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CHAPTER 410

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

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FILING CAPTION: Establishes New Overarching Telehealth Rule Authorizing Medicaid Coverage Of Fee For Service Health Service Benefits

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RULES:

410-120-1990, 410-130-0610

ADOPT: 410-120-1990

RULE TITLE: Telehealth

NOTICE FILED DATE: 10/14/2020

RULE SUMMARY: This new overarching telehealth rule authorizes the Division to cover medically necessary and appropriate physical, behavioral and oral health services within Oregon Health Plan (OHP) covered benefit plans. This rule results in the repeal of OAR 410-130-0610 Telemedicine which was narrow in scope. This rule authorizes the Division to operationalize the intended coverage of Telehealth, Teleconsultations and Online / Telephonic Services as described in the Health Evidence Review Commission's (HERC) guideline notes which can be found at: <https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/Prioritized-List.aspx>.

RULE TEXT:

- (1) For the purpose of this general rule, the Authority defines telehealth as the use of electronic information and telecommunications technologies to support and promote long-distance clinical healthcare, patient and professional health-related education, public health and health administration.
- (a) Information related to telehealth services may be transmitted via landlines and wireless communications, including the Internet and telephone networks;
- (b) Services can be synchronous (using audio and video, video only or audio-only) or asynchronous (using audio and video, audio, or text-based media) and may include transmission of data from remote monitoring devices. Communications may be between providers, or between one or more providers and one or more patients, family members /caregivers /guardians.
- (2) Telehealth encompasses different types of programs, services and delivery mechanisms for medically appropriate services for covered physical, behavioral and oral health conditions within the patient's defined benefit package. This overarching fee for service rule applies to all program-specific rules or as set forth in the individual program provider rules. Providers are prohibited from excluding or otherwise limiting OHP members to using exclusively telehealth

services, except where Authority has implemented section (7) of this rule.

(3) Patient choice and accommodation for telehealth shall encompass the following standards and services:

(a) Providers shall provide meaningful access to telehealth services by assessing patients' capacities to use specific approved methods of telehealth delivery that comply with accessibility standards including alternate formats, and provides the optimal quality of care for the patient given their capacity;

(b) Pursuant to Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act and the corresponding Code of Federal Regulation (CFR) at 45 CFR Part 92 (Section 1557) and The Americans with Disabilities Act and Amendments Act of 2008 (ADA), providers' telehealth services shall accommodate the needs of individuals who have difficulty communicating due to a medical condition, who need accommodation due to a disability, advanced age or who have limited English proficiency (LEP) and including providing access to auxiliary aids and services as defined in Code of Federal Regulation (CFR) at 45 CFR Part 92 (Section 1557);

(c) Providers shall provide meaningful access to health care services for LEP and Deaf and hard of hearing patients and their families by working with qualified and certified health care interpreters, to provide language access services as described in OAR 333-002-0040;

(d) Providers' telehealth services shall be culturally and linguistically appropriate as described in the relevant standards:

(A) National Culturally and Linguistically Appropriate Services (CLAS) Standards:

<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.

(B) Tribal based practice standards: <https://www.oregon.gov/OHA/HSD/AMH/Pages/EBP.aspx>.

(C) Services shall be provided using a trauma informed approach. "Trauma Informed Approach" means approach undertaken by providers and healthcare or human services programs, organizations, or systems in providing mental health and substance use disorders treatment wherein there is a recognition and understanding of the signs and symptoms of trauma in, and the intensity of such trauma on, individuals, families, and others involved within a program, organization, or system. It then considers those signs, symptoms, and their intensity and fully integrates that knowledge when implementing and providing potential paths for recovery from mental health or substance use disorders. The Trauma Informed Approach also means that providers and healthcare or human services programs, organizations, or systems can actively resist re-traumatization of the individuals being served within their respective entities.

(4) Privacy and security standards for telehealth services shall be met by satisfying the following:

(a) Prior to the delivery of services via a telehealth modality, a patient oral, recorded, or written consent to receive services using a telehealth delivery method in the language that the patient understands must be obtained and documented by Providers annually. Consent must be updated at least annually thereafter. For LEP and Deaf and hard of hearing patients and their families, providers must use qualified and certified health care interpreters when obtaining patient consent.

(b) Consistent with ORS 109.640, provision of birth control information and services shall be provided to any person regardless of age without consent of parent or legal guardian.

(c) Consistent with ORS 109.640, provision of any other medical or dental diagnosis and treatment shall be provided to any person 15 years of age or older without consent of parent or legal guardian.

(d) Services provided using a telehealth platform shall comply with Health Insurance Portability and Accountability Act (HIPAA), <https://aspe.hhs.gov/report/health-insurance-portability-and-accountability-act-1996>, and with the Authority's Privacy and Confidentiality Rules (Chapter 943 Division 14) except as noted in section (7) below.

(e) The patient may be located in the community, or in a health care setting.

(f) OHP enrolled providers may be located in any location where patient privacy and confidentiality can be ensured.

(g) Persons providing interpretive services and supports shall be in a location where patient privacy and confidentiality can be ensured.

(5) Telehealth providers shall meet the following requirements:

(a) Shall be enrolled with the Authority as an Oregon Health Plan (OHP) provider, per 410-120-1260.

(b) Shall provide services via telehealth that are within their respective certification or licensing board's scope of practice and comply with telehealth requirements including, but not limited to:

- (A) Documenting patient and provider agreement of consent to receive services;
- (B) Allowed physical location of provider and patient;
- (C) Establishing or maintaining an appropriate provider-patient relationship.
- (c) Providers billing for covered telehealth services are responsible for:
 - (A) Complying with HIPAA and the Authority's Privacy and Confidentiality Rules and security protections for the patient in connection with the telehealth communication and related records requirements (OAR chapter 943 division 14 and 120, OAR 410-120-1360 and 1380, 42 CFR Part 2, if applicable, and ORS 646A.600 to 646A.628 (Oregon Consumer Identity Theft Protection Act) except as noted in section (7) below;
 - (B) Obtaining and maintaining technology used in telehealth communication that is compliant with privacy and security standards in HIPAA and the Authority's Privacy and Confidentiality Rules described in subsection (A) except as noted in section (7) below;
 - (C) Developing and maintaining policies and procedures 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 persons and timely breach reporting;
 - (D) Maintaining clinical and financial documentation related to telehealth services as required in OAR 410-120-1360 and any program specific rules in OAR Ch 309 and Ch 410;
 - (E) Complying with all federal and state statutes as required in OAR 410-120-1380.
- (6) Authority will only pay for telehealth services meeting all of the following requirements:
 - (a) Services provided shall be medically and clinically appropriate for covered conditions within the Health Evidence Review Commission's (HERC) prioritized list and in compliance with relevant guideline notes;
 - (b) The Authority shall provide reimbursement for telehealth services at the same reimbursement rate as if it were provided in person. As a condition of reimbursement, providers shall agree to reimburse Certified and Qualified Health Care Interpreters (HCIs) for interpretation services provided via telehealth at the same rate as if interpretation services were provided in-person, per OARs 410-141-3515(12) and 410-141-3860(12);
 - (c) When allowed by individual certification or licensing boards' scope of practice standards, telehealth delivered services for covered conditions are covered:
 - (A) When an established relationship exists between a provider and patient as defined by a patient who has received in-person professional services from the physician or other qualified health care professional within the same practice within the past three years; and
 - (B) For establishing a patient-provider relationship.
 - (d) All physical, behavioral and oral telehealth services except School Based Health Services (SBHS) shall include Place of Service code 02;
 - (e) All claim types except Dental services, shall use modifiers GT or 95 when the telehealth delivered service utilizes a synchronous audio and video modality. When provision of the same service via synchronous audio and video is not available or feasible (e.g. the patient declines to enable video, or necessary consents cannot reasonably be obtained with appropriate documentation in patient's medical record) the claim should not include any modifiers but should continue billing Place of Service as 02.
- (7) In the event of a declared emergency or changes in federal requirements, the Authority may adopt flexibilities to remove administrative barriers and support telehealth delivered services:
 - (a) The Authority will follow guidance from the US Department of Health and Human Services (HHS) Office for Civil Rights (OCR) which may allow enforcement discretion related to privacy or security requirements;
 - (b) The Authority may expand network capacity through remote care and telehealth services provided across state lines;
 - (c) The Authority may expand access to telehealth services for new patients.

STATUTORY/OTHER AUTHORITY: ORS 413.042

STATUTES/OTHER IMPLEMENTED: ORS 414.025, 414.065

REPEAL: 410-130-0610

RULE TITLE: Telemedicine

NOTICE FILED DATE: 10/14/2020

RULE SUMMARY: The new overarching telehealth rule in Division 120 (410-120-1990) authorizes the Division to cover medically necessary and appropriate physical, behavioral and oral health services within Oregon Health Plan (OHP) covered benefit plans. The 120 rule results in the repeal of OAR 410-130-0610 Telemedicine which was narrow in scope. The 120 rule authorizes the Division to operationalize the intended coverage of Telehealth, Teleconsultations and Online / Telephonic Services as described in the Health Evidence Review Commission's (HERC) guideline notes which can be found at: <https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/Prioritized-List.aspx>

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 and the recipient are covered when billed services comply with the guideline notes set forth by the Health Evidence Review Commission (HERC) and correct coding standards.
 - (b) Patient to clinician services using electronic and telephone communications are covered when billed services comply with HERC guideline notes and correct coding standards.
 - (c) OHP enrolled providers may provide such services to new patients whenever they judge it to be medically appropriate.
 - (d) Clinician to clinician consultations using electronic and telephone communications are covered when billed services comply with HERC guideline notes.
 - (e) 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. 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