KRIEG DEVAULT

Insights

Delaware Issues New Regulation to Clarify Telemedicine Statute

July 16, 2018

By: Stephanie T. Eckerle

On June 1, 2018, the Delaware Board of Medical Licensure and Discipline (the "Board") issued a Final Rule to add a new regulation to Title 24, Chapter 1700 of the Delaware Administrative Code in order to clarify certain terms used in the telemedicine and telehealth statute found at Title 24, Chapter 17, Section 1769D of the Delaware Code (the "Telemedicine Statute").

The Telemedicine Statute requires a physician to ensure a proper physician-patient relationship is established either in person or through telehealth.[1] Further, physicians are required to take one of four specific steps prior to a diagnosis or treatment of a patient through telemedicine. The Telemedicine Statute states:

> Physicians using telemedicine technologies to provide medical care to patients located in Delaware must, prior to a diagnosis and treatment, either provide:
>
> (1) An appropriate examination in-person;
>
> (2) Having another Delaware licensed practitioner at the originating site with the patient at the time of the diagnosis;
>
> (3) The diagnosis must be based using both audio and visual communication; or
>
> (4) The service meets standards of establishing a patient-physician relationship included as part of evidence-based clinical practice guidelines in telemedicine developed by major medical specialty societies.[2]

Prior to issuing the Final Rule, the Board recognized there was confusion among how the requirements found in the Telemedicine Statute were defined and considered to be satisfied. Therefore, the Board added 24 Del. Admin. Code 1700-19.0 to provide clarification for the interpretation of some of the terms in the Telemedicine Statute and how the requirements can be met.

Specifically, 24 Del. Admin. Code 1700-19.1 clarifies that a "remote, audio-only examination is not an 'appropriate in-person examination'" as described in 24 Del. Code 1796D(b)(4) for the establishment of a physician-patient relationship. Additionally, the audio and visual communications referenced in 24 Del. Code 1769(h)(3) must be "live, real-time communications."[3] Finally, "major medical specialty societies," as referenced in 24 Del. Code §1796D(h)(4), is defined by 24 Del. Admin. Code 1700-19.4 to mean the "specialty societies that are members of the Council of Medical Specialty Societies." The new regulation also contains a provision that prohibits opioid prescribing via telemedicine except when the prescribing is in connection with an

addiction treatment program with medication assisted treatment that has received a Division of Substance Abuse and Mental Health waiver for use of telemedicine.[4]

The new regulation created by the Final Rule was effective June 11, 2018. The entire Final Rule may be accessed here.

If you are a healthcare entity that provides telemedicine services in multiple states or on a national level, it is critical to keep up with the changing regulatory landscape of telemedicine. In addition, it is important to have standardized policies and procedures in place for healthcare practitioners to ensure compliance with telemedicine regulations while also maximizing patient care and reimbursement levels when providing telemedicine services. If you have any questions regarding this Final Rule or related telemedicine or telehealth regulations, please contact Stephanie T. Eckerle at seckerle@kdlegal.com.

[1] 24 Del. C. § 1769D(b).

[2] 24 Del. C. § 1769D(h).

[3] 24 Del. Admin. Code 1700-19.3.

[4] 24 Del. Admin. Code 1700-19.2.