



GOVERNMENT OF PUERTO RICO
Office of the Commissioner of Insurance

April 8, 2020

RULING LETTER NO. CN-2020-274-D

TO ALL HEALTH SERVICES ORGANIZATIONS AND INSURERS THAT WRITE COMMERCIAL HEALTH INSURANCE AND MEDICARE ADVANTAGE PLANS IN PUERTO RICO.

PAYMENT TO HEALTH SERVICES PROVIDERS FOR SERVICES RENDERED BY MEANS OF TELEMEDICINE DURING THE EMERGENCY DUE TO COVID-19.

Dear Sirs and Madams:

In view of the coronavirus (COVID-19) pandemic, the state and federal governments have taken unprecedented action to stem the propagation of the virus. In Puerto Rico the Executive Branch and the Legislature have taken emergency measures directed at protecting the health of the public. On March 20, 2020, Governor Wanda Vázquez-Garced, signed Joint Resolution number 491, now called Joint Resolution 19-2020, (“Resolution”), which seeks, among other things, to dissuade the congregation of people at hospitals and medical offices through the use of telemedicine. To that end, Section 2 of the Resolution provides that “[a]ll physicians authorized to practice medicine in Puerto Rico may bill for services provided through telemedicine, for medical consultations by telephone, or by any other authorized method, and health insurance companies and the Health Insurance Administration (ASES) **will have the obligation to pay such as though it were a face to face visit.**” (Our emphasis) Finally, Section 5 of the Resolution states that “[t]he provisions of this Joint Resolution shall preempt any other law, regulation, or standards whose provisions contravene this Resolution.”

Furthermore, it must be added that the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) requires insurers and health services organizations that provide health insurance to afford parity in all aspects of coverage between mental health or behavioral disorders benefits and medical and surgery benefits for physical health conditions. Therefore, it must be made clear that the provisions as set forth in Senate Joint Resolution number 49 will be applicable equally to the benefits under mental health of behavior disorders in commercial health insurance.

Furthermore, on March 6, 2020, the federal government promulgated the law titled *Coronavirus Preparedness And Response Supplemental Appropriations Act*, Public Law 116-123, which has a chapter titled *Telehealth Services During Certain Emergency Periods Act of 2020* (“Telehealth Act”). Through the Telehealth Act, due to the propagation of COVID-19 the federal government eliminated for the emergency period certain regulatory barriers to expand and facilitate the use of telemedicine under the Medicare program, including Medicare Advantage health insurance, for the purpose of providing beneficiaries with better access to health care services.¹ The waivers provided under the Telehealth Act, as interpreted by the Center for Medicare & Medicaid Services (CMS) allow for consultations with health care providers from the home; eliminate the requirement of a prior relationship with the provider; expand the services that can be provided, which may not be limited to conditions related to COVID-19 and include services for behavioral and physical conditions; and specify that the program will pay for services rendered by the providers through telemedicine at the same rate as if the consultation were face to face.²

Qualified providers who are allowed to provide telemedicine services under Medicare and Medicare Advantage during the public health emergency include physicians and certain non-physician professionals, such as licensed clinical social workers, clinical psychologists, and registered dietitians or nutrition professionals, among others, who may also provide services within the scope of their practice and according to the CMS benefits rules that are applicable to all services.³

The waiver established in Section 1135 (b) of the Social Security Act allows the use of telephones with audio and video capabilities to provide telemedicine services under Medicare and Medicare Advantage during the COVID-19 public health emergency. In addition, the Office of Civil Rights (OCR) of the HHS will enforce the HIPAA Act more flexibly against health care providers that serve patients in good faith through common communications technology such as FaceTime or Skype, during the COVID-19 public health emergency at a national level.⁴

According to the aforementioned state and federal regulations, and pursuant to the powers and authority vested under the provisions of Section 2.030 of Act No. 77, enacted on June 19, 1957, as amended, the Office of the Commissioner of Insurance, through this ruling letter, requires that all health services organizations and insurers that write commercial health insurance and Medicare Advantage honor the payment of services rendered by health services providers, whether physical or mental health, through the use of telemedicine at the same rate as if the service were provided face to face. No reduction in the payment of fees for health care service providers will be allowed on the sole grounds that the mechanism that was used was telemedicine.

¹ Medicare Advantage and Part D Plans: CMS Flexibilities to Fight COVID-19; information available at the following address: <https://www.cms.gov/files/document/covid-ma-and-part-d.pdf>.

² “Medicare pays the same amount for telehealth services as it would if the service were furnished in person”; <https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>

³ Id.

⁴ For more information: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html>.

These guidelines will be applied during the emergency period insofar as federal and state regulations remain in effect. ⁵ Failure to comply with the foregoing provisions will entail the imposition of severe sanctions.

Very truly yours,

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⁵ “Emergency period” is the period during which there exists the public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act on January 31, 2020, entitled “Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus”.