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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

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

**FILED**

07/11/2023 8:49 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amends Overarching Telemedicine Rule Authorizing Coverage Of Remote Health Care Services  
Delivered Using Telecommunication Technologies

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/21/2023 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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NEED FOR THE RULE(S)

The utilization of telecommunication technologies as one of the methods for the delivery of healthcare services was demonstrated during the Federally designated public health emergency for COVID-19. This declaration expired at the end of the day on May 11, 2023. Telehealth will continue to be one of the models for healthcare service delivery. The amendments to these rules are needed to clarify coverage of medically appropriate and clinically indicated health care services delivered via telehealth. These amendments clarify provider requirements. The amendments authorize the Division to operationalize intended coverage of telemedicine services as described in the Health Evidence Review Commission's (HERC) Prioritized List of Health Services and Guideline Notes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HERC Prioritized List: <https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/Prioritized-List.aspx>

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

Enrolled legislation: <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2508>

Administration for Strategic Preparedness and Response: <https://www.hhs.gov/about/news/2023/05/11/hhs-secretary-xavier-becerra-statement-on-end-of-the-covid-19-public-health-emergency.html>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The rule amendments have the potential to increase access to healthcare providers and services which may have a positive impact on health outcomes. Access to healthcare providers via telehealth may allow individuals who have transportation, childcare or employment limitations be able to receive necessary care. The Department/Authority also recognizes that over reliance on telehealth services has the potential for negative impacts on communities

disproportionately impacted by racial or health inequities. Adequate access to broadband, devices and digital literacy must also be addressed to mitigate any potential negative impacts.

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**FISCAL AND ECONOMIC IMPACT:**

The Department/Authority does not anticipate there will be a fiscal impact from these rule changes.

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**COST OF COMPLIANCE:**

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) This amendment has no additional cost or administrative burdens for the state agency, local government or public.

(2)

(a) The number of small businesses potentially impacted to be < 200. This could include independent medical / physician based practices, other licensed independent practitioners such as Advance Practice Nurses (Nurse Practitioners), independent therapy practices (physical, occupational, speech therapy), independent nutrition therapy (licensed dietitians), licensed behavioral health providers.

(b) No additional documentation or administrative burden as standard documentation applies to support the clinical services provided and billed.

(c) No additional supplies or administrative activities are required or mandated

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**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

Small businesses were notified of the RAC participation invitation through outreach which included: National Association of Mental Illness (NAMI), various state licensing boards for health care professions, Community Partner Outreach Program of OHA, Coalition of Oregon Professional Associations for Counseling and Therapy (COPACT), Oregon Medical Association, Telehealth Alliance of Oregon. There were 20 seated RAC members in attendance plus over 15 additional interested parties representing varied perspectives.

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**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES**

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**RULES PROPOSED:**

410-120-1990, 410-141-3566

AMEND: 410-120-1990

**RULE SUMMARY:** This overarching telemedicine rule authorizes the Division to cover medically necessary and appropriate physical, behavioral and oral health services within Oregon Health Plan (OHP) covered benefit plans. The amendment clarifies requirements for healthcare service providers who offer services using telecommunication technologies. 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) prioritized list and guideline notes which can be found at: <https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/Prioritized-List.aspx>

**CHANGES TO RULE:**

410-120-1990

Telehealth

Telemedicine and Telehealth Delivered Health Care Services¶¶

(1) The following definitions apply to the Division's administrative rules applicable to the medical assistance

program.¶

(2) "Asynchronous" means not simultaneous or concurrent in time. For the purpose of this general rule, asynchronous telecommunication technologies for telemedicine or telehealth services may include audio and video, audio without video, client or member portal and may include remote monitoring. "Asynchronous" does not include voice messages, facsimile, electronic mail or text messages.¶

(3) "Audio only" means the use of audio technology, permitting real-time communication between a health care provider and a member for the purpose of diagnosis, consultation or treatment. "Audio only" does not include health services that are customarily delivered by audio telephone technology and customarily not billed as separate services by a health care provider, such as the sharing of laboratory results.¶

(4) "Meaningful access" means client or member-centered access reflecting the following statute and standards:¶

(a) Pursuant to Title VI of the Civil Rights Act of 1964, Section 1557 of the Affordable Care Act and the corresponding Federal Regulation at 45 CFR Part 92 and The Americans with Disabilities Act (ADA), providers' telemedicine or 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) including providing access to auxiliary aids and services as described in 45 CFR Part 92;¶

(b) National Culturally and Linguistically Appropriate Services (CLAS) Standards at <https://thinkculturalhealth.hhs.gov/clas/standards>; and¶

(c) As applicable to the client or member, Tribal based practice standards: <https://www.oregon.gov/OHA/HSD/AMH/Pages/EBP.aspx>;¶

(d) "Synchronous" means an interaction between a provider and a client or member that occurs at the same time using an interactive technology. This may include audio only, video only, or audio with video and may include remote monitoring.¶

(5) "Telecommunication technologies" means the use of devices and services for telemedicine or telehealth delivered services. These technologies include videoconferencing, store-and-forward imaging, streaming media including services with information transmitted via landlines, and wireless communications, including the Internet and telephone networks.¶

(6) "Telehealth" includes telemedicine and also includes the use of electronic information and telecommunications technologies to support remote clinical healthcare, client or member and professional health-related education, public health, and health administration. ¶

(7) "Telemedicine" means the mode of delivering remote clinical health services using information and telecommunication technologies to provide consultation and education or to facilitate diagnosis, treatment, care management or self-management of a client or member's healthcare.¶

(8) "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 where 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, and then takes into account 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 actively resist re-traumatization of the individuals being served within their respective entities.¶

(9) "Trauma informed services" means those services provided using a Trauma informed Approach.¶

(10) Communications may be between providers, or between one or more providers and one or more clients or members, family members, caregivers and guardians.¶

(11) Providers shall ensure OHP clients or members are offered a choice of how services are received, including services offered via telemedicine or telehealth modalities and in-person services, except where the Authority issues explicit guidance during a declared state of emergency or if a facility has implemented its facility disaster plan.¶

(12) Providers unable to offer in-person services shall refer a client or member within 10 business days of the request for services to a different local provider who offers in-person services when an in-person visit is clinically indicated or when the client or member request in-person services.¶

(13) Client or member choice and accommodation for telemedicine or telehealth shall encompass the following standards and services:¶

(a) Providers who offer telemedicine or telehealth delivered services shall offer meaningful access to services by completing a capacity assessment of the client or member in the use of specific approved methods of telemedicine or telehealth delivery that comply with accessibility standards including alternate formats, and provides the optimal quality of care for the client or member given considerations of client or member access to necessary devices, access to a private and safe location, adequate internet, digital literacy, cultural appropriateness of telemedicine or telehealth services, and other considerations of client or member readiness to use telemedicine or

telehealth;¶

(b) Providers shall offer meaningful access to health care services for clients or members and their families who experience LEP or hearing impairment by working with qualified or certified health care interpreters, to provide language access services as described in OAR 333-002-0040. Such services shall not be significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals;¶

(c) Providers shall collaborate with clients or members to identify and offer modalities for delivering health care services which best meets the needs of the member and considers the client or member's choice and readiness for the modality of service selected;¶

(d) Providers shall offer telemedicine or telehealth services which are culturally and linguistically responsive 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) Trauma-informed approach to care.¶

(134) Privacy and security standards for telemedicine or telehealth services shall be met by satisfying the following:¶

(a) Prior to the delivery of services via a telemedicine or telehealth modality, a client or member's written, oral, or recorded consent to receive services using a telemedicine or telehealth delivery method in the language that the client or member understands must be obtained and documented by the health system, clinic or provider in the client or member's health record. Consent must include an assessment of client or member readiness to access and participate in telemedicine or telehealth delivered services, including conveying all other options for receiving the health care service to the client or member. Consent must be updated at least annually thereafter. For clients or members who experience LEP or hearing impairment clients-, providers ~~must~~shall use qualified or certified health care interpreters when obtaining client or member consent;¶

(b) Consistent with ORS 109.640, provision of birth control information and services via a telemedicine or telehealth modality 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 via a telemedicine or telehealth modality shall be provided to any person 15 years of age or older without consent of parent or legal guardian;¶

(d) Services provided using a telemedicine or 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 (168) below;¶

~~(e) The client or member may be located in the community, or in a health care setting of this rule.~~¶

(e) There is no limitation on the location of the client or member.¶

(f) OHP enrolled providers may be located in any location where client or member privacy and confidentiality can be ensured;¶

(g) Persons providing interpretive services and supports shall be in a location where client or member privacy and confidentiality can be ensured¶

(145) Providers who offer telemedicine or telehealth delivery of services shall ~~also offer in-person services and~~ meet the following requirements:¶

(a) Shall hold an unencumbered Oregon license.¶

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

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

(A) Documenting client or member and provider agreement of consent to receive services.¶

(B) Allowed physical locations of provider and client or member.¶

(C) Establishing or maintaining an appropriate provider-client or member relationship.¶

~~(d) Providers billing for covered telemedicine or telehealth services are responsible for:~~¶

(A) Complying with HIPAA and the Authority's Privacy and Confidentiality Rules and security protections for the member in connection with the telemedicine or 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 (168) below of this rule.¶

(B) Obtaining and maintaining technology used in telemedicine or 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 (168) below of this rule.¶

(C) Developing and maintaining policies and procedures to prevent a breach in privacy or exposure of client or

member health information or records (whether oral or recorded in any form or medium) to unauthorized persons and timely breach reporting as described in OAR 943-014-0440.¶

(D) Maintaining clinical and financial documentation related to telemedicine or 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.¶

(156) ~~The Authority will~~ Providers shall develop and maintain care coordination policies and procedures that require the provider to refer clients or members within 10 business days to a different local provider offering in-person services when in-person services are clinically indicated or requested by the client or member and the provider does not offer these services.¶

(17) The Authority shall only pay for telemedicine or 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 telemedicine or 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 telemedicine or 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, telemedicine or telehealth delivered services for covered conditions are covered:¶

(A) When an established relationship exists between a provider and client, or member defined as a client or member 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 client or member-provider relationship.¶

(d) All physical and behavioral telemedicine or telehealth, and oral teledentistry services except School Based Health Services (SBHS) shall include Place of Service code 02 when the client or member is located in a place other than their home. When the client or member is located in their home, the claim shall include Place of Service code 10.¶

(e) All claim types except Dental services, shall ~~use~~ include modifiers ~~GT or 95~~ when the telemedicine or telehealth delivered service utilizes a ~~synchronous audio and video modality~~ real-time interactive audio and video telecommunication system. When provision of the same ~~a~~ service via ~~synchronous audio and video~~ is not available or feasible (e.g., the client or member declines to enable video, or necessary consents cannot reasonably be obtained with appropriate documentation in client or member's medical record) delivered using real-time interactive audio only the claim should ~~not~~ all include any modifiers ~~but should continue billing Place of Service as 02 93.~~¶

(168) In the event of a declared emergency or changes in federal requirements, the Authority may adopt flexibilities to remove administrative barriers and support telemedicine, or telehealth delivered services:¶

(a) The Authority ~~will~~ shall 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 telemedicine, or telehealth services provided across state lines.¶

(c) The Authority may expand the definition of an established client or member-provider relationship beyond the standard of an in-person encounter every three (3) years.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 414.025, 414.065

RULE SUMMARY: The rule changes are due to care coordination and regarding in person services.

CHANGES TO RULE:

410-141-3566

Telemedicine and Telehealth Delivered Health Service and Reimbursement Requirements

(1) The following definitions apply to the Division's administrative rules governing Managed Care Entities (MCEs) as defined in OAR 410-141-3500;¶

(a) "Asynchronous" means not simultaneous or concurrent in time. For the purpose of this rule, asynchronous telecommunication technologies for telemedicine or telehealth services may include audio and video, audio, or member portal and may include transmission of data from remote monitoring. "Asynchronous" does not include voice messages, facsimile, electronic mail or text messages.¶

(b) "Audio only" means the use of audio technology, permitting real-time communication between a health care provider and a member for the purpose of diagnosis, consultation or treatment. "Audio only" does not include the delivery of health services that are customarily delivered by audio telephone technology and customarily not billed as separate services by a health care provider, such as the sharing of laboratory results.¶

(c) "Meaningful access" means member-centered access reflecting the following statute ~~and~~ standards:¶

(A) Pursuant to Title VI of the Civil Rights Act of 1964, Section 1557 of the Affordable Care Act and the corresponding Federal Regulation at 45 CFR Part 92 and The Americans with Disabilities Act (ADA), providers' telemedicine or telehealth 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 described in Federal Regulation at 45 CFR Part 92;¶

(B) National Culturally and Linguistically Appropriate Services (CLAS) Standards at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>;¶

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

(d) "Synchronous" means an interaction between a provider and a member that occurs at the same time using an interactive technology. This may include audio only, video only, or audio and video and may include transmission of data from remote monitoring.¶

(e) "Telecommunication technologies" means the use of devices and services for telemedicine or telehealth delivered services. These technologies include video conferencing, store-and-forward imaging, streaming media including services with information transmitted via landlines, and wireless communications, including the Internet and telephone networks.¶

(f) "Telehealth" includes telemedicine and ~~also~~ includes the use of electronic information and telecommunications technologies to support remote clinical healthcare, member and professional health-related education, public health, and health administration.¶

(g) "Telemedicine" means the mode of delivering remote clinical health services using information and telecommunication technologies to provide consultation and education or to facilitate diagnosis, treatment, care management or self-management of a member's healthcare.¶

(h) "Trauma informed approach" as defined in OAR 410-141-3500¶

(i) "Trauma informed services" as defined in OAR 410-141-3500¶

(2) Communications may be between providers, or between one or more providers and one or more members, family members /caregivers /guardians.¶

(3) ~~CCOs~~Coordinated Care Organizations (CCOs) shall ensure that OHP members are offered a choice of how services are received, including services offered via telemedicine or telehealth modalities and in-person services, except where the Authority issues explicit guidance during a declared state of emergency or if a facility has implemented its facility disaster plan.¶

(4) CCOs shall ensure that providers unable to offer in-person services have access to the CCO Provider Directory.¶

(5) CCOs shall ensure that providers unable to offer in-person services inform the CCO upon referring a member to another provider in accordance with the requirements set forth in OAR 410-120-1990 so the CCO can provide any care coordination services necessary to support the member in accessing care.¶

(6) CCOs shall ensure that member choice and accommodation for telemedicine or telehealth shall encompass the following standards and services:¶

(a) CCOs shall ensure that providers offer meaningful access to telemedicine/telehealth services by completing a capacity assessment of members in the use of specific approved methods of telemedicine or telehealth delivery that comply with accessibility standards including alternate formats, and provides the optimal quality of care for the member given considerations of member access to necessary devices, access to a private and safe location,

adequate internet, digital literacy, cultural appropriateness of telemedicine or telehealth services, and other considerations of member readiness to use telemedicine or telehealth;¶

(b) CCOs shall ensure that providers offer meaningful access to health care services for members and their families who experience LEP or hearing impairments by working with qualified or certified health care interpreters to provide language access services as described in OAR 333-002-0040. Such services shall not be significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals;¶

(c) CCOs shall ensure that providers collaborate with members to identify modalities for delivering health care services which best meets the needs of the member and considers the member's choice and readiness for the modality of service selected.¶

(d) CCOs shall ensure that telemedicine or telehealth services provided are culturally and linguistically appropriate as described in the relevant standards:¶

(A) National Culturally and Linguistically Appropriate Services (CLAS) Standards;¶

(B) Tribal based practice standards;¶

(C) Trauma-informed approach to care as defined in OAR 410-141-3500.¶

(57) CCOs shall provide reimbursement for telemedicine or telehealth services and reimburse Certified and Qualified Health Care Interpreters (HCIs) as defined in OAR 333-002-0010 for interpretation services provided via telemedicine at the same reimbursement rate as if it were provided in person. This requirement does not supersede the CCOs direct agreement(s) with providers, including but not limited to, alternative payment methodologies, quality and performance measures or Value Based Payment methods described in the CCO contract. However, nothing either in this requirement or within CCO direct agreement(s) with providers referenced herein supersedes any federal or state requirements with regard to the provision and coverage of health care interpreter services.¶

(68) Consistent with OAR 410-120-1990 privacy and security standards for telemedicine and telehealth services ~~must~~shall be met by satisfying the following:¶

(a) Prior to the delivery of services via a telemedicine or telehealth modality, a member's written, oral, or recorded consent to receive services using a telemedicine or telehealth delivery method in a language that the member understands must be obtained by the health system, clinic, or provider and documented in the member's health record. Consent must include an assessment of member readiness to access and participate in telemedicine or telehealth delivered services, including conveying all other options for receiving the health care service to the member. Consent must be updated at least annually thereafter. For members and their families with LEP or hearing impairments, providers must use qualified or certified health care interpreters, when obtaining patient consent;¶

(b) Consistent with ORS 109.640, provision of birth control information and services via a telemedicine or telehealth modality 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 via a telemedicine or telehealth modality shall be provided to any person 15 years of age or older without consent of parent or legal guardian;¶

(d) Services provided using a telemedicine or telehealth platform shall comply with Health Insurance Portability and Accountability Act (HIPAA), <https://aspe.hhs.gov/reports/health-insurance-portability-accountability-act-1996> and with the Authority's Privacy and Confidentiality Rules (Chapter 943 Division 14) except as noted in section (9) ~~below 11~~ of this rule.¶

(e) The member may be located in the community or in a health care setting;¶

(f) Providers may be located in any location where privacy can be ensured;¶

(g) Persons providing interpretive services and supports shall be in any location where member privacy and confidentiality can be ensured.¶

(79) CCOs shall ensure that network providers offering telemedicine or telehealth services, must meet the following requirements:¶

(a) Provide services via telehealth that are within their respective certification or licensing board's scope of practice and comply with telemedicine or telehealth requirements including but not limited to:¶

(A) Documenting patient and provider agreement of consent to receive services;¶

(B) Allowed physical locations of provider and patient;¶

(C) Establishing or maintaining an appropriate provider-patient relationship.¶

(b) Complying with HIPAA and the Authority's Privacy and Confidentiality Rules and security protections for the member in connection with the telemedicine or 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 (9) ~~below 11~~ of this rule;¶

(c) Obtaining and maintaining technology used in telemedicine/telehealth communication that is compliant with privacy and security standards in HIPAA and the Authority's Privacy and Confidentiality Rules described in subsection (b) except as noted in section ~~(9) below~~ 11 of this rule;¶

(d) Ensuring policies and procedures are in place to prevent a breach in privacy or exposure of member health information or records (whether oral or recorded in any form or medium) to unauthorized persons and timely breach reporting as described in OAR 943-014-0440;¶

(e) Maintaining clinical and financial documentation related to telemedicine or telehealth services as required in OAR 410-120-1360 and any program specific rules in OAR Ch 309 and Ch 410;¶

(f) Complying with all federal and state statutes as required in OAR 410-120-1380.¶

~~(8)~~ 10 CCO reimbursement to network providers offering telemedicine or telehealth services shall meet 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) Dependent on individual certification or licensing board's scope of practice standards, telemedicine or telehealth delivered services for covered conditions are covered for establishing a patient-provider relationship, and 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 (3) years;¶

(c) For all claim types except dental, CCOs shall ensure that encounter submissions for telehealth or telemedicine delivered services covered using synchronous audio and video include modifiers GT or 95, and can be billed with either telephone codes (e.g. 99441) or regular in-person codes. For all telehealth services including dental, CCOs shall ensure that encounter submissions include Place of Service code 02;¶

(d) All physical and behavioral telemedicine and telehealth and oral teledentistry telehealth services except School Based Health Services (SBHS) shall include Place of Service code 02;¶

~~(e) When provision of the same service via synchronous audio and video is not available or feasible, e.g. the member declines to enable video, or necessary consents cannot reasonably be obtained with appropriate documentation in member's medical record when the client or member is located in a location other than their home. When the client or member is located in their home, the claim shall include Place of Service code 10.~~¶

~~(e) All claim types except Dental services, shall include modifier 95 when the telemedicine or telehealth delivered service utilizes a real-time interactive audio and video telecommunication system. When provision of delivered using real-time interactive audio only telecommunication system, then encounter submissions should not all include any modifiers but should continue billing Place of Service as 02.~~ 93.¶

~~(9)~~ 11 In the event of a declared emergency or changes in federal requirements, the Authority may adopt flexibilities to remove administrative barriers and support telemedicine, or telehealth delivered services:¶

(a) The Authority ~~wi~~ shall 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 telemedicine, or telehealth services provided across state lines;¶

(c) Should the Authority exercise options in this section ~~(9)~~ 11, all CCO obligations for Network Adequacy requirements as described in OAR 410-141-3515 remain in full effect;¶

(d) The Authority may expand the definition of an established patient-provider relationship beyond the standard of an in-person encounter every three (3) years.

Statutory/Other Authority: ORS 413.042, 414.572, 414.591, 414.605, 414.615

Statutes/Other Implemented: ORS 414.572