

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE
JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR
800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 20-2020

CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED
04/17/2020 10:39 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amends Telemedicine Rule To Align With Updated Practice Guidelines And Respond To Infectious Disease Outbreaks

EFFECTIVE DATE: 04/17/2020 THROUGH 09/11/2020

AGENCY APPROVED DATE: 04/16/2020

CONTACT: Brean Arnold 500 Summer St. NE
503-569-0328 Salem, OR 97301
brean.n.arnold@dhsosha.state.or.us

Filed By:
Brean Arnold
Rules Coordinator

NEED FOR THE RULE(S):

The Division needs to amend this rule to support appropriate response during an outbreak or epidemic of an infectious disease. The amended rule authorizes the Division to operationalize intended coverage of telemedicine services as described in the Health Evidence Review Commission's (HERC) guideline notes. The amended rule incorporates guidance from Center for Medicare and Medicaid Services (CMS) policy and regulatory revisions in response to the COVID-19 public health emergency as described in CMS-1744-IFC.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and recipients of Medicaid benefits. This rule needs to be adopted promptly so that the Authority may operationalize intent of the Health Evidence Review Commission's (HERC) Telehealth coverage guidelines. This rule needs to be adopted promptly in order to support appropriate response to an outbreak or epidemic of infectious disease and assure appropriate access to qualified health care providers.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HERC Prioritized List Guideline Note A5: <https://www.oregon.gov/oha/HPA/DSI-HERC/SearchablePLdocuments//Prioritized-List-GN-A005.docx>

HHS Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

AMEND: 410-130-0610

SUSPEND: Temporary 410-130-0610 from DMAP 7-2020

RULE TITLE: Telemedicine

RULE SUMMARY: The Health Evidence Review Commission (HERC) has updated guidelines for coverage of telehealth

services. These updates support appropriate response to an outbreak or epidemic of an infectious disease through increased access to appropriate health care resources. This temporary rule amendment authorizes the Authority and Division to operationalize the intent of the revisions to telehealth services.

RULE TEXT:

- (1) Telemedicine is defined as the use of telephonic or electronic communications of medical information from one site to another regarding a patient's health status.
- (2) Telemedicine encompasses different types of programs, services and delivery mechanisms for medically appropriate covered services within the patient's benefit package.
- (3) Providers shall ensure access to health care services for limited English proficient (LEP) and deaf and hard of hearing patients and their families through the use of qualified and certified health care interpreters to provide meaningful language access services as described in OAR 333-002-0040.
- (4) Coverage for physical health telemedicine services include Telemedicine (synchronous audio/video visits), Patient to Clinician services (electronic/telephonic) and Clinician to Clinician Consultations (electronic/telephonic).
 - (a) Telemedicine patient visits using a synchronous (live two-way interactive) video and audio transmission resulting in real time communication between a licensed health care provider located in a distant site and the recipient being evaluated located in an alternate site, are covered when billed services comply with the guideline notes set forth by the Health Evidence Review Commission (HERC) and correct coding standards.
 - (A) Alternate sites can be a patient's home or other location.
 - (B) For the duration of the Coronavirus (COVID-19) outbreak state of emergency initiated under governor Kate Brown's executive order 20-03 and any subsequent executive order extending the state of emergency, "distant site" shall be defined as any setting, including the provider's home.
 - (C) Should governor Kate Brown's executive order 20-03 and any subsequent executive order extending the state of emergency expire prior to this temporary rule, "distant site" shall be defined as a clinical setting or practice location.
 - (b) Patient to clinician services using electronic and telephone communications are covered when billed services comply with HERC guideline notes and correct coding standards.
 - (A) During the Coronavirus (COVID-19) outbreak state of emergency initiated under governor Kate Brown's executive order 20-03 and any subsequent executive order extending the state of emergency, the Authority will not audit to confirm existence of an established patient-clinician relationship, or that written consent to receive care through telemedicine is provided (verbal consent is sufficient).
 - (B) OHP enrolled providers may provide such services to new patients whenever they judge it to be medically appropriate in the context of the COVID-19 emergency.
 - (c) Clinician to clinician consultations using electronic and telephone communications are covered when billed services comply with HERC guideline notes.
 - (d) For purposes of physical health services, the Authority shall provide coverage for telemedicine services to the same extent that the services would be covered if they were provided in person subject to the requirements outlined in the Prioritized List and associated guideline notes.
- (5) During an outbreak or epidemic, the Authority shall provide coverage and reimbursement of patient to clinician telephonic and electronic services for established patients using the Division's maximum allowable rate setting methodology:
 - (a) Relative Value Unit (RVU) weight-based rates for Current Procedural Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes assigned an RVU weight are calculated on the current year's published value multiplied by a state-wide factor;
 - (b) The Division may reimburse telephonic and electronic services to the same extent that the services would be covered if they were provided in person consistent with HERC guideline notes.
- (6) Unless authorized in OAR 410-120-1200 Exclusions, other types of telecommunications are not covered, such as telephone calls without medical decision making, images transmitted via facsimile machines and electronic mail.
- (7) During the Coronavirus (COVID-19) outbreak state of emergency initiated under governor Kate Brown's executive

order 20-03 and any subsequent executive order extending the state of emergency, the Division will follow guidance from the US Department of Health and Human Services (HHS) Office for Civil Rights (OCR), and the Authority will apply the same flexibilities on HIPAA compliance as HHS OCR in its Notification of Enforcement Discretion regarding COVID-19 and its Guidance on Telemedicine Remote Communications issued on March 17, 2020.

(a) Providers billing for covered physical health telemedicine services shall:

(A) Comply with HIPAA and the Authority's Confidentiality and Privacy Rules and security protections for the patient in connection with the telemedicine communication and related records;

(B) Obtain and maintain technology used in the telemedicine communication that is compliant with privacy and security standards in HIPAA and the Authority's Privacy and Confidentiality Rules set forth in OAR 943 division 14;

(C) Ensure policies and procedures are in place to prevent a breach in privacy or exposure of patient health information or records (whether oral or recorded in any form or medium) to unauthorized individuals;

(D) Comply with the relevant HERC guideline note for telemedicine, teleconsultation and electronic/telephonic services. Refer to the current prioritized list and guidelines at <https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/Prioritized-List.aspx>;

(E) Maintain clinical and financial documentation related to telemedicine services as required in OAR 410-120-1360.

(8) Performing / Rendering Providers of covered physical health telemedicine services shall:

(a) Hold a current and valid license without restriction from a state licensing board where the provider is located;

(b) Have authority to provide physical health telemedicine services for eligible Oregon Medicaid beneficiaries;

(c) Comply with correct coding standards using the most appropriate Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) codes.

STATUTORY/OTHER AUTHORITY: ORS 413.042

STATUTES/OTHER IMPLEMENTED: ORS 414.025, 414.065