

5160-1-21**Telehealth during a state of emergency.**

This rule shall be in effect during any time period in which the Governor of the State of Ohio declares a state of emergency and when authorized by the medicaid director. During such time period, this rule supersedes rule 5160-1-18 of the Administrative Code.

This emergency rule is being implemented to expand access to medical and behavioral health services using telehealth. New and established patients may be provided services through telehealth per this rule. No initial face-to-face visit is necessary to initiate services through telehealth.

(A) For the purposes of this rule, the following definitions apply:

- (1) "Patient site" is the physical location of the patient at the time a health care service is provided through the use of telehealth. There is no limitation on the patient site.
- (2) "Practitioner site" is the physical location of the treating practitioner at the time a health care service is provided through the use of telehealth. There is no limitation on the practitioner site.
- (3) "Telehealth" is:
 - (a) The direct delivery of health care services to a patient via synchronous, interactive, real-time electronic communication comprising both audio and video elements; or
 - (b) Activities that are asynchronous and do not have both audio and video elements such as telephone calls, images transmitted via facsimile machine, and electronic mail.

(B) Eligible providers.

- (1) The following practitioners are eligible to render services through the use of telehealth:
 - (a) Physician as defined in Chapter 4731. of the Revised Code.
 - (b) Psychologist as defined in Chapter 4732. of the Revised Code.
 - (c) Physician assistant as defined in Chapter 4730. of the Revised Code.
 - (d) Clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner as defined in Chapter 4723. of the Revised Code.

- (e) Licensed independent social worker, licensed independent marriage and family therapist, or licensed professional clinical counselor as defined in Chapter 4757. of the Revised Code.
 - (f) Licensed independent chemical dependency counselor as defined in Chapter 4758. of the Revised Code.
 - (g) Supervised practitioners and supervised trainees as defined in rule 5160-8-05 of the Administrative code.
 - (h) Audiologist as defined in Chapter 4753. of the Revised Code.
 - (i) Occupational therapist as defined in Chapter 4755. of the Revised Code.
 - (j) Physical therapist as defined in Chapter 4755. of the Revised Code.
 - (k) Speech-language pathologist as defined in Chapter 4753. of the Revised Code.
 - (l) Occupational therapist assistant as defined in section 4755.04 of the Revised Code.
 - (m) Physical therapist assistant as defined in section 4755.40 of the Revised Code.
 - (n) Speech-language pathology aides and audiology aides as defined in section 4753.072 of the Revised Code.
 - (o) An individual holding a conditional license as defined in section 4753.071 of the Revised Code.
 - (p) Medicaid school program (MSP) practitioners as described in Chapter 5160-35 of the Administrative Code.
 - (q) Dietitians as defined in Chapter 4759. of the Revised Code.
 - (r) Other participating and non-participating providers delivering services in the managed care or fee-for-service (FFS) programs, as designated by the director of the Ohio department of medicaid (ODM).
- (2) The following provider types are eligible to bill for services rendered through the use of telehealth:
- (a) Any practitioner identified in paragraph (B)(1) of this rule, except for the following dependent practitioners:

- (i) Supervised practitioners and supervised trainees as defined in rule 5160-8-05 of the Administrative Code;
 - (ii) Occupational therapist assistant as defined in section 4755.04 of the Revised Code;
 - (iii) Physical therapist assistant as defined in section 4755.40 of the Revised Code;
 - (iv) Speech-language pathology aides and audiology aides as defined in section 4753.072 of the Revised Code; and
 - (v) An individual holding a conditional license as defined in section 4753.071 of the Revised Code;
- (b) A professional medical group;
 - (c) A federally qualified health center (FOHC) or rural health clinic (RHC) as defined in Chapter 5160-28 of the Administrative Code;
 - (d) Ambulatory health care clinics (AHCC) as described in Chapter 5160-13 of the Administrative Code;
 - (e) Outpatient hospitals;
 - (f) Medicaid school program (MSP) providers as defined in Chapter 5160-35 of the Administrative Code.
 - (g) Other participating and non-participating providers delivering services in the managed care or FFS programs, as designated by the director of ODM.

(C) Requirements and responsibilities.

- (1) HIPAA related directives of the Office of Civil Rights (OCR) at the Department of Health and Human Services (HHS) issued during the COVID-19 national emergency are incorporated by reference. Consistent with the "Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency" (Notification) issued by the OCR, covered health care providers subject to the HIPAA rules may communicate with patients, and provide telehealth services, through remote communications technologies even though some of these technologies, and the manner in which they are used by HIPAA covered health care providers, may not fully comply with the requirements of the HIPAA Rules. The restrictions in the Notification apply, including:

- (a) Providers can use any audio or video non-public facing remote communication product that is available to communicate with patients;
 - (b) Facebook Live, Twitch, TikTok, and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers;
 - (c) Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications; and
 - (d) Providers are to exercise professional judgment in the use of telehealth examinations.
- (2) The practitioner site should have access to the medical records of the patient at the time of service to the greatest extent possible, and is responsible for maintaining documentation in accordance with paragraph (C)(1) of this rule for the health care service delivered through the use of telehealth. If the medical record is not available, the practitioner site should create appropriate documentation and to the greatest extent possible, maintain existing documentation requirements.
- (3) Practitioner and patient site locations should be consistent with the current procedural terminology (CPT) and health care common procedure coding systems (HCPCS) guidelines for the service being provided.
- (4) The following provisions of the Administrative Code are modified for the purposes of this rule:
- (a) In paragraph (D)(2)(c)(i) of rule 5160-8-05 of the Administrative Code, the requirement that the professional responsible for the patient's care has face-to-face contact during the initial visit is suspended.
 - (b) In paragraph (C) of rule 5160-4-05 of the Administrative Code, the limitation is suspended, allowing payment for services rendered by a resident practicing outside a primary care center without the presence of a teaching practitioner.
- (5) Entities who provide services certified by the Ohio department of mental health and addiction services (OhioMHAS) are subject only to paragraph (C) of this rule. Requirements for these entities are covered in Chapter 5160-27 of the Administrative Code with the following modifications and suspensions:

- (a) New and established patients may be provided services through telehealth per this rule. No initial face-to-face visit is necessary to initiate services through telehealth.
 - (b) Paragraph (J) of rule 5160-27-02 of the Administrative Code is modified to add asynchronous activities that do not have both audio and video elements and will be considered interactive video conferencing such as telephone calls, images transmitted via facsimile machine, and electronic mail.
 - (c) In paragraph (N) of rule 5160-27-04 of the Administrative Code, the prohibition on billing for assertive community treatment (ACT) team services and supports delivered through telephone or secure video conference is suspended.
 - (d) In paragraph (G) of rule 5160-27-05 of the Administrative Code, the prohibition on billing for intensive home-based treatment (IHBT) practitioner services rendered via telephone or video conference is suspended.
 - (e) In paragraph (D) of rule 5160-27-08 of the Administrative Code, the requirements for therapeutic behavioral services (TBS) and psychosocial rehabilitation (PSR) to be delivered as a face-to-face intervention are suspended.
 - (f) In paragraph (A) of rule 5160-27-12 of the Administrative Code, behavioral health crisis intervention is modified to remove the face-to-face requirement.
 - (g) Paragraph (B)(2) of rule 5160-27-12 of the Administrative Code stating practitioners may provide crisis intervention only if they have previously met and provided services to the medicaid covered individual is suspended.
 - (h) OhioMHAS certified community behavioral health centers that have previously rendered medicaid peer recovery support services, as evidenced by a claim submitted to ODM or a medicaid managed care plan with a date of service on or prior to the effective date of this emergency rule, may use telehealth as described in paragraph (C) of this rule to deliver peer recovery support services.
- (6) Paragraphs (C)(5)(a) to (C)(5)(g) of this rule applies to outpatient behavioral health (OPHBH) services.

(D) Payment may be made only for the following medically necessary health care services identified in the appendix to this rule when delivered through the use of telehealth from the practitioner site:

- (1) Evaluation and management of a new patient described as "office or other outpatient visit" with medical decision making not to exceed moderate complexity.
- (2) Evaluation and management of an established patient described as "office or other outpatient visit" with medical decision making not to exceed moderate complexity.
- (3) Inpatient or office consultation for a new or established patient when providing the same quality and timeliness of care to the patient other than by telehealth is not possible, as documented in the medical record.
- (4) Mental health or substance use disorder services described as "psychiatric diagnostic evaluation" or "psychotherapy."
- (5) Remote evaluation of recorded video or images submitted by an established patient.
- (6) Virtual check-in by a physician or other qualified health care professional who can report evaluation and management services, provided to an established patient.
- (7) Online digital evaluation and management service for an established patient.
- (8) Remote patient monitoring.
- (9) Audiology, speech-language pathology, physical therapy, and occupational therapy services.
- (10) Medical nutrition services.
- (11) Lactation counseling provided by dietitians.
- (12) Psychological and neuropsychological testing.
- (13) Smoking and tobacco use cessation counseling.
- (14) Developmental test administration.
- (15) Other services as designated by the director of ODM.

(16) Services under the specialized recovery services (SRS) program as defined in rule 5160-43-01 of the Administrative Code.

(E) Submission and payment of telehealth claims.

(1) The practitioner site may submit a professional claim for health care services delivered through the use of telehealth.

(2) An institutional (facility) claim may be submitted by the practitioner site for the health care service through the use of telehealth. Services provided in a hospital setting may be billed in accordance with rule 5160-2-02 of the Administrative Code.

(3) The practitioner site may submit a claim for a telehealth originating fee. If such a practitioner renders a separately identifiable evaluation and management service to the patient on the same date as the health care service delivered through the use of telehealth, the provider may submit a claim for the evaluation and management service and the telehealth originating fee.

(4) Medicaid-covered services may be provided through telehealth, as appropriate, if otherwise payable under the medicaid school program as defined in Chapter 5160-35 of the Administrative Code.

(5) Except for FOHC and RHC services defined in rules 5160-28-03.1 and 5160-28-03.3 of the Administrative Code, the payment amount for a health care service delivered through the use of telehealth is the lesser of the submitted charge or the maximum amount shown in appendix DD to rule 5160-1-60 of the Administrative Code for the date of service.

(6) For a covered service delivered by an FOHC or RHC through the use of telehealth, payment is made in accordance with Chapter 5160-28 of the Administrative Code. The face-to-face requirement for covered FOHC and RHC services that are allowable under this rule is temporarily suspended.

(7) Individuals who meet the definition of inmate in a penal facility or a public institution as defined in rule 5160:1-1-03 of the Administrative Code are not eligible for reimbursement for telehealth services.

(8) For any professional claim submitted for health care services utilizing telehealth to be paid, it is the responsibility of the provider to follow ODM billing guidelines found on the ODM website, www.medicaid.ohio.gov.

Effective: 3/20/2020

CERTIFIED ELECTRONICALLY

Certification

03/20/2020

Date

Promulgated Under: 119.03
Statutory Authority: 5164.02, 5164.95
Rule Amplifies: 5164.02, 5164.95