STATE OF NEW YORK

6256

2021-2022 Regular Sessions

IN ASSEMBLY

March 11, 2021

Introduced by M. of A. WOERNER, GOTTFRIED -- read once and referred to the Committee on Insurance

AN ACT to amend the public health law in relation to the delivery of health care services via telehealth

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 2999-cc of the public health law is amended by adding a new subdivision 8 to read as follows:

8. "Health care plan" means an entity (other than a health care provider) that approves, provides, arranges for, or pays for health care services, including but not limited to:

(a) a health maintenance organization licensed under article forty-three of the insurance law;

(b) a health maintenance organization or other organization certified under article forty-four of this chapter;

(c) an insurer or corporation subject to the insurance law; and

(d) the medical assistance program under title eleven of article five of the social services law ("medicaid"); the child health plus program under title one-A of article twenty-five of this chapter, and the basic health program under section three hundred sixty-nine-gg of the social services law.

§ 2. Section 2999-dd of the public health law, as amended by section 4 of subpart C of Part S of chapter 57 of the laws of 2018, subdivision 1 as amended by chapter 124 of the laws of 2020, subdivisions 3 and 4 as added by chapter 328 of the laws of 2020, is amended to read as follows:

§ 2999-dd. Telehealth delivery of services. 1. [~~Health care services delivered by means of telehealth shall be entitled to reimbursement under section three hundred sixty-seven-u of the social services law; provided however, reimbursement for additional modalities, provider categories and originating sites specified in accordance with section twenty-nine hundred ninety-nine-ee of this article, and audio-only tele-~~

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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~~phone communication defined in regulations promulgated pursuant to subdivision four of section twenty-nine hundred ninety-nine-cc of this article, shall be contingent upon federal financial participation.~~] (a) A health care service may be delivered by means of telehealth by a telehealth provider otherwise authorized to perform that service. A health care service delivered by telehealth shall be with the consent of the patient or a person authorized to consent for the patient. The consent shall be documented in the patient's medical record.

(b) In-person contact between a telehealth provider and a patient prior to the delivery of health care services via telehealth shall not be required, unless the provider determines it to be clinically necessary.

2. (a) A health care plan shall cover a service, regardless of whether it is provided by telehealth, if the service would otherwise be covered by the health care plan and the provider is otherwise covered by the health care plan.

(b) A health care plan shall reimburse a treating or consulting health care provider for health care services appropriately delivered by telehealth on the same basis, at the same rate, and to the same extent that the health care plan reimburses for the service when provided through in-person diagnosis, consultation, or treatment.

(c) A health care plan may subject the coverage of a telehealth service to copayments, coinsurance or deductibles if they are at least as favorable to the enrollee as would apply if the service is not provided by telehealth.

(d) This article does not alter any obligation a health care plan may have to ensure that enrollees have access to all covered services through an adequate network of contracted providers.

(e) With respect to health care plans under paragraph (d) of subdivision eight of section 2999-cc of this article (medicaid, child health plus, and the basic health plan), this article shall only apply where there is federal financial participation. The commissioner shall make state plan amendments and seek federal waivers as necessary to obtain that federal financial participation.

3. The department of health, the office of mental health, the office of [~~alcoholism and substance abuse services~~] addiction services and supports, and the office for people with developmental disabilities shall coordinate on the issuance of a single guidance document, to be updated as appropriate, that shall: (a) identify any differences in regulations or policies issued by the agencies, including with respect to reimbursement [~~pursuant to section three hundred sixty-seven-u of the social services law~~]; and (b) be designed to assist consumers, providers, and health care plans in understanding and facilitating the appropriate use of telehealth in addressing barriers to care.

[~~3.~~] 4. The authority of the department of financial services to establish and enforce minimum standards for accident and health insurance under articles thirty-two and forty-three of the insurance law shall include enforcement of telehealth standards set forth in this article.

5. (a) Dental telehealth services shall adhere to the standards of appropriate patient care required in other dental health care settings, including but not limited to appropriate patient examination, taking of x-rays, and review of a patient's medical and dental history. All dental telehealth providers shall identify themselves to patients, including providing the professional's New York state license number. No dental telehealth provider shall attempt to waive liability for its telehealth

services in advance of delivering such telehealth services and no dental telehealth provider shall attempt to prevent a patient from filing any complaint with any governmental agency or authority.

(b) This subdivision shall not be construed to diminish requirements for other telehealth services.

[~~4.~~] **6.** Nothing in this article shall be deemed to allow any person to provide any service for which a license, registration, certification or other authorization under title eight of the education law is required and which the person does not possess.

§ 3. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 4. This act shall take effect January 1, 2022 and shall apply to all policies and contracts issued, renewed, modified, altered or amended on or after such date. Effective immediately, the commissioner of health, the superintendent of the department of financial services, the commissioner of the office of mental health, the commissioner of the office of addiction services and supports, and the commissioner of the office for people with developmental disabilities shall make regulations and take other actions reasonably necessary to implement this act on that date.