."

Consent

Medi-Cal's psychiatric procedure guidelines previously required providers to obtain a telehealth-specific oral consent from the patient before providing treatment via telehealth. In the proposed policy, DHCS expanded this requirement to telehealth generally, initially labeling it as "informed consent." Under the Revised Policy, however, DHCS agreed with comments requesting the word "informed" be removed from references to "informed consent" in the manual to align with California law under Business and Professions Code section 2290.5, and revised the section to allow verbal or written consent by patients to any form of telehealth services.

The Department also explained in the Revised Policy that it is acceptable to use "a general consent agreement that specifically mentions use of telehealth as an acceptable modality for delivery of services." This will make the administrative side of providing services via telehealth less onerous for some enrolled Medi-Cal providers. Providers should keep copies of the general consent agreements in the patient's medical file to document patient consent.

Documentation Requirements

As noted above, Medi-Cal's psychiatric procedure guidelines required providers obtain oral consent to telehealth services, which providers were required to document in the patient's medical record by including the following information: a description of the risks, benefits and consequences of receiving treatment via telehealth, confirmation that the patient may withdraw from the telehealth consult at any time, and that all existing requirements under confidentiality laws apply to services provided via telehealth. In expanding the consent requirements to all telehealth services, the Revised Policy instead requires providers to document treatment in a way that substantiates the CPT or HCPCS codes billed and to document benefits or services in the same manner as a comparable in-person service.

Remote Patient Monitoring

One downside for telehealth advocates is that DHCS intentionally chose not to include remote patient monitoring in the Revised Policy, though according to responses to stakeholder feedback issued last year, it will "continue to evaluate and assess different modalities for delivery of Medi-Cal covered benefits and services."

For more information, the Revised Policy is available on DHCS's website here, along with an All Plan Letter concerning coverage of telehealth services by managed care health plans.

Hooper, Lundy & Bookman's digital health attorneys will continue monitoring developments in California's telehealth landscape as they unfold. For further information, please contact Andrea Frey in San Francisco or Jeremy Sherer in Boston, or your regular Hooper, Lundy & Bookman contact.

1 83 Fed. Reg. 59452, 59483 (Nov. 23, 2018).

2 42 CFR § 410.78.

3 See 83 Fed. Reg. 59489.

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