

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 16-148)**

Overview and Legal and Fiscal Impact

The regulations modify provisions that govern the coverage and reimbursement of telehealth services provided under the Maryland Medical Assistance Program.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Freestanding Clinics: COMAR 10.09.08.10

Telehealth Services: COMAR 10.09.49.01 through .08 and .10 through .12

Legal Analysis

Background

Telemedicine means, as it relates to the delivery of health care services, the use of interactive audio, video, or other telecommunications or electronic technology (1) by a health care provider to deliver a health care service that is within the scope of practice of the health care provider at a site other than the site at which the patient is located and (2) that enables the patient to see and interact with the health care provider at the time the service is provided to the patient. Telemedicine does not include an audio-only telephone conversation, electronic mail message, or facsimile transmission between a health care provider and a patient.

Chapters 579 and 580 of 2012 required insurers, nonprofit health service plans, and health maintenance organizations to cover and reimburse for health care services appropriately delivered through “telemedicine.” Carriers may impose cost-sharing requirements for services delivered through telemedicine. Carriers may also undertake utilization review, including preauthorization, to determine the appropriateness of a health care service – whether delivered in person or through telemedicine – if the appropriateness of the service is determined in the same manner.

In accordance with Chapters 141 and 426 of 2014, to the extent authorized by federal law or regulation, coverage of and reimbursement for health care services delivered through telemedicine must apply to the Maryland Medical Assistance Program and managed care

organizations in the same manner they apply to health insurance carriers. Subject to the limitations of the State budget and to the extent authorized by federal law, the Department of Health and Mental Hygiene may authorize coverage of and reimbursement for health care services that are delivered through store and forward technology or remote patient monitoring. The department may specify by regulation the types of health care providers eligible to receive reimbursement for telemedicine health care services provided to Medicaid recipients.

Chapters 366 and 367 of 2016 required the department to include primary care providers if the department specifies by regulation the types of providers eligible to be reimbursed for telemedicine services under Medicaid. The legislation also authorized the department to require a health care provider to submit a registration form that includes information required for the processing of Medicaid reimbursement claims.

Summary of Regulations

The regulations modify provisions that govern the coverage and reimbursement of telehealth services under Medicaid. In addition, the regulations update language in provisions that govern payment procedures for freestanding clinics to correlate with provisions governing coverage and reimbursement of telehealth services.

Specific and noteworthy changes to the regulations are summarized below.

Scope

The regulations expand the scope of the regulations by specifying that the purpose of providing medically necessary services via telehealth is to improve access to *somatic and behavioral health services* (a broader array of services than the outpatient specialty care and psychiatric services specified in current regulations), access to outpatient and inpatient subspecialty services, and capacity and choice for ongoing treatment in underserved areas of the State.

Definitions

The regulations add, modify, and repeal defined terms used in the regulations. Among other changes, “[t]elehealth” is defined to mean the delivery of *somatic or behavioral health services* to a patient at an originating site by a distant site provider, through the use of technology assisted communication.

Registration and Service Model

Under the regulations, an eligible originating and distant site provider must register with the department before providing telehealth services. A provision establishing the service model for telehealth services is modified to provide for access to distant site providers generally, instead of merely providing access to distant site providers from other areas of the State, the District of Columbia, or a contiguous state.

Covered Services

Among other changes, the regulations require the department to cover under the Telehealth Program medically necessary services covered by Medicaid rendered by a *registered*, as opposed to an *approved*, distant site provider. The department must also cover the transmission fee paid to a registered originating site, except when the originating site is not a Medicaid payable provider. Regulations are repealed that specify coverage requirements for certain mental health services and services and a professional fee for certain telehealth services furnished to a Medicaid participant presenting in a hospital emergency department setting.

Provider Conditions for Participation

The regulations establish and modify certain conditions a provider must meet to participate in the Program. Under current regulations, a provider must be enrolled as a Medicaid provider on the date of the service rendered and meet certain general requirements for participation in Medicaid specified in regulations. Under the proposed regulations, a provider is exempted from these requirements when the provider is the originating site and is not a Medicaid payable provider (*e.g.*, residential crisis services site). The regulations also establish as conditions for participation that the provider engage in telehealth with a permitted telehealth provider registered with the department (except when the originating site is not a Medicaid payable provider) and a requirement that an originating and distant site provider maintain certain documentation, retain certain telehealth records, and include the participant's consent to participate in telehealth or an explanation as to why consent was not available.

The regulations also authorize a deaf or hard of hearing participant's home or any other secure location as approved by the participant and the provider to register as an originating site for Telehealth Program service delivery and authorize a provider fluent in American Sign Language who provides telehealth services to deaf or hard of hearing participants to register as a distant site provider.

Limitations

The department may not reimburse a provider for (1) communications between providers where the participant is not physically present at the originating site or (2) telehealth services whether either the distant site is not a registered distant site provider or the originating site is not a permitted originating site provider.

Reimbursement

Under the regulations, a provider must participate with a telehealth partner that meets provider conditions for participation to receive reimbursement for telehealth services. The regulations also modify provisions that require reimbursement for a professional fee under certain circumstances. The department must reimburse a registered telehealth provider for a distant site professional fee performed via telehealth. For somatic services, the fee must be as set forth in the Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, and for

behavioral health services, the fee must be as set forth in the departmental fee schedule for Public Mental Health System Reimbursement.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 2-104(b), 15-103, 15-105, and 15-105.2(b) of the Health – General Article as statutory authority for the regulations. Section 2-104(b) authorizes the Secretary of Health and Mental Hygiene to adopt regulations to carry out the provisions of law that are within the jurisdiction of the Secretary. Section 15-103 gives the Secretary broad authority to regulate Medicaid. Section 15-105 requires the department to adopt regulations for the reimbursement of providers under Medicaid.

Section 15-105.2(b) of the Health – General Article requires, to the extent authorized by federal law or regulation, that provisions of State insurance law that govern coverage of and reimbursement for health care services delivered through telemedicine apply to Medicaid and managed care organizations in the same manner they apply to health insurance carriers. The department may specify by regulation the types of health care providers eligible to receive reimbursement for telemedicine health care services provided to Medicaid recipients. The section also requires the department to adopt regulations to carry out the provisions of law governing coverage of and reimbursement for services delivered through telemedicine.

Although not cited by the department, Chapters 366 and 367 of 2016 require the department to include primary care providers if the department specifies by regulation the types of providers eligible to be reimbursed for telemedicine services under Medicaid. The legislation also authorizes the department to require a health care provider to submit a registration form that includes information required for the processing of Medicaid reimbursement claims.

With the addition of Chapters 366 and 367 of 2016, the authority cited by the department is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

Regulation 10.09.49.07 states that a provider, to participate in the Telehealth Program, must meet certain conditions, including being enrolled as a Medicaid provider on the date of the service rendered, meeting certain general requirements for participation in Medicaid specified in regulations, and engaging in telehealth with a permitted telehealth provider registered with the department. The regulation includes an exception to these conditions, however, when “the originating site is not a Medicaid payable provider.”

Under current regulations, the term “provider” is defined to include an “individual, association, partnership, corporation, unincorporated group, or any other person authorized, licensed, or certified to provide services for Medical Assistance participants and who, through

appropriate agreement with the Department, has been identified as a Maryland Medical Assistance Provider by the issuance of an individual account number.”

As drafted, Regulation 10.09.49.07 would seem to exempt any individual or entity that falls under the definition of “provider” from the conditions for participation above when the originating site is not a Medicaid payable provider. Under this broad construction, a physician providing health care services via telemedicine at a distant site, such as a hospital, would not be required to be enrolled as a Medicaid provider on the date the service is rendered or meet the other conditions for participation noted above if the patient is located at an originating site that is not a Medicaid payable provider, such as a school.

Staff at the department confirm that this is not the intended interpretation of the regulation. The regulation is intended, instead, to make clear that a provider, *when the provider is the originating site and is not a Medicaid payable provider*, is not required to meet the specified conditions for participation in the Telehealth Program. To better reflect the intended meaning of the regulation, 10.09.49.07A(1), for example, could state, instead, that “[t]o participate in the *Telehealth* Program, the provider shall . . . [e]xcept when the *provider is the originating site and is not a Medicaid payable provider*, be enrolled as a Medical Assistance Program provider on the date . . . the service is rendered[.]”

Staff at the department have been notified of the potential ambiguity and indicate that they will review the regulation to determine whether any modification is required.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations clarify and update Medicaid telehealth provisions, primarily to require *registration* rather than *approval* as a telehealth provider and permit providers fluent in American Sign Language to engage in telehealth directly with a deaf or hard of hearing recipient from the recipient’s home or other secure agreed-upon location in an effort to increase access for deaf or hard of hearing recipients. As the changes do not alter service delivery charges, the department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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