

Oklahoma Health Care Authority

It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments are directed to Oklahoma Health Care Authority (OHCA) Health Policy Unit <http://www.okhca.org/proposed-rule-changes.aspx>

OHCA COMMENT DUE DATE: February 16, 2015

The proposed policy is a Permanent Rule. This proposal is scheduled to be presented to the Medical Advisory Committee (MAC) on March 12, 2015 and the (OHCA) Board of Directors on March 26, 2015.

Reference: APA WF 14-50

SUMMARY:

Telemedicine - Policy is revised to expand the scope of telemedicine for access.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Telemedicine Act of 1997; 42 CFR 410.78

RULE IMPACT STATEMENT:

**STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY**

TO: Tywanda Cox
Health Policy

FROM: Demetria Bennett
Health Policy

SUBJECT: Rule Impact Statement
APA WF # 14-50

A. Brief description of the purpose of the rule:

The OHCA rule for Telemedicine is being revised to clarify the definition for telemedicine, and to remove the definitions sections for consistency. Proposed changes also remove coverage guidelines to expand the scope of the telemedicine delivery method. Revisions remove requirements for a presenter at the originating site to align with the Oklahoma Medical Licensure rules, and to remove guidelines regarding the required use of OHCA-approved telemedicine networks. Proposed revisions also eliminate the originating site fee payment. Additional clean-up

ensures no restrictions on services rendered using the telemedicine delivery model.

- 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:

Providers using telehealth technology to render compensable SoonerCare services will be affected by the proposed rule.

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

SoonerCare members will benefit from the rule, as services limitations for telemedicine are removed to increase access.

- 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 may be a possible impact to SoonerCare providers as proposed revisions eliminate reimbursement for the originating site payment.

- 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 effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

The anticipated savings tied to the removal of the originating site fee payment will result in approximately \$650,000 total dollars; \$245,050 state dollars. The impact to expand the scope of telemedicine will result in an approximately an 11% increase in utilization. The 11% increase between CY2012 to CY2013 is approximately \$134,533.22.

- 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 may have an economic impact on SoonerCare providers; however, the change does not require their cooperation in implementing or enforcing the rule.

- 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 proposed rule will not have an adverse effect on small businesses as provided by the Oklahoma Small Business Regulatory Flexibility Act.

- 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 is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

- 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 may have a positive impact on public health as rules expand telehealth services by removing limitations.

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

OHCA does not believe there is a detrimental effect on the public health and safety if the rule is not passed.

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

The rule impact statement was prepared December 5, 2014.

RULE TEXT

**CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE
SUBCHAPTER 3. GENERAL PROVIDER POLICIES
PART 1. GENERAL SCOPE AND ADMINISTRATION**

317:30-3-27. Telemedicine

(a) **Applicability and scope.** The purpose of this Section is to implement telemedicine policy that improves access to health care services ~~by enabling the provision of medical specialty care in rural areas to meet the needs of members and providers alike,~~ while complying with all applicable federal and state statutes and

regulations. Telemedicine services are not an expansion of SoonerCare covered services but an option for the delivery of certain covered services. SoonerCare views telemedicine no differently than an office visit or outpatient consultation. However, if there are technological difficulties in performing an objective ~~through~~thorough medical assessment or problems in the member's understanding of telemedicine, hands-on-assessment and/or in person care must be provided for the member. ~~Quality of health care must be maintained regardless of the mode of delivery.~~Any service delivered using telehealth technology must be appropriate for telemedicine delivery and be of the same quality and otherwise on par with the same service delivered in person. A telemedicine encounter must comply with the Health Information Portability and Accountability Act (HIPAA) ~~and shall include an originating site, distant site, and certified or licensed attendant to present the member at the originating site to the rendering provider located at the distant site.~~ For purposes of SoonerCare reimbursement telemedicine is the use of interactive audio, video or other electronic media for the purpose of diagnosis, consultation or treatment that occur in real-time or near real-time and when the member is actively participating during the transmission. Telemedicine does not include the use of audio only telephone, electronic mail, or facsimile transmission.

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

(1) ~~"Certified or licensed health care professional"~~ means an individual who has successfully completed a prescribed program of study in any variety of health fields and who has obtained an Oklahoma state license or certificate indicating his or her competence to practice in that field.

(2) ~~"Distant site"~~ means the site where the specialty physician/practitioner providing the professional service is located at the time the service is provided via audio/video telecommunications.

(3) ~~"Interactive telecommunications"~~ means multimedia communications equipment that includes, at a minimum, audio/video equipment permitting two-way, real-time or near real time service or consultation between the member and the practitioner.

(4) ~~"Originating site"~~ means the location of the SoonerCare member at the time the service is being performed by a contracted provider via audio/video telecommunications.

(5) ~~"Rural area"~~ means a county with a population of less than 50,000 people.

(6) ~~"Store and forward"~~ means the asynchronous transmission of medical information to be reviewed at a later time. A camera or similar device records (stores) an image(s) that is then sent (forwarded) via telecommunications media to another location for later viewing. The sending of x-rays, computed tomography

~~scans, or magnetic resonance images are common store and forward applications. The original image may be recorded and/or forwarded in digital or analog format and may include video "clips" such as ultrasound examinations, where the series of images that are sent may show full motion when reviewed at the receiving location.~~

~~(7) **"Telehealth"** means the use of telecommunication technologies for clinical care (telemedicine), patient teaching and home health, health professional education (distance learning), administrative and program planning, and other diverse aspects of a health care delivery system.~~

~~(8) **"Telemedicine"** means the practice of health care delivery, diagnosis, consultation and treatment and the transfer of medical data through interactive audio, video or data communications that occur in the real-time or near real-time and in the physical presence of the member.~~

~~(9) **"Telemedicine network"** means a network infrastructure, consisting of computer systems, software and communications equipment to support telemedicine services.~~

~~(c) **Coverage.** SoonerCare coverage for telemedicine technology is limited to consultations, office visits, individual psychotherapy, psychiatric diagnostic interview examinations and testing, behavioral health assessments, behavioral health service plan development, pharmacologic management, and services for medically high risk pregnancies.~~

~~(1) An interactive telecommunications system is required as a condition of coverage.~~

~~(2) Coverage for telemedicine services is limited to members in rural areas or geographic areas where there is a lack of medical specialty, psychiatric or behavioral health expertise locally. The coverage of all telemedicine services is at the discretion of OHCA.~~

~~(3) Office and outpatient visits that are conducted via telemedicine are counted toward the applicable benefit limits for these services.~~

~~(4) Authorized originating sites are:~~

~~(A) The office of a physician or practitioner;~~

~~(B) A hospital;~~

~~(C) A school;~~

~~(D) An outpatient behavioral health clinic;~~

~~(E) A critical access hospital;~~

~~(F) A rural health clinic (RHC);~~

~~(G) A federally qualified health center (FQHC); or~~

~~(H) An Indian Health Service facility, a Tribal health facility or an Urban Indian clinic (I/T/U).~~

~~(5) Authorized distant site specialty providers, excluding professionals under supervision, are contracted:~~

~~(A) Physicians;~~

~~(B) Advanced Registered Nurse Practitioners;~~

~~(C) Physicians Assistants;~~

- ~~(D) Genetic Counselors;~~
- ~~(E) Licensed Behavioral Health Professionals;~~
- ~~(F) Dietitians; and~~
- ~~(G) I/T/U's with specialty service providers as listed in (A) through (F) above.~~

~~(d) **Non-covered services.** Non-covered services include, but are not limited to:~~

- ~~(1) Telephone conversation;~~
- ~~(2) Electronic mail message;~~
- ~~(3) Facsimile;~~
- ~~(4) Unencrypted, non-HIPAA compliant Internet-based communications;~~
- ~~(5) Video cell phone interactions;~~
- ~~(6) Outpatient surgical services;~~
- ~~(7) Home Health services;~~
- ~~(8) Well child checkups, and preventive visits;~~
- ~~(9) Laboratory services;~~
- ~~(10) Audiologist services;~~
- ~~(11) Care coordination services; and~~
- ~~(12) Physical, speech, or occupational therapy services.~~

~~(e) **Store and forward technology.** SoonerCare covers store and forward technology for applications in which, under conventional health care delivery, the medical service does not require face-to-face contact between the member and the provider. Examples include teleradiology, telepathology, fetal monitor strips, as well as physician interpretation of electrocardiogram and electroencephalogram readings that are transmitted electronically. SoonerCare does not consider these services telemedicine as defined by OHCA and will not reimburse an originating site fee for these services.~~

~~(f)(b) **Conditions.** The following conditions apply to all services rendered via telemedicine.~~

- ~~(1) Interactive audio and video telecommunications must be used, permitting encrypted real-time communication between the distant site physician or practitioner and the SoonerCare member. The telecommunication service must be secure and adequate to protect the confidentiality and integrity of the telemedicine information transmitted. As a condition of payment the member must be physically present at the originating site and must actively participate in the telemedicine visit. The originating site must provide pertinent medical information and/or records to the distant site provider via a secure HIPAA compliant transmission.~~
- ~~(2) Only telemedicine services provided utilizing an OHCA approved network are eligible for reimbursement.~~
- ~~(3) For SoonerCare reimbursement, telemedicine connections to rural areas must be located within Oklahoma and the health providers must be licensed in Oklahoma or practice at an I/T/U.~~
- ~~(4)(2) The telemedicine 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 telemedicine visit need to be trained in the use of the telemedicine equipment and competent in its operation.

~~(5)~~(3) The medical or behavioral health related service must be provided ~~by a distant site provider that is located at an approved HIPAA compliant site, or site in compliance with HIPAA Security Standards, at an appropriate site for the delivery of telemedicine services. A telemedicine approved~~An appropriate telemedicine site is one that has the proper security measures in place; the appropriate administrative, physical and technical safeguards should be in place that ensure the confidentiality, integrity, and security of electronic protected health information. ~~The physical environments at both the originating and distant site are clinical environments and the spaces should reflect that. The location of the room for the encounter at both ends should ensure comfort, privacy, and confidentiality. Both visual and audio privacy are important, placement and selection of the rooms should consider this. An appropriate certified or licensed health care professional at the originating site is required to present the member to the physician or practitioner at the distant site and remain available as clinically appropriate.~~Appropriate telemedicine equipment and networks must be used considering factors such as appropriate screen size, resolution, and security. Providers and/or members may provide or receive telemedicine services outside of Oklahoma when medically necessary.

(4) The provider must be contracted with SoonerCare and appropriately licensed for the service to be provided. 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 telemedicine requirements.

~~(6)~~(5) The health care practitioner must obtain written consent from the SoonerCare member that states ~~they agree~~he or she agrees to participate in the telemedicine-based office visit. The consent form must include a description of the risks, benefits and consequences of telemedicine and be included in the member's medical record.

~~(7)~~(6) If the member is a minor child, a parent/guardian must present the minor child for telemedicine services unless otherwise exempted by State or Federal law. The parent/guardian need not attend the telemedicine session unless attendance is therapeutically appropriate.

~~(8)~~(7) The member retains the right to withdraw at any time.

~~(9)~~(8) All telemedicine activities must comply with the HIPAA Security Standards, OHCA policy, and all other applicable state and federal laws and regulations.

~~(10)~~(9) 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.

~~(11)~~(10) There will be no dissemination of any member images or information to other entities without written consent from the member.

~~(9)~~(b) **Reimbursement.**

~~(1)~~ A facility fee will be paid to the originating site when the appropriate telemedicine facility fee code is used.

~~(A) Hospital outpatient:~~ When the originating site is a hospital outpatient department, payment for the originating site facility fee will be paid according to the SoonerCare fee schedule.

~~(B) Hospital inpatient:~~ For hospital inpatients, payment for the originating site facility fee will be paid outside the Diagnostic Related Group (DRG) payment.

~~(C) FQHCs and RHCs:~~ The originating site facility fee for telemedicine services is not an FQHC or RHC service. When an FQHC or RHC serves as the originating site, the originating site facility fee is paid separately from the center or clinic all-inclusive rate.

~~(D) Facilities of the Indian Health Service, tribal facilities or Urban Indian Clinics:~~ When an I/T/U serves as the originating site, the originating site facility fee is reimbursed outside the OMB rate.

~~(E) Physicians'/practitioners' offices:~~ When the originating site is a physician's office, the originating site facility fee will be paid according to the SoonerCare fee schedule. If a provider from the originating site performs a separately identifiable service for the member on the same day as telemedicine, documentation for both services must be clearly and separately identified in the member's medical record.

~~(2)~~(1) Services provided by telemedicine must be billed with the appropriate modifier. Only the portion of the telemedicine service rendered from the distant site is billed with the modifier. Coding and billing the appropriate modifier with a covered telemedicine procedure code, the distant site provider and/or practitioner certifies that the member was present at the originating site when the telemedicine service was furnished.

~~(3)~~(2) If the technical component of an X-ray, ultrasound or electrocardiogram is performed at the originating site during a telemedicine transmission, the technical component ~~and a telemedicine facility fee~~ are billed by the originating site can be billed by the provider that provided that service. The professional component of the procedure and the appropriate visit code are billed by the distant site should be billed by the provider that rendered that service.

~~(4)~~ Reimbursement for telemedicine services is available only when the originating site is located in a geographic area where there is a lack of medical/psychiatric/behavioral health expertise and the distance from the originating and distant site is greater than 20 miles apart, with few exceptions. The OHCA

~~may make an exception to this requirement based on geographic limitations and service constraints. The OHCA has discretion and the final authority to approve or deny any telemedicine services based on agency and/or SoonerCare members' needs. Services are not reimbursable when provided primarily for the convenience of the provider. Adequate documentation must be maintained as service is subject to post payment review. Post payment review may result in adjustments to payment when a telemedicine modifier is billed inappropriately or not billed when appropriate.~~

~~(5)(3) The cost of telemedicine equipment and transmission is not reimbursable by SoonerCare.~~

~~(h)(b) **Documentation.**~~

~~(1) Documentation must be maintained at the originating and the distant locations by the rendering provider to substantiate the services provided rendered.~~

~~(2) Documentation must indicate the services were rendered via telemedicine, and the location of the originating and distant sites, and which OHCA approved network was used services.~~

~~(3) All other SoonerCare documentation guidelines apply to the services rendered via telemedicine. 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.~~

~~(i) **Telemedicine network standards.** In order to be an approved telemedicine network, an applicant must be contracted with the OHCA and meet certain technical and privacy standards stated within the contract in order to ensure the highest quality of care. Contracted networks must complete HIPAA Security Risk and Mobile Device Analysis associated with remote access to, and offsite use of, Electronic Protected Health Information (ePHI). Networks must develop and implement risk management measures to assure the safeguard of ePHI. The OHCA has discretion and the final authority to approve or deny any telemedicine network based on agency and/or SoonerCare members' needs.~~

~~(j) **Telemedicine provider responsibilities.** Providers must adhere to privacy standards for the confidentiality, integrity, and security of ePHI. Privacy standards include but are not limited to the following:~~

~~(1) Complying with Health Insurance Portability and Accountability Act (HIPAA) and security protection for the member in connection with the telemedicine communication and related records.~~

~~(2) Submitting a Mobile Device Security Assessment to the OHCA Provider Enrollment Unit, to assure that SoonerCare members' ePHI will not be compromised. Providers are required to attest to compliance with applicable provisions of HIPAA and submit one of the following:~~

~~(A) A completed OHCA Provider HIPAA Mobile Device Security Assessment form; or~~

~~(B) A copy of the provider's most recent HIPAA Security Assessment, mobile device section only, with any risk compromising wording redacted.~~

~~(3) Obtaining and maintaining technology used in the telemedicine communication that is compliant with privacy and security standards in HIPAA, and OHCA Provider and Network Contracts.~~

~~(4) Ensuring policies and procedures are in place to prevent a breach in privacy or exposure of patient health information or records to unauthorized persons.~~

~~(5) Maintaining clinical documentation.~~

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