

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 15-2020**

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

**FILED**  
03/26/2020 4:25 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Adds Telemedicine Option to Align With Updated Practice Guidelines and Respond to Infectious Disease Outbreaks

EFFECTIVE DATE: 03/26/2020 THROUGH 09/21/2020

AGENCY APPROVED DATE: 03/26/2020

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 these rules 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 Commissions' (HERC) guideline notes.

**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. These rules need to be adopted promptly so that the Authority may operationalize intent of Health Evidence Review Commission's (HERC) Telehealth coverage guidelines. These rules need 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:**

Current HERC prioritized list and guidelines at <https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/Prioritized-List.aspx>

**RULES:**

410-129-0075, 410-131-0040, 410-140-0020, 410-150-0040

AMEND: 410-129-0075

RULE TITLE: Face-to-Face Encounter Requirements for Fee-for-Service Clients and Telehealth

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) For initial ordering of speech generating devices (SGD), an in-person, face-to-face encounter that is related to the primary reason the client requires the medical equipment or supplies must occur no more than six months prior to the start of services:

(a) The face-to-face encounter shall be conducted and documented by the treating physician (MD or DO) or an authorized non-physician practitioner (NPP);

(b) Authorized NPPs for SGD are nurse practitioners, clinical nurse specialists working in collaboration with a physician, or physician assistants under the supervision of a physician;

(c) The physician or NPP conducting the face-to-face encounter shall document that the client is evaluated or treated for a condition that supports the need for the SGD ordered within six months prior to completing the written order for the equipment;

(d) If the NPP performing the face-to-face encounter does not have prescribing authority, the NPP shall communicate the clinical findings to the ordering physician;

(e) The ordering physician shall incorporate the clinical findings into a written or electronic document included in the client's medical record.

(2) If a dually eligible client is evaluated for medical equipment or supplies under Medicare and transitions to Medicaid, the Medicare face-to-face encounter documentation shall meet the Medicaid face-to-face requirement.

(3) The durable medical equipment (DME) supplier shall maintain documentation of the qualifying face-to-face encounter and provide the documentation when the item requires PA or at the Division's request.

(4) The table at [https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/Downloads/DME\\_List\\_of\\_Specified\\_Covered\\_Items\\_updated\\_March\\_26\\_2015.pdf](https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/Downloads/DME_List_of_Specified_Covered_Items_updated_March_26_2015.pdf) identifies the DME items subject to these face-to-face requirements.

(5) Telehealth for Speech-Language Pathology, Audiology, and Hearing Aid Services

(a) The speech-language pathology, audiology and hearing aid service providers shall comply with the relevant HERC evidence-based guidelines for telephone and e-mail consultation. Refer to HERC list and guideline notes specified in OAR 410-141-3830;

(b) The speech-language pathology, audiology and hearing aid service providers may utilize telemedicine for services that are not required to be provided face-to-face in an in-person setting.

(c) The speech-language pathology, audiology and hearing aid service providers must request prior written agency approval to utilize telemedicine for services that require a face-to-face setting when there is a documented barrier to providing in-person services.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 414.065

STATUTES/OTHER IMPLEMENTED: ORS 414.065

AMEND: 410-131-0040

RULE TITLE: Physical and Occupational Therapy

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) The Division's Physical and Occupational Therapy (PT/OT) Services rules are designed to assist licensed physical and occupational therapists deliver health care services and prepare health claims for clients with medical assistance program coverage. The limits, authorization, and plan of treatment criteria apply to both rehabilitative and habilitative therapy. The definition for both is the following:

(a) "Rehabilitative Services" means health care services that help an individual re-establish, restore, or improve skills and functioning for daily living that have been lost or impaired due to illness, injury, or disability;

(b) "Habilitative Services" means health care services that help an individual keep, learn, or improve skills and functioning for daily living, designed to establish skills that have not yet been acquired at an age-appropriate level.

Examples include therapy for a child who is not walking or talking at the expected age;

(2) A total of 30 visits per year of rehabilitative therapy and a total of 30 visits per year of habilitative therapy (physical and occupational therapy) are included on these lines when medically appropriate. Additional visits, not to exceed 30 visits per year of rehabilitative therapy and 30 visits per year of habilitative therapy, may be authorized in cases of a new acute injury, surgery, or other significant change in functional status. Children under age 21 may have additional visits authorized beyond these limits if medically appropriate, as per guideline note 6 of the Prioritized List of Health Services.

(3) OAR 410-131-0040 through 0160:

(a) Apply to services delivered by home health agencies and by hospital-based therapists in the outpatient setting.

Billing and reimbursement for therapy services delivered by home health agencies and hospital outpatient departments must comply with the rules in their respective provider guides;

(b) Do not apply to services provided to hospital inpatients; and

(c) May not limit or effect any obligations of a school district or education entity eligible for reimbursement for covered, health-related services provided in support of a child with a disability education program required by state and federal law. School-sponsored services are supplemental to other health plan therapy services and are not considered duplicative. (See OAR chapter 410 division 133 SBHS rules for services provided by public education providers and OAR 410-141-3420 (Managed Care Entity (MCE) Billing and Payment).

(4) The Division shall enroll only the following types of providers as performing providers under the PT/OT program:

(a) An individual licensed by the relevant state licensing authority to practice physical therapy; and

(b) An individual licensed by the relevant state licensing authority to practice occupational therapy.

(5) All Division rules are intended to be used in addition to the General Rules for Health Systems Division programs (OAR 410 division 120) and the Oregon Health Plan (OHP) (OAR 410 division 141).

(6) The Oregon Health Evidence Review Commission's (HERC) Prioritized List of Health Services is found in OAR 410-141-3830 and defines the covered services.

(7) Telehealth for physical and occupational therapy services

(a) The physical and occupational therapy providers shall comply with the relevant HERC evidence-based guidelines for telephone and e-mail consultation. Refer to HERC list and guideline notes specified in OAR 410-141-3830;

(b) The physical and occupational therapy service providers may utilize telemedicine for services that are not required to be provided face-to-face in an in-person setting.

(c) The physical and occupational therapy service providers must request prior written agency approval to utilize telemedicine for services that require a face-to-face setting when there is a documented barrier to providing in-person

services.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.065

STATUTES/OTHER IMPLEMENTED: ORS 414.065

AMEND: 410-140-0020

RULE TITLE: Service Delivery

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) The Division enrolls the following as providers of vision services:

- (a) An individual licensed by the relevant state licensing authority to practice optometry; and
- (b) A licensed ophthalmologist; and
- (c) An optician as defined in ORS 683.510-683.530;

(2) Division clients are enrolled for covered health services to be delivered through one of the following means:

(a) Prepaid Health Plan (PHP) or Coordinated Care Organization (CCO):

(A) Payment for all vision services provided to PHP and CCO members by ophthalmologists, optometrists, and opticians is a matter between the provider and the PHP or CCO;

(B) Providers shall comply with PHP and CCO policies, including PA requirements, for reimbursement. Providers shall inform PHPs and CCOs of the last date of service when inquiring on service limitations. Failure to follow PHP and CCO rules may result in the denial of payment; and

(C) If the provider has been denied payment for failure to follow the rules established by the PHP or CCO, neither the Division, the PHP or CCO, nor the PHP or CCO member are responsible for payment; and

(D) If the PHP or CCO uses the Division's visual materials contractor or another visual materials contractor for visual materials and supplies, all issues shall be resolved between the PHP or CCO and the contractor;

(b) Fee-for-service (FFS):

(A) FFS clients are not enrolled in a PHP or CCO and may receive vision services from any Division-enrolled provider that accepts FFS clients subject to limitations and restrictions in the visual services program rules; and

(B) All claims shall be billed directly to the Division.

(3) The provider shall verify whether a PHP, CCO, or the Division is responsible for reimbursement.

(4) If a client receives services under section (2)(b) of this rule:

(a) The Division may require a PA for certain covered services or items before the service may be provided and before payment is made; and

(b) Providers needing materials and supplies shall order those directly from SWEEP Optical, except when the OHP client has primary Medicare coverage.

(5) Telehealth for visual services

(a) The visual service providers shall comply with the relevant HERC evidence-based guidelines for telephone and e-mail consultation. Refer to HERC list and guideline notes specified in OAR 410-141-3830;

(b) The visual service providers may utilize telemedicine for services that are not required to be provided face-to-face in an in-person setting.

(c) The visual service providers must request prior written agency approval to utilize telemedicine for services that require a face-to-face setting when there is a documented barrier to providing in-person services.

STATUTORY/OTHER AUTHORITY: ORS 413.042

STATUTES/OTHER IMPLEMENTED: ORS 414.025, 414.065, 414.631, 414.651

AMEND: 410-150-0040

RULE TITLE: Requirements

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) A completed OHP 729 Administrative Medical Examination/Report Authorization is the prior authorization needed to perform an administrative examination, complete supplemental forms, or send copies of records.

(a) Only the version of the OHP 729 series that is current as of the date of request is valid. The current OHP 729 series is available online at <https://www.oregon.gov/oha/HSD/OHP/Pages/Policy-Admin-Exam.aspx>.

(b) Only an employee of the Department of Human Services (DHS) or Oregon Youth Authority (OYA), or the Division (OHA) may complete the OHP 729.

(c) Providers must keep a copy of the OHP 729 for seven years.

(2) There are a series of OHP 729 forms that may or may not be necessary to complete. Always follow the instructions on the OHP 729.

(3) Examinations are only to be completed by the provider type listed on the Administrative Exam and Report Codes table found at <https://www.oregon.gov/oha/HSD/OHP/Pages/Policy-Admin-Exam.aspx>.

(4) An administrative medical examination or report requested must be in compliance with the policies outlined in the Division worker guide found at <https://www.oregon.gov/oha/HSD/OHP/Pages/Policy-Admin-Exam.aspx>.

(5) Claims may only be submitted by a Division-enrolled provider who:

(a) Is contracted with DHS, OYA or the Division to provide Administrative Medical Examinations and Reports;

(b) Meets acceptable source criteria for the agency making the request; and

(c) Has received a completed OHP 729 form.

(6) Providers may only perform the services included on the OHP 729 as requested by a DHS, OYA or Division employee. Providers must:

(a) Provide the requested report within 15 days, as noted on the OHP 729, unless there is good cause for a delay.

(b) Follow the instructions for all forms received in the OHP 729 series, and

(c) Keep a copy of the OHP 729 for seven years.

(7) Individuals needing an Administrative Exam who do not have other means of transportation, may use Non-Emergent Medical Transportation (NEMT). Authorizing staff must follow the NEMT Worker Guide, policies and associated rules in Oregon Administrative Rules 410-136.

(8) Telehealth for administrative examination services

(a) The administrative examination service providers shall comply with the relevant HERC evidence-based guidelines for telephone and e-mail consultation. Refer to HERC list and guideline notes specified in OAR 410-141-3830;

(b) The administrative examination service providers may utilize telemedicine for services that are not required to be provided face-to-face in an in-person setting.

(c) The administrative examination service providers must request prior written agency approval to utilize telemedicine for services that require a face-to-face setting when there is a documented barrier to providing in-person services.

STATUTORY/OTHER AUTHORITY: ORS 413.042

STATUTES/OTHER IMPLEMENTED: ORS 414.065