

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: July 27, 2019

The proposed policy is an Emergency Rule. The proposed policy was presented at the June 18, 2019 Tribal Consultation and is scheduled to be presented to the Medical Advisory Committee on July 18, 2019 and the OHCA Board of Directors on August 21, 2019.

Reference: APA WF 19-08

SUMMARY:

Telehealth services - The proposed revisions bring OAC 317:30-3-27 into compliance with recently enacted Senate Bill 575, which becomes effective on July 1, 2019. The rules also establish and/or clarify requirements for the provision of telehealth services, including those services provided in a school setting.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; and 25 Oklahoma Statutes, Sections 2004 and 2005.

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

TO: Nicole Nantois
Legal Services

FROM: Harvey Reynolds
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 19-08

A. Brief description of the purpose of the rule:

The proposed revisions to telehealth policies are in accordance with Oklahoma Senate Bill (SB) No. 575, which amended 25 Oklahoma Statutes (O.S.), Sections 2004 and 2005. Revisions outline and further define the following requirements: parental

consent for telehealth services; confidentiality and security of protected health information; that services provided or received outside of Oklahoma may require prior authorization; that services provided must be within the scope of the practitioner's license or certification; and that the member's primary care provider and parent or legal guardian must receive a summary of any medical telehealth services provided in schools. Revisions also define that program restrictions and coverage for telehealth services mirror those which exist for the same services when not provided through telehealth, provided, however, that only certain telehealth codes are reimbursable by SoonerCare.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

Schools that have established telehealth programs, SoonerCare providers who treat children at a school site with an established telehealth program, and children who are treated through a school-based telehealth program are most likely to be affected by the proposed rule. This rule change should not place any cost burden on private or public entities. No information on any cost impacts were received from any entity.

- C. A description of the classes of persons who will benefit from the proposed rule:

The proposed rule change will benefit some SoonerCare members and providers by establishing and/or clarifying requirements for the provision of telehealth services, including those services provided in a school setting.

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no probable economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivisions.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed

rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated affect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

Agency staff has determined that the proposed rule changes will result in a budget impact of \$332,330 of which \$115,950 is the state share.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule changes will not have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule changes.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The agency does not anticipate that the proposed rule changes will have an adverse effect on small businesses.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there are no other legal methods to achieve the purpose of the proposed rule changes. Measures included a formal public comment period and tribal consultation.

- I. A determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule changes should not have any effect on the public health, safety, or environment. The proposed rule changes are not designed to reduce significant risks to the public health, safety, or environment.

- J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

The agency does not anticipate any detrimental effect on the public health, safety, or environment if the proposed rule is not implemented.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared date: May 14, 2019

RULE TEXT:

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-27. Telehealth

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **"Remote patient monitoring"** means the use of digital technologies to collect medical and other forms of health data (e.g. vital signs, weight, blood pressure, blood sugar) from individuals in one location and electronically transmit that information securely to health care providers in a different location for assessment and recommendations.

(2) **"Store and forward"** means the acquisition (storing) of clinical information (e.g. data, document, image, sound, video) that is then electronically transmitted (forwarded to or retrieved by) to another site for clinical evaluation.

(3) **"Telehealth"** means the mode of delivering healthcare services via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of patients, at a distance from health care providers.

(4) "Telehealth medical service," for the purpose of Oklahoma Administrative Code (OAC) 317:30-3-27(d)(2) and (d)(3), means a health care service initiated by a physician who is licensed to practice medicine in Oklahoma or provided by a health professional acting under physician delegation and supervision, but expressly does not include physical therapy, occupational therapy, and/or speech and hearing services. Physical therapy, occupational therapy, and/or speech and hearing services that

are provided in a primary or secondary school setting but that are not "school-based services," as defined by OAC 317:30-5-1020(a), must adhere to all state and federal requirements relating to prior authorization and prescription or referral, including, but not limited to, 42 C.F.R. § 440.110, OAC 317:30-5-291, OAC 317:30-5-296, and OAC 317:30-5-676.

(b) **Applicability and scope.** The purpose of this Section is to implement telehealth policy that improves access to health care services, while complying with all applicable ~~Federal and State~~ State and Federal laws and regulations. Telehealth services are not an expansion of ~~SoonerCare-covered~~ SoonerCare-covered services, but an option for the delivery of certain covered services. However, if there are technological difficulties in performing an objective, thorough medical assessment, or problems in the member's understanding of telehealth, hands-on-assessment and/or ~~in-person~~ in-person care must be provided for the member. Any service delivered using telehealth technology must be appropriate for telehealth delivery and be of the same quality and otherwise on par with the same service delivered in person. A telehealth encounter must ~~comply with the Health Information Portability and Accountability Act (HIPAA)~~ maintain the confidentiality and security of protected health information in accordance with applicable State and Federal law, including, but not limited to, 42 Code of Federal Regulations (CFR) Part 2, 45 CFR Parts 160 and 164, and 43A Oklahoma Statutes (O.S.) § 1-109. For purposes of SoonerCare reimbursement, telehealth is the use of interactive audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment that ~~occurs~~ occurs in real-time and when the member is actively participating during the transmission. Telehealth does not include the use of ~~audio only~~ audio-only telephone, electronic mail, or facsimile transmission.

(c) **ConditionsRequirements.** The following ~~conditions~~ requirements apply to all services rendered via telehealth.

(1) Interactive audio and video telecommunications must be used, permitting encrypted real-time communication between the physician or practitioner and the SoonerCare member. The telecommunication service must be secure and adequate to protect the confidentiality and integrity of the telehealth information transmitted. As a condition of payment the member must actively participate in the telehealth visit.

(2) The telehealth equipment and transmission speed and image must be technically sufficient to support the service billed. If a peripheral diagnostic scope is required to assess the member, it must provide adequate resolution or audio quality for decision making. Staff involved in the telehealth visit

need to be trained in the use of the telehealth equipment and competent in its operation.

(3) The medical or behavioral health related service must be provided at an appropriate site for the delivery of telehealth services. An appropriate telehealth site is one that has the proper security measures in place; the appropriate administrative, physical, and technical safeguards should be in place that ensures the confidentiality, integrity, and security of electronic protected health information. The location of the room for the encounter at both ends should ensure comfort, privacy, and confidentiality. Both visual and audio privacy are important, and the placement and selection of the rooms should consider this. Appropriate telehealth equipment and networks must be used considering factors such as appropriate screen size, resolution, and security. Providers and/or members may provide or receive telehealth services outside of Oklahoma when medically necessary; however, prior authorization may be required, per OAC 317:30-3-89 through 317:30-3-91.

(4) The provider must be contracted with SoonerCare and appropriately licensed for the service to be provided or certified, in good standing. Services that are provided must be within the scope of the practitioner's license or certification. If the provider is outside of Oklahoma, the provider must comply with all laws and regulations of the provider's location, including health care and telehealth requirements.

(5) If the member is a minor ~~child~~, a ~~parent/guardian~~ parent or legal guardian must present the minor ~~child~~ for telehealth services unless otherwise exempted by State or Federal law. The ~~parent/guardian~~ parent or legal guardian need not attend the telehealth session unless attendance is therapeutically appropriate. This requirement does not apply to telehealth services provided in a primary or secondary school setting.

(6) The member retains the right to withdraw at any time.

(7) All telehealth activities must comply with ~~the HIPAA Security Standards~~, OHCA policy, and all other applicable State and Federal laws and regulations, including, but not limited to, 59 O.S. § 478.1.

(8) The member has access to all transmitted medical information, with the exception of live interactive video as there is often no stored data in such encounters.

(9) There will be no dissemination of any member images or information to other entities without written consent from the member or member's parent or legal guardian, if the member is a minor.

(10) A telehealth service is subject to the same SoonerCare program restrictions, limitations, and coverage which exist for

the service when not provided through telehealth; provided, however, that only certain telehealth codes are reimbursable by SoonerCare. For a list of the SoonerCare-reimbursable telehealth codes, refer to the Oklahoma Health Care Authority's (OHCA) Behavioral Health Telehealth Services and Medical Telehealth Services, available on OHCA's website, www.okhca.org.

(d) Additional requirements specific to telehealth services in a school setting. In order for OHCA to reimburse medically necessary telehealth services provided to SoonerCare members in a primary or secondary school setting, all of the requirements in (c) above must be met, with the exception of (c)(5), as well as all of the requirements shown below.

(1) Advance parent or legal guardian consent for telehealth services must be obtained for minors, in accordance with 25 O.S. §§ 2004 through 2005. Additional consent requirements shall apply to school-based services, which are medically necessary health-related and rehabilitative services that are provided by a qualified provider to a student under the age of twenty one (21) pursuant to an Individualized Education Program, per OAC 317:30-5-1020.

(2) The member's primary care provider (PCP) must be notified of any telehealth medical service, unless the member does not have a PCP. This notification must include a summary of the service, including:

(A) Exam findings;

(B) Prescribed or administered medications; and

(C) Patient instructions.

(3) The information in subparagraph (d)(2) of this subsection must also be offered to the member, if he or she is an adult, or the member's parent or legal guardian, if the member is a minor.

(d)(e) Reimbursement.

(1) Health care services delivered by telehealth such as Remote Patient Monitoring, Store and Forward, or any other telehealth technology, must be compensable by OHCA in order to be reimbursed.

(2) Services provided by telehealth must be billed with the appropriate modifier.

(3) If the technical component of an X-ray, ultrasound or electrocardiogram is performed during a telehealth transmission, the technical component can be billed by the provider that provided that service. The professional component of the procedure and the appropriate visit code should be billed by the provider that rendered that service.

(4) The cost of telehealth equipment and transmission is not reimbursable by SoonerCare.

~~(e)~~(f) **Documentation.**

(1) Documentation must be maintained by the rendering provider to substantiate the services rendered.

(2) Documentation must indicate the services were rendered via telehealth, and the location of the services.

(3) All other SoonerCare documentation guidelines apply to the services rendered via telehealth. Examples include but are not limited to:

(A) Chart notes;

(B) Start and stop times;

(C) Service provider's credentials; and

(D) Provider's signature.

~~(f)~~(g) The OHCA has discretion and the final authority to approve or deny any telehealth services based on agency and/or SoonerCare members' needs.