COLORADO
Department of
Regulatory Agencies

Department of Regulatory Agencies (DORA)

FAQs on COVID-19 Telehealth Services

What is telehealth? How has it changed in light of the COVID-19 pandemic?

The term "telehealth" generally refers to the exchange of medical information from one site to another through electronic communication to improve a patient's health.

In Colorado law, for insurance purposes, telehealth is defined in Colorado Revised Statutes (C.R.S.) Section 10-16-123(4)(e). Individual professionals should check their respective practice acts, rules or policies to determine specific definitions and limitations regarding telehealth.

Earlier this year, Governor Jared Polis issued a series of Executive Orders temporarily suspending certain statutes to expand the use of telehealth services for both COVID-19-related care and non-COVID-19-related care due to the presence of COVID-19 in Colorado. In addition, the Colorado Legislature passed, and the Governor signed, SB20-212 related to the reimbursement for telehealth services. While there were some changes to the telehealth laws through Executive Order 2020 20, extensions of that Order expired on July 27, 2020. Therefore, current state law is now in effect.

Now that the Executive Order has expired, as a healthcare practitioner, what must I do as far as remaining HIPAA compliant?

Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements were never waived under the telehealth EO and must be followed.

What is the practical implication of the expiration of the Executive Order regarding telehealth for licensees under the auspices of the Division of Professions and Occupations?

The Executive Order suspended the requirements of §12-245-217(2)(e)(II), C.R.S., and removed the 20-day cap for certain out-of-state mental health providers providing services to Colorado patients. The suspension of the 20-day cap no longer remains in effect, reverting requirements back to what is included in the Mental Health Practice Act, and board rules and policies. The Executive Order also suspended §12-315-104(19)(b), C.R.S., regarding veterinarian-client patient relationships. The suspension expired and veterinarians should now follow current Colorado law.

Does the expiration of the Executive Order change who can provide services to Colorado patients?

Typically, telehealth requirements in Colorado are based on the location of the patient, not the location of the

practitioner. In most cases, a healthcare provider must be licensed in Colorado in order to treat Colorado patients, regardless of the provider's location. However, there are exceptions. Please refer to your individual profession's statutes, rules and policies for more information.

I am a Colorado licensee. I want to see Colorado patients via telehealth. Can I?

The expiration of the telehealth Executive Order means Colorado licensees must now follow the current requirements set out in statute, rule, and policy and adhere to established telehealth guidelines. Please consult the individual statutes, policies and rules of your board or program on DORA's website for more information.

I am a Colorado licensee. I want to see an out-of-state patient via telehealth. Can I?

Colorado licensees treating patients in another state need to follow the laws, rules, regulations and policies of the state where the patient is located.

I am an out-of-state licensee. I want to see Colorado patients. Can I?

The Executive Order allowed certain out-of-state mental health providers to treat patients who returned to Colorado during the COVID-19 pandemic without penalty (for example, a college student who returned to the state). That exception no longer exists with the expiration of the Executive Order. If you hold a Colorado license, you may treat Colorado patients. If you do not, you should review the Colorado state laws, regulations, and policies for your profession. Another option would be to obtain a Colorado license via the endorsement process, if available.

I am an out-of-state practitioner, and Colorado allowed my mental health profession unlimited teletherapy treatment days of Colorado patients under the now expired Executive Order. Can I still treat Colorado patients via telehealth?

While there were some changes to the teletherapy regulations through Executive Order D 2020 116, the Executive Order expired on July 27, 2020. Therefore, current state law is now in effect and requires all mental health professionals to know and practice within the established teletherapy guidelines, which are available on the website for each type of mental health provider. Section 12-245-217, C.R.S., outlines the exemptions for certain individuals, including out-of-state practitioners.

FAQs Related to Insurance Reimbursement

Note: Insurance FAQs apply to fully insured plans regulated by the Division of Insurance, other rules may apply to Medicaid, Medicare, and ERISA self-funded plans.

What effect did the passage of SB20-212 have on telehealth services?

The legislature passed, and the Governor signed, legislation related to telehealth services in July 2020. That law, SB20-212, prohibits carriers offering health benefit plans from:

- Imposing specific requirements on HIPAA compliant technologies that a provider used to deliver telehealth services, including limitations on audio orlive video technologies;
- Requiring an individuals to have an existing relationship with a provider before receiving telehealth services from that provider; and
- Imposing additional certification, location, or training requirements on providers as a condition for reimbursement for telehealth services

The law also added remote monitoring services to the definition of telehealth.

The Division of Insurance issued emergency telehealth services regulation 20-E-11, effective August 14, 2020. Pursuant to that regulation, the use of non-public facing remote communication products, including but not limited to audio only telephone calls, shall be considered HIPAA compliant for purposes of § 10-16-123, C.R.S. during the nationwide public health emergency period when OCR has enforcement discretion regarding HIPAA compliance and providers in Colorado are making a good faith provision of telehealth services.

Which health plans are required to comply with SB20-212 and Emergency Regulation 20-E-11?

SB 20-212 and DOI emergency regulation 20-E-11 apply to plans regulated by the State of Colorado, including individual, small group, and large group health benefit plans, managed care plans (i.e., HMOs), and student health plans.

For Medicare providers and patients, the Centers for Medicare and Medicaid Services (CMS) has released guidance expanding the use of telehealth services during the COVID-19 public health emergency. Providers are encouraged to visit the CMS Current Emergencies website for further information.

For Health First Colorado (Medicaid) providers and patients, the Colorado Department of Health Care Policy and Financing (HCPF) has also released information on telehealth service delivery. Information is available on HCPF's COVID-19 Information for Health First Colorado and CHP+ Providers and Case Managers website.

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Employers with self-funded health plans are not regulated by the Division, as such plans are regulated at the Federal level (under ERISA). The Division strongly encourages employers that have self-funded health plans to request that the third-party administrators of their health plans comply with state and federal guidance, including the Division's regulations on telehealth during the COVID-19 emergency.

Which providers can be reimbursed for telehealth services?

Under state law, Colorado Revised Statutes Section 10-16-123, carriers are required to reimburse health care providers *who are licensed or otherwise authorized to* deliver health care services in the state, as defined in Colorado Revised Statutes Section 10-16-102(56). This definition includes, but is not limited to:

- Physicians;
- Physician assistants and nurse practitioners;
- Physical, occupational therapists, and speech therapists;
- Licensed or certified mental health professionals;
- Licensed clinical social workers, licensed social workers; and
- Dentists.

Providers who do not meet the definition in CRS Section 10-16-102(56), such as registered dietitians and nutrition professionals, are not covered by this regulation, but carriers may elect and are encouraged to cover telehealth services offered by such providers. The list of providers covered by the Division's regulation may differ from Medicare guidance.

Are telehealth services subject to cost sharing requirements?

Under state law, telehealth services may be subject to cost sharing requirements with one exception: During the pendency of the disaster emergency, carriers are required to cover cost sharing for in-network telehealth services **for COVID-19 testing and treatment**, per DOI emergency regulation 20-E-09.

CMS issued guidance on March 24, 2020, encouraging all health insurers to cover telehealth services without cost sharing or other medical management requirements. Some health insurance companies have indicated they will waive cost sharing for telehealth services; consumers are encouraged to contact their company to determine if cost-sharing has been waived for telehealth services.

Does a telephone-only call qualify as reimbursable for telehealth services during the emergency?

Yes. Under the Division's emergency regulation 20-E-11, as long as the federal government is exercising enforcement discretion related to the good faith provision of telehealth services, the provision of telehealth services using audio only telephone calls and non-public facing remote communication products shall be considered HIPAA compliant and subject to reimbursement for purposes of §10-16-123, C.R.S.

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What types of services do not qualify for telehealth?

During the COVID-19 public health emergency, health insurance companies are required to cover medically necessary services that can be appropriately delivered through telehealth. Telephone calls with health care provider office staff and other calls for administrative purposes, such as requests for refills, scheduling, and payment or billing issues are not billable services. Providers should also be careful not to double bill for services; for example, some follow-up visits may be considered to be part of a global package of services, and should not be billed as a separate encounter. Insurers are required to notify health care providers of any instructions necessary to facilitate billing for telehealth, and make this information prominently available on their websites.

What requirements can the health insurance companies impose, such as prior authorization and other medical management requirements, as a condition of telehealth services?

Health insurance companies cannot impose limitations on services, such as prior authorization and other medical management requirements, solely because the services are delivered via telehealth rather than in-person. The Division encourages insurers to streamline processes during the COVID-19 emergency so that covered persons can easily access needed telehealth services.

Can an insurer require the use of certain types of platforms to reimburse?

No. SB20-212 prohibits health insurance companies from imposing limitations on HIPAA-compliant technologies or "platforms" used to deliver telehealth services, including any limitations on the use of audio only or live video technologies. Consistent with HHS guidance, "non-public facing" remote communication platforms or products must be used for the provision of telehealth services.

A "non-public facing" remote communication product is one that, as a default, allows only the intended parties to participate in the communication. Non-public facing remote communication products would include, for example, platforms such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Whatsapp video chat, Zoom, or Skype. Such products also would include commonly used texting applications such as Signal, Jabber, Facebook Messenger, Google Hangouts, Whatsapp, or iMessage. Typically, these platforms employ end-to-end encryption, which allows only an individual and the person with whom the individual is communicating to see what is transmitted. The platforms also support individual user accounts, logins, and passcodes to help limit access and verify participants. In addition, participants are able to assert some degree of control over particular capabilities, such as choosing to record or not record the communication or to mute or turn off the video or audio signal at any point.

In contrast, public-facing products such as TikTok, Facebook Live, Twitch, or a chat room like Slack are not acceptable forms of remote communication for telehealth because they are designed to be open to the public or allow wide or indiscriminate access to the communication

What settings are acceptable for providing or receiving telehealth services?
Insurance companies cannot impose any requirements or limitations on telehealth services based on the site at which either the patient or the health care provider is located at the time the health care services are delivered. Per Office of Civil Rights (OCR) guidance, providers should use private locations and patients should not receive telehealth services in public or semi-public settings, absent patient consent or exigent circumstances. If telehealth cannot be provided in a private setting, covered health care providers should continue to implement reasonable HIPAA safeguards to limit incidental uses or disclosures of protected health information (PHI).

Are there specific codes that health care providers should use to bill for telehealth services?
Claim and billing questions for state-regulated insurance plans should be directed to the insurance company. In general, health care providers can bill typical code ranges for medically clinically appropriate services delivered via telehealth, using appropriate code modifiers and location codes. DOI emergency regulation 20-E-11 directs health insurance companies to notify providers of any instructions necessary to facilitate billing for telehealth and post this information prominently on a public-facing website.

Insurers may request that providers include a specific telehealth code (i.e., a place of services code or telehealth modifier) when submitting claims for reimbursement. However, health insurance companies must reimburse in-network providers for services delivered via telehealth at rates no lower than in-person services, and in compliance with state behavioral health parity laws.

CMS maintains a list of services that may be furnished via telehealth to Medicare beneficiaries during the COVID-19 public health emergency, available here: www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes.

Information about billing and coding for telehealth services furnished to Health First Colorado (Medicaid) clients is available on the Colorado Department of Health Care Policy and Financing website at: www.colorado.gov/pacific/hcpf/provider-telemedicine

How do the Division of Insurance's telehealth requirements apply to catastrophic plans or high deductible health plans (HDHP)?

Catastrophic health benefit plans are generally not required to provide coverage of essential health benefits (EHB), including coverage for the diagnosis of treatment of COVID-19, before an enrollee meetings their plan deductible, with limited exceptions including: 1) the coverage of at least three primary care visits per year, and 2) any cost sharing delivered for preventive services.

However, on March 24, 2020, CMS released guidance allowing carriers to amend catastrophic plans to *allow pre-deductible coverage for telehealth services*, even if the specific telehealth services are not related to COVID-19. In accordance with this guidance, the Colorado DOI will allow, and strongly encourages, insurance companies to cover all medically appropriate telehealth services without requiring enrollees to meet the deductible during the COVID-19 public health emergency. Insurers are NOT allowed to limit or eliminate other benefits to offset the costs of providing pre-deductible coverage for telehealth services.

High deductible health plans (HDHP) are generally prohibited from covering any health care services, other than preventive care, until an enrollee has met the full plan deductible. However, in recognition of the nature of COVID-19 public health emergency, and the need to avoid administrative delays or financial disincentives that might otherwise impede testing for and treatment of COVID-19 for participants in HDHPs, the U.S. Internal Revenue Service (IRS) announced on March 11, 2020 that *all HDHPs will be allowed* to cover medical care services received and items purchased associated with testing for and treatment of COVID-19 that are provided by a health plan without a deductible, or with a deductible below the minimum annual deductible otherwise required. In accordance with CMS guidance, the DOI will allow, and strongly encourage, health insurance companies to provide pre-deductible coverage for health care services, including services coverage via telehealth, for enrollees in HDHP. Carriers are NOT allowed to limit or eliminate other benefits to offset the costs of providing pre-deductible coverage for telehealth services.

Will the DOI allow health insurance companies to amend plan benefits during a plan year to provide or expand coverage for telehealth services, and to reduce or eliminate cost sharing for such services?
Yes. The DOI, in accordance with CMS guidance, will allow health insurance companies in the individual or group market to make mid-year changes to the health insurance product to provide greater coverage for telehealth services or to reduce or eliminate cost-sharing requirements for telehealth services, even if the specific telehealth services covered by the change are not related to COVID-19. Insurers are NOT allowed to limit or eliminate other benefits or to change rates to offset the costs of increasing the accessibility of telehealth benefits.

How does HIPAA, and other privacy and confidentiality rules including 42 C.F.R. Part 2, apply to telehealth services during the COVID-19 public health emergency?

The U.S. Office of Civil Rights (OCR) has recognized that during the COVID-19 public health emergency, health care providers may need to communicate with patients and provide telehealth services through remote communications technologies, some of which may not fully comply with HIPAA requirements. To facilitate the expanded use of telehealth services in response to the COVID-19 pandemic, the OCR announced on March 17, 2020, that it would will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against providers in connection with the good faith provision of telehealth 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.

Coverage of telehealth services for mental health and substance use disorders is required under mental health parity laws, and of particular importance during the COVID-19 public health emergency. In addition to HIPAA, substance use information is subject to federal rules in 42 C.F.R. Part 2. The Substance Abuse and Mental Health Services Administration (SAMHSA), recognizing the difficulties that substance use disorder patients may face in accessing services during the COVID-19 public health emergency, released guidance on March 19, 2020 noting that prohibitions on use and disclosure of patient identifying information under 42 C.F.R. Part 2 would not apply in situations where a health care provider may not be able to obtain written patient consent for disclosure of substance use disorder records due to circumstances related to COVID-19. SAMHSA emphasized such flexibility is allowed only to the extent that, as determined by the provider(s), a medical emergency exists. Under the medical emergency exception, providers are required to make their own determinations whether a bona fide medical emergency exists for purposes of providing needed treatment to patients.

CMS and SAMHSA issued further guidance related to mental health, behavioral health, and SUD services on June 29, 2020 encouraging carriers to implement practices to expand the use of telehealth services during the COVID-19 emergency.

Can health care providers in quarantine continue to provide and be reimbursed for telehealth services?
Yes. carriers are not allowed to restrict the use of telehealth based on provider or patient location. A provider under quarantine can continue to provide and be reimbursed for telehealth services, as long as they are able and have access to the resources needed to provide appropriate care. Providers should follow Office of Civil Rights (OCR) guidance regarding patient privacy and confidentiality, and take reasonable safeguards to limit incidental uses or disclosures of protected health information (PHI).

What remote monitoring devices are included as part of telehealth service delivery?

Remote monitoring devices are defined in SB20-212 to include the use of synchronous or asynchronous technologies to collect or monitor medical and other forms of health data for individuals at an originating site and electronically transmit that information to providers at a distant site so they can assess, diagnose, consult, treat, educate, provide care management, suggest self management, or make recommendations regarding the individual's health care. Remote neuromonitoring related to surgical procedures is not included as part of telehealth services

Does a health care provider need to have an existing relationship with a patient in order to be reimbursed for telehealth services?

No. Under SB20-212, carriers are not allowed to require enrollees or health care providers to have a previously existing relationship in order for telehealth services to be reimbursed.

What kinds of medications can be prescribed through telehealth?

Health insurance companies are required to provide at least one additional refill of all necessary prescriptions to ensure plan enrollees have access to necessary medications, per the Division's emergency regulation 20-E-09.

The federal government has waived certain restrictions around in-person visits with prescribers and/or treatment programs. On March 17, 2020, the Drug Enforcement Agency issued guidance permitting patients to be initiated on buprenorphine through a telehealth visit, without an in-person exam. SAMHSA released additional guidance on March 19, 2020, reiterating that new opioid treatment program patients can be started on buprenorphine via telehealth, including phone only encounters. This flexibility does not apply to patients starting on methadone, which still requires an in-person visit to initiate treatment. Additional guidance released by the DEA on March 31, 2020, confirms follow-up visits for both buprenorphine and methadone can be completed via telehealth, including phone only.

Health care providers should follow federal and state guidance surrounding appropriate prescribing practices during the COVID-19 public health emergency, and stay informed of updates in a rapidly changing environment. Insurers must reimburse all medically necessary prescriptions to ensure patients, particularly those facing challenges to accessing treatment for behavioral health conditions, during the COVID-19 emergency.

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