

March 29, 2020 | 4:15 pm

Information on Novel Coronavirus

Governor Cuomo has put NY State on **PAUSE**: All non-essential workers are directed to work from home, and everyone is required to maintain a 6-foot distance from others in public.

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Department of Financial Services

Insurance Circular Letter No. 6 (2020)

March 15, 2020

TO: All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, Health Maintenance Organizations, Student Health Plans Certified Pursuant to Insurance Law § 1124, Municipal Cooperative Health Benefit Plans, and Prepaid Health Services Plans

RE: Coronavirus and Telehealth Services

STATUTORY AND REGULATORY REFERENCES: N.Y. Ins. Law §§ 301, 3216, 3217, 3217-h, 3221, 4303, and 4306-g; Public Health Law § 2999-cc and Article 27-F; 45 C.F.R. Parts 160 and 164; 42 C.F.R. Part 2; and Mental Health Law § 33.13

I. Purpose

The Governor of New York has declared a state of emergency to help New York more quickly and effectively contain the spread of the novel coronavirus (“COVID-19”). As part of these containment efforts, telehealth is especially important as a replacement for in-person visits to a health care provider. The purpose of this circular letter is to advise insurers authorized to write accident and health insurance in this state, Article 43 corporations, health maintenance organizations, student health plans certified pursuant to Insurance Law § 1124, municipal cooperative health benefit plans (collectively “issuers”), and prepaid health services plans of coverage requirements for telehealth services.

II. Telehealth Delivery of Services for Issuers

Given that COVID-19 is a communicable disease, some insureds may be using telehealth services instead of in-person health care services for both the diagnosis of COVID-19 and for other covered health care services, including mental health care and substance use disorder treatment services, whether or not related to COVID-19. Issuers are reminded that Insurance Law §§ 3217-h and 4306-g and Public Health Law § 4406-g prohibit issuers from excluding a service that is otherwise covered under a comprehensive health insurance policy or contract because the service is delivered via telehealth. Under those laws, “telehealth” means the use of electronic information and communication technologies by a provider to deliver health care services to an insured individual while the individual is located at a site that is different from the site where the provider is located.

The Department of Financial Services (“Department”) has received inquiries as to what electronic and communication technologies must be covered under the definition of telehealth. During the state of emergency for COVID-19, electronic information and communication technologies include telephonic or video modalities (including technology commonly available on smart phones and other devices) when medically appropriate to deliver health care services for the assessment, diagnosis, consultation, treatment, care management, and self-management of a patient and if all other requirements for a covered health care service are met. To further ensure that insureds do not have barriers to access for telehealth services, the Department will be promulgating an emergency regulation to provide that, during the state of emergency for COVID-19, no policy or contract delivered or issued for delivery in New York that provides comprehensive coverage for hospital, surgical, or medical care may impose, and no insured is required to pay, copayments, coinsurance, or annual deductibles for an in-network service delivered via telehealth when such service would have been covered under the policy if it had been delivered in person.

Issuers are reminded that all services delivered via telehealth must be performed on dedicated secure transmission linkages that meet minimum federal and state requirements including, but not limited to, 45 C.F.R. Parts 160 and 164 (HIPAA Security Rules); 42 C.F.R. Part 2 (Confidentiality of Substance Use Disorder Patient Records), Public Health Law Article 27-F, and Mental Health Law § 33.13. Transmissions must employ acceptable authentication and identification procedures by both the sender and the receiver.

III. Telehealth Delivery of Services for Medicaid (including Prepaid Health Services Plans)

Public Health Law § 2999-cc provides that telehealth means the use of electronic information and communication technologies by telehealth providers to deliver health care services,

including the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient. The law further provides that telehealth does not include delivery of health care services by means of audio-only telephone communication. The Governor has issued an Executive Order to suspend Public Health Law § 2999-cc, and any regulations promulgated thereunder by the Department of Health, the Office of Mental Health, the Office of Addiction Services and Supports, and the Office for People with Developmental Disabilities, to the extent necessary to allow additional telehealth provider categories and modalities, to permit other types of practitioners to deliver services within their scopes of practice, and to authorize the use of certain technologies for the delivery of health care services to established patients, pursuant to such limitations as the commissioners of such agencies may determine appropriate.

During the state of emergency for COVID-19, electronic information and communication technologies include telephonic or video modalities (including technology commonly available on smart phones and other devices) when medically appropriate to deliver health care services for the assessment, diagnosis, consultation, treatment, care management and self-management of a patient and if all other requirements for a covered health care service are met. The Department of Health, the Office of Mental Health, the Office of Addiction Services and Supports, and the Office for People with Developmental Disabilities plan to issue further guidance on this important coverage.

IV. Conclusion

Use of telehealth is essential to reduce the spread of COVID-19 and to ensure access to covered services, whether or not related to COVID-19. Issuers and prepaid health services plans should ensure that telephonic and video modalities are covered for telehealth when medically appropriate for the provision of services covered under a policy or contract, including Medicaid coverage.

Please direct any questions regarding this circular letter to Tobias Len, Assistant Chief, Health Bureau, by mail at New York State Department of Financial Services, Health Bureau, One Commerce Plaza, 19th Floor, Albany, New York 12257 or by email at Tobias.Len@dfs.ny.gov.

Very truly yours,

Lisette Johnson
Chief, Health Bureau

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