

Effective Immediately, Michigan Expands Use of Telehealth Services for All Health Care Providers

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Late last week, Michigan Governor Gretchen Whitmer issued Executive Order 2020-86, which authorizes and encourages all health care providers to use telehealth services when medically appropriate and upon obtaining patient consent. Although telehealth is already permitted under Michigan law, the purpose of this Executive Order is to expand the use of telehealth to new contexts. Further, although Executive Order 2020-86 encourages insurers to reimburse for telehealth services, the Executive Order does not require insurers to cover the expanded modalities and services, except as described below. Accordingly, providers should contact insurers to determine the insurers' requirements for coverage of telehealth services.

This expansion of telehealth services is effective now and remains in effect during any state of emergency or state of disaster arising out of the COVID-19 pandemic.

Here are some of the key provisions from the Order:

1. **Patient Consent:** Executive Order 2020-86 clarifies MCL 333.16284 and allows providers to obtain a patient's verbal or written consent for telehealth services. Providers must document a patient's verbal consent before providing telehealth services.
2. **Asynchronous Telehealth:** Providers engaging in telehealth services can use asynchronous store-and-forward technology for the transmission of medical information, including remote patient monitoring, or interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology. Previously, the Michigan Insurance Code, MCL 500.3476, required health care professionals to be able to examine the patient via a real-time, interactive audio or video, or both, telecommunications system. This change is consistent with the five-bill package, House Bills 5412-5416, introduced in Michigan in February.
3. **Ease of Prescribing:** Executive Order 2020-86 states that a physician is not required to conduct an in-person examination before prescribing medication or ordering the administration of medication, including controlled substances (except for methadone). Providers should, however, be aware of and comply with all federal guidance applicable to the prescription of controlled substances via telehealth, especially SAMHSA and DEA guidance.
4. **Out-of-State Telehealth Providers:** Michigan law currently requires telemedicine services to be provided by a health care professional who is licensed in his or her health care profession in the state where the patient is located. The Executive Order suspends this requirement to the extent necessary to allow a medical professional licensed and in good standing in a state other than Michigan to use telehealth to treat patients in Michigan without a license to practice in Michigan. This is consistent with Executive Order 2020-30, which already suspended Article 15 of the Public Health Code to allow health care professionals licensed and in good standing in any state to practice in Michigan without criminal, civil, or administrative penalty related to lack of licensure.

5. **Reimbursement:** To facilitate reimbursement of telehealth services, private insurance carriers must cover virtual check-ins and e-visits and cannot impose any additional requirements inconsistent with CMS guidance issued March 17, 2020. DIFS may issue orders or guidance implementing this aspect of the Executive Order.

Under the Michigan Medicare/Medicaid Assistance Program and Healthy Michigan Plan, telehealth services are covered if the “originating site” is an in-home setting or other originating site allowed in the Medicaid Provider Manual (e.g., FQHC, hospital, skilled nursing facility), or considered appropriate by the provider. Under the Order, “originating site” means the location of the beneficiary at the time the service being furnished by a telecommunications system occurs. This change is consistent with the five-bill package, House Bills 5412-5416, introduced in Michigan in February, which proposed including a patient’s home as an approved originating site under Michigan’s Medicare/Medicaid Medical Assistance Program and Healthy Michigan program.

6. **Compliance with Other Federal Guidance:** Providers must abide by all applicable guidance issued by SAMHSA, CMS, CDC, and DEA when providing telehealth services.

For questions regarding this Executive Order, please contact your relationship attorney at Honigman.