

Blog Post

Florida Telehealth Updates in Response to COVID-19

March 25, 2020

In response to the public health emergency declared in Florida on March 1, 2020, Florida loosened existing licensure and other telehealth requirements in response to the COVID-19 pandemic, as outlined below.

However, unless specifically waived or relaxed by the Orders (as defined below), all current minimum practice requirements and standards of care for telehealth services set forth under F.S.A. §456.47 continue to apply, including, but not limited to, the duty to:

- practice within his/her scope of practice and the prevailing standard of practice as provided for in-person healthcare services;
- document the telehealth services provided in the patient's medical record according to the same standards used for in-person services; and
- maintain the confidentiality of all medical records generated.

Out-of-State Licensure

The Florida Surgeon General issued an emergency order (DOH No. 20-002) on March 16, 2020 (the "March 16 Order"), permitting certain out-of-state licensed providers such as physicians, physician assistants ("PAs"), and advanced practice registered nurses ("APRNs") to provide services via telehealth

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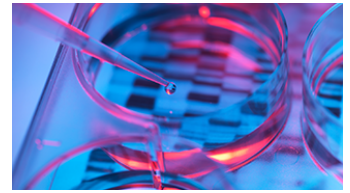
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for a period not to exceed 30 days unless extended by order of the Florida Surgeon General. On March 21, 2020, the Florida Surgeon General issued a second emergency order (DOH No. 20-003) (“March 21 Order,” collectively with the March 16 Order, the “Orders”) expanding the types of out-of-state licensed providers permitted to provide telehealth services within the state for a period not to exceed 30 days to include clinical social workers, marriage and family therapists, mental health counselors, and psychologists. Under these Orders, these out-of-state licensed providers may provide telehealth services if they have valid and unrestricted licenses in another state and are not subject to any investigations or prosecution in any disciplinary action in any state in which they are licensed.

Controlled Substances

The March 16 Order also waived the physical examination requirement needed before a renewal prescription for a controlled substance listed as Schedule II, Schedule III, or Schedule IV. For a period of 30 days, licensed Florida physicians, PAs, and APRNs may issue a renewal prescription for controlled substances listed as Schedule II, Schedule III, or Schedule IV for existing patients for the purposes of treating chronic nonmalignant pain by conducting an examination via telehealth rather than an in-person physical exam.

Medicaid Telehealth Reimbursement Expansion

During the state of emergency, the Agency for Health Care Administration (AHCA) has expanded existing Medicaid coverage for fee-for-service telehealth services provided by licensed providers to include medically necessary:

- Behavioral health services (g., therapy services; medication management; behavioral health-related medical services);

- Store-and-forward and remote patient monitoring (including telephone communications) rendered by licensed providers (including those operating within a clinic) and functioning within their respective scope of practice;
- Behavior analysis services for children in need of such services when: (i) services cannot be delivered because the center is closed and home-based care is not an option; or (ii) the provider and/or recipient meets one or more of the screening criteria for COVID-19 in accordance with the Department of Health guidelines and services cannot be delivered in the home. Behavior analysis services may also be provided via telehealth for purposes of caregiver training when such services cannot be delivered in the home and the caregiver needs to be supported in the delivery of care. Note, providers seeking to provide behavior analysis services via telehealth must submit an administrative authorization request to eQHealth, but the authorization process will be expedited;
- Therapy services (g., occupational, physical, and speech-language pathology) and early intervention services (“EIS”) if: (i) services cannot be delivered because the provider office is closed and in-home care or delivering service in an alternative location is not an option; or (ii) the provider and/or recipient meets one or more of the screening criteria for COVID-19 in accordance with the Department of Health guidelines and services cannot be delivered in the home. Note, reimbursement for EIS will only be paid if performed by an eligible EIS provider (e.g., APRNs, clinical psychologist, mental health counselor) as defined under the existing Medicaid coverage policy (R. 59G-4.085, available [here](#)) to provide family training designed to support the caregiver in the delivery of care.

Providers should review the AHCA issued alerts (available [here](#)) regarding the above telehealth services to ensure compliance with the practice

delivery requirements set forth therein including, but not limited to, ensuring services are medically necessary, complying with privacy and security requirements under HIPAA (refer to OCR guidance issued during the COVID-19 pandemic summarized in our previous federal post); and meeting any supervision requirements within a provider's scope of practice.

Please review our previously issued articles on federal and other state telehealth updates issued in response to the COVID-19 crisis. For questions or more information for these new and developing telehealth requirements and implications in Florida, 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.