

As State Ends Emergency Declaration, What Does that Mean for Telehealth Coverage?

With Governor Cuomo announcing last week an end to the state's "emergency" declaration and an ending of the many Executive Orders waiving portions of New York laws and regulations, it has prompted several questions from physicians and their staff as to what coverage will continue to exist for telehealth services for their patients.

The following is a brief update on the range of issues regarding access to telehealth services that MSSNY will continue to address over the summer, and fall, as well as during the 2022 legislative session.

- **Coverage Parity Continues** Existing state law requires New York regulated health insurance companies to provide coverage for Telehealth services for care that is covered on an in-person basis. NY state law also requires Telehealth coverage by Medicaid. These policies do not address payment levels for physicians and are not affected by suspension of the public health emergency, so "coverage parity" for Telehealth services will continue. These policies do not apply to ERISA regulated plans.
- **Waiving of Cost-Sharing Ends** DFS recently ended its emergency regulation that required insurers to waive cost-sharing requirements on patients for services delivered via Telehealth. MSSNY raised concerns with regulators, but it may be harder to justify given the very significant drop in COVID cases over the last two months.
- **Audio-Only Coverage** The latest emergency regulation from DFS continues coverage for Telehealth services delivered via audio-only until July 5, but it is unclear if DFS will renew, making clarifying legislation potentially necessary. Please note that last year a statute was enacted that requires Medicaid to cover audio-only Telehealth. The New York State Department of Health recently issued a guidance document for how Medicaid will continue to cover telehealth services, including through audio-only [COVID-19-Telephonic-and-Telehealth-06-25-21.pdf \(hca-nys.org\)](https://www.hca-nys.org/COVID-19-Telephonic-and-Telehealth-06-25-21.pdf).
- **Telehealth thru FaceTime?** At this time, it is unclear whether DFS guidance from last March ([Coronavirus \(COVID-19\) information: Information for Insurers and Providers on Coverage for Telehealth Services | Department of Financial Services \(ny.gov\)](https://www.ny.gov/coronavirus-covid-19-information-information-for-insurers-and-providers-on-coverage-for-telehealth-services)), regarding the approved use of simplified modalities for delivering Telehealth services will be continued. MSSNY is seeking clarification.

However, the DOH notice referenced above does suggest that approved use of simplified technologies will continue as they note that: *"during the COVID-19 federally declared public health emergency, the Department of Health and Human Services Office for Civil Rights (OCR) has issued a Notification of Enforcement Discretion for telehealth remote communications. 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 emergency"*.

- **Continued Push for Payment Parity** Some health insurers made the decision to increase telehealth payments to match in-person payments. However, many insurers did not follow the same path. MSSNY will continue to work with other patient and physician groups in support of legislation such as A.6256/S.5055 that would require health insurers to ensure payment for Telehealth services are equal to similar services provided in-person.

We understand that the pandemic significantly transformed the use of telehealth services, creating new options for patients to receive care and their physicians to deliver care. To that end, MSSNY will continue to advocate for measures that remove barriers to patients receiving Telehealth services from their physicians, including ensuring fair payments for these services.