OLR Bill Analysis

SB 1022

AN ACT CONCERNING TELEHEALTH.

SUMMARY

This bill modifies requirements for the delivery of telehealth services and insurance coverage of these services, codifying provisions temporarily enacted by PA 20-2, July Special Session. Among other things, it:

1. expands the types of health providers authorized to provide telehealth services;

2. allows certain telehealth providers to provide services using audio-only telephone, which current law prohibits;

3. allows certain telehealth providers to use additional information and communication technologies in accordance with federal requirements (e.g., certain third-party video communication applications);

4. authorizes the Department of Public Health (DPH) commissioner to temporarily modify, waive, or suspend certain regulatory requirements to reduce the spread of COVID-19 and protect the public health;

5. establishes requirements for telehealth providers seeking payment from uninsured and underinsured patients;

6. requires insurance coverage for telehealth services and prohibits providers reimbursed for services from seeking payment from an insured patient beyond cost sharing; and

7. prohibits (a) insurance policies from excluding coverage for a telehealth platform selected by an in-network provider and (b)

carriers from reducing reimbursement to a provider because services are provided through telehealth instead of in-person.

The bill also makes minor, technical, and conforming changes related to, among other things, patient consent for telehealth services.

EFFECTIVE DATE: Upon passage

§ 1 — TELEHEALTH

Telehealth Providers

The bill modifies the definition of "telehealth provider" to include providers who are (1) in-network providers for fully insured health plans or (2) Connecticut Medical Assistance Program ("CMAP," i.e., Medicaid and HUSKY B) providers providing care or services to established CMAP patients, including:

1. telehealth providers authorized under current law (see BACKGROUND);

2. certified, licensed, or registered art therapists, athletic trainers, behavior analysts, dentists, genetic counselors, music therapists, nurse mid-wives, and occupational or physical therapist assistants; and

3. any of the above listed providers who (a) are appropriately licensed, certified, or registered in another U.S. state or territory, or the District of Columbia; (b) are authorized to practice telehealth under a relevant order issued by the DPH commissioner; and (c) maintain professional liability insurance or other indemnity against professional malpractice liability in an amount at least equal to that required for Connecticut health providers.

(The bill does not appear to address the provision of telehealth services by in-network providers in self-insured health plans.)

The bill also requires any Connecticut entity, institution, or provider who engages or contracts with an out-of-state telehealth provider to:

1. verify the provider's credentials to ensure he or she is certified, licensed, or registered in good standing in his or her home jurisdiction and

2. confirm that the provider maintains professional liability insurance or other indemnity against professional malpractice liability in an amount at least equal to that required for Connecticut health providers.

Audio-Only Telephone

Unlike current law, the bill allows in-network and CMAP telehealth providers to provide telehealth services via audio-only telephone.

Under the bill and existing law, "telehealth" excludes fax, texting, and email. It includes:

1. interaction between a patient at an originating site and the telehealth provider at a distant site and

2. synchronous (real-time) interactions, asynchronous store and forward transfers (transmitting medical information from the patient to the telehealth provider for review later on), or remote patient monitoring.

Service Delivery

Under existing law, a telehealth provider can provide services to a patient only when he or she meets certain requirements, such as (1) having access to, or knowledge of, the patient's medical history and health record and (2) conforming to his or her professional standard of care for in-person care appropriate for the patient's age and presenting condition.

The bill requires the provider to also determine if the (1) patient has health coverage that is fully insured, not fully insured, or provided through CMAP and (2) coverage includes telehealth services.

Additionally, the bill allows telehealth providers to provide telehealth services from any location.

Additional Communication Technologies

The bill modifies the requirement that telehealth services and health records comply with the federal Health Insurance Portability and Accountability Act (HIPAA) by allowing telehealth providers to use additional information and communication technologies in accordance with HIPAA requirements for remote communication as directed by the federal Department of Health and Human Services' Office of Civil Rights (e.g., certain third-party video communication applications, such as Apple FaceTime, Skype, or Facebook Messenger).

Payment for Uninsured and Underinsured Patients

The bill requires a telehealth provider to accept the following as payment in full for services:

1. for patients who do not have health insurance coverage for telehealth, an amount equal to the Medicare reimbursement rate for telehealth services or

2. for patients with health insurance coverage, the amount the carrier reimburses for telehealth services and any cost sharing (e.g., copay, coinsurance, deductible) or other out-of-pocket expense the health plan imposes.

Under the bill, a telehealth provider who determines that a patient cannot pay for telehealth services must offer the patient financial assistance to the extent required by federal or state law.

DPH Regulatory Requirements

Notwithstanding existing law on regulatory action, the bill authorizes the DPH commissioner to waive, modify, or suspend regulatory requirements adopted by DPH or state licensing boards and commissions regarding health care professions, health care facilities, emergency medical services, and other specified topics. She may take these actions to provide residents with telehealth services from out-of-state providers, as she deems necessary to reduce the spread of COVID-19 and protect the public health.

§§ 2-5 — INSURANCE COVERAGE FOR TELEHEALTH SERVICES

Coverage Required

Current law generally establishes requirements and restrictions for health insurance coverage of telehealth services. The bill replaces these requirements with similar, but more expansive requirements.

As with current law, the bill requires certain commercial health insurance policies to cover medical advice, diagnosis, care, or treatment provided through telehealth to the extent that they cover those services when provided in person. It generally subjects telehealth coverage to the same terms and conditions that apply to other benefits under the policy.

Under the bill and existing law, insurers, HMOs, and related entities may conduct utilization review for telehealth services in the same manner they conduct it for in-person services, including using the same clinical review criteria.

Prohibitions

Under the bill and existing law, health insurance policies cannot exclude coverage solely because a service is provided through telehealth, as long as telehealth is appropriate. The bill further prohibits policies from excluding coverage through a telehealth platform that a telehealth provider selects.

The bill also prohibits a telehealth provider who is reimbursed for providing a telehealth service from seeking payment from the insured patient, except for cost sharing (e.g., copay, coinsurance, deductible). The provider must accept the amount as payment in full.

Lastly, the bill prohibits health carriers (e.g., insurers and HMOs) from reducing the reimbursement amount they pay to telehealth providers for covered services appropriately provided through telehealth instead of in person.

Applicability

The bill applies to individual and group health insurance policies that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; or (4) hospital or medical

services, including those provided under an HMO plan. (Because of the federal Employee Retirement Income Security Act (ERISA), state insurance benefit mandates do not apply to self-insured benefit plans.)

BACKGROUND

Authorized Telehealth Providers

Current law allows the following licensed health care providers to provide health care services using telehealth: advanced practice registered nurses, alcohol and drug counselors, audiologists, certified dietician-nutritionists, chiropractors, clinical and master social workers, marital and family therapists, naturopaths, occupational or physical therapists, optometrists, paramedics, pharmacists, physicians, physician assistants, podiatrists, professional counselors, psychologists, registered nurses, respiratory care practitioners, and speech and language pathologists. By law, authorized telehealth providers must provide telehealth services within their profession's scope of practice and standard of care.

Related Bill

sHB 6470, favorably reported by the Human Services Committee, removes the prohibition on audio-only telehealth services and adds licensed nurse-midwives and behavior analysts to the list of authorized telehealth providers.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable
Yea 18 Nay 0 (03/22/2021)