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## Amendment to New York's telehealth legislation

By Laurie Cohen, Lindsay Maleson, Carly Eisenberg Hoinacki and Barbara Asheld

As expected, on March 13, 2015, Governor Andrew Cuomo signed into law a chapter amendment to the telehealth legislation passed at the end of last year. The original telehealth legislation required health insurers, including Medicaid, to pay for covered services delivered through telehealth and telemedicine technology as long as the services and providers of the services are otherwise covered under the patient's insurance contract or policy.

The amendment re-defines "telehealth" in a new Article 29-G in the Public Health Law as "the use of electronic information and communication technologies by telehealth providers to deliver health care services, which shall include the assessment, diagnosis, consultation, treatment, education, care management and/or self-management of a patient." The new definition carves out the delivery of health care services by means of audio-only telephone communication, facsimile machines or electronic messaging alone. The amendment clarifies that the use of these technologies is not precluded if used in conjunction with telemedicine, store and forward technology or remote patient monitoring.

The amendment also re-defines telemedicine as "the use of synchronous, two-way electronic audio visual communication to deliver clinical health care services, which shall include the assessment, diagnosis and treatment of a patient, while such patient is at the originating site and a telehealth provider is at a distant site." This definition is distinct from the previous definition of telemedicine in that it requires synchronous communication rather than real time communication.

In addition, the amendment expands the already broad list of health care providers who may provide telehealth services. The amendment defines telehealth provider under the Public Health Law to include New York licensed physicians, physician assistants, dentists, nurse practitioners, registered professional nurses, podiatrists, optometrists, psychologists, social workers, speech language pathologists or audiologists, midwives, hospitals, home care services agencies and hospices. A telehealth provider is also defined to include:

- A person who is certified as a diabetes educator by the National Certification Board for Diabetes Educators, or a successor national certification board, or provided by such a professional who is affiliated with a program certified by the American Diabetes Association, the American Association of Diabetes Educators, the Indiana Health Services

- or any other national accreditation organization approved by CMS;
- A person who is certified as an asthma educator by the National Asthma Educator Certification Board, or a successor national certification board; or
- A person who is certified as a genetic counselor by the American Board of Genetic Counseling, or a successor national certification board.

These new definitions are applicable to the telehealth services to be covered under the state Medicaid program.

The Chapter Amendment also amends the Insurance Law to clarify that while an insurer is prohibited from excluding coverage for a service that is otherwise covered under a policy because the service is delivered via telehealth, an insurer may exclude from coverage a service rendered by a health care provider if the provider is not otherwise covered under the insurance policy. The amendment defines telehealth more narrowly under the Insurance Law as “the use of electronic information and communication technologies by a health care provider to deliver health care services to an enrollee while such enrollee is located at a site that is different from the site where the health care provider is located.” We believe this distinction is intended to help limit the scope of the covered telehealth services to those provided by health care providers already covered under existing insurance policies as compared to telehealth services covered under Medicaid.

The chapter law amendment provides that the telehealth legislation will not take effect until January 1, 2016. The amendments to the original legislation, including the creation of Public Health Law Article 29-G, provide greater recognition of telemedicine and telehealth and the expected expansion of the use of telehealth in Medicaid managed care and New York’s Delivery System Reform Incentive Payment (DSRIP) Program. The New York State Department of Health is also expected to release an omnibus package of telehealth and telemedicine regulations later this year.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Laurie Cohen at [lauriecohen@nixonpeabody.com](mailto:lauriecohen@nixonpeabody.com) or (518) 427-2708
  - Lindsay Maleson at [lmaleson@nixonpeabody.com](mailto:lmaleson@nixonpeabody.com) or (516) 832-7627
  - Carly Eisenberg Hoinacki at [choinacki@nixonpeabody.com](mailto:choinacki@nixonpeabody.com) or (516) 832-7559
  - Barbara Asheld at [bashed@nixonpeabody.com](mailto:bashed@nixonpeabody.com) or (518) 427-2659
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