

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 20-E-05

CONCERNING COVERAGE AND REIMBURSEMENT FOR TELEHEALTH SERVICES DURING THE COVID-19 DISASTER EMERGENCY

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Section 1 Authority

This emergency regulation is promulgated and adopted by the Commissioner of Insurance under the authority of Executive Order D 2020 020 and §§ 10-1-108(7), 10-1-109, 10-16-109, 10-16-708, C.R.S.

Section 2 Scope and Purpose

The purpose of this emergency regulation is to require carriers to reimburse providers for provision of telehealth services using non-public facing audio or video communication products during the COVID-19 nationwide public health emergency.

On March 17, 2020, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) announced that it will waive potential Health Insurance Portability and Accountability Act (HIPAA) penalties for good faith use of telehealth during the nationwide public health emergency due to COVID-19. OCR is exercising its enforcement discretion to not impose penalties for noncompliance with the HIPAA Rules in connection with the good faith provision of telehealth using such non-public facing audio or video communication products during the COVID-19 nationwide public health emergency. This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.

On March 11, 2020, Governor Polis issued Executive Order D 2020 003 declaring a disaster emergency due to the presence of COVID-19 in Colorado. On April 1, 2020, Governor Polis issued Executive Order D 2020 020 ("Order") ordering the temporary suspension of certain provisions of § 10-16-123, C.R.S., to expand the use of telehealth, whenever possible, to protect the public health and mitigate exposure to and the spread of COVID-19. The Order authorizes the Commissioner of Insurance to adopt emergency regulations related to telehealth during the COVID-19 public health emergency. This regulation shall remain in effect for 120 days or as long as the Governor's Emergency Declaration is in effect, whichever is shorter.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare as allowing

individuals broader access to telehealth services during the COVID-19 public emergency is imperative to preserve the health of the citizens of Colorado. Therefore, compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

Section 3 Applicability

This regulation shall apply to all carriers offering individual, small group, large group plans, managed care plans, and student health insurance coverage subject to the insurance laws of Colorado and the requirements of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), together referred to as the “Affordable Care Act” (ACA).

The definition of telehealth, contained below, shall apply to all existing Division of Insurance regulations.

Section 4 Definitions

- A. “Carrier” shall have the same meaning as found at § 10-16-102(8), C.R.S.
- B. “Commissioner” means, for the purposes of this regulation, the Commissioner of Insurance or his or her designee.
- C. “Covered person” shall have the same meaning as found at § 10-16-102(15), C.R.S.
- D. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.
- E. “Health care services” shall have the same meaning as found at § 10-16-102(33), C.R.S.
- F. “HIPAA” means, for the purposes of this regulation, the Health Insurance Portability and Accountability Act of 1996, which protects the privacy and security of certain health information.
- G. “Provider” shall have the same meaning as found at § 10-16-102(56), C.R.S.
- H. “Remote monitoring” means, for the purposes of this regulation, using digital technologies to collect or monitor medical and other forms of health data from individuals in one location and electronically transmit that information to health care providers in a different location for assessment, diagnosis, consultation, treatment, education, care management, self-management or recommendations of a covered person’s health care.
- I. “Telehealth”, for the purposes of this regulation, notwithstanding § 10-16-123, C.R.S., and consistent with guidance issued by HHS on March 17, 2020, means a mode of delivery of health care services through audio visual and telephone communications systems, including audio only telephone calls and non-public facing live video technologies including but not limited to Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to facilitate in the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a covered person’s health care. Public-facing video communications such as Facebook Live, Twitch, and TikTok, are not considered telehealth for purposes of this regulation.

Section 5 Reimbursement for Telehealth Services

- A. A carrier offering a health benefit plan in this state shall reimburse providers for the provision of 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, and physical therapy services as well as remote monitoring of patients. Carriers shall not deny payment for the use of remote communications

technologies that do not fully comply with HIPAA requirements in connection with the good faith provision of telehealth services during the COVID-19 emergency.

- B. Telehealth services delivered by providers shall be reimbursed at rates not lower than in-person services delivered by providers and in compliance with state behavioral health parity laws.
- C. Carriers shall not impose specific requirements or limitations on the technologies used to deliver telehealth services, including any limitations on audio only or live video technologies.
- D. Carriers shall not require a covered person have a previously established patient/provider relationship with a specific provider in order for that covered person to receive medically necessary health care services via telehealth from that provider.
- E. Carriers shall not impose additional certification, location, or training requirements as a condition of reimbursing providers for using telehealth services.
- F. Carriers shall notify providers of any instructions necessary to facilitate billing for telehealth. Carriers shall ensure this information is prominently displayed on a public-facing website. For purposes of processing payment of a claim, a carrier shall not require a health professional to provide documentation of a health care service or procedure delivered as a telehealth service beyond what is required for the same service or procedure in an in-person setting.
- G. If a covered person is unable to access medically necessary health care services via telehealth from a participating provider, carriers shall cover such telehealth services by a nonparticipating provider pursuant to § 10-16-704(2)(a), C.R.S.

Section 6 Severability

If any provision of this regulation or the application of it to any person or circumstances is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 7 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 8 Effective Date

This emergency regulation shall be effective April 3, 2020.

Section 9 History

Emergency regulation effective April 3, 2020.