AMERICA'S PHYSICIAN GROUPS
Taking Responsibility for America's Health

April 2, 2020

Sarah Ream, Esq.
Acting General Counsel
Department of Managed Health Care
980 9th Street, 5th Floor
Sacramento, CA 95814
Sent via email: sarah.ream@dmhc.ca.gov.

Re: APG Comments on Draft APL 20-_____, Coding for Telehealth Services

Dear Ms. Ream:

Thank you for the opportunity to provide comment on the Department's draft APL. Thank you for the clarification on the scope of application to fully insured commercial and Medi-Cal Managed Care plan networks and enrollees. Our comments are as follows:

Draft APL:

Thank you for clarifying two important functions:

- Enabling the treating provider to determine, in their professional judgment, which services can be provided via telehealth, and preventing any categorical exclusions by a health plan
- That all plan network physicians and licensed healthcare professionals may render services via telehealth and that enrollee access to their current provider is maintained via telehealth if the provider is willing and able to do so

Comments: The second element of the APL (above) is not enabled where a health plan has shifted the financial burden of providing the telehealth visit onto the that individual provider and/or their delegated physician group through a waiver of copay. The Department ordered the waiver of copays in its March 8th APL 20-009 but did not require health plans to cover such a waiver. We notified the Department by email of the significant problem this posed within minutes of receipt of this APL.

Copays are collected by the individual network provider at the time of service and form an important part of their compensation. Risk-bearing organizations and health plans negotiate capitation rates in advance with the copay factor in mind. The Department's prior action has allowed health plans to shift the financial cost of the copay factor onto the risk-bearing delegated organization to cover the physician's loss of revenue. As several APG members have pointed out to us, this action poses a significant loss of revenue at a time when they will face challenges to maintain staff and provide continued services at greatly increased cost. In effect,

the Department allowed health plans to unilaterally decrease provider reimbursement without negotiation, a violation of the Provider Bill of Rights provisions under the Act.

We ask the Department to consider review of each plan's policies and procedures and refer such violations to the enforcement division. In the absence of such immediate action, the continued financial viability of individual providers and their capitated, delegated physician organizations is threatened. In the alternative, please confirm that the Department has adopted a policy to allow health plans to unilaterally reduce physician and capitated organization compensation during the pendency of this emergency.

Suggested alternate language: *A health plan may not unilaterally decrease the total compensation to its contracted network providers during the pendency of the emergency through waiver of coinsurance and/or copay, or any other risk-shifting mechanism.*

Draft FAQ Document:

Comments: The Governor has changed the use of the phrase "social distancing" to "physical distancing."

- We appreciate the specific clarification on the scope and application of the Department's APL under Question 1. We have separately commented on the issues faced by providers dealing with self-funded plan patients. We recognize the complexity of the situation, and the interplay between ERISA, the U.S. Department of the Treasury, and the U.S. Department of Labor. We reserve further comment on this issue pending forthcoming clarification from these federal entities.
- We did not receive comments from our membership on the remaining sections of the FAQ document. If we receive further comment, we'll forward it to you immediately.

Thank you for your consideration and for the efforts of the Department on behalf of all Californians.

Sincerely,

Bill Barcellona
EVP, Government Affairs

Please reply to Sacramento:
wbarcellona@apg.org
(916) 606-6763 mobile

CC: Mary Watanabe & Sara Durston, DMHC

Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
980 9th Street, Suite 500
Sacramento, CA 95814
Phone: 916-324-8176 | Fax: 916-255-5241
www.HealthHelp.ca.gov

[DRAFT] ALL PLAN LETTER

DATE: April __, 2020

TO: All Health Care Service Plans

FROM: Sarah Ream**,** Acting General Counsel

SUBJECT: APL 20-___–Coding for Telehealth Services; Telehealth for the Delivery of Services

On March 18, 2020, the Department of Managed Health Care (Department) issued an All Plan Letter (APL 20-009) directing all health plans to:

1. Reimburse providers at the same rate, whether a service is provided in-person or through telehealth, if the service is the same regardless of the modality of delivery, as determined by the provider's description of the service on the claim.

2. For services provided via telehealth, not subject enrollees to cost-sharing greater than the same cost-sharing if the service were provided in-person.

3. Provide the same amount of reimbursement for a service rendered via telephone as they would if the service is rendered via video, provided the modality by which the service is rendered (telephone versus video) is medically appropriate for the enrollee.

Following issuance of APL 20-009, providers and others asked the DMHC how providers should code the services rendered via telehealth and whether APL 20-009 applies to all types of services, including Applied Behavior Analysis, physical therapy and speech therapy, among others.

Coding

During the COVID-19 State of Emergency, when a provider delivers a service via telehealth that the provider would normally deliver in-person, the provider should document and code the service(s) as follows:

- Thoroughly document the visit as if the visit had occurred in person.
- Use the CPT codes for the particular services rendered.
- Use Place of Service "02" to designate telehealth.

- Use modifier 95 for synchronous rendering of services or GQ for asynchronous.

Types of Service That Can Be Provided Via Telehealth

A health plan may not exclude coverage for certain types of services or categories of services simply because the services are rendered via telehealth, if the enrollee's provider, in their professional judgment, determines the services can be effectively delivered via telehealth. For example, a health plan may not categorically exclude coverage for Applied Behavioral Analysis services delivered via telehealth (video or telephone) during the State of Emergency.

Providers Who May Render Telehealth Services

The Department has heard from providers and enrollees that health plans are requiring their enrollees to access services through the plans' contracted telehealth vendor (e.g., Teledoc) rather than covering telehealth services delivered by providers who have typically delivered services to the enrollees in person. During the State of Emergency, a health plan may not require enrollees to use the plan's telehealth vendor, or a different provider from the one the enrollee typically sees, if the enrollee's provider is willing to deliver services to the enrollee via telehealth and the enrollee consents to receiving services via telehealth.

Frequently Asked Questions

Attached to this All Plan Letter is a "Frequently Asked Questions" document which provides answers to common questions the Department has received regarding the provision of telehealth services during the State of Emergency.

If you have questions regarding this APL, please contact Sarah Ream, Acting General Counsel, at (916) 324-2522 or via email at sarah.ream@dmhc.ca.gov.

Delivery of Services via Telehealth During the COVID-19 State of Emergency
Frequently Asked Questions

During the COVID-19 State of Emergency, many health care providers need and want to continue to deliver services to their patients. Because social distancing is necessary to slow the spread of the coronavirus, many providers are using telehealth, when clinically appropriate, to deliver services they would typically deliver to patients in-person. This allows the patients to continue to receive care while limiting both the patients' and providers' exposure to the coronavirus.

On March 18, 2020, the Department of Managed Health Care (DMHC) issued All Plan Letter 02-009 (Letter), which requires the health plans the DMHC regulates to reimburse providers for services they would typically deliver to patients in-person but are now delivering via telehealth.

The DMHC has received numerous questions from providers about the Letter. This FAQ addresses those questions.

Question 1: Does the DMHC's Letter apply to all payers (e.g., health plans, health insurers, self-insured employers, Medicare, Medi-Cal)?

Answer: The DMHC's Letter applies only to the health plans the DMHC regulates. DMHC-regulated plans cover the majority of people in commercial health care coverage in California. The DMHC also regulates most of the Medi-Cal managed care plans.

However, there are types of health care coverage to which the Letter does not apply. These include:

- Health insurers regulated by the California Department of Insurance. The Department of Insurance issued guidance regarding telehealth services.
- Medi-Cal fee-for-service. The Department of Health Care Services issued guidance regarding reimbursement for telehealth services.
- Medicare. The Centers for Medicare and Medicaid Services issued guidance regarding the use of telehealth for Medicare patients.
- Self-insured plans (also referred to as ERISA plans)
- TRICARE

Question 2: How should a provider code services delivered via telehealth during the State of Emergency, when the provider would normally deliver the services in-person?

Answer: During the COVID-19 State of Emergency, when a provider delivers a service via telehealth that the provider would normally deliver in-person, the provider should document and code the service(s) as follows:

- Thoroughly document the visit as if the visit had occurred in person.
- Use the CPT codes for the particular services rendered.
- Use Place of Service "02" to designate telehealth.

DRAFT

- Use modifier 95 for synchronous rendering of services or GQ for asynchronous.

Question 3: Is the option to deliver services via telehealth available for all types of services?

Answer: Yes, so long as it is medically appropriate to render the services via telehealth.

During the COVID-19 State of Emergency, a health plan may not exclude coverage of certain types services or categories of services simply because those services are delivered via telehealth, if the enrollee's provider, in their professional judgment, determines the services can be effectively delivered via telehealth. For example, a health plan may not categorically exclude coverage for Applied Behavioral Analysis services provided via telehealth (video or telephone) during the State of Emergency.

Question 4: My patient's health plan says it covers telehealth only when the service is provided by the health plan's telehealth vendor. Does my patient need to change providers to receive services via telehealth?

Answer: No. If you believe, in your professional judgment, that it is medically appropriate for you to provide services to your patient via telehealth and you can effectively provide the services via telehealth, the health plan must cover the services as if you had provided them in-person.

Question 5: Can the plan deny coverage for telehealth if the plan has not yet approved/credentialed the provider rendering services via telehealth?

Answer: No, the plan cannot impose credentialing or approval requirements specific to telehealth if the provider is otherwise appropriate to render services to the enrollee and the health plan would cover the provider's services if the provider had rendered the services in-person.

Question 6: My patient's Evidence of Coverage says the plan covers telehealth only in certain circumstances. During the COVID-19 State of Emergency, does the plan have to cover services I provide to my patient via telehealth if I would normally provide the services in-person?

Answer: Yes. Notwithstanding language to the contrary in an Evidence of Coverage, the health plan must cover services delivered via telehealth if:

1) the health plan would cover the services if they were delivered in-person by the provider;
2) the provider, in their professional judgment, determines it is appropriate to deliver the services via telehealth and the provider can effectively deliver the services via telehealth; and,

3) the enrollee consents to receiving the services via telehealth.

Question 7: Are there restrictions on the platforms or modalities providers can use to deliver services via telehealth?

Answer: During the COVID-19 State of Emergency, health plans may not require providers to use particular platforms or modalities to deliver services via telehealth as a condition for covering the services.

However, providers must keep in mind their obligations to protect the confidentiality of their patients. The federal Office of Civil Rights recently issued guidance relaxing enforcement of certain HIPPA requirements involving the use of telehealth.

Question 8: Does the provider have to be physically present in their office when providing services via telehealth?

Answer: No. If the provider can effectively deliver services via telehealth from another location (e.g., the provider's home), while also maintaining the patient's privacy, the health plan may not deny coverage of the services because the service was delivered outside the provider's usual place of business.

DRAFT