From: DMHC Licensing eFiling

Subject: APL 22-003 – Assembly Bill 457 Protection of Patient Choice in Telehealth Provider Act

Date: Friday, January 21, 2022, 2:36 PM

Attachments: APL 22-003 – Assembly Bill 457 Protection of Patient Choice in Telehealth Provider Act (1.21.22).pdf

Dear Health Plan Representative:

Please find attached All Plan Letter (APL) 22-003, setting forth the Department of Managed Health Care's guidance regarding how health care service plans shall comply with AB 457.

Thank you.

Gavin Newsom, Governor
State of California
Health and Human Services Agency
DEPARTMENT OF MANAGED HEALTH CARE
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ALL PLAN LETTER

DATE: January 21, 2022

TO: All Full-Service Commercial and Specialized Care Service Plans[1]

FROM: Jenny Phillips
Deputy Director
Office of Plan Licensing

SUBJECT: APL 22-003 - Assembly Bill 457 Protection of Patient Choice in Telehealth Provider Act

Assembly Bill (AB) 457 (Santiago, Ch. 439, Stats. 2021) amends Health and Safety Code section 1374.14 and adds Section 1374.141 effective January 1, 2022.[2] This All Plan Letter (APL) sets forth the Department of Managed Health Care's (DMHC or Department) guidance regarding how health care service plans (plans) shall comply with AB 457.

I. Background

On October 1, 2021, Governor Gavin Newsom signed AB 457, which amends Section 1374.14 and adds Section 1374.141. Section 1374.141 requires a plan to meet certain conditions if it offers telehealth services to an enrollee through a third-party corporate telehealth provider.[3,4] These conditions include:

[1] This APL does not apply to Medicare Advantage products or Medi-Cal Managed Care products.
[2] References to California Code of Regulations sections will be designated as "Rule," e.g., Rule 1300.67.1, and references to California Health and Safety Code sections will be designated as "Section," e.g., Section 1367.016. All references are to the California Health and Safety Code unless otherwise noted. The Knox-Keene Health Care Service Plan Act of 1975, California Health and Safety Code Section 1340 et seq. (the "Act").
[3] The requirements of Section 1374.141 do not apply when an enrollee seeks services directly from a third-party corporate telehealth provider rather than accessing services through the enrollee's health plan benefits.
[4] A "Third-party corporate telehealth provider" is defined as a corporation directly contracted with a plan that provides health care services exclusively through a

1. Making the following disclosures to enrollees in any promotion or coordination of the service:[5]

    a. The availability of receiving the service on an in-person basis or via telehealth, if available, from the enrollee'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 set forth in the Act and Rules,[6] and

    b. If the enrollee has coverage for out-of-network benefits, a reminder of the availability of receiving the service either via telehealth or on an in-person basis using the enrollee'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.[7]

2. If the enrollee is currently receiving specialty telehealth services for a mental or behavioral health condition, the enrollee is given an option to continue receiving specialty telehealth services for a mental or behavioral health condition with that contracting individual health professional, contracting clinic, or contracting facility[8] rather than receive services via the third party telehealth provider, and

3. The enrollee consents to receive the service via telehealth through a third-party corporate telehealth provider, consistent with Section 2290.5 of the Business and Professions Code, after being notified of the disclosures listed above.[9]

AB 457 also requires a plan that provides services to an enrollee through a third-party corporate telehealth provider to (a) notify the enrollee of their right to access their medical records, (b) share the records of any telehealth services provided with the enrollee's PCP, (c) ensure such records are shared with the enrollee's PCP unless the enrollee objects, and (d) notify the enrollee that all services received through the third-party corporate telehealth provider are available at in-network cost-sharing and all cost-sharing shall accrue to the out-of-pocket maximum and deductible (if any).[10]

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telehealth technology platform and has no physical location at which a patient can receive services. *See* Section 1374.141(b)(4).
[5] Section 1374.141(a)(1).
[6] *See* Section 1374.141(a)(1)(A).
[7] *See* Section 1374.141(a)(1)(A).
[8] *See* Section 1374.141(a)(4).
[9] *See* Section 1374.141(a)(2) and (3).
[10] *See* Section 1374.141(c).

AB 457 adds to existing reporting requirements under Section 1367.035 by requiring plans to report specific information about enrollee use of telehealth as described below.[11]

Separately, AB 457 amends Section 1374.14 of the Health and Safety Code to apply telehealth payment parity requirements to all contracts between a health care service plan and a health care provider. Previously, these requirements only applied to contracts issued or renewed after January 1, 2021.[12]

If a plan delegates responsibilities under Section 1374.141 to a contracted entity, including, but not limited to, a medical group or independent practice association, the delegated entity shall comply with Section 1374.141.[13]

II. Compliance and Filing Requirements

All full service commercial and specialized plans must submit by March 21, 2022, a filing to demonstrate compliance with the AB 457 requirements discussed in this APL. Submit the filing via eFiling as an Amendment titled "Compliance with AB 457." In the "Compliance with AB 457" Amendment filing, include an Exhibit E-1 (the "Compliance E-1") that addresses how the plan intends to comply with AB 457.

- With respect to Section 1374.14, as amended,
    - Please affirm the following in the Compliance E-1:
        - Affirm that all plan contracts with providers specify that the plan will reimburse covered telehealth services on the same basis and to the same extent the plan reimburses the same covered services delivered in-person.
        - Affirm that all plan contracts with enrollees specify that the plan will provide coverage for health care services appropriately delivered through telehealth on the same basis and to the same extent that the plan is responsible for coverage for the same service through in-person diagnosis, consultation, or treatment, and that coverage is not limited only to services delivered by select third-party corporate telehealth providers.
    - Plans shall review the following documents to determine which documents are not consistent with the requirements of Section 1374.14, as amended

[11] *See* Section1374.141(d).
[12] See Section 1374.14(a)(1).
[13] *See* Section 1374.141(f).

in AB 457. Plans shall make all necessary revisions to ensure these documents are consistent with AB 457 and submit the revised documents as part of this filing. If the plan determines any of the documents listed below do not require revisions to comply with AB 457, affirm the plan has reviewed the document and no revisions were necessary.

- EOCs, Disclosure Forms, and/or Group Subscriber Agreements.
- Contracts with Provider Contracts, Administrative Service Agreements, and/or Plan-to Plan Agreements.

- With respect to Section 1374.141, if the plan offers services via telehealth through a third-party corporate telehealth provider,
  - Please affirm the following in the Compliance E-1:
    - Affirm the plan has provided all of the following required information to enrollees in all promotions and documents related to the coordination of services:
      - The availability of receiving the service on an in-person basis or via telehealth, if available, from the enrollee'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 set forth in the Act and Rules, and
      - If the enrollee has coverage for out-of-network benefits, a reminder of the availability of receiving the service either via telehealth or on an in-person basis using the enrollee'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.
    - Affirm the plan requires providers to obtain consent from enrollees for services provided by third-party corporate telehealth providers, consistent with Business & Professions Code section 2290.5. Further affirm, the plan maintains proper oversight to ensure providers have obtained the above referenced consent.
    - Affirm that for enrollees currently receiving specialty telehealth services for mental health or substance use disorders, the enrollee is given the option of continuing to receive that service with the

contracting individual health professional, a contracting clinic, or a contracting health facility.

- Affirm the plan will notify the enrollee (a) of their right to access their medical records pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106, (b) that the record of any services provided to the enrollee through a third-party corporate telehealth provider shall be shared with their primary care provider, unless the enrollee objects and (c) that all services received through the third-party corporate telehealth provider are available at in-network cost-sharing and the cost-sharing will accrue to any applicable deductible or out-of-pocket maximum.

- Affirm that the records are entered into a patient record system shared with the enrollee's primary care provider or are otherwise provided to the enrollee's primary care provider, unless the enrollee objects, in a manner consistent with state and federal law.

- Affirm that the Plan is regularly collecting the following information:

  (1) By specialty, the total number of services delivered via telehealth by third-party corporate telehealth providers.

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

  (3) For each third-party corporate telehealth provider with which it contracts, the percentage of the third-party corporate telehealth provider's contracted providers available to the plan's enrollees that are also contracting individual health professionals.

  (4) For each third-party corporate telehealth provider with which it contracts, the types of telehealth services utilized by enrollees, including frequency of use, gender, and age.

  (5) For each enrollee that has accessed services for a third-party corporate telehealth provider, enrollee demographic data, including gender and age.

  The Department will issue detailed instructions for reporting this information, along with specific report forms and any other information determined necessary by the Department, in accordance with Section 1367.035.

- Please submit the following documents, if amended for compliance with AB 457:

  - Submit updated EOCs, Subscriber Contracts, Disclosure Forms, advertisements and any other promotional or coordination of services materials to reflect compliance with AB 457. For other promotional or coordination of services materials (including electronic and online) updated but not routinely submitted to the Department for review, please provide a list of the promotional or coordination of services materials updated and include the language used.

  - Submit revisions to Provider Contracts (as an Exhibit K-1), Plan-to-Plan Agreements (as an Exhibit P-5), Administrative Services Agreements (as an Exhibit N-1) and/or Provider Notices (as an Exhibit I-7) demonstrating the plan's compliance with Section 1374.141(a)(4) allowing for an enrollee to have the option to continue to receive specialty telehealth service for a mental or behavioral health condition.

  - Submit policies and procedures the plan created or revised demonstrating how the plan ensures the conditions set forth in Section 1374.141(a) are met.

  - Submit plan documents reflecting how the plan will ensure its providers obtain enrollee consent to receive the service via telehealth through a third-party corporate telehealth provider consistent with Business and Professions Code Section 2290.5.

  - Submit template Enrollee Notices, as an Exhibit I-9, consistent with Section 1374.141(c), regarding an enrollee's use of third party corporate telehealth providers, which contains all of the required information related to access to medical records and services, including records being shared with the enrollees primary care provider (unless the enrollee objects) and that services are available at in-network cost-sharing and cost-sharing shall accrue to any applicable deductible or out-of-pocket maximum.

  - Submit policies and procedures, flow charts and contract provisions demonstrating how the plan will comply with Section 1374.141(c) and ensure records are entered into a patient record system and shared with the enrollee's primary care provider or are otherwise provided to the enrollee's primary care provider or blocked from sharing when the enrollee objects.

- If the plan delegates responsibilities under Section 1374.141 to a contracted entity, submit updated contract(s) (as an Exhibit K-1, Exhibit N-1, and/or Exhibit P-5) and any oversight documents demonstrating the delegated entity is required to comply with Section 1374.141.

- If a plan believes that its providers and/or facilities do not meet the definitions set forth in Section 1374.141(b), please provide a detailed legal analysis in the Compliance E-1 as to why the plan does not need to comply with AB 457.

If you have questions regarding the applicable timelines for filing or other questions about the requirements of this APL, please contact your plan's assigned reviewer in the Office of Plan Licensing.