

March 23, 2020

**Division of Medicaid and Medical Assistance  
Changes to Telehealth Policies to Respond to COVID-19**

**PURPOSE:**

As we respond to COVID-19, we encourage providers to consider utilizing telehealth services for the delivery of Delaware Medicaid and Medical Assistance (DMMA) covered services when appropriate and necessary. DMMA has a longstanding Telehealth Policy and has recently created additional flexibility for its usage.

**BACKGROUND:**

Telehealth allows providers to deliver services to individuals remotely so that providers can monitor and address health conditions. Federal Medicaid statute (Title XIX of the Social Security Act) does not recognize Telemedicine Telehealth as a distinct service.

DMMA covers medically necessary telehealth services and procedures covered under the Title XIX State Plan. Qualifying provider services include any covered State Plan service that would typically be provided to an eligible individual in a face-to-face setting by an enrolled provider. Telehealth is not limited based on the diagnosed medical condition of the eligible recipient or geographical location. All telehealth services must be furnished within the limits of provider program policies and within the scope and practice of the provider's professional standards as described and outlined in DMAP Provider Manuals.

If a service is not covered in a face-to-face setting, it is not covered if provided through telehealth. A service provided through telehealth is subject to the same program restrictions, limitations and coverage that exist for the service when not provided through telehealth.

**UPDATE AND CLARIFICATION:**

**Delivery of Telehealth**

DMMA has a longstanding Telehealth Policy that allows for all State Plan Services to be provided via Telehealth. In response to COVID-19, DMMA has expanded the methods that Telehealth may be delivered to include:

- Interactive Communication – Provider and patient interact in “real time” using an interactive telecommunications system that includes, at a minimum, audio and video equipment permitting two-way, real time interactive communication between the patient, at the originating site, and the physician or practitioner at the distant site; or

- Telephonic Services – In addition to Interactive Telehealth Services, telephones are an acceptable mode to deliver telehealth if the following conditions are met:
  - It is determined that Interactive Telehealth Services are unavailable, and
  - Telephonic Services are medically appropriate for the underlying covered service.

Chart reviews, electronic mail messages, facsimile transmissions or internet services for online medical evaluations are not coverable telehealth services.

### **Telehealth Sites**

Two distinct sites are necessary for delivering telehealth services. The first site, called the Originating Site refers to the location of the patient during the telehealth encounter. An approved originating site may include the DMAP member's place of residence or any alternate location in which the member is physically present and telehealth can be effectively utilized.

The second site, called the Distant Site, refers to the site at which the physician or other licensed practitioner delivering the service is located at the time the telehealth service is provided. Generally, providers are not required to be physically present at a specific site. However, some state plan services may have site restrictions that do require this. DMMA is working to identify any of these services and lift this requirement where necessary and allowable to maximize telehealth flexibilities during this response and ensure necessary care is delivered.

In response to COVID-19, Effective 3/18/2020 until further notice provided by Governor John Carney, Title 24 requirements that patients be present in Delaware at the time the telemedicine service is provided are suspended, so long as the patient is a Delaware resident.

### **Telehealth Provider Eligibility**

In response to COVID-19, Effective 3/18/2020 until further notice provided by Governor John Carney, DMMA relaxed eligibility requirements for providers providing Telehealth Services.

For services delivered through telehealth technology from DMAP or MCOs to be covered, healthcare practitioners must:

- Act within their scope of practice;
- Be licensed for the service for which they bill DMAP;
  - Any out of state healthcare provider who would be permitted to provide telemedicine services in Delaware if they were licensed under Title 24 may provide telemedicine services to a Delaware resident if they hold an active license in another jurisdiction.
- Be enrolled with, or have engaged in the process to become enrolled with, DMAP/MCOs; and
- Be located within the continental United States.

Additionally, Title 24 requirements that patients present in person before telemedicine services may be provided are suspended.

## **Operational Requirements**

In response to COVID-19, the Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) published a [Notification of Enforcement Discretion](#) (“Notification”) regarding HIPAA noncompliance in connection with the provision of telehealth services that DMMA will follow until further notice.

OCR “will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth” during the public health emergency.

OCR stated telehealth services may be provided using “any non-public facing remote communication product that is available to communicate with patients.” This means that more widely used and available consumer services and products that would not typically meet the HIPAA privacy and security standards for telehealth can be used. Examples of such services and products include FaceTime and Skype. Under this Notice, however, Facebook Live, Twitch, TikTok, and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers.

OCR has also published a [Bulletin](#) on HIPAA during the current public health emergency.

## **Prior Authorization Requirements for Telehealth**

Prior authorization for telehealth-delivered services is not required, but the Distant Site provider must obtain prior approval for any other covered services which would normally require prior authorization.

## **Consent**

DMMA is eliminating the current informed consent requirement and redefining patient consent as follows:

Consent is required to assure that the recipient is a willing participant in the telehealth delivered service and to assure that the recipient retains a voice in their treatment plan. The patient must be informed and given an opportunity to request an in-person assessment before receiving a telehealth assessment. Verbal consent is accepted, and written consent is no longer required. However, this consent must be documented in the patient’s record.

## **Telehealth and Pharmacy**

DMMA continues to allow medications to be prescribed through telehealth. The preferred order of prescribing medications is:

- Secure e-prescribe
- Fax
- Phone

- Hard Copy

In response to COVID-19, Effective 3/18/2020 until further notice provided by Governor John Carney, The Delaware Board of Medical Licensure and Discipline's Regulation 19 regarding restrictions on the use of telemedicine are suspended.

### **Billing for Telehealth**

In general, services must be billed in accordance with applicable sections of DMAP Provider manuals. For Interactive Telehealth Services, the same procedure codes and rates apply to the underlying covered service as if those services were delivered face- to-face.

In response to COVID-19, Effective 3/18/2020 until further notice, Telephonic Services can be provided to any member for any visit not related to an E/M service provided within the previous 7 days nor leading to an E/M service or procedure within the next 24 hours or soonest available appointment. Billable Telephonic Services must be between the patient and the Physician or other qualified health professional.

### **Originating Site Providers**

If the Health Care Provider at the Originating Site is making a room and telecommunications equipment available the provider may bill for an Originating Facility Fee using code Q3014.

### **Non-Federally Qualified Health Care Center (FQHC) Distant Site/Rendering Providers**

- Distant Site/Rendering Providers billing for *Interactive Telehealth Services* should continue to bill their appropriate Usual & Customary charge for the service provided and use an O2 Modifier as Place of Service for all Telehealth charges.
- Distant Site/Rendering Providers billing for *Telephonic Services* should use the following codes as appropriate, and should use an O2 Modifier as Place of Service for all Telehealth charges:
  - Physician or other qualified health professional:
    - 99441: 5-10 minutes of medical discussion
    - 99442: 11-20 minutes of medical discussion
    - 99443: 21-30 minutes of medical discussion
  - Qualified Non-Physician:
    - 98966: 5-10 minutes of medical discussion
    - 98967: 11-20 minutes of medical discussion
    - 98968: 21-30 minutes of medical discussion

### **Federally Qualified Health Care Center (FQHC) Distant Site/Rendering Providers**

FQHC Rendering Providers billing for Interactive *Telehealth Services* or *Telephonic Services* should continue to bill their appropriate HCPCS (Healthcare Common Procedure Coding System) "G" visit payment code for each payable encounter visit, along with the appropriate code for the service provided and use an O2 Modifier as Place of Service for all Telehealth Charges. For Telephonic Services, the same codes listed above should be used as appropriate.