



OFFICE OF MANAGEMENT & BUDGET

STATE BUDGET OFFICE

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MEMORANDUM

To: The Honorable Marvin L. Abney
Chairman, House Finance Committee

The Honorable William J. Conley, Jr.
Chairman, Senate Finance Committee

From: Thomas A. Mullaney *Thomas A. Mullaney*
Executive Director/State Budget Officer

Date: July 10, 2020

Subject: New Article for the FY 2021 Appropriations Act
(20-H-7171)

The Governor requests that a new article, entitled "Relating to Telemedicine", be included in the FY 2021 Appropriations Act.

This proposed budget article continues many of the emergency provisions established to respond to the COVID-19 pandemic through June 30, 2021. Most of these provisions have been in place since March 18, 2020 and have been extended via Executive Orders in 30-day increments. These provisions have applied (where relevant) to Medicaid and commercial insurers.

This legislation continues most of the current Executive Order-related Telemedicine provisions through June 30, 2021 will allow for the study of telemedicine impacts and best practices, resulting in recommendations being made on the optimal more-permanent legal structure of Telemedicine in Rhode Island. A stakeholder process will advise the Office of the Health Insurance Commissioner on the development of a report to be submitted to the General Assembly by December 31, 2020.

Revisions to the Rhode Island Telemedicine Act, based upon the Emergency Executive Order on Telemedicine include:

1. Current law applies only to fully funded commercial insurance plans. The revisions contained in this article would add a new section of law to include Medicaid Telemedicine provisions to align with the commercial insurance provisions, as is currently the practice during the pandemic.
2. The article requires continuation of the current pandemic policy of provider reimbursement at the same rate of an in-person visit for the same in-network service. Many states have permanently adopted this "reimbursement parity" for Telemedicine. (Some of these state laws are available at the link provided below.)
3. The article allows that patients and providers are not limited by their location (site of care) at the time of service.

4. The article allows for telephone-only (in addition to secure audio-visual, internet) platforms for Telemedicine care, contingent upon compliance with all federal laws and guidance. The Federal Trade Commission suspended enforcement of HIPAA provisions related to telemedicine in March, so the Article allows for flexibility around HIPAA-compliant platforms, in line with that federal guidance. The draft language anticipates that HIPAA-compliant platforms could be required again at a later date.
5. The article allows for the determination of appropriateness of a health-care service to be provided through telemedicine may vary for services provided through audio-visual telemedicine versus those provided through audio-only telemedicine.
6. The article provides that carriers may not exclude from coverage any type of service that is medically appropriate to be delivered through telemedicine simply because the service was delivered through telemedicine and not through an in-person visit.
7. The article prohibits requiring Prior Authorization to access Telemedicine care for in-network Primary Care and Behavioral Health Care. It allows Prior Authorization requirements for all other types of services at the same level as is the practice for similar in-person care. (Through July 1, 2020, all Prior Authorization requirements for in-network services delivered through Telemedicine had been suspended, so this provision reinstates a level of insurer review.)
8. The article allows for Telemedicine patient cost-sharing consistent with the level of cost-sharing for similar in-person care. (The current Executive Order is silent on cost-sharing and most insurers have been voluntarily waiving it during this period.)

Revision to the Benefit Determination Review Act based on the Executive Order to Remove Barriers to Access to Care:

1. The Benefit Determination Review Act would be amended to continue until July 1, 2021 certain COVID-19-related Executive Order provisions regarding prior authorization. These provisions prohibit the use of prior authorization for any in-network COVID-19-related non-pharmacy service, and for any in-network behavioral health service reasonably related to the pandemic.

Link to report on other State Telemedicine laws:

According to December 2019 Foley report, the states with true payment parity laws are Arkansas, Delaware, Georgia, Hawaii, Kentucky, Minnesota, Missouri, New Mexico, Utah, and Virginia. <https://www.foley.com/-/media/files/insights/health-care-law-today/19mc21486-50state-survey-of-telehealth-commercial.pdf>.

Last month, Colorado and Idaho have added payment parity to their Telemedicine laws.

If you have any questions regarding this new article, please feel free to call me at 222-6414.

TAM: 21-Amend-07

Cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
Marie Ganim, Health Insurance Commissioner

New Article

RELATING TO TELEMEDICINE

SECTION 1. *Preamble.*

WHEREAS, the transmission and spread of COVID-19 is and is expected to continue to be a significant public health concern in Rhode Island until such time as an effective vaccine against the virus is discovered and made widely available; and

WHEREAS, this act that is intended to protect public health and mitigate exposure to and the spread of COVID -19 during the COVID-19 pandemic while also serving as a one-year long experiment to provide the state with invaluable information around telemedicine policies and practices and thereby enable the state to make recommendations regarding telemedicine polices going forward based on data-driven assessments; and

WHEREAS, federal and state public health authorities largely agree that it is highly unlikely that a vaccine effective against COVID-19 will be widely available in less than twelve to eighteen months; and

WHEREAS, it is imperative that health insurers issuing policies in Rhode Island continue to take and maintain timely measures to ensure access and continuity of healthcare services, including the expansion of telemedicine services; and

WHEREAS, low-cost telephone and other internet-based audio-only and live video technologies are widely available and accessible to health care providers and patients. These technologies can enable the provision of health care services, including behavioral health care services, in a manner that will limit the transmission of COVID-19 to health care providers and patients while providing medically appropriate health care services to those quarantined or practicing social distancing; and

WHEREAS, insurance carriers have not always provided coverage for the full range of telemedicine services; and

WHEREAS, broad access to telemedicine services is particularly important during the COVID-19 outbreak so that health care professionals can continue to treat patients while in quarantine and to limit exposure as a preventive measure; and

WHEREAS, the existing statutory and regulatory frameworks on benefit determination and network plans do not contemplate drastic increase in demands for health care delivery and corresponding insurance reimbursements, providers' decreased administrative bandwidth, changes in utilization patterns

and anticipated streams of income, the need for alternative methods and sites of care delivery, and the anticipated shortage of available direct care workers and providers, all resulting from the COVID-19 public health emergency; and

WHEREAS, it has become clear that during the expected course of the COVID-19 pandemic, certain benefit determination requirements should be suspended or relaxed in order to better enable providers' continuing delivery of critical services and by easing and accelerating patients' access to necessary health care services; and

WHEREAS, Medicare program guidance has been issued by the federal government during this COVID-19 pandemic to remove barriers to telemedicine/telehealth services during this crisis, and reasonable consistency among insurance plans is necessary to ensure health service access and continuity of care for patients and providers; and

WHEREAS, in order to protect public health and mitigate exposure to and the spread of COVID - 19, it is essential to continue to facilitate the delivery of telemedicine services as a convenient, easily accessible, and affordable option to both health care providers and patients at least through June 30, 2020; and

WHEREAS, at this point in the pandemic, it is also important to concurrently develop a framework for assessing the state's temporary, emergency telemedicine policies, while studying their impacts and forming recommendations on which of these telemedicine policies should or should not be carried forward on a more permanent basis in Rhode Island. This act is intended to allow certain telemedicine provisions to be studied during a trial period.

SECTION 2. Section 27-81-3 of the General Laws in Chapter 27-81 entitled "The Telemedicine Coverage Act" is hereby amended to read as follows:

27-81-3. Definitions.

As used in this chapter:

(1) "Distant site" means a site at which a health-care provider is located while providing health-care services by means of telemedicine.

(2) "Health-care facility" means an institution providing health-care services or a health-care setting, including, but not limited to: hospitals and other licensed, inpatient centers; ambulatory surgical or treatment centers; skilled nursing centers; residential treatment centers; diagnostic, laboratory and imaging centers; and rehabilitation and other therapeutic-health settings.

(3) "Health-care professional" means a physician or other health-care practitioner licensed, accredited, or certified to perform specified health-care services consistent with state law.

(4) "Health-care provider" means a health-care professional or a health-care facility.

(5) "Health-care services" means any services included in the furnishing to any individual of medical, podiatric, or dental care, or hospitalization, or incident to the furnishing of that care or hospitalization, and the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

(6) "Health insurer" means any person, firm, or corporation offering and/or insuring health-care services on a prepaid basis, including, but not limited to a nonprofit service corporation, a health-maintenance organization, or an entity offering a policy of accident and sickness insurance.

(7) "Health-maintenance organization" means a health-maintenance organization as defined in chapter 41 of this title.

(8) "Nonprofit service corporation" means a nonprofit, hospital-service corporation as defined in chapter 19 of this title, or a nonprofit, medical-service corporation as defined in chapter 20 of this title.

(9) "Originating site" means a site at which a patient is located at the time health-care services are provided to them by means of telemedicine, which can ~~be include~~ a patient's home where medically appropriate, ~~provided, however, notwithstanding any other provision of law, health insurers and health-care providers may agree to alternative siting arrangements deemed appropriate by the parties.~~

(10) "Policy of accident and sickness insurance" means a policy of accident and sickness insurance as defined in chapter 18 of this title.

(11) "Store-and-forward technology" means the technology used to enable the transmission of a patient's medical information from an originating site to the health-care provider at the distant site without the patient being present.

(12) Effective July 1, 2021, "Telemedicine" means the delivery of clinical health-care services by means of real time, two-way electronic audiovisual communications, including the application of secure video conferencing or store-and-forward technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, treatment, and care management of a patient's health care while such patient is at an originating site and the health-care provider is at a distant site, consistent with applicable federal laws and regulations. Effective July 1, 2021, "Telemedicine" does not include an audio-only

telephone conversation, email message, or facsimile transmission between the provider and patient, or an automated computer program used to diagnose and/or treat ocular or refractive conditions.

Through June 30, 2021, "Telemedicine" shall mean the delivery of clinical health-care services by means of real time, two-way electronic audiovisual communications, including the application of secure video conferencing or store-and-forward technology or telephone-audio-only communications to provide or support health-care delivery, which facilitate the assessment, diagnosis, treatment, and care management of a patient's health care while such patient is at an originating site and the health-care provider is at a distant site, consistent with applicable federal laws, regulations and guidance. Through June 30, 2021, "Telemedicine" does not include an email message, text message, or facsimile transmission between the provider and patient, or an automated computer program used to diagnose and/or treat ocular or refractive conditions.

SECTION 3. Section 27-81-4 of the General Laws in Chapter 27-81 entitled "The Telemedicine Coverage Act" is hereby amended to read as follows:

27-81-4. Coverage of telemedicine services.

(a) Each health insurer that issues individual or group accident-and-sickness insurance policies for health-care services and/or provides a health-care plan for health-care services shall provide coverage for the cost of such covered health-care services provided through telemedicine services, as provided in this section.

(b) Effective July 1, 2021, a health insurer shall not exclude a health-care service for coverage solely because the health-care service is provided through telemedicine and is not provided through in-person consultation or contact, so long as such health-care services are medically appropriate to be provided through telemedicine services and, as such, may be subject to the terms and conditions of a telemedicine agreement between the insurer and the participating health-care provider or provider group.

Through June 30, 2021, a health insurer shall not exclude a health-care service for coverage solely because the health-care service is provided through telemedicine and is not provided through in-person consultation or contact, so long as such health-care services are medically appropriate to be provided through telemedicine services. The determination of the medical appropriateness of a health-care service to be provided through telemedicine shall include taking into consideration any existing public health emergency. The determination of the medical appropriateness of a health-care service to be provided through telemedicine may vary for health care services provided through audio-visual telemedicine versus health care services provided through audio-only telemedicine.

(c) Effective July 1, 2021, benefit plans offered by a health insurer may impose a deductible, copayment, or coinsurance requirement for a health-care service provided through telemedicine.

Through June 30, 2021, benefit plans offered by a health insurer shall not impose a deductible, copayment, or coinsurance requirement for a service delivered through telemedicine in excess of what would normally be charged for the same service when performed in-person.

(d) Through June 30, 2021, medically appropriate telemedicine services delivered by in-network primary care and behavioral health providers shall not be subject to prior authorization. No more stringent medical or benefit determination and utilization review requirements shall be imposed on any telemedicine service than is imposed upon the same service when performed in-person.

(e) Through June 30, 2021, medically appropriate telemedicine services delivered by in-network providers shall be reimbursed at rates not lower than the reimbursement rates for the same services delivered through traditional (in-person) methods.

(f) Through June 30, 2021, except for requiring compliance with applicable state and federal laws, regulations and/or guidance, no health insurer shall impose any specific requirements as to the technologies used to deliver medically appropriate telemedicine services.

(g) ~~The requirements of this section shall apply to all policies and health plans issued, reissued, or delivered in the state of Rhode Island on and after January 1, 2018.~~

(h) ~~This chapter shall not apply to: short-term travel, accident-only, limited or specified disease; or individual conversion policies or health plans; nor to policies or health plans designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare; or any other similar coverage under state or federal governmental plans.~~

SECTION 4. Chapter 27-81 of the General Laws entitled “The Telemedicine Coverage Act” is hereby amended by adding thereto the following sections:

27-81-6. Telemedicine Data Reporting and Telemedicine Stakeholder Advisory Group.

(a) Each health insurer shall collect and provide to the Office of the Health Insurance Commissioner (Office), in a form and frequency acceptable to the Office, information and data reflecting its telemedicine policies, practices, and experience.

(b) The Office shall convene a state agency and community stakeholder advisory group to inform future state telemedicine policies by assessing which, if any, of the provisions of this act to maintain in the medium- and long-term.

i. The advisory group shall review current telemedicine utilization data and policies and recommend strategies to improve telemedicine as a convenient, cost-effective, accessible, affordable, and equitable option to providers and patients in Rhode Island; balancing telemedicine’s potential for access and quality improvement with concerns about cost, appropriate utilization, and incorporation into alternative payment models; and to ensure that care across services are medically appropriate.

ii. On or before December 31, 2020, the Office shall submit a set of telemedicine recommendations to the General Assembly, considering factors that include, but are not limited to, the following:

1) Outlining strategies for any necessary changes to state legislative telemedicine structures;

2) Developing metrics for telemedicine that measure quality, outcomes, and cost;

3) Recommending safeguards against fraud, waste, and abuse;

4) Maximizing alignment of telemedicine policies across commercial payers and Medicaid managed care organizations;

5) Identifying barriers to consumer and safety-net provider use of clinically appropriate telemedicine, to improve equitable and enhanced access to health care for isolated, underserved and disadvantaged patients; and considering expansion

6) Ensuring that security, privacy, and confidentiality are maintained, and promoting the use of HIPAA compliant technologies.

7) Considering the expansion of the definition of “health-care professional” to include additional provider types who would be eligible to deliver telemedicine services and receive payment for rendering those services; and

8) Ensuring that telemedicine policies support primary care medical homes (PCMHs); continuity of care; and do not adversely affect network adequacy.

27-81-7. Rules and Regulations.

(a) The health insurance commissioner may promulgate such rules and regulations as are necessary and proper to effectuate the purpose and for the efficient administration and enforcement of this chapter.

SECTION 5. Chapter 27-18.9 of the General Laws entitled “Benefit Determination and Utilization Review Act” is hereby amended by adding thereto the following section:

27-18.9-16. Temporary benefit determination review requirements during the COVID-19

Pandemic.

(a) Through June 30, 2021, health care entities and, where applicable, review agents shall suspend prior authorization requirements for all in-network non-pharmacy COVID-19 related diagnostic and treatment services, including behavioral health services reasonably related to the COVID-19 pandemic;

(b) Through June 30, 2021, health care entities and, where applicable, review agents shall not replace prior authorization requirements suspended pursuant to paragraph (a) above with new retrospective review requirements;

SECTION 6. Chapter 42-7.2 of the General Laws entitled "Office of Health and Human Services" is hereby amended by adding thereto the following section:

42-7.2-21. Telemedicine

(a) Statement of intent. Rhode Island Medicaid shall cover medically necessary, non-experimental, and cost-effective Telemedicine services provided by Medicaid providers. There are no geographic restrictions for Telemedicine; services delivered via Telemedicine are covered statewide. Rhode Island Medicaid and its contracted managed care entities shall promote the use of Telemedicine to support an adequate provider network.

(b) Effective July 1, 2021, "Telemedicine" shall mean the delivery of clinical health-care services by means of real time, two-way electronic audiovisual communications, including the application of secure video conferencing or store-and-forward technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, treatment, and care management of a patient's health care while such patient is at an originating site and the health-care provider is at a distant site, consistent with applicable federal laws and regulations. Effective July 1, 2021, "Telemedicine" does not include an audio-only telephone conversation, email message, or facsimile transmission between the provider and patient, or an automated computer program used to diagnose and/or treat ocular or refractive conditions.

Through June 30, 2021, "Telemedicine" shall mean the delivery of clinical health-care services by means of real time, two-way electronic audiovisual communications, including the application of secure video conferencing or store-and-forward technology or telephone-audio-only communications to provide or support health-care delivery, which facilitate the assessment, diagnosis, treatment, and care management of a patient's health care while such patient is at an originating site and the health-care provider is at a distant site, consistent with applicable federal laws, regulations and guidance. Through

June 30, 2021, "Telemedicine" does not include an email message, text message, or facsimile transmission between the provider and patient, or an automated computer program used to diagnose and/or treat ocular or refractive conditions.

(c) Coverage of telemedicine services. Rhode Island Medicaid and its contracted managed care entities shall provide coverage for the cost of such covered health-care services provided through telemedicine services, as provided in this section.

(i) Through June 30, 2021, Rhode Island Medicaid and its contracted managed care entities shall not exclude a health-care service for coverage solely because the health-care service is provided through telemedicine and is not provided through in-person consultation or contact, so long as such health-care services are medically appropriate to be provided through telemedicine services. The determination of the medical appropriateness of a health-care service to be provided through telemedicine shall include taking into consideration any existing public health emergency. The determination of the medical appropriateness of a health-care service to be provided through telemedicine may vary for health care services provided through audio-visual telemedicine versus health care services provided through audio-only telemedicine.

(ii) Through June 30, 2021, medically appropriate telemedicine services delivered by in-network primary care and behavioral health providers shall not be subject to prior authorization. No more stringent medical or benefit determination and utilization review requirements shall be imposed on any telemedicine service than is imposed upon the same service when performed in-person.

(iii) Through June 30, 2021, medically appropriate telemedicine services delivered by Rhode Island Medicaid and its contracted managed care entities shall be reimbursed at rates not lower than the reimbursement rates for the same services delivered through traditional (in-person) methods.

(iv) Through June 30, 2021, except for requiring compliance with applicable state and federal laws, regulations and/or guidance, Rhode Island Medicaid and its contracted managed care entities shall not impose any specific requirements as to the technologies used to deliver medically appropriate telemedicine services.

(d) Telemedicine data reporting and telemedicine stakeholder advisory group. Each of Rhode Island Medicaid's contracted managed care entities shall collect and provide to the Executive Office of Health and Human Services, in a form and frequency acceptable to the Executive Office, information and data reflecting its telemedicine policies, practices, and experience. The Executive Office shall collaborate

with and participate in the Office of the Health Insurance Commissioner's state agency and community stakeholder advisory group as contained in Rhode Island General Laws section 27-81-6.

(e) Rules and Regulations. The secretary may promulgate such rules and regulations as are necessary and proper to effectuate the purpose and for the efficient administration and enforcement of this chapter.

SECTION 7. This article shall take effect upon passage.