GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health Care Finance

Office of the Senior Deputy Director/Medicaid Director

Transmittal # 20-08

TO: All District of Columbia Medicaid Providers

FROM: Melisa Byrd MB
Senior Deputy Director/State Medicaid Director

DATE: March 19, 2020

SUBJECT: **Public Health Emergency Guidance on Medicaid-Reimbursable Telemedicine Services: Allowance for Audio-Only Visits and HIPAA**

Purpose

The purpose of this transmittal is to notify all Medicaid providers of changes to the standards governing Medicaid reimbursement of health services provided to a beneficiary in their home via telemedicine using audio-only telephone communication. In addition, DHCF is offering clarification on guidance from the Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) with respect to exercising enforcement discretion and waiving potential penalties of Health Insurance Portability and Accountability Act (HIPAA) violations. These changes shall be in effect throughout the public health emergency and until 60 days after the end of a public health emergency declared by the Mayor of the District of Columbia, pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), as allowable under federal law.

Reimbursement for Telemedicine Services Delivered using Audio-only Telephone Communication

On March 12, 2020, DHCF adopted an emergency and proposed rule that established authority for Medicaid reimbursable services to be delivered in a beneficiary's home to ensure the health, safety, and welfare of residents is not threatened by a lapse of in-person access to covered healthcare services due to the threat of infection with coronavirus (COVID-19). On March 18, 2020 in response to further guidance from the Centers for Disease Control and Prevention and public need to expand access to telemedicine services, under the Mayor's authority, DHCF authorizes payment

for audio-only visits delivered via telephone. This action temporarily suspends provisions of the District of Columbia Telehealth Reimbursement Act of 2013 that indicate "services delivered through audio-only telephones, electronic mail messages, or facsimile transmissions are not included" in the definition of telehealth.

Providers must ensure they are able to meet the standard of care for services rendered and must meet all other requirements of the telemedicine rule adopted on March 10, 2020. Please see updated guidance to telemedicine services posted on DHCF's website (https://dhcf.dc.gov/page/telemedicine) for further clarification of requirements of the emergency and proposed rule.

Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) Guidance on Waiver of Potential Penalties for HIPAA

On March 17, 2020, the Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS) announced, effective immediately, that it will exercise its enforcement discretion and will waive potential penalties for HIPAA violations against health care providers that serve patients through everyday communications technologies during the COVID-19 nationwide public health emergency.

Under this Notice, covered providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency. Providers should understand that utilizing these third-party applications without an established business associate agreement (BAA) introduces privacy and security risks, and providers are encouraged to enable all available encryption and privacy modes when using such applications. 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.

Providers should also understand that HHS' decision to suspend HIPAA penalties does not immunize a provider from other legal action concerning the failure to properly protect a beneficiary's Protected Health Information (PHI). Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant and will enter into HIPAA BAAs in connection with the provision of their video communication products.

The list below includes some vendors that represent that they provide HIPAA-compliant video communication products and that they will enter into a HIPAA BAA.

- Skype for Business
- Updox
- VSee
- Zoom for Healthcare
- Doxy.me
- Google G Suite Hangouts Meet

These telemedicine services are provided for reference only. DHCF does not endorse or recommend any commercial products, processes, or services.

If you have any questions regarding this transmittal, please contact Jordan Kiszla in the Health Care Reform and Innovation Administration at Jordan.Kiszla@dc.gov or by telephone at 202-442-9055.

Cc: DC Hospital Association
DC Primary Care Association
DC Health Care Association
DC Home Heath Association
DC Behavioral Health Association
DC Coalition of Disability Service Providers