CENTER for HEALTH LAW and POLICY INNOVATION
HARVARD LAW SCHOOL

Telehealth in Massachusetts after COVID-19: An FAQ for Infectious Disease Services Providers

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"An Act Promoting a Resilient Health Care System that Puts Patients First" (referred to in this document as the "Telehealth Law") was passed in January 2021. This Law makes many telehealth capabilities relied on during the COVID-19 pandemic permanent by amending the definition of telehealth, establishing requirements for coverage of telehealth services, and creating reimbursement parity under some circumstances. The legal framework is, however, still evolving. The Massachusetts Division of Insurance (DOI) has issued interim guidance to support implementation.

DOI will establish additional standards for insurance coverage of telehealth services in the months ahead. This document will be revised to address specific infectious disease services.

Which types of insurance coverage does the Telehealth Law apply to?

The Telehealth Law applies to MassHealth (including MassHealth managed care plans), to plans sold on the Massachusetts Health Connector, and to fully insured employer-sponsored plans. The law does not apply to self-insured employer-sponsored plans or to Medicare (including Medicare Advantage plans).

Which telehealth services must be covered by Insurers?*

The Telehealth Law created "coverage parity," meaning that Insurers must cover all services provided via telehealth as long as (1) the same service is covered when provided in an in-person encounter, and (2) the service may be "appropriately provided through the use of telehealth."

Does coverage parity mean that Insurers must cover all modalities of delivering telehealth services?

Not necessarily. The Telehealth Law authorizes providers to engage in a wide range of synchronous and asynchronous telecommunication technology, including:

- interactive audio-video technology
- remote patient monitoring devices
- audio-only telephone and
- online adaptive interviews.

This does not mean, however, that Insurers must cover telehealth services provided via all modalities.

What does the Telehealth Law require regarding reimbursement parity for telehealth services?

The Telehealth Law mandates reimbursement parity—i.e., reimbursement for telehealth services at the same levels as in-person services—for some but not all services.

Specifically, the Telehealth Law mandates:

* "Insurers" refers to plans subject to the Telehealth Law. Insurers had until May 17, 2021, to submit implementation plans to DOI to detail proposals to develop guidelines that determine the appropriateness of telehealth as a means of delivering a specific health care service.

- Permanent reimbursement parity for in-network **behavioral health services**.
- Reimbursement parity for **services provided by a primary care provider** and **chronic disease management services** through December 2022.
- For **all other services**, reimbursement parity is mandated only until September 13, 2021 (90 days after the state of emergency ended on June 15, 2021).

What does the law require regarding patient out-of-pocket costs?

Patient cost sharing for telehealth services is permitted but cannot exceed cost sharing amounts for in-person services.

Does the Telehealth Law impose location-related restrictions to providing telehealth services?

No. The Telehealth Law specifically states that the delivery of telehealth services is not limited to specific settings (for patients or providers). However, providers must inform patients of their location and obtain the location of the patient.

Are there other standards for providing telehealth services that providers should be aware of?

Yes. Health care services provided via telehealth must conform to:

- standards of care applicable to the provider's profession and specialty
- applicable federal and state health information privacy and security standards and
- standards for informed consent.

The Division of Insurance requires the following additional practices to be put in place until further notice:

- For an initial appointment with a new patient, the provider must review the patient's relevant medical history and any relevant medical records with the patient before initiating the delivery of any service.
- For existing provider-patient relationships, the provider must review the patient's medical history and any available medical records with the patient during the service.
- Prior to each appointment, the provider must ensure that they are able to deliver the services to the same standard as in-person care and in compliance with the provider's licensure regulations and requirements, programmatic regulations, and performance specifications related to the service (e.g., communication access). If the provider cannot meet these requirements, then—prior to delivering services—they must notify the patient of this and advise the patient to seek appropriate in-person care.
- To the extent feasible, providers must ensure patients the same rights to confidentiality and security as provided in face-to-face services and must—prior to delivering services—inform patients of any relevant privacy considerations. Providers must follow consent and patient information protocols consistent with in-person visits.
- Providers must inform patients of their location and obtain the location of the patient. Providers must inform patients how to see a provider in-person.

The resource will be updated as regulations and/or other government policies are finalized. To ensure that you are reading the most up-to-date version, please visit: https://www.chlpi.org/health-law-and-policy/public-health-in-massachusetts//.