OLR Bill Analysis

HB 6001

Emergency Certification

AN ACT CONCERNING TELEHEALTH.

SUMMARY:

This bill modifies requirements for the delivery of telehealth services and insurance coverage of these services until March 15, 2021. Among other things, it:

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

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

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

4. establishes requirements for telehealth providers seeking payment from uninsured or underinsured patients;

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

6. 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.

Additionally, the bill modifies requirements for pharmacies

transferring unfilled prescriptions for controlled substances that were electronically transmitted. It generally allows pharmacists to make these transfers electronically or by telephone if they meet certain requirements, such as recording specified information and taking measures to prevent the prescription from being filled at any pharmacy other than the one intended.

EFFECTIVE DATE: Upon passage

§§ 1, 2 & 6 — TELEHEALTH

The bill modifies requirements for health care providers who provide health services through the use of telehealth. These changes are effective from the bill's passage through March 15, 2021.

Telehealth Providers (§1)

The bill applies only to telehealth 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 existing 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 any relevant order issued by the Department of Public Health (DPH) commissioner; and (c) maintain professional liability insurance or other indemnity against professional malpractice liability in an amount equal to or greater than that required for Connecticut health providers.

Until March 15, 2021, the bill also requires any Connecticut entity,

institution, or provider who contracts with an out-of-state telehealth provider to:

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

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

Audio-Only Telephone (§1)

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 at a later time), or remote patient monitoring.

Expanded CMAP Coverage (§ 6)

The bill authorizes the Department of Social Services commissioner, to the extent allowed under federal law, to enable CMAP to cover applicable services provided through audio-only telehealth services.

Service Delivery (§§ 1 & 2)

Under existing law, a telehealth provider can provide telehealth services to a patient only when the provider has met 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 expected for in-person care

appropriate for the patient's age and presenting condition.

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

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

The bill also makes technical and conforming changes to a statute on the prescription of controlled substances by telehealth providers.

Initial Telehealth Interactions (§1)

Under current law, at the first telehealth interaction with a patient, a telehealth provider must document in the patient's medical record that the provider obtained the patient's consent after informing him or her about telehealth methods and limitations. Under the bill, this must include information on the limited duration of the bill's provisions.

Use of Additional Communication Technologies (§ 1)

The bill modifies the requirement that telehealth services and health records comply with the 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 (§ 1)

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

1. for patients who do not have health insurance coverage for telehealth services, 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 imposed by the health plan.

Under the bill, a telehealth provider who determines that a patient is unable to pay for telehealth services must offer the patient financial assistance to the extent required under federal or state law.

§ 2 — PHARMACY TRANSFERS OF CONTROLLED SUBSTANCES PRESCRIPTIONS

The bill authorizes pharmacies to transfer unfilled prescriptions for Schedule II-V controlled substances that were electronically transmitted in accordance with federal requirements. Pharmacists may make these transfers electronically or by telephone if the:

1. transfer is consistent with the federal Controlled Substances Act and related regulations and policies established by the federal Drug Enforcement Administration;

2. pharmacy that first receives the prescription (a) takes measures to prevent the prescription from being filled at any pharmacy other than the intended (i.e., "receiving") pharmacy and (b) records the receiving pharmacy's contact information and the name and license number of the pharmacist who receives the transfer; and

3. receiving pharmacy records (a) all information required by state law, (b) that the transfer occurred, (c) the name of the initial pharmacy that received the prescription, (d) the dates the prescription was issued and transferred, and (e) any refills issued for Schedule III-V controlled substances.

Under the bill, the pharmacy that first receives the electronically submitted prescription may fax the above information to the transferring pharmacy if making the transfer by telephone.

§§ 3-5 — INSURANCE COVERAGE FOR TELEHEALTH SERVICES

Coverage Required

Existing law generally establishes requirements and restrictions for health insurance coverage of services provided through telehealth. The bill temporarily replaces these requirements with similar but more expansive requirements for telehealth coverage for the time period beginning when the bill is effective and ending March 15, 2021.

As with existing 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 for a telehealth platform that a telehealth provider selects.

The bill also prohibits a telehealth provider who receives reimbursement for providing a telehealth service from seeking any 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), until March 15, 2021, from reducing the amount of reimbursement 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 in effect any time from the bill's passage until March 15, 2021, 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

Existing 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.