

Blog Post

Illinois Telehealth Updates in Response to COVID-19

March 24, 2020

Like many other states, in response to the COVID-19 pandemic and the guidance that the federal government has issued, Governor Pritzker of Illinois issued an executive order (2020-09) on March 19, 2020, amending and relaxing existing telehealth related requirements under 225 ILCS 60/49.5 regarding: (1) telemedicine services provided by licensed Illinois physicians; (2) telemedicine and telepsychiatry services provided to Illinois Medicaid beneficiaries under 89 Ill. Admin. Code §140.403; and (3) reimbursement for such telehealth services. A general summary of these updates is summarized below.

Executive Order 2020-09 Summary

During the Gubernatorial Disaster Proclamation period (commencing on March 9, 2020 and continuing until declared over):

- “Telehealth Services” are expanded to include all health care, psychiatry, mental health treatment, substance use disorder treatment, and related services provided to a patient regardless of the patient’s location via electronic or telephonic methods including, for example, FaceTime, Facebook Messenger, Google Hangouts, or Skype.
- Telehealth Services must be provided by Illinois licensed providers. However, reinstatement requirements of licenses that have lapsed or are inactive for less than three years are suspended

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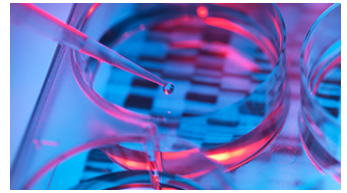
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with respect to: (i) proof of meeting continuing education requirements for one renewal period; and (ii) payment of the reinstatement fee.



- Health insurers (“Insurers”) may not impose:
 - Utilization review requirements for Telehealth Services that are unnecessary, duplicative, or unwarranted or treatment limitations that are more stringent than those applicable to the health care services if provided in-person;
 - Prior authorization requirements for in-network providers providing Telehealth Services related to COVID-19; or
 - Cost-sharing obligations for Telehealth Services provided by in-network providers except for non-preventative care services for enrollees with high-deductible health plans who have not met the applicable deductible of the plan (note, however, based on recently issued IRS guidance, COVID-19 testing, treatment, and potential vaccination are considered “preventative care,” *see [here](#)*).
- Covered entities subject to the Illinois Mental Health and Developmental Disabilities Confidentiality Act (“IL Mental Health Act”) may provide Telehealth Services through the use of a non-public facing remote communication product (*g.*, FaceTime, Skype). If feasible, providers should notify patients that privacy risks may exist with the use of these applications and should not use public facing applications (*e.g.*, Facebook Live, Twitch, TikTok).

Commencing on March 19, 2020:

- Insurers:
 - Must cover the costs of Telehealth Services rendered by in-network providers for medically necessary covered services (presumably at the same rate as in-person services, but note that the Executive Order does not specifically address);

- May establish reasonable requirements and parameters for Telehealth Services (these requirements may not be more restrictive than those issued by the Department of Healthcare and Family Services); and
- Must notify providers of any billing instructions.
- With regard to the provision of Telehealth Services to mental health and developmental disability patients in Illinois, the following requirements under the Illinois Mental Health and Developmental Disabilities Confidentiality Act are suspended:
 - The disclosure prohibitions as to records and communications; and
 - Written consent provisions.

Emergency Amendments to Existing Medicaid Requirements for Telemedicine and Telepsychiatry to Beneficiaries

For medically necessary and clinically appropriate Telehealth Services provided on or after March 9, 2020 until the public health emergency no longer exists, the existing Illinois law (89 IL. Admin. Code §140.403) governing the Illinois Medicaid program coverage and reimbursement for telemedicine and telepsychiatry services has been amended as follows:

1. The distant site provider must be an enrolled provider operating within his/her scope of practice and license. However, a physician or other licensed healthcare professional is no longer required to be present at all times with the patient at the originating site.
2. The patient may be located at any originating site including his/her place of residence or other temporary location within or outside of Illinois.
3. In addition to other Telehealth Services already covered under the existing statute, the following will be reimbursed:

1. Brief communications using technology-based services such as virtual check-ins that use audio-only real-time telephone interactions rendered by a physician, advanced practical nurse, or physician assistant who can report evaluation and management (E/M) services provided to an established patient not originating from a related E/M services provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment.
2. Online patient portal or e-visit services provided to a patient with an already established relationship with the billing practice. The patient must generate the initial inquiry and verbally consent to receive virtual check-in services, and the communications must occur over a 7-day period.
4. Behavioral health services detailed in §140.453 of the statute provided using audio-only real-time telephone interactions or video interactions will be reimbursed at the same rate as services provided on-site.
5. Telehealth Services must be provided via: (a) “interactive telecommunication system” (i.e., audio and video equipment permitting two-way, real-time interactive communication); (b) “telecommunication system” (i.e., asynchronous store and forward technology or interactive communication system used to transmit data); (c) communication system where information is exchanged between the qualified healthcare practitioner and the patient during the course of synchronous telehealth services that would be sufficient to meet the key components and requirements of the same services when rendered face-to-face.
6. Reimbursement for Telehealth Services will be the same rate as the same services if provided face-to-face.

7. Adequate documentation for the Telehealth Services must be maintained in accordance with existing requirements (i.e., name and license number of provider at distant site; locations of distant and originating sites; date and time the Telehealth Services begin and end).

Providers should monitor additional billing instructions for the Telehealth Services from the IL Medicaid department at <https://www.illinois.gov/hfs/Pages/coronavirus.aspx>. For further information on federal changes, please access our update at: <https://www.akerman.com/en/perspectives/telehealth-and-covid-19-federal-update.html>.

Please review our previously issued articles on federal telehealth updates issued in response to the COVID-19 crisis. For questions or more information for these new and developing Telehealth Services requirements and implications in Illinois, please contact any member of the Akerman Healthcare team.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.