CAHP IMPLEMENTATION GUIDELINE

AB 457 (Santiago)
Chapter 439, Statutes of 2021

As a service to our members, the California Association of Health Plans produces guidelines designed to assist in the interpretation and implementation of new laws, and to promote full compliance with those laws. This document, however, is not intended to be authoritative. Any questions about official interpretations of the law should be directed to the appropriate state regulatory agency such as the Department of Managed Health Care or the Department of Health Care Services, as well as your legal counsel.

PROTECTION OF PATIENT CHOICE IN TELEHEALTH PROVIDER ACT

BACKGROUND

Assembly Bill 457 was introduced by Assembly Member Miguel Santiago (D-Los Angeles) and was sponsored by the California Medical Association.

AB 457 requires health plans to disclose to their enrollees that they may use either a telehealth third-party corporate provider or their primary care provider for such services if offered by the health plan. Furthermore, if the enrollee has coverage for out-of-network benefits, a health plan must include a reminder of the availability for such services out-of-network, and provide the cost sharing obligation for out-of-network benefits compared to the in-network benefits and balance billing protections for services received from contracted providers.

Initially, CAHP had numerous concerns with this bill. The original version of AB 457 would have set up unnecessary barriers before a patient could access their telehealth benefits, including requiring health plans to assist patients in arranging for a telehealth visit. Several organizations shared our concern, advocating that the bill disregarded the valuable benefit that third-party telehealth providers provide. The bill was significantly amended in the Senate Health Committee. Amendments dramatically reduced the scope of the bill by mostly limiting health plan obligations to notifying their enrollees of their options when utilizing their telehealth benefits. CAHP remained opposed to this bill unless it was further amended to better define some ambiguous language included in the bill, as well as clarify the intent of the bill. During the last week of the legislative session, CAHP was able to secure some additional amendments to address our additional concerns, and we were able to remove our opposition to the bill.

AB 457 passed out of the Legislature on a bi-partisan vote. The Governor signed AB 457 on October 1, 2021.

REQUIREMENTS

Specifically, AB 457 does the following:

1) Prohibits, to the extent consistent with existing federal law, regulations, or guidelines the payment or receipt of consideration for internet-based advertising, appointment booking, or any service that provides information and resources to prospective patients of licensees from constituting a referral of a patient if the internet-based service provider does not recommend or endorse a licensee for the prospective patient.

2) Requires if a health plan or health insurer offers a service via telehealth through a third-party corporate telehealth provider all of the following conditions to be met:

   a) The health plan or insurer discloses in any promotion or coordination of the service both of the following:

      i) Notice of the availability of receiving the service on an in-person basis or via telehealth, if available, from the enrollee's or insured's primary care provider, treating specialist, or from another contracting individual health professional, contracting clinic, or contracting health facility consistent with the service and existing timeliness and geographic access standards law and regulations;

      ii) A reminder that if the enrollee or insured has coverage for out-of-network benefits of the availability of receiving the service either via telehealth or on an in-person basis using the enrollee's or insured's out-of-network benefits and the cost sharing obligation for out-of-network benefits compared to in-network benefits and balance billing protections for services received from contracted providers;

   b) The enrollee or insured chooses to receive the service via telehealth through a third-party corporate telehealth provider after being informed of a) above;

   c) The enrollee consents to the service consistent with existing law; and,

   d) If the enrollee or insured is currently receiving specialty telehealth services for a mental or behavioral health condition, the enrollee or insured is given the option of continuing to receive that service with the contracting individual health professional, a contracting clinic, or a contracting health facility.

3) Requires a health plan or health insurer to comply with all of the following, if services are provided to an enrollee or insured through a third-party corporate telehealth provider:

   a) Notify the enrollee or insured of their right to access their medical records pursuant to existing law;

   b) Notify the enrollee or insured that the record of any services provided through a third-party corporate telehealth provider shall be shared with their primary care provider, unless the enrollee or insured objects;

   c) Ensure that the records are entered into a patient record system shared with the enrollee's or insured's primary care provider or are otherwise provided to the enrollee's or insured's

primary care provider, unless the enrollee or insured objects, in a manner consistent with state and federal law; and,

d) Notify the enrollee or insured that all services received through the third-party corporate telehealth provider are available at in network cost-sharing and out-of-pocket expenses accrue to any deductibles and out of pocket maximums.

4) Requires a health plan or health insurer to include in its reports submitted to DMHC/CDI pursuant to network adequacy law and regulations, in a manner specified by DMHC/CDI, all of the following for each product type:

   a) By specialty, the total number of services delivered via telehealth, including the number provided by contracting individual health professionals and the number provided by third-party corporate telehealth providers;

   b) The names of each third-party corporate telehealth provider contracted with the plan and, for each, the number of services provided by specialty;

   c) For each third-party corporate telehealth provider with which it contracts, the percentage of the third-party corporate telehealth provider's contracted providers available that are also contracting individual health professionals; and,

   d) The types of telehealth services utilized by enrollees\insureds, including frequency of use, gender, age, demographic information, and any other information as determined by the DMHC/CDI.

5) Requires the DMHC director and Insurance Commissioner to, as appropriate, investigate and take enforcement action against a health plan or health insurer that fails to comply with these requirements and to periodically evaluate contracts between health plans/health insurers and third-party corporate telehealth providers to determine if any audit, evaluation, or enforcement actions should be undertaken by DMHC/CDI.

6) Requires a delegated entity, if a health plan delegates responsibilities to a contracted entity, including, but not limited to, a medical group or independent practice association, to comply with this bill.

7) States that this bill does not apply when an enrollee or insured seeks services directly from the third-party corporate telehealth provider.

COMPLIANCE DATES

Plans will be required to implement the provisions of this bill beginning on January 1, 2022.

IMPLEMENTATION ISSUES

Applicability:

This bill applies to commercial health plans and health insurers. As written, the bill does not apply to Medi-Cal managed care plans, but it requires DHCS to consider the appropriateness of applying the law to the Medi-Cal program.

Implementation Issues:
This bill requires health care service contracts to include specific information related to telehealth and reimbursement. Plans should review provider contracts to ensure compliance with these provisions.

Plans may also need to make system changes to ensure that reports submitted to the DMHC account for and include the telehealth data points specified in H.S.C. section 1374.141(d).

For plans offering telehealth services through third-party corporate telehealth provider, this bill requires certain notice and consent conditions to be met. Plans may need to review and update member handbooks/Evidence of Coverage (EOC) accordingly. Plans will also need to ensure administrative processes are in place to accommodate these changes.

If you have any questions regarding this document, please email Jedd Hampton atjhampton@calhealthplans.org.