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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 16-2020

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

FILED
03/26/2020 5:31 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Coordinated Care Organization (CCO) Telemedicine/Telehealth Payment Parity Requirements for Providers During COVID-19 Crisis.

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

AGENCY APPROVED DATE: 03/26/2020

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NEED FOR THE RULE(S):

The Division needs to amend this rule to support appropriate response during the COVID-19 crisis to ensure critical access to physical and behavioral health services via telehealth so that OHP members are not unnecessarily exposed to the COVID-19 virus.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public health and interest, the Authority, and recipients of Medicaid benefits. This rule needs to be adopted promptly in order to support appropriate response to the COVID-19 pandemic and assure appropriate, safe, timely access to qualified health care providers for Oregon Health Plan members.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Governor Kate Brown's Declaration of COVID-19 Emergency viewable at:
<https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=36109>
White House Declaration of National Emergency viewable at: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>
Other rules cited in temporary rule include OAR 410-120-1295, 410-130-0610, 410-141-3515. All viewable at:
<https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=87>
US Department of Health and Human Services, Office of Civil Rights, Guidance on HIPAA compliance exemptions during COVID-19 Crisis. Viewable at: <https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf>

ADOPT: 410-141-3566

RULE TITLE: Telemedicine Payment Parity Requirements

RULE SUMMARY: This temporary rule directs Oregon's contracted Coordinated Care Organizations to reimburse their contracted physical and behavioral health providers the same rate for telemedicine and telehealth services as they

would for persons in-person. The provisions for exemptions of HIPAA compliance based on guidance from the US Department of Health and Human Services, Office of Civil Rights in light of the COVID-19 crisis.

RULE TEXT:

(1) In this rule, "telemedicine" means the use of telephonic or electronic communications of medical information from one site to another regarding a patient's health status, including but not limited to Telehealth (synchronous audio/video visits), Patient to Clinician services (electronic/telephonic) and Clinician to Clinician Consultations (electronic/telephonic).

(2) MCEs shall reimburse contracted physical and behavioral health providers for covered services provided to OHP members by means of telemedicine at the same rate paid when such services are provided in person.

(3) MCEs shall reimburse non-contracted providers for telemedicine services at the rates agreed to between the MCE and the provider or at the OHP Fee-For-Service rates consistent with OAR 410-120-1295(2), whichever is greater.

(4) MCEs shall assure that all telemedicine services are delivered consistent with requirements set forth in OAR 410-130-0610 and 410-172-0850.

(5) MCEs shall ensure that all telemedicine services meet all requirements relating to language access, interpreter, and translation services set forth in OAR 410-141-3515(12).

(6) Consistent with guidance from the US Department of Health and Human Services (HHS), Office for Civil Rights (OCR), OHA will apply the same flexibilities on HIPAA compliance as HHS OCR in its Notification of Enforcement Discretion regarding COVID-19 and its Guidance on Telehealth Remote Communications issued on March 17, 2020.

(a) OHA will not subject MCEs or covered health care providers to sanctions, including civil monetary penalties, for violations of the HIPAA Privacy, Security, and Breach Notification Rules that occur in the good faith provision of telemedicine during the COVID-19 public health emergency.

(b) The exemption in subsection (a) of this section (6) does not affect the application of the HIPAA Rules to other areas of health care outside of telemedicine during the emergency.

(7) This rule is effective March 26, 2020.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.572, 414.591, 414.605, 414.615

STATUTES/OTHER IMPLEMENTED: ORS 414.572