Sustaining Improved Access to Behavioral Telehealth – Executive Summary

A BHI provider survey identified that over 76% of respondents did not use telehealth prior to COVID-19. The federal government and other states have begun efforts to sustain improved access to behavioral health through use of telemedicine and telehealth. The following areas of focus were identified - these are based on waived or relaxed provisions and provider input.

Telemedicine & Telehealth

The terms "telemedicine" and "telehealth" are inconsistently defined and used by Washington State and the federal government. However, the types of services that were reimbursed were relatively consistent. Prior to the crisis, Medicaid and Medicare paid for audio/video and store-and-forward technology as defined below.

In Washington State "RCW 74.09.325 defines telemedicine as the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment."

The HCA and MCOs have "implemented temporary policies to expand the type of telecommunications that can be used to provide covered services. For the duration of the pandemic, telehealth can be considered an umbrella term that includes telemedicine as well as these temporary policies …. Telehealth is the use of electronic information and telecommunications technologies to support distant primary health and behavioral health care; patient and professional health-related education; public health, and health administration…In contrast to telemedicine, some telehealth technologies may not be HIPAA compliant and some are not conducted through interactive audio-video exchange."

Conversely, for CMS/Medicare "the term "telehealth service" means professional consultations, office visits, and office psychiatry services" as modified on an annual basis for the addition or deletion of services (and codes)…shall pay for telehealth services that are furnished via a telecommunications system by a physician…or a practitioner…to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner providing the telehealth service is not at the same location as the beneficiary…the term "telecommunications system" includes store-and-forward technologies that provide for the asynchronous transmission of health care information in single or multimedia formats."

During the COVID crisis, Medicaid is now also paying for telehealth, as defined in the COVID Apple Health (Medicaid) telemedicine & telehealth brief. Additionally, "using new waiver authority, CMS is also allowing many behavioral health and education services to be furnished via telehealth using audio-only communications."

Payment Parity

"HCA's Apple Health (Medicaid) program pays the same for services rendered via telemedicine as in-person. HCA has done so previously, and we will continue to do so."

In addition, the legislature passed a requirement that providers be paid at the same rate when providing services via telemedicine that was scheduled to be effective 1/1/21. This requirement was accelerated due to COVID and the Governor's proclamation made this rule effective 3/25/20. Pursuant to state law, proclamations such as this one must be extended by the Legislature every 30 days, and this one has been extended twice so far with a current end date of 6/17/20.

In-Person/Face-to-Face Requirement

The Washington State DOH has behavioral health agency licensing and certification requirements imposing an obligation to provide assessments and certain services "in person" or "face-to-face." These requirements, which are codified in multiple WACs, have been temporarily waived due to the Public Health Emergency.

Billing

Billing requirements are updated on an annual or as needed basis. Washington uses "Billing Guides" and provides guidelines and physician fee schedules to MCOs, and the federal government uses the physician fee schedule. FQHCs and RHCs use separate payment systems.

These guides/schedules provide interpretation of RCW, WAC and Social Security Act laws, and they have separate processes for updates. Recent Medicare relaxations include rural/urban, new vs. established patients, provider types, virtual check-in, e-visits, e-consults, and MA plan requirements to be consistent with FFS.

Service Provision and Medication Dispensing (including Opioids)

In Washington, an emergency rule has modified the Uniform Controlled Substances Act (in WAC) to "reduce burdens on practitioners prescribing Schedule II substances during the COVID-19 outbreak."

Providers now have more time to deliver signed prescriptions (15 days), and a "signed prescription" now includes paper, electronic transmission, facsimile, photograph, or scanned copy.

Federally, the DEA activated an exception to the Ryan Haight Act allowing providers to prescribe controlled substances via telemedicine without first conducting an in-person examination – telemedicine requires audio-visual, two-way interactive communication. The DEA (in partnership w/ SAMHSA) later went further, allowing "authorized practitioners" to prescribe buprenorphine to new and existing OUD patients using a telehealth examination – telehealth may include telephone voice-only evaluation.

Other

There are numerous additional regulations which have been relaxed in order to sustain access to behavioral health services. However, these may not specifically or directly impact telemedicine/telehealth. For example, there have also been multiple changes to pharmacy regulations which may ease current barriers to SUD treatment, such as the use of pharmacy ancillary personnel and allowing them to practice without prior authorization (from PQAC), relaxing limitations on the use of pharmacy technicians, and removing DOH approval requirement on location licensing.

Patient Barriers

A BHI needs assessment survey identified multiple patient barriers to telemedicine. Many of these do not have specific regulations or other policies which have been waived.

Broadband is an example of one of these issues, and the Strategic Oversight Committee (SOC) is forming a subcommittee to evaluate options, barriers, and develop a proposal for expanding broadband in Washington to provide telehealth services to persons with behavioral health needs.

Additional common examples of patient barriers include lack of access to computers or cellphones; a private location, childcare or other personal barriers; adapting to telephone / telehealth; and difficulty contacting providers.

Privacy & Security

Privacy

There have not been changes to federal or state laws related to privacy. However during the crisis, the Office of Civil Rights (OCR) said "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 COVID-19 nationwide public health emergency." This enforcement discretion has also been applied to 42 CFR Part 2 privacy rules. The CARES Act made rule changes around SUD records, partially aligning them with HIPAA statue, and also directing the HHS secretary to write regulations no later than a year after the law passed.

SAMHSA has also provided "guidance to ensure that substance use disorder treatment services are uninterrupted during this public health emergency." The administration says, "prohibitions on use and disclosure of patient identifying information under 42 C.F.R. Part 2 would not apply in these situations to the extent that, as determined by the provider(s), a medical emergency exists."

Providers should keep in mind that "Washington law related to giving out healthcare information has not been waived at this time…The Department of Health and healthcare profession boards and commissions are working together on federal and state policy for COVID-19."

Security

As part of the 1135 waiver, security requirements for video communication in a telehealth visit have been temporarily waived. This allows providers to temporarily use telephone and "readily available platforms like Facetime, WhatsApp, Skype, etc. to facilitate the telehealth visit with the patient at home."