



PERMANENT ADMINISTRATIVE ORDER

DMAP 44-2020

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

FILED

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FILING CAPTION: Amends Medical-Surgical Program Rules For Telemedicine To Assure Access To Medically Necessary Services

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AMEND: 410-130-0610

REPEAL: Temporary 410-130-0610 from DMAP 20-2020

RULE TITLE: Telemedicine

NOTICE FILED DATE: 07/21/2020

RULE SUMMARY: This amended rule incorporates updates relative to the provision of health services using telehealth delivery systems, ensuring continued access to medically necessary services. Changes to the Notice version of the rule reflect public comment received as a result of the NPRM, along with removal of reference to the emergency declaration. Should the emergency declaration end, we would want to continue to operationalize telemedicine access as intended by HERC's prioritized list and relevant guideline notes.

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