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HB 2454: telehealth; health care providers; requirements

Sponsor: Representative Cobb, LD 5

Senate Engrossed

Overview

An emergency measure that requires all contracts issued by specified health insurers to provide coverage for health care services that are provided through telehealth. Adds the definition for telehealth and establishes the Telehealth Advisory Committee on Telehealth Best Practices (Committee).

History

A hospital, medical, dental and optometric service corporation (corporation) are corporations organized for the purpose of establishing, maintaining and operating nonprofit hospital, medical, dental and optometric service plans. The Corporation contracts with general, specialized or restricted practice optometrists to provide subscribers with hospital, medical, dental and optometric services ([A.R.S. § 20-822](#)).

A health care services organization (organization) is a person who administers one or more health care plans. An organization includes a provider sponsored health care services organization ([A.R.S. § 20-1051](#)).

Statute outlines the scope and format of a policy with a disability insurer, group disability insurer or a blanket disability insurer (disability insurers) ([A.R.S. §§ 20-1342](#) and [20-1401](#)).

Under current law, *telemedicine* is defined as the practice of health care delivery, diagnosis, consultation and treatment and the transfer of medical data through interactive audio, video or data communications that occur in the physical presence of the patient, including audio or video communications sent to a health care provider for diagnostic or treatment consultation ([A.R.S. § 36-3601](#)).

Provisions

Network Adequacy Requirements

1. Prohibits a health insurer from using contracted telehealth providers to meet network adequacy standards required by state and federal law. (Sec. 1)
2. Stipulates that a health insurer's contracted health care provider (provider) network is not considered adequate if enrollees are unable to access appropriate nonemergency in-person health care services from the network's contracted providers in a timely manner. (Sec. 1)
3. Directs a health insurer to reimburse a provider for the cost of any waived copayment, coinsurance or other cost sharing measure that impacts a provider's reimbursement to ensure that the provider receives the full contracted rate. (Sec. 1)
4. Requires a health insurer to provide notice in its provider network directories that all enrollees have the right to request and receive appropriate nonemergency in-person health care services from the network's providers in a timely manner. (Sec. 1)

Health Insurers

5. Requires all contracts, evidences of coverage and policies issued in Arizona by a corporation, organization and disability insurer (health insurer) to provide coverage for health care services that are provided through telehealth if the health care service would be covered were it through an in-person encounter. (Sec. 2-5)
6. Specifies that the following requirements apply to coverage of telehealth services:
 - a) A health insurer may not limit or deny coverage of health care services provided through telehealth, including ancillary services, except for procedures or service for which the weight of evidence, based on peer-reviewed clinical publications or research recommends not be provided through telehealth;
 - b) A health insurer must reimburse providers at the same level of payment for equivalent services, as identified by the diagnostic and procedure codes, whether provided through telehealth or in-person care, unless the telehealth encounter is provided through a platform sponsored by the health insurer;
 - c) A health insurer can establish reasonable requirements and parameters for telehealth services, including documentation, fraud prevention, identity verification and recordkeeping, but these requirements must not be discriminatory;
 - d) Telehealth services can be provided and must be covered regardless of where the subscriber is located or the type of site; and
 - e) Except in an emergency, the contract can limit the coverage to providers that are members of the health insurer's provider network. (Sec. 2-5)
7. States that a health insurer may not require a provider to use a telehealth platform that is sponsored or provided by the health insurer. (Sec. 2-5)
8. Stipulates that, in order to qualify for the same level of payment, the provider must make telehealth services generally available to patients through the interactive use of audio, video or other electronic media. (Sec. 2-5)
9. Asserts that the provider must access, at the time of the visit, any available clinical information and records and must inform the subscriber before the visit if there is a charge for the telehealth encounter. (Sec. 2-5)
10. States that services provided through telehealth or resulting from a telehealth encounter are subject to the following:
 - a) Arizona's laws governing prescribing, dispensing and administering prescription pharmaceuticals;
 - b) Arizona licensure requirements; and
 - c) Any practice guidelines established by the Committee, or if not addressed, the practice guidelines of a national association of medical professionals. (Sec. 2-5)
11. Modifies the definition of telehealth to:
 - a) Include the use of an audio-only telephone encounter between a subscriber who has an existing relationship with a provider or provider group if the following apply:
 - i. An audio-visual telehealth encounter is not reasonably available due to the subscriber's preference, the functional status, lack of technology or telecommunications infrastructure limits; and
 - ii. The telehealth encounter is initiated at the request of the subscriber or authorized by the subscriber before the telehealth encounter;
 - b) Include the use of an audio-only encounter, regardless of whether there is an existing relationship with the provider or provider group, if the encounter is for a behavioral health or substance use disorder service;

- c) Exclude the sole use of a fax machine, instant messages, voicemail or email. (Sec. 2-5)

Workers' Compensation

- 12. Requires a request for a medical examination for an employee to fix a time and place with regard to whether the medical examination could be conducted through telehealth. (Sec. 6)
- 13. Allows a medical examination to be conducted via telehealth with the consent of both the employee and the requesting party. (Sec. 6)

Medical Professionals

- 14. Specifies that a licensed physician may conduct a physical or mental health status examination through telehealth with clinical evaluation that is appropriate for the patient and the condition for which the patient presents. (Sec. 7,8)
- 15. Stipulates that it is unprofessional conduct for a licensed pharmacist to knowingly dispense a drug on a prescription order from a diagnosis by mail or the internet unless the order was written pursuant to a physical or mental status examination conducted through telehealth. (Sec. 9)

Requirements for Providers

- 16. Stipulates that a health care provider regulatory board or agency may not enforce any statute, rule or policy that would require a licensed provider who is authorized to write prescriptions to require an in-person examination of the patient before issuing a prescription. (Sec. 19)
- 17. Specifies that a physical or mental health status examination may be conducted during a telehealth encounter. (Sec. 19)
- 18. Requires a provider to make a good faith effort in determining whether a health care service should be provided through telehealth instead of in person. (Sec. 19)
- 19. Instructs a provider to use clinical judgement considering whether the nature of the services necessitates physical interventions and close observation and the circumstances of the patient, as outlined. (Sec. 19)
- 20. Requires a provider to make a good faith effort in determining the communication medium of telehealth and, whenever reasonably practicable, the telehealth communication medium that allows the provider to most effectively assess, diagnose and treat the patient. (Sec. 19)
- 21. Stipulates that a provider may consider lack of access to or inability to use technology or limits in telecommunication infrastructure when determining the communication medium. (Sec. 19)
- 22. Prohibits a provider from using their personal preference of convenience. (Sec. 19)

Interstate Providers

- 23. Allows a provider who is not licensed in Arizona to provide telehealth services to an Arizona resident if the provider complies with the all of the following:
 - a) Registers in Arizona with the applicable provider regulatory board or agency that licenses comparable providers in Arizona on an application that contains specified information;
 - b) Pays the registration fee as determined by the applicable provider board or agency;
 - c) Holds a current, valid and unrestricted license to practice in another state that is similar to a license issued in Arizona to a comparable provider and is not subject to any past or pending disciplinary proceedings;
 - d) Acts in full compliance with all applicable laws and rules, including scope of practice and telehealth requirements;
 - e) Complies with all existing requirements in Arizona and any other state in which the provider is licensed regarding maintaining professional liability insurance;

- f) Consents to Arizona's jurisdiction for any disciplinary action or legal proceeding related to the provider's acts;
 - g) Follows Arizona's standards of care for that particular licensed health profession; and
 - h) Annually updates their registration and submits a report to the applicable board or agency with the number of patients they served and the total number of encounters in Arizona for the preceding year (Sec. 19)
24. Requires an interstate provider to notify the applicable regulatory board or agency within five days of any restriction placed on the provider's license or any disciplinary action imposed. (Sec. 19)
25. Prohibits an interstate provider from opening an office in Arizona or providing in-person health care services to Arizona residents without first obtaining the applicable license. (Sec. 19)
26. Stipulates that an interstate provider who fails to comply with the applicable laws and rules of Arizona is subject to investigation and disciplinary action by the applicable regulatory board or agency, which may include revoking the provider's practice privileges and referring the matter to the appropriate licensing authority. (Sec. 19)
27. Stipulates that the venue for any action arising from a violation of the above-mentioned provisions is the patient's county of residence in Arizona. (Sec. 19)
28. Outlines circumstances in which an interstate provider who is licensed in another state and provides telehealth services to an Arizona resident is not required to register in Arizona. (Sec. 19)

Committee

29. Establishes the Committee consisting of specified health care professionals who are appointed by the Governor. (Sec. 19)
30. Requires the Committee to:
- a) Review national and other standards for telehealth best practices and relevant peer-reviewed literature;
 - b) Conduct public meetings at which testimony may be taken regarding the efficacy of various communication mediums and the types of services and populations for which telehealth is appropriate;
 - c) By September 1, 2021, submit a report to the Governor and Legislature with recommendations, including best practice guidelines for telehealth use by providers; and
 - d) Update the Committee's best practice guidelines when applicable. (Sec. 19)
31. Terminates the Committee on July 1, 2029. (Sec. 19)

Definitions

32. Modifies the definition of a *provider* by adding:
- a) Nursing care institution administrators and assisted living facilities managers, midwives and hearing aid dispensers, audiologists and speech language pathologists; and
 - b) A licensed health care institution;
 - c) A person who holds a training permit to be a physician or osteopathic physician. (Sec. 15)
33. Repeals the definition of *telemedicine*. (Sec. 15)
34. Defines *health care provider regulatory board or agency*. (Sec. 15)
35. Defines *telehealth* as:

<input type="checkbox"/> Prop 105 (45 votes) <input type="checkbox"/> Prop 108 (40 votes) <input checked="" type="checkbox"/> Emergency (40 votes) <input type="checkbox"/> Fiscal Note

- a) The interactive use of audio, video or other electronic media for the practice of health care, assessment, diagnosis, consultation or treatment and the transfer of medical data;
- b) Including the use of an audio-only telephone encounter between the patient or client and provider if an audio-visual telehealth encounter is not reasonably available due to the patient's preference, functional status, lack of technology or telecommunication infrastructure limits; and
- c) Not including the use of a fax machine, instant messages, voicemail or email. (Sec. 15)

Acute Care Services Pilot Program (Pilot Program)

- 36. Requires DHS, by September 1, 2021, to develop a three-year pilot program that allows the delivery of at-home acute care services provided by hospitals in Arizona working in coordination with licensed home health professionals. (Sec. 22)
- 37. Requires the pilot program to be designed in a manner and in coordination with the acute care at home program authorized by the Centers for Medicare and Medicaid Services.

Miscellaneous

- 38. Requires the Arizona Department of Insurance and Financial Institutions (DIFI), by January 1, 2023, to report to the Legislature the number of telehealth encounters in Arizona in the preceding year. (Sec. 23)
- 39. Removes the term *telemedicine* and replaces it with *telehealth* throughout various sections of statute. (2-5, 7-11, 13, 16-18, 20, 21)
- 40. Changes the heading of Title 36, Chapter 36 from *telemedicine* to *telehealth*. (Sec. 14)
- 41. Makes technical and conforming changes. (Sec. 2-21)

Senate Amendments

- 1. Removes network adequacy requirements for health insurers.
- 2. Specifies that a health insurer may not limit or deny coverage of health care services provided through telehealth, including ancillary services, except for procedures or services for which the weight of evidence, based on recommendations by the Committee determines not to be appropriate to be provided through telehealth.
- 3. Requires a health insurer to reimburse providers at the same level of payment for equivalent behavioral health and substance use disorder services as identified by the health care common procedure coding system, if provided through telehealth using an audio-visual format.
- 4. Requires a health insurer, by January 1, 2022, to cover services provided through an audio-only telehealth encounter and that are covered by Medicare or the Arizona Health Care Cost Containment System when provided through an audio-only telehealth encounter.
- 5. Requires a health insurer, by January 1, 2022, to cover services provided through an audio-only telehealth encounter if the Committee recommends that the services may appropriately be provided through an audio-only telehealth encounter.
- 6. Directs a provider to bill for a telehealth encounter using the healthcare common procedure coding system and to identify whether the telehealth encounter was provided in an audio-only or audio-video format.
- 7. States that the requirements for telehealth coverage do not limit the ability of health insurers to provide incentives to insureds or to offer network contracts to providers that employ value-based purchasing or bundled payment methodologies.

8. Prohibits network adequacy standards required by federal or state law from being met by a health insurer that contracts with providers who provide only telehealth services and do not provide in-person health care services in Arizona or within 50 miles of Arizona's border.
9. Requires a health insurer that waives a deductible or copayment or coinsurance that impact a provider's contracted reimbursement rate to reimburse the provider for the cost.
10. Requires a provider to make a good faith effort in determining whether a health care service should be provided through telehealth instead of in-person, consistent with the best practice guidelines adopted by the Committee.
11. Allows schedule II drugs to be prescribed only after an in-person or audio-visual examination and to the extent allowed by federal and state law.
12. Removes language prohibiting a provider from considering their personal preference or convenience when determining the telehealth communication medium.
13. Requires an interstate provider to register with the controlled substance prescription monitoring program before prescribing a controlled substance to a patient in Arizona.
14. Outlines the actions an applicable health care provider regulatory board or agency in Arizona may take if an interstate provider fails to comply with the applicable laws and rules.
15. Modifies the Committee's membership and reporting requirements.
16. Requires the Committee to adopt telehealth best practice guidelines and recommendations and analyze outlined information before making its recommendation.
17. Establishes a reporting requirement for each health care provider regulatory board and agency.
18. Modifies the date by which DHS must develop the pilot program.
19. Outlines procedures for DHS to develop the pilot program and requirements for hospitals participating in the pilot program.
20. Modifies the information that must be included in DIFI's report and extends the date by which the report must be submitted from January 1, 2023 to March 31, 2023.
21. Exempts each health care provider regulatory board or agency from rulemaking requirements for one year.
22. Modifies the definition of *telehealth*.
23. Adds an emergency clause.