

# DEPARTMENT OF INSURANCE

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3370, and 3571R, and 29 Delaware Code, Section 10113 (18 **Del.C.** §§311, 3370, & 3571R; 29 **Del.C.** §10113)  
18 **DE Admin. Code** 1409

### FINAL

#### FINAL ORDER

#### 1409 Insurance Coverage for Telemedicine and Telehealth

Regulation 1409, entitled Insurance Coverage for Telemedicine and Telehealth, sets forth requirements for insurance coverage for the delivery of healthcare using telemedicine and telehealth.

On March 12, 2020, Delaware's Governor issued a Declaration of a State of Emergency for the State of Delaware (the Declaration) due to a public health threat as a result of the COVID-19 pandemic. Thereafter, the Declaration was amended through a series of modifications and a Joint Order of the Department of Health and Social Services and the Delaware Emergency Management Agency (the Joint Order), which, in total, eased restrictions on who may provide medical services through telehealth, who may receive those services and under what circumstances, and how those services were to be paid.

On July 17, 2020, the Governor signed House Substitute 1 for House Bill 348 as modified by House Amendment 1 (150th General Assembly) (the Act). The Act, which expired on July 1, 2021, promulgated the telemedicine-related requirements in the Declaration as further modified in the Joint Order. The Act included revisions to sections 3370 and 3571R of the Delaware Insurance Code.

On June 23, 2021, the Governor signed House Bill 160 as amended by House Amendment 1 (151st General Assembly), known as the Telehealth Access Preservation and Modernization Act of 2021 (TAPM 21). TAPM21 generally makes permanent the telehealth flexibilities put in place under the Act. TAPM 21 became effective on July 1, 2021.

With this order, the Department is updating Regulation 1409 to conform the regulation with TAPM21, including updating definitions and removing the July 1, 2021 expiration date. These updates are exempt from the requirement of public notice and comment because they include "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations," pursuant to 29 Del.C. § 10113(b)(5).

This order shall be effective 10 days after publication in the *Register of Regulations*.

IT IS SO ORDERED.

This 19 day of July, 2021

Trinidad Navarro  
Commissioner, Delaware Department of Insurance

#### 1409 Insurance Coverage for Telemedicine and Telehealth

##### 1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 3370 and 3571R and is promulgated in accordance with 29 **Del.C.** Chapter 101.

**24 DE Reg. 488 (11/01/20)**

##### 2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**"Distant site"** means a site at which a health care provider legally allowed to practice in the state is located while providing health care services by means of telehealth.

**"Originating site"** means a site in Delaware ~~or outside of Delaware if the patient is a Delaware resident~~ at which a patient is located at the time health care services are provided to the patient by means of telemedicine or telehealth, unless the term is otherwise defined with respect to the provision in which it is ~~used; provided, however, notwithstanding~~ used. Notwithstanding any other provision of law, insurers and providers may agree to alternative siting arrangements deemed appropriate by the parties.

**"Store and forward transfer"** means ~~the transmission of a patient's medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient being present nor must it be in real time.~~ the synchronous or asynchronous transmission of a patient's medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient being present nor must it be in real time, as set forth in 24 Del.C. §6001(4).

**"Telehealth"** means the use of information and communications technologies consisting of telephones, ~~store and forward transfers,~~ remote patient monitoring devices or other electronic means which support clinical health care, health-care provider consultation, patient and professional health-related education, public health, and health ~~administration~~ administration, and other services which may not require the use of technology permitting visual communication. as authorized in 24 Del.C. Ch. 60.

**"Telemedicine"** ~~means a form~~ is a subset of telehealth which is the delivery of clinical health-care services and other services, as authorized in 24 Del.C. Ch. 60, by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's ~~health care~~ health-care by a health-care provider legally allowed to practice in the state and practicing within his or her ~~the health-care provider's scope of practice as would be practiced in-person with a patient, and legally allowed to practice in the State, or other jurisdiction when treating a Delaware resident,~~ while such patient is at an originating site and the health-care provider is at a distant site.

**24 DE Reg. 488 (11/01/20)**

### **3.0 Compliance with Statutes Regarding Telemedicine and Telehealth**

Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each health service corporation providing individual or group accident and sickness subscription contracts; and each managed care organization and health maintenance organization providing a health care plan for health care services shall comply with the provisions of 18 Del.C. §§3370 and 3571R, and this regulation.

### **4.0 Telehealth**

- 4.1 Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each health service corporation providing individual or group accident and sickness subscription contracts; and each managed care organization and health maintenance organization providing a health care plan for health care services shall provide coverage for the cost of such health care services provided through telehealth. Coverage for health care services provided through telehealth shall be provided so long as the underlying health care service is a covered service and the health care provider providing the service is licensed to furnish the service under State law and is practicing within the scope of State ~~law.~~ law, including but not limited to 24 Del.C. Ch. 60.
- 4.2 No insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; health service corporation providing individual or group accident and sickness subscription contracts; or managed care organization or health maintenance organization providing a health care plan for health care services shall impose any limitation on the ability of an insured to seek medical care through the use of telehealth service solely because the health care service is being provided through telehealth. Such prohibited limitations shall include, but not be limited to, preauthorization, medical necessity, homebound requirements, or requiring the use of technology permitting visual communication.

**24 DE Reg. 488 (11/01/20)**

### **5.0 Severability**

If any provision of this regulation or the application of any such provision to any person or circumstance shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

### **6.0 Effective Date**

This regulation became effective on February 11, 2016, ten (10) days after being published as a final regulation. The amendments to the ~~regulation shall become~~ regulation, effective November 11, 2020, ~~and shall expire 2020 (the 2020 amendments)~~ on July 1, 2021, unless extended by order of the Commissioner. The expiration date of the 2020

amendments was removed by operation of the Telehealth Access Preservation and Modernization Act of 2021, HB 160/HA1 (151<sup>st</sup> Gen. Assembly) and by order of the Commissioner dated July 19, 2021.

**19 DE Reg. 768 (02/01/16)**

**24 DE Reg. 488 (11/01/20)**

**25 DE Reg. 285 (09/01/21) (Final)**