



**DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 120
PRODUCERS AND ADJUSTERS BULLETIN NO. 34**

**TO: INSURANCE COMPANIES LICENSED INSURANCE PRODUCERS
AUTHORIZED TO TRANSACT HEALTH INSURANCE COVERAGE
IN DELAWARE**

RE: PASSAGE OF TELEMEDICINE STATUTE

DATED: JULY 17, 2020

This Bulletin informs health insurance carriers and producers that House Substitute 1 for House Bill 348 as modified by House Amendment 1 (150th General Assembly) was signed by the Governor on July 17, 2020 (the Act). The Act expires on July 1, 2021.

Background

On March 12, 2020, Delaware's Governor issued a Declaration of a State of Emergency for the State of Delaware (the Declaration) due to a public health threat as a result of the COVID-19 pandemic. Thereafter, the Declaration was amended through a series of modifications and a Joint Order of the Department of Health and Social Services and the Delaware Emergency Management Agency, which, in total, eased restrictions on who may provide medical services through telehealth, who may receive those services and under what circumstances, and how those services were to be paid. Those modifications and the Joint Order are more fully explained in the preamble to the Act.

As a result, both patients and healthcare providers have increased their use of telemedicine, with reportedly positive results. Providers have reported fewer "no-shows" than in-person visits and an increase in the time they are able to spend with their patients. The use of telemedicine has also made the provider/patient interaction more comfortable, such that patients are more likely to seek care earlier in the course of an illness, sometimes leading to better health outcomes and likely long-term financial savings for both the patients and insurers.

Patients also report positive experiences with telemedicine, including savings in both time and money since they do not have to travel to a doctor's office or rearrange their personal and family schedules around a doctor's visit. Patients have also reported feeling

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more comfortable using telemedicine than going into an office during the pandemic. Additionally, access to health care for patients who live in rural or underserved areas has also reportedly increased.

Both patients and providers appreciate that telemedicine is now more widely covered by insurance providers. Even after COVID-19 is no longer considered a health concern, many patients and providers will still likely want to use telemedicine.

Content of the Act

The Act finds that:

[T]he interest of Delawareans will be served by ensuring that the provisions in the Declaration of the State of Emergency, as modified, pertaining to authorizing telemedicine without a pre-existing provider-patient relationship and through the use of land-lines and other technology which does not have a video component, as well as permitting out-of-state mental health practitioners to practice in Delaware subject to Division of Professional Regulation oversight are maintained to facilitate the delivery of health care services during and in the aftermath of the serious public health threat occasioned by COVID-19.

Specifically, the Act promulgates the telemedicine-related requirements in the Declaration as further modified and in the Joint Order as follows:

- Allows patients to seek healthcare via telemedicine without having to first present themselves in person to a provider under circumstances which make in-person presentation impractical;
- Deletes the requirement that a patient must be in Delaware at the time the telemedicine services are provided, as long as the patient is a Delaware citizen;
- Prohibits any regulation pertaining to telemedicine requiring visual communication so that telemedicine services may be delivered using non-smart phones and land line connections;
- Authorized “[a]ll out of state mental health providers with an active license in good standing in any United States jurisdiction, including psychologists, mental health counselors, clinical social workers, chemical dependency counselors and marriage and family therapists” to provide in-person and telemedicine health services in Delaware;
- Continues suspension of the Delaware Board of Medical Licensure and Discipline Regulation 19 limiting the scope of telemedicine, including with respect to prescribing opioids. Professions not covered by the Act include those professionals who require direct supervision by the nature of the work such as licensed associate counselors of mental health. Such professionals may engage in telemedicine and telehealth as provided by existing law. Practitioners covered by the Medical Practices Act, 24 *Del. C.* Ch. 17, including respiratory care practitioners and physician assistants, are covered by the Act. Professions covered by Title 24 who do not currently have statutory telemedicine authorization are not covered;

- Requires that out-of-state practitioners complete a Medical Request Form and comply with any other regulations established by the Division of Professional Regulation;
- Allows the practice of telemedicine by both physicians and APRNs without the existence of a pre-COVID-19 practitioner-patient relationship;
- Specifies that prescribing controlled substances including opioids prescribed via telemedicine is subject to the same standards of practice under existing law pertaining to authorization for APRNs to prescribe controlled substances and adds the authority to prescribe opioids by electronic means; and
- Requires that telemedicine services permitted under the Act receive the same insurance coverage as under existing law.

The Department expects that telemedicine services will be covered as provided in both the Declaration as further modified and in the Act. The Department is updating Regulation 1409, 18 *DE Admin. Code* 1409, to comport the regulation to the Act. Publication of a general notice to that effect is scheduled for publication in the September 1, 2020 *Register of Regulations*.

Questions concerning this Bulletin should be directed to the Department's Consumer Services Bureau at consumer@delaware.gov.

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.



Trinidad Navarro
Delaware Insurance Commissioner