STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

SPRINGFIELD, ILLINOIS

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MAR 19 2020
IN THE OFFICE OF
SECRETARY OF STATE

March 19, 2020

Executive Order 2020-09

EXECUTIVE ORDER TO EXPAND TELEHEALTH SERVICES AND PROTECT HEALTH CARE PROVIDERS IN RESPONSE TO COVID-19 (COVID-19 EXECUTIVE ORDER NO. 7)

WHEREAS, in late 2019, a new and significant outbreak of Coronavirus Disease 2019 (COVID-19) emerged; and,

WHEREAS, COVID-19 is a novel severe acute respiratory illness that can spread among people through respiratory transmissions and present with symptoms similar to influenza; and,

WHEREAS, certain populations are at a higher risk of experiencing more severe illness as a result of COVID-19, including older adults and people who have serious chronic health conditions such as heart disease, diabetes, lung disease or other mental or physical conditions; and,

WHEREAS, despite efforts to contain COVID-19, the World Health Organization (WHO) and the federal Centers for Disease Control and Prevention (CDC) have declared that it is expected to spread; and

WHEREAS, in communities with confirmed COVID-19 cases, the CDC currently recommends mitigation measures, including practicing social distancing, staying at home when sick, staying home when a household member is sick with respiratory disease symptoms or when instructed to do so by public health officials or a healthcare provider, and keeping away from others who are sick; and

WHEREAS, social distancing, which consists of maintaining at least a six-foot distance between people, is the paramount strategy for minimizing the spread of COVID-19 in our communities; and

WHEREAS, the CDC, taking note of a need to reduce unnecessary healthcare visits and prevent transmission of respiratory viruses at healthcare facilities, currently recommends that healthcare providers increase the use of telehealth systems, formal or otherwise, to assess and care for patients to decrease the volume of persons seeking care in facilities; and

WHEREAS, the CDC currently recommends that health plans, healthcare systems, and insurers or other payors message beneficiaries to promote the availability of covered telehealth, telemedicine, or nurse advice line services; and

WHEREAS, in response to the COVID-19 outbreak, which also constitutes a nationwide public health emergency, covered health care providers and entities subject to the Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110, may seek to communicate with patients and provide telehealth services through remote communications technologies, and some of these technologies and the manner in which they are used by health care providers or covered entities may not fully comply with the statutory requirements; and

WHEREAS, the U.S. Department of Health and Human Services – Office of Civil Rights has issued a Notice of Enforcement Discretion for telehealth remote communications in response to the COVID-19 outbreak, which temporarily expands the non-public facing audio or video communication products that may be used for telehealth services without being subject to enforcement actions under the federal Health Insurance Portability and Accountability Act of 1996; and

WHEREAS, the current testing availability has identified further spread of confirmed cases throughout the State of Illinois, and it is expected that increased testing capacity would demonstrate that COVID-19 is circulating in communities across Illinois that currently have not identified a confirmed case; and,

WHEREAS, the ongoing spread of COVID-19 and the danger the virus poses to the public's health and wellness requires an expansion of the healthcare workforce to ensure there are sufficient practitioners to help support the healthcare response to the COVID-19 pandemic in Illinois; and

WHEREAS, I, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area on March 9, 2020 ("Gubernatorial Disaster Proclamation"); and,

WHEREAS, on March 11, 2020, WHO characterized COVID-19 as a pandemic; and;

WHEREAS, it is necessary and appropriate for the State of Illinois to immediately take measures to promote and secure the safety and protection of the civilian population in response to this COVID-19 outbreak including measures to ensure the provision and coverage of health care services while the public and health care providers are subjection to quarantine;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, and pursuant to Sections 7(1), 7(8), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, I hereby Order the following:

Section 1. "Telehealth Services" shall be defined to include the provision of health care, psychiatry, mental health treatment, substance use disorder treatment, and related services to a patient, regardless of their location, through electronic or telephonic methods, such as telephone (landline or cellular), video technology commonly available on smart phones and other devices such as FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, and videoconferencing, as well as any method within the meaning of "telehealth services" under Section 356z.22 of the Illinois Insurance Code, 215 ILCS 5. "Health insurance coverage" and "health insurance issuer" shall have the meanings given in Section 5 of the Illinois Health Insurance Portability and Accountability Act, 215 ILCS 97.

Section 2. Beginning March 19, 2020 and continuing for the duration of the Gubernatorial Disaster Proclamation, in order to protect the public's health, to permit expedited treatment of health conditions during the COVID-19 pandemic, and to mitigate its impact upon the residents of the State of Illinois, all health insurance issuers regulated by the Department of Insurance are hereby required to cover the costs of all Telehealth Services rendered by in-network providers to deliver any clinically appropriate, medically necessary covered services and treatments to insureds, enrollees, and members under each policy, contract, or certificate of health insurance coverage.

Issuers may establish reasonable requirements and parameters for Telehealth Services, including with respect to documentation and recordkeeping, to the extent consistent with this Executive Order or any company bulletin subsequently issued by the Department of Insurance under this Executive Order. An issuer's requirements and parameters may not be more restrictive or less favorable toward providers, insureds, enrollees, or members than those contained in the emergency rulemaking undertaken by the Department of Healthcare and Family Services at 89 Ill. Adm. Code 140.403(e). Issuers shall notify providers of any instructions necessary to facilitate billing for Telehealth Services.

Section 3. In order to ensure that health care is quickly and efficiently provided to the public, health insurance issuers shall not impose upon Telehealth Services utilization review requirements that are unnecessary, duplicative, or unwarranted, nor impose any treatment limitations that are more stringent than the requirements applicable to the same health care service when rendered in-person. For Telehealth Services delivered by in-network providers that relate to COVID-19, health insurance issuers shall not impose any prior authorization requirements.

Section 4. Health insurance issuers shall not impose any cost-sharing (copayments, deductibles, or coinsurance) for Telehealth Services provided by in-network providers. However, in accordance with the standards and definitions in 26 U.S.C. 223, if an enrollee in a "high-deductible health plan" has not met the applicable deductible under the terms of their coverage, the requirements of this Section do not require an issuer to pay for a charge for Telehealth Services unless the associated health care service for that particular charge is deemed "preventive care" by the United States Treasury. The federal Internal Revenue Service recently has recognized that services for testing, treatment, and any potential vaccination for COVID-19 fall within the scope of "preventive care."

Section 5. Telehealth Services subject to this Executive Order's coverage requirements may be provided by any in-network physicians, physician assistants, optometrists, advanced practice registered nurses, clinical psychologists, prescribing psychologists, dentists, occupational therapists, pharmacists, physical therapists, clinical social workers, speech-language pathologists, audiologists, hearing instrument dispensers, other mental health providers, and other substance use disorder treatment providers, as long as they are licensed, registered, certified, or authorized to practice in the State of Illinois, regardless of whether or not the in-network provider was originally established prior to the COVID-19 pandemic in any designated telehealth network for the policy, contract, or certificate of health insurance coverage. Existing insurance law requirements regarding coverage of treatments based on licensure apply, such as the coverage requirements for treatment of autism spectrum disorders contained in Section 356z.14 of the Illinois Insurance Code, 215 ILCS 5.

Section 6. This Executive Order does not apply to "excepted benefits" as defined by 45 C.F.R. 146.145(b) and 45 C.F.R. 148.220, but does apply to limited scope dental benefits, limited scope vision benefits, long-term care benefits, coverage only for accidents, or coverage only for specified disease or illness. This Executive Order applies to short-term, limited-duration health insurance coverage, fully insured student health insurance coverage, and fully insured association health plans except with respect to excepted benefits as provided above. Any policy, contract, or certificate of health insurance coverage that does not distinguish between in-network and out-of-network providers shall be subject to this Executive Order as though all providers were in-network.

Section 7. The Department of Insurance may provide additional guidance and implement rules consistent with the terms of this Executive Order.

Section 8. Beginning March 19, 2020 and continuing for the duration of the Gubernatorial Disaster Proclamation, the following statutory limitations pursuant to Section 5 of Illinois' Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/5, are suspended for the provision of Telehealth Services to mental health and developmental disability patients in Illinois:

1. The disclosure prohibitions as to records and communications pursuant to 740 ILCS 110/5(a).
2. The written consent provisions pursuant to 740 ILCS 110/5(b).

Section 9. A covered health care provider and/or covered entity subject to the requirements of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110, that uses audio or video communication technology to provide Telehealth Services to mental health and developmental disability patients may use any non-public facing remote communication product in accordance with Section 1 of this Executive Order for the duration of the Gubernatorial Disaster Proclamation. This exercise of discretion applies to Telehealth Service providers or covered entities for any reason, regardless of whether the Telehealth Service concerns the diagnosis and treatment of health conditions related to COVID-19. Providers and covered entities should, to the extent feasible, notify patients that third-party applications potentially introduce privacy risks. Providers should enable all available encryption and privacy modes when using such applications. Facebook Live, Twitch, TikTok, and similar video communication applications which are public facing should not be used in the provision of telehealth by covered health care providers or covered entities.

Section 10. During the duration of the Gubernatorial Disaster Proclamation, the following requirements of the Medical Practice Act of 1987, 225 ILCS 60/21, for reinstatement of a license are suspended for licensees whose licenses have been lapsed or inactive for less than three years: (1) proof of meeting continuing education requirements for one renewal period; and (2) payment of a reinstatement fee.

JB Pritzker, Governor

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