ENGROSSED ORIGINAL

A BILL

22-233

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the Telehealth Reimbursement Act of 2013 to expand the scope of reimbursable telehealth services covered by Medicaid, to clarify that all categories of Medicaid recipients are eligible for telehealth services, to establish eligibility and prior authorization requirements for remote patient monitoring services, to require operational standards and establish conditions of payment for remote patient monitoring services, to establish fees for remote patient monitoring services, to establish facility fees for telehealth services, to require the Mayor to seek the approval of the Centers for Medicare and Medicaid Services for any amendments to the District's Medicaid State Plan necessary to implement the act, and to require the Department of Health Care Finance to issue rules.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Telehealth Medicaid Expansion Amendment Act of 2018".

Sec. 2. The Telehealth Reimbursement Act of 2013, effective October 17, 2013 (D.C. Law 20-026; D.C. Official Code § 31-3861 *et seq*.) is amended as follows:

(a) Section 2 (D.C. Official Code § 31–3861) is amended to read as follows:

"Sec. 2. Definitions.

"For purposes of this chapter, the term:

"(1) "Asynchronous store and forward" means the transmission of a patient's medical information via a telecommunications system from an originating site to a provider at a distant site.

"(2) "Core services agency" shall have the same meaning as provided in section 102(3) of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1131.02).

"(3) "Department" means the Department of Health Care Finance.

"(4) "Distant site" means a site where a provider is located while delivering health care services to a patient through telehealth, and shall include a:

"(A) Hospital, nursing facility, federally qualified health center, clinic;

"(B) Physician or nurse practitioner group;

"(C) Physician or nurse practitioner office;

"(D) District of Columbia Public School or District of Columbia Public Charter School;

"(E) Core services agency; home care agency; hospice; or

"(F) Other locations as determined by the Director of the Department through rules issued pursuant to section 8.

"(5) "Facility Fee" means the reimbursement issued by the Department to an originating site for health care services delivered through telehealth.

"(6) "Federally qualified health center" shall have the same meaning as provided in section 1861(aa)(4) of the Social Security Act, approved August 14, 1935 (79 Stat. 313; 42 U.S.C. § 1395x(aa)(4)).

"(7) "Health benefits plan" shall have the same meaning as provided in section 2(4) of the Prompt Pay Act of 2002, effective July 23, 2002 (D.C. Law 14-176; D.C. Official Code § 31-3131(4)).

"(8) "Health insurer" shall have the same meaning as provided in section 2(5) of the Prompt Pay Act of 2002, effective July 23, 2002 (D.C. Law 14-176; D.C. Official Code § 31-3131(5)).

"(9) "Home care agency" shall have the same meaning as provided in section 2(a)(7) of the Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(a)(7)).

"(10) "Hospital" shall have the same meaning as provided in section 2(a)(1) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(a)(1)).

"(11) "Hospice" shall have the same meaning as provided in as provided in section 2(a)(6) of the Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(a)(6)).

"(12) "Medication adherence management services" means the monitoring of a patient's conformance with a provider's medication plan with respect to timing, dosing and frequency of medication-taking through telehealth.

"(13) "Nursing home" shall have the same meaning as provided in section 2(a)(3) of the Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(a)(3)).

"(14) "Originating site" means a site where a patient is located at the time health care services are delivered through telehealth, and shall include a:

"(A) Hospital, nursing home, federally qualified health center, clinic;

"(B) Physician or nurse practitioner group;

"(C) Physician or nurse practitioner office;

"(D) District of Columbia Public School or District of Columbia Public Charter School;

"(E) Core services agency, home care agency, hospice; university health center;

"(F) Patient's home; or

"(G) Other locations as determined by the Director of the Department through rules issued pursuant to section 8.

"(15) "Provider" shall have the same meaning as provided in section 2(7) of the Prompt Pay Act of 2002, effective July 23, 2002 (D.C. Law 14-176; D.C. Official Code § 31-3131(7)).

"(16) "Remote patient monitoring services" means the collection and transmission of personal health information and medical data from a patient at an originating site to a provider at a distant site for use in the treatment and management of chronic medical conditions.

"(17) "Synchronous interaction" means a real-time interaction between a patient at an originating site and a provider at a distant site.

"(18) "Telehealth" means the delivery of health care services, including services provided via synchronous interaction and asynchronous store-and-forward, through the use of interactive audio, video, or other electronic media used for the purpose of diagnosis, consultation, remote patient monitoring, or treatment; provided, that services delivered through audio-only telephones, electronic mail messages, or facsimile transmissions are not included.

(b) Section 4 (D.C. Official Code § 31–3863) is amended as follows:

(1) Designate the existing text as subsection (a).

(2) The newly designated subsection (a) is amended to read as follows:

"(a) Medicaid shall cover and reimburse for health care services delivered through telehealth if:

(1) The health care services are covered when delivered in person; or

(2) The health care services are covered under the District's Medicaid State Plan and any implementing regulations, including:

(A) Evaluation, consultation, and management;

(B) Behavioral health care services including, but not limited to, psychiatric evaluation and treatment, psychotherapies, substance abuse assessment, and counseling;

(C) Diagnostic, therapeutic, interpretative, and rehabilitation services;

(D) Medication therapy management;

(E) Remote patient monitoring, subject to prior authorization by the Department; and

(F) Any other service as authorized by the Director of the Department through rules issued pursuant to section 8.

(3) New subsections (b), (c), and (d) are added to read as follows:

"(b) Reimbursements issued to a provider at a distant site for professional services shall not be shared with a referring provider at an originating site.

"(c) To be eligible for Medicaid reimbursement pursuant to this act, a telehealth provider shall utilize the reimbursement codes designated for telehealth by the Department.

"(d) All Medicaid recipients, including individuals who receive services on either a fee for service basis or through a health plan provided by a health insurer under contract with the Department shall be eligible to receive telehealth services, pursuant to this act.".

(c) New sections 5, 6, 7, 8, and 9 are added to read as follows:

"Sec. 5. Remote patient monitoring service providers; payment.

"(a) A provider engaged in the provision of remote patient monitoring services through telehealth shall establish protocols governing:

"(1) The authentication and authorization of patients;

"(2) The process for monitoring, tracking and responding to changes in a patient's clinical condition;

"(3) The acceptable and unacceptable parameters for a patient's clinical condition;

"(4) The response of monitoring staff to abnormal parameters of a patient's vital signs, symptoms and/or lab results;

"(5) The process for notifying the patient's provider of significant changes in the patient's clinical condition;

"(6) The prevention of unauthorized access to the provider's information-technology systems;

"(7) The provider's compliance with the security and privacy requirements of the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 1936; 42 U.S.C. § 1320d *et seq*.);

"(8) The storage, maintenance, and transmission of patient information;

"(9) The synchronization and verification of patient data as appropriate; and

"(10) Notification of the patient's discharge from remote patient monitoring services.

"(b) To receive payment for the delivery of remote patient monitoring services through telehealth, a provider shall:

"(1) Assess and monitor a patient's clinical data including, but not limited to, appropriate vital signs, pain levels, other biometric measures specified in the plan of care, and the patient's response to prior changes in the plan of care;

"(2) Assess changes, if any, in the condition of the patient observed during the course of remote patient monitoring that may indicate the need for a change in the plan of care; and

"(3) Develop and implement a patient plan addressing:

"(A) Management and evaluation of the plan of care, including changes in visit frequency or addition of other health care services;

"(B) Coordination of care regarding telehealth findings;

"(C) Coordination and referral to other providers as needed.

"(c) The equipment used by a provider to deliver remote patient monitoring services through telehealth shall:

"(1) Be maintained in good repair and kept free from safety hazards;

"(2) Be newly purchased or, if previously utilized, sanitized before installation in the patient's home;

"(3) Accommodate non-English language options; and

"(4) Provide technical and clinical support services to the patient user.

"Sec. 6. Right to synchronous interaction.

"(a) A patient receiving asynchronous store and forward health care services delivered through telehealth shall have the right to interact with a provider via synchronous interaction.

"(b) Providers shall give notice of the right described in subsection (a) of this section to a patient at the time the asynchronous store and forward health care services are delivered through telehealth.

"(c) If, for any reason, the provider is unable to provide a patient with a synchronous interaction within 30 days of the patient's request for such, the provider shall not be reimbursed for any asynchronous store and forward telehealth services previously provided to the patient.

"Sec. 7. Facility fees.

"(a) For telehealth services furnished during the period between October 1, 2018, and October 1, 2019, an originating site shall receive a payment from the Department equivalent to the lesser of the reimbursement paid by the Department to a provider or the originating site facility fee of $25.

"(b) Beginning October 2, 2019, the facility fee for the originating site shall be determined in accordance with the Medicare Economic Index, as determined by the United States Centers for Medicaid and Medicaid Services.

"(c) A distant site provider shall not bill for or receive payment for facility fees associated with the delivery of telehealth.

"(d) A provider of remote patient monitoring services shall not be eligible to receive facility fees.

"Sec. 8. Federal authorization.

By January 1, 2019, the Mayor shall seek the approval of the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services for any amendments to the Medicaid State Plan necessary to implement this act.

"Sec. 9. Rules.

Within 180 days after the effective date of the Telehealth Medicaid Expansion Amendment Act of 2018 (Committee print B22-233), the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.".

Sec. 3. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in 534 the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.