



# Telehealth in Oklahoma during COVID-19

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April 1, 2020 for Project ECHO, Updated 4/15/2020*

## Federal or National Policy

### Practice Guidelines

- American Medical Association Practice Guidelines<sup>i</sup>
- American Osteopathic Association Practice Guidelines<sup>ii</sup>
- American Nurses Association<sup>iii</sup>
- American Academy of Pediatrics<sup>iv</sup>

### Federal Communications Commission

- Chairman Pai Announces Plan for \$200 Million COVID-19 Telehealth Program<sup>v</sup>

### Reimbursement – Medicare

- The federal CARES Act permits FQHCs and RHCs to serve as distant sites to provide telehealth services to patients in their homes and other eligible locations during this emergency period. The legislation will reimburse FQHCs and RHCs at a rate that is similar to payment for comparable telehealth services under the physician fee schedule.<sup>vi</sup>

CMS is expanding access to telehealth in the following ways for the duration of the COVID-19 pandemic:<sup>vii</sup>

- Allowing the provision of evaluation and management services via audio-only phones.
  - **CAUTION:** Audio only can count as a telehealth visit under Medicare. This is not always true under state law or commercial insurance.

- Allowing practitioners to render telehealth services from their home, without reporting their home address on their Medicare enrollment, while continuing to bill from their currently enrolled location;
  - Example of Medicare billing for nursing homes: The clinician bills under the medical fee schedule and not the nursing home as a facility.
- Paying for more than 80 additional services when furnished via telehealth, including emergency department visits;
- Allowing physicians to provide “virtual check-ins” to new as well as established patients;
  - New patients are permitted for Medicare telehealth visits and are not being audited for existing physician patient relationship.
- Allowing clinicians to provide remote patient monitoring services for acute conditions, whether for COVID-19 or for another condition;
- Allowing telehealth to fulfill many face-to-face visit requirements for patients in inpatient rehabilitation facilities, home health and hospice;
- Allowing a physician determination that a Medicare beneficiary should not leave home because of a medical reason or COVID-19 to satisfy the home health “homebound” requirement; and
- Allowing hospice recertifications to be completed via telehealth rather than a face-to-face visit.

Medicare Physician Fee Schedule should be consulted.<sup>viii</sup>

### **HIPAA Privacy Standards Waived**

On March 17, the U.S. Department of Health and Human Services (HHS) Office of Civil Rights (OCR) [announced](#) that it would exercise its enforcement discretion and not penalize providers who make good faith use of platforms that normally would not meet HIPAA privacy standards to provide telehealth care. A subsequent [HHS OCR frequently asked question \(FAQ\) document](#) provides further details of this discretion and expectations at this time.

- The HHS Office for Civil Rights has clarified HIPAA compliance in light of the recent announcement that they will exercise “enforcement discretion” and waive penalties for certain uses of non-HIPAA-compliant technology in telehealth encounters.
- The statement highlights the difference between a HIPAA-covered health care provider using telehealth services during the pandemic *versus* an insurance company that reimburses for telehealth services. The first is exempt from HIPAA penalties while the second is not.
- The statement further defines telehealth to also include internet-based platforms, audio-only communications, text messaging, and other forms of communication.
- Additionally, “non-public facing” remote communication platforms are covered but public-facing products, like Facebook Live and TikTok, do not fall under acceptable methods.
- In the event of an interception during a telehealth interaction, OCR will not impose a penalty outright but will consider all the facts and circumstances of good faith telehealth interactions and the provider’s level of compliance with OCR standards.

- For mental health and substance abuse: SAMSA guidance for bona fide medical emergency will allow provider discretion to share information for particular individuals.

Prediction: The COVID-19 pandemic will change how consumers expect to interact with their providers and will force a change in HIPAA.

### Prescribing of Medications DEA – Ryan Haight Act:

- The Federal Controlled Substances Act (CSA) 21 U.S.C § 801 et seq. set up five schedules for assignment to a controlled dangerous substance (CDS) category.
- DEA (DOJ) registration required for prescribing: 21 U.S.C. § 1301 et seq. Requirements for prescribing CDS.
- Amendment to CSA: A practitioner who has a DEA registration may not write for CDS for a patient one has not examined in person. 21 U.S.C. § 829(e).
  - The patient must have a valid prescription from someone who has examined the patient in person or someone providing coverage of the practice.
- January 31, 2020, Sec. Azar declared a public health emergency triggering the exception for the in-person requirement to the Ryan Haight Act. The acting DEA administrator concurred on March 15, 2020.

**Oklahoma Warning:** In Oklahoma, you **cannot** establish a physician patient relationship solely for the purposes of prescribing opioids and other CDS. Title 59 Okla. Stat. §478.1

Complying with the law federally is great, but state law must also be complied with by the prescriber.

### Commercial Payer Policies – National

- The AMA compiled resources to help track expanding coverage for telemedicine services. You can also check with your local state medical association or society for more information.
  - **Blue Cross Blue Shield** - [Coronavirus updates: Coverage of testing for members and access expansion to care](#)
  - **Humana** - [Patient responsibility: Waiving member cost share for COVID-19 and urgent care telehealth visits](#) and [How Humana is caring for members](#) (telemedicine cost waived for urgent care needs for next 90 days, online member support, etc.)
  - **Molina Health** - [COVID-19 provider notification](#): Molina Health is waiving co-pays and cost sharing for tests, as well as offering \$0 co-pay and cost share for participating in telemedicine visits for any diagnosis until May 1, 2020.

- **UnitedHealthcare - [Provider Telehealth Policies](#)**: UnitedHealthcare is expanding telehealth services policies to cover Medicare Advantage, Medicaid and commercial members through June 18, 2020 at this time.

### **Vendors and Tracking of COVID patients**

- Example – [Mobile Angel](#)

## **Oklahoma-Specific Policies on Telemedicine**

### **AG Opinion on Telemedicine 2020 OK AG 7 Decided 3/24/2020:**

- Licensed physicians in Oklahoma are allowed to practice telemedicine.<sup>ix</sup>
- Question: What restrictions are imposed by Oklahoma law on the use of telemedicine by health professionals responding to the COVID-19 pandemic?<sup>x</sup>
- On the most basic level, physicians must still be licensed to practice in Oklahoma, and they must still inform patients of and receive from patients the most fundamental of identifying information, location, and credentials.

### **OHCA Reimbursement**

OHCA has expanded the use of telehealth and telephonic services during the COVID-19 National/State Emergency.<sup>xi</sup>

### **Governor Stitt Executive Order 2020-07 6<sup>th</sup> Amendment, March 29, 2020 and EO 2020-13:<sup>xii</sup>**

- Clarifies telemedicine for face-to-face visits;
- Deemed licensed to practice in Oklahoma;
  - This shall only apply to Medical (MD) and Allied Licenses by the Board of Medical Licensure and Supervision, Licenses issued by State Board of Osteopathic Examiners and Licenses and Certificates issued by the Board of Nursing.
- Licensure: One day licensure with most medical boards or temporary licensure. In some instances, licensure is not limited to just telemedicine practice (OBMLS).

### **Oklahoma Insurance Department - Bulletin No. 2020-02<sup>xiii</sup> re: health insurance companies and payment**

- **Blue Cross of Oklahoma Announcement<sup>xiv</sup>** – BCBS of Oklahoma will temporarily lift cost-sharing for medically necessary medical and behavioral health services delivered via telemedicine in response to the COVID-19 public health emergency. BCBS is also delivery model neutral.

**Coming soon:** Oklahoma Bureau of Narcotics and Dangerous Drugs FAQ on DEA

## Telemedicine Fixes Requested in Oklahoma for Gov. Stitt future Executive Order:

- All health care licensure boards, as long as the Executive Order 2020-07 is in effect, shall provide proper guidelines to licensees under its jurisdiction to incorporate teletherapy platform.<sup>xv</sup>
- Payment parity to telemedicine for face-to-face for same specialty and use of appropriate modifiers.
- All health insurance carriers shall not require specific platforms for providers and facilities to perform telemedicine services for the insureds.
- Health carriers shall waive any cost sharing for:
  - COVID-19 laboratory tests
  - in-network provider office visit
  - in network urgent care visit when testing for COVID-19
  - telehealth co-payments for insureds and reimburse the provider for the copayment *as COVID-19 is a communicable disease and insured should be encouraged to use telemedicine when possible.*
- Health insurance carriers shall use the same established CPT codes.

## Additional Resources:

**CMS Fact Sheet** <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/TelehealthSrvcsfctsht.pdf>

**Center for Telehealth and ELaw** <http://ctel.org/2020/03/humana-announces-new-telehealth-standards-for-covid-19-response-and-more-telehealth-buzz/> Also hosting webinars.

**Center for Connected Health Policy** <https://www.cchpca.org/resources/covid-19-telehealth-coverage-policies>

## Oklahoma Hospital Association

[https://www.okoha.com/OHA/Hotline/2020/March 20/Medicare and Medicaid announce new telehealth payments for COVID-19 .aspx](https://www.okoha.com/OHA/Hotline/2020/March_20/Medicare_and_Medicaid_announce_new_telehealth_payments_for_COVID-19.aspx)

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<sup>i</sup> <https://www.ama-assn.org/practice-management/digital/ama-quick-guide-telemedicine-practice>

<sup>ii</sup> <https://osteopathic.org/wp-content/uploads/COVID-19-practice-guide.pdf>

<sup>iii</sup> <https://www.nursingworld.org/practice-policy/advocacy/telehealth/>

<sup>iv</sup> <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/aap-guidance-telehealth-payer-policy-in-response-to-covid-19/>

<sup>v</sup> <https://docs.fcc.gov/public/attachments/DOC-363381A1.pdf>

<sup>vi</sup> Subject to a section 1135 emergency declaration, this legislation will waive the Section 1834(m) restriction on FQHCs and RHCs that prohibits them from serving as distant sites. Specifically, during the emergency period, FQHCs and RHCs will be able to serve as distant sites to provide telehealth services to patients in their homes and other eligible locations. The legislation will reimburse FQHCs and RHCs at a rate that is similar to payment for comparable telehealth services under the physician fee schedule. <https://www.aha.org/special-bulletin/2020-03-26-senate-passes-coronavirus-aid-relief-and-economic-security-cares-act>

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vii CMS is waiving the provisions related to telemedicine at 42 CFR §482.12(a)(8)–(9) for hospitals and §485.616(c) for CAHs, making it easier for telemedicine services to be furnished to the hospital’s patients through an agreement with an off-site hospital. This allows for increased access to necessary care for hospital and CAH patients, including access to specialty care. <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf> [Download specific COVID-19 coding scenarios.](#)

viii <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>

ix See Title 59 Okla. Stat. Section 478.1 and Title 36 Okla. Stat. Section 6803(A).

x <https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=486491>

xi <https://www.okhca.org/providers.aspx?id=112> Scroll down to March 17, 2020

“The Oklahoma Health Care Authority is allowing expanded use of telehealth beginning March 16, 2020 through April 30, 2020 for services that can be safely provided via secure telehealth communication devices for all SoonerCare members. OHCA will assess the status of the COVID-19 situation toward the end of April to determine if the expansion should be continued. Providers will continue to meet the requirements of OAC 317:30-3-27 in delivering telehealth services and must submit claims using the GT modifier. Additionally, the use of telephonic services (non face-to-face) may be utilized in instances when the SoonerCare member does not have access to telehealth equipment, the service is necessary to the health and safety of the member, and the service can safely and effectively be provided over the telephone. For providers who bill E&M codes, the codes for telephonic services are 99441, 99442 and 99443. Other healthcare professionals can bill using 98966, 98967 and 98968.

Providers are encouraged to create internal policies and procedures regarding the use of telehealth during a national/state emergency so that all staff understand its appropriate use during this time. Documentation in the client’s record should either reference the provider’s internal policy or otherwise indicate why telehealth was utilized if the service was not reimbursed via telehealth prior to March 16, 2020.

xii Number 11 <https://www.sos.ok.gov/documents/executive/1924.pdf> and Number 14 in

<https://www.sos.ok.gov/documents/executive/1930.pdf> “Telemedicine shall be used to maximum potential and shall be allowed for non-established patients for the purposes of the COVID-19 response. The preexisting patient relationship requirement for telemedicine, as required by 59 O.S. §478.1, only applies to the prescribing of opiates and other controlled dangerous substances. 59 O.S. §478.1 already allows the physician to see patients using telemedicine without the prior establishment of the physician patient relationship. Nothing in this Order shall waive 59 O.S. §478.1 (C) for the purpose of prescribing opiates and other controlled dangerous substances reference therein.”

xiii <https://www.oid.ok.gov/lh-bulletin-no-2020-02/>

xiv <https://www.bcbsok.com/company-info/alerts-announcements/alerts-announcements?lid=k7sxor5p>

xv Recommendation: All health care licensure boards, as long as the Executive Order 2020-07 is in effect, shall provide proper guidelines to licensees under its jurisdiction to incorporate teletherapy platform to: (1) avoid a break in treatment, (2) avoid cross contamination by keeping both patients and practitioners safe and prevent spread of the virus; and (3) avoid closing the medical practice altogether. Title 36 Okla. Stat. Section 6803 already provides for consumer parity where the an in-person service is covered. This issue of payment parity was not addressed in OID Bulletin 3-17-2020. See CMS Guidance March 23, 2020.