

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

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DEPUTY SUPERINTENDENT OF
SUPERINTENDENT OF INSURANCE
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BULLETIN 2021-003

February 10, 2021

FILED

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

RE: CLARIFICATION OF BULLETIN 2020-005

In Bulletin 2020-005, the superintendent reminded health care insurers that the telemedicine parity laws¹ of New Mexico require carriers to reimburse telemedicine services if the same in-person service would be reimbursed. The mental health parity provisions of state law,² read in conjunction with the telemedicine parity laws, require a subject health insurer to reimburse behavioral health services delivered through telemedicine on the same terms as physical health services. In short, a subject health care insurer cannot impose different coverage standards for in-person and telemedicine services for either physical or behavioral health. If a covered person accesses covered health services through telemedicine, these parity requirements apply.

A plan may include supplemental “telehealth” or “tele-doc” programs, which generally provide a covered person virtual access to specified services. However, a plan cannot require a member to access care through one of these supplemental programs for otherwise covered services accessed through telemedicine. A service accessed through telemedicine must be reimbursed if an in-person visit would be reimbursable, even if the member does not access care through a supplemental telehealth or virtual doctor program.

In the same bulletin, the superintendent informed subject health care insurers that the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) waived potential penalties for HIPAA violations by providers who use specified communications

¹ Sections 59A-46-50.3(A), 59A-22-49.3, 59A-23-7.12, and 59A-47-45.3, NMSA 1978.

² Section 59A-23E-18, NMSA 1978.

technologies “during the COVID-19 nationwide public health emergency.” HHS subsequently clarified that this discretionary waiver would automatically terminate “upon the expiration date of the declared public health emergency, including any extensions * * *.” *See Federal Register / Vol. 85, No. 77 / Tuesday, April 21, 2020, p. 22024.*

Some health care insurers have asked whether they must continue following the guidance in that bulletin after the expiration of the declared public health emergency. Insurers have specifically asked whether coverage parity requirements continue to apply to behavioral health services.

The Biden Administration announced in January that the public health emergency declaration is expected to continue through 2021, so the penalty waiver will remain in place at least through the calendar year. Please be reminded that the New Mexico statutes that require coverage parity for telemedicine and in-person services are *not* linked to or triggered by the declaration of a public health emergency. These parity requirements apply no matter whether a public health emergency declaration is in effect.

When the public health emergency declaration expires, providers *may* lose the safe harbor of the OCR/HHS discretionary HIPAA enforcement waiver. If that occurs, some providers may cease providing certain telemedicine services. Nevertheless, the expiration of the waiver has no bearing on whether a subject health care insurer must provide coverage for a telemedicine service. If the insurer provides coverage for the service when delivered in person, the insurer must provide coverage when the service is delivered via telemedicine, even if the OCR/HHS HIPAA waiver has expired.

Some carriers also have questioned whether they may prospectively exclude coverage for a specific telemedicine service based on a carrier’s determination that delivering the service via telemedicine would be less efficacious than in-person delivery. Currently, no law authorizes a carrier to impose any such exclusions or limitations.

Thank you again for your cooperation with the Bulletin 2020-005 guidance.

ISSUED this 10th day of February, 2021.



RUSSELL TOAL
Superintendent of Insurance