

Revised Bulletin No. B-4.89

Policy Directives for Telehealth

I. Background and Purpose

Since January 1, 2017, Colorado statute has required carriers offering health benefit plans in the state to provide coverage of services appropriately provided through telehealth, subject to terms and conditions of the health benefit plan, without requiring in-person contact, and to reimburse the treating or consulting participating provider for the diagnosis, consultation, or treatment of a covered person through telehealth on the same basis as a service delivered through in-person consultation or contact. During the COVID-19 public health emergency, requirements for the coverage of services delivered through telehealth were expanded at both the national and state level. Telehealth coverage in Colorado was addressed through Executive Orders issued by the Governor, and through Emergency Regulations issued by the Division of Insurance (the Division). With the passage and signing of SB20-212 on July 6, 2020, several provisions around emergency coverage of telehealth services were permanently incorporated into Colorado law.

Most recently, the passage of SB 21-139 by the Colorado General Assembly, which became effective on May 7, 2021, extended the requirement to cover services appropriately provided through telehealth to all dental plans issued, amended, or renewed in Colorado. The Governor's rescission of the COVID-19 public health emergency order in Colorado on July 8, 2021, and the subsequent expiration of the Division's emergency regulations related to telehealth coverage, further altered the telehealth landscape, bringing emergency coverage requirements for COVID-19 telehealth-related services to an end.

The purpose of this bulletin is to provide clarity around existing state requirements, to alleviate carrier, provider, and consumer confusion, and provide guidance to carriers regarding current and ongoing requirements for coverage of services appropriately delivered through telehealth.

Bulletins are the Division's interpretations of existing insurance law or general statements of Division policy. Bulletins themselves neither establish binding norms nor finally determine issues or rights.

II. Applicability and Scope

This bulletin is intended to provide guidance to all carriers offering individual, small group, and large group health benefit plans, dental plans, managed care plans, and student health



insurance coverage subject to the insurance laws of Colorado. Carriers who are third-party administrators for self-funded plans are encouraged to follow the guidance in this bulletin.

III. Division Position

It is the position of the Colorado Division of Insurance that access to telehealth is vital to ensuring the continuity of physical, dental, mental, and behavioral health care for Coloradans. In addition, the Colorado General Assembly has recognized and codified the practice of telehealth as a means by which an individual may receive health care services from a provider without in-person contact with the provider, regardless of the existence of a public health emergency.

While the Secretary of the U.S. Department of Health and Human Services renewed the national public health emergency on July 19, 2020, which will remain in effect for 90 days or until renewed, in Colorado the state declared public health emergency was rescinded by the Governor on July 8, 2021 through Executive Order 2021 122. In this Executive Order, the Governor shifted the state's focus on COVID-19 from response to recovery. During the COVID-19 recovery, the Division encourages carriers to continue the following practices:

- Notification of available telehealth benefits for consumers and providers: Carriers are strongly encouraged to notify and clearly communicate information about the coverage of telehealth benefits, including information related to the coverage of COVID-19 related treatment, and coverage of other services provided via telehealth, to consumers and providers, including any instructions necessary to facilitate provider billing of telehealth services. Such information should be prominently displayed on a public-facing website and updated regularly. Carriers are also encouraged to minimize any documentation requirements necessary to cover a service or procedure delivered through telehealth.
- Additional coverage of non-COVID-19 related benefits during the public health emergency: Many carriers may have expanded coverage for telehealth benefits above and beyond national and state requirements during the COVID-19 public health emergency (e.g., removed cost sharing for non-COVID related services), to ensure consumers had continued access to needed services. While it is within a carrier's discretion to discontinue such additional coverage(s), the Division strongly encourages carriers to clearly communicate any changes in benefits to plan members and providers. Carriers must still fully cover all plan benefits, and remain in compliance with all state and federal requirements.

Colorado telehealth coverage requirements outside of a state of emergency, which apply to all carriers offering health benefit plans and dental plans, include:

- Reimbursement for telehealth services no less than for in-person services: Colorado law requires carriers to reimburse treating or consulting participating providers for the diagnosis, consultation, or treatment of a covered person delivered through telehealth on the same basis that the carrier is responsible for reimbursing that provider for the same service delivered in person, subject to all terms and conditions of the health benefit plan or dental plan (Section 10-16-123(2)(b)(I), C.R.S.). As of July 6, 2020, carriers can no longer require a pre-existing relationship between the patient and the provider as part of the terms and conditions of the plan. Carriers also cannot place additional certification, location, or training requirements as a condition of reimbursing providers for using telehealth services as part of the terms and conditions of the plan. Payment parity applies to all medically necessary covered health care services that are appropriately provided through telehealth, including but not limited to behavioral health, mental health, substance use disorder, occupational therapy, speech therapy, physical therapy services, dental services, and remote monitoring of patients.
- Access to services that may be appropriately provided through telehealth: Carriers cannot require in-person contact between a provider and a covered person for services appropriately provided through telehealth (Section 10-16-123(2)(A), C.R.S.). During the COVID-19 public health emergency, many providers and patients utilized telehealth services. As state or national public health emergency declarations begin to expire, carriers may not require members or providers to transition back into an in-person, in-office-setting, and must continue to reimburse providers in parity with in-person rates.
- Telehealth services include HIPAA-compliant telecommunication systems: The definition of telehealth in Colorado was amended by SB21-212 to include “delivery of health care services through HIPAA-compliant telecommunications systems, including information, electronic, and communication technologies,” as well as remote monitoring technologies. At the national level, HHS Office for Civil Rights is continuing to exercise HIPAA enforcement discretion regarding the use of audio only telephone calls and non-public facing remote communication products, which allows health care providers to use widely-available communications software without fear of violating HIPAA. This discretion will remain in place through the duration of the national public health emergency.¹ In Colorado, the use of HIPAA-compliant telecommunications technologies, including HIPAA-compliant telephone only and non-public facing communications, is now codified as an allowed mode of delivery of telehealth services, and will remain in place after the national public health emergency expires.

¹ U.S. Department of Health and Human Services Office for Civil Rights, “FAQs on Telehealth and HIPAA during the COVID-19 nationwide public health emergency” (March 2021), available at <https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf>

The guidance in this bulletin applies only to health insurance and dental carriers offering health benefit plans and dental plans in Colorado that are regulated by the Division. The Division strongly encourages employers with self-funded plans to request that the third-party administrators of such plans comply with state and federal guidance, including the directives in this bulletin. Consumers and providers can determine whether a plan is subject to the Division's authority by looking for the designation "CO DOI" on the patient's insurance identification card.

V. Additional Resources

A. For More Information

Colorado Division of Insurance
Consumer Services, Life and Health Section
1560 Broadway, Suite 850
Denver, CO 80202
Tel. 303-894-7490 Toll-free (in state): 800-930-3745
Internet: <http://www.dora.colorado.gov/insurance>

B. Related Telehealth Guidance for Medicare and Medicaid:

U.S. Department of Health and Human Services: <https://www.telehealth.hhs.gov/>

Health First Colorado: <https://hcpf.colorado.gov/provider-telemedicine>

VI. History

Issued March 31, 2016.

Revised August 18, 2021.