

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal



DEPUTY SUPERINTENDENT
Robert E. Doucette, Jr.

BULLETIN 2020-005

March 17, 2020

FILED
2020 MAR 17 PM 6:06
OFFICE OF
SUPERINTENDENT
OF INSURANCE

TO: EVERY HEALTH INSURER SUBJECT TO THE PROVISIONS OF THE PATIENT PROTECTION ACT, SECTION 59A-57-1, et seq., NMSA 1978

RE: UTILIZATION AND REIMBURSEMENT OF TELEMEDICINE DURING COVID-19 PUBLIC HEALTH EMERGENCY

We are issuing this Bulletin to underscore our support of and expectations for telemedicine. Virtually all federal and state health authorities *strongly* encourage the use of telemedicine services to reduce COVID-19 exposure and to enable providers and patients to practice social distancing. In Bulletin 2020-04, this Office urged the subject health insurers to implement proactive measures in this effort, one of which was to encourage “network providers to utilize telehealth services to minimize exposure of provider staff and other patients to those who may have the virus”. Our Notice of Inquiry and Order of March 12, 2020, called for insurers to report on this and the other critical steps to our office by the close of business on March 23, 2020.

Our office has received a number of consumer and provider calls about telemedicine, and in particular, telemedicine and telehealth services for psychiatric or behavioral health services. Patients have reported that telemedicine services are unavailable, and providers have reported that some health insurers are imposing software, hardware, billing and reimbursement restrictions that severely limit the availability of these essential services. This has resulted in patients forgoing necessary care, or continuing with in-person provider visits when a telemedicine visit would have sufficed. This defeats the goal of social distancing.

This Bulletin is directed at removing barriers to telemedicine services by reminding subject health insurers of their obligations under Sections 59A-46-50.3(A), 59A-22-49.3, 59A-23-7.12, and 59A-47-45.3, NMSA 1978. These statutes require that:

- (1) Insurers shall treat telemedicine visits and in-person visits equally;
- (2) Your plan or member agreement not impose limitations on telemedicine visits that are not likewise imposed on in-person provider visits; and
- (3) Rates for services delivered via telemedicine not be lower than the rates for in-person services.

Insurers are also reminded that:

- (a) for services to those with COVID-19, there must be no prior authorization requirements or cost sharing obligations; and
- (b) to the extent that your provider contracts limit or impose barriers to telemedicine visits (such as a requirement that the patient use a two-way video/audio connection), such restrictions may cause your health plan to no longer meet network adequacy requirements.

The Superintendent also reminds insurers that under the mental health parity provisions of state law, Section 59A-23E-18, NMSA 1978,

“[a] group health plan or group or individual insurance shall not impose treatment limitations or financial restrictions, limitations or requirements on the provision of mental health benefits that are more restrictive than the predominant restrictions, limitations or requirements that are imposed on coverage of benefits for other conditions”.

This law, read in conjunction with the telemedicine parity law, requires that behavioral health services be available via telemedicine on the same terms as physical health services. OSI will be monitoring compliance with these parity laws, and will pursue enforcement proceedings as necessary to effect compliance.

CMS has promulgated guidance for telemedicine services provided to Medicare recipients, and the New Mexico Human Services Department, through its Medical Assistance Division, is issuing a Letter of Direction (LOD) to all contracted Managed Care Organizations detailing requirements for telehealth and other services. Their LOD will be posted on the HSD website and we will post it on the OSI website. For the sake of consistency, and to eliminate delayed services or payments to your network providers, OSI


encourages commercial insurers to apply the same guidance and codes to billings under their group and individual policies.

To facilitate the delivery of telemedicine and telehealth services, the Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) announced today that, “effective immediately, it will exercise its enforcement discretion and will waive potential penalties for HIPAA violations against health care providers that serve patients through everyday communications technologies during the COVID-19 nationwide public health emergency.”

OSI understands that there is a potential for misuse of telemedicine services and related billings. We encourage you to take action on misuse and also notify the Fraud Bureau of OSI's Criminal Division at <https://www.osi.state.nm.us/index.php/stop-fraud/> to report suspicion of fraud or abuse.

Thank you for your attention to this matter and your cooperation. Please be sure that your report to this office on March 23 provides us with sufficient detail on the steps you have taken to facilitate telemedicine.

ISSUED this 17th day of March, 2020.



RUSSELL TOAL
Superintendent of Insurance