

Hello New Mexico Telehealth Alliance,

New Mexico's telemedicine and telehealth statutes apply to all provider types. They do not single out behavioral health providers, or any other provider type, for that matter.

The New Mexico Telehealth Act, which was last amended in 2007, defines telehealth as "the use of electronic information, imaging and communication technologies, including interactive audio, video, data communications as well as store-and-forward technologies, to provide and support health care delivery, diagnosis, consultation, treatment, transfer of medical data and education." § 24-25-3(C) NMSA. This definition clearly incorporates audio-only services, particularly as "the purpose of the New Mexico Telehealth Act is to provide a framework for health care providers to follow in providing telehealth services to New Mexico citizens in a manner that provides efficient and effective access to quality health services." 24-25-2(B) NMSA.

Insurance coverage of telemedicine services was not addressed until 2013, and amended in 2019, leaving the legislature ample opportunity to restrict or otherwise limit the approved modalities for telemedicine. Instead, they further broadened telemedicine by defining it as:

"The use of telecommunications and information technology to provide clinical health care at a site distinct from the patient. "Telemedicine" allows health care professionals to evaluate, diagnose and treat patients in remote locations using telecommunications and information technology in real time or asynchronously, including the use of interactive simultaneous audio and video or store-and-forward technology, or remote patient monitoring and telecommunications in order to deliver health care services to a site where the patient is located, along with the use of electronic media and health information. "Telemedicine" allows patients in remote locations to access medical expertise without travel."

59A-22-49.3(L)(6)

While some might find the statute's language to be somewhat open to interpretation, given the NM Telehealth Act along with the Health Coverage via Telemedicine Act, OSI does not agree. The OSI is committed to reducing barriers to care, such as distance, health status, and access to transportation and we believe that was also the intent of the sponsor. The telemedicine definition allows the use of audio-only telemedicine services.

In addition, the statute does not contain any language requiring periodic in-person visits as a condition for coverage of telemedicine visits. OSI does not have a regulation requiring periodic in-person visits for patients receiving any type of treatment via telemedicine. Furthermore, the statute does state that "An insurer shall not impose any unique condition for coverage of services provided via telemedicine." To this point, OSI is not aware of any conditions our regulated entities have set as part of telemedicine coverage. We require all regulated insurance plans to cover telemedicine services per the statute. Our reviewers have not reported any requirements for periodic in-person visits for coverage of treatment via telemedicine.

Keep in mind that prior to the public health emergency (PHE), Medicare was very limited in its coverage of services delivered via telemedicine, and in the modes of delivery. I am not an expert, but it would not be surprising if Medicare required some kind of periodic in-person visit. Prior to the PHE, Medicare's coverage of voice-only services was extremely limited. Medicaid coverage of telemedicine has been left mostly up to a state's Medicaid program.

As promised, we will discuss the possibility of a bulletin, but if you have not had trouble being reimbursed for telemedicine services by any of OSI's regulated entities (Exchange plans and fully insured plans), I am not sure it is advisable to issue a bulletin. The Health Coverage via Telemedicine Act is now in its 3rd year, and we have not had complaints about non-coverage for telemedicine services, or conditions for coverage of telemedicine services.

NMTHA also asked what insurance does this apply to and below is the response from a follow up email.

The vast majority of state statutes affecting health insurance apply only to fully insured plans (the ones that OSI regulates) and plans in the Health Purchasing Act (state employee, public schools, and state retiree health plans) The state cannot apply coverage mandates to self-insured plans as the are regulated by the federal Dept. of Labor (although they may voluntarily comply.) Self-insured plans are those offered by large employers to their employees where the employer assumes the risk of the insurance. And it does not apply to any federal employee health plans, Tricare, etc.

Please let me know if I can be of further assistance.

Best regards,

Julie

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