

Publications

Health Care Alert: Ohio Releases Emergency Rules Increasing Access to Telehealth

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CLIENT ALERT | 3.20.2020

As we reported [last evening](#), Governor DeWine issued [Executive Order 2020-05D](#) which paved the way for the Ohio Department of Medicaid (ODM) and the Ohio Department of Mental Health and Addiction Services (OMHAS) to issue emergency telehealth rules. These rules, issued early this afternoon, expand and enhance access to telehealth services. The effective date is March 9, 2020, the date the Governor declared an emergency, and the rules will continue in effect for 120 days, or upon the formal adoption of the rules through the normal JCARR process, whichever is sooner.

The Medicaid rule, O.A.C. 5160-1-21, supersedes the telehealth rule formerly found at O.A.C. 5160-1-18. Both new and established patients may be provided telehealth services under the rule, and no initial face-to-face visit is required to initiate these services. The new rule allows for direct delivery of services through synchronous, interactive, real-time electronic communication, as well as asynchronous communication, such as telephone calls, images transmitted by facsimile, and e-mail.

Eligible Provider Types

The following provider types may render services through telehealth under the ODM emergency rule:

- Physician
- Psychologist
- Physician Assistant
- Clinical Nurse Specialist
- Certified Nurse Midwife
- Certified Nurse Practitioner
- Licensed Independent Social Worker
- Licensed Independent Marriage and Family Therapist
- Licensed Professional Clinical Counselor

- Licensed Independent Chemical Dependency Counselor
- Supervised practitioners and supervised trainees (as defined in O.A.C. 5160-8-05)
- Audiologist and audiology aides
- Occupational Therapist and Occupational Therapist Assistant
- Physical Therapist and Physical Therapist Assistant
- Speech Language Pathologist and Speech Language Pathology Aides
- Individuals holding conditional licenses (as defined in O.R.C. 4753.01)
- Medicaid School Program (MSP) Practitioners
- Dietitians
- Other participating and non-participating providers delivering services in the managed care or fee for service programs as designated by the Ohio Medicaid Director.

Telehealth Services Reimbursable by Ohio Medicaid

Payment may be made by Ohio Medicaid only for the services identified in the ODM rule, which are the following:

- Evaluation and management of a new patient described as “office or other outpatient visit” with medical decision making not to exceed moderate complexity
- Evaluation and management of an existing patient described as “office or other outpatient visit” with medical decision making not to exceed moderate complexity
- Inpatient or office consultation for a new or established patient when timeliness of care other than by telehealth is not possible.
- Mental health or substance use disorder services describes as “psychiatric diagnostic evaluation” or “psychotherapy”
- Remote evaluation of recorded images or video by an established patient
- Virtual check-in by a physician or other qualified health care professional who can report evaluation and management services, provided to an established patient
- Online digital evaluation and management service for an established patient
- Remote patient monitoring
- Audiology, speech-language pathology, physical therapy and occupational therapy
- Medical nutrition services
- Lactation counseling by dietitians
- Psychological and neuropsychological testing
- Smoking and tobacco use cessation counseling
- Developmental test administration
- Other services as designated by the Medicaid Director.

Billing for Medicaid Telehealth Services

All of the provider types listed above may bill Medicaid for these telehealth services, **except** the following:

- Supervised practitioners (licensed professional counselor, licensed social worker, licensed marriage & family therapist, licensed chemical dependency counselor II, licensed chemical dependency counselor III)
- Supervised trainees (registered counselor trainee, registered social worker trainee, marriage & family therapist trainee, chemical dependency counselor assistant, individuals registered with the Ohio Board of Psychology as assistant, psychology assistant, psychology intern, psychology fellow or psychology resident)
- Occupational Therapist Assistant
- Physical Therapist Assistant
- Speech-Language Pathology Aide
- Audiology Aide
- Individuals holding conditional licenses (as defined in O.R.C. 4753.01)

Additionally, the following providers may bill Medicaid for telehealth services:

- Professional Medical Groups
- Federally Qualified Health Centers or Rural Health Clinics
- Ambulatory Health Care Centers
- Outpatient hospitals
- Medicaid School Program providers
- Other participating and non-participating providers delivering services in the managed care FFS programs as designated by the Medicaid Director.
- OMHAS certified providers (more information may be found below)

Incorporation of HIPAA-Related Directives

Ohio has adopted the HIPAA-related directives issued by the U.S. Department of Health & Human Services Office for Civil Rights, which were issued in response to the COVID-19 national emergency. For more information on OCR's HIPAA recent pronouncements, please see our [prior alert](#). To this end, the ODM rule provides the following:

- Providers can use audio or video non-public facing remote communication products that are available to communicate with patients.
- Facebook Live, Twitch, TikTok and similar public facing applications should NOT be used
- Providers are encouraged to notify patients that these applications potentially introduce privacy risks and should use encryption where available.

- Providers should exercise professional judgment in the use of telehealth for examinations.

Behavioral Health care Services

With respect to behavioral health care services in particular, the ODM rule permits entities certified by OMHAS to provide services to both new and established patients through telehealth, with no requirement for an initial in-person, face-to-face visit. Additionally, assertive community treatment (ACT), intensive home-based therapy (IHBT), therapeutic behavioral health services (TBS), psychosocial rehabilitation (PSR), and behavioral health crisis intervention, may all be delivered by telehealth. Further, OMHAS certified community behavioral health centers that have previously rendered peer recovery support services as evidenced by a claim submitted to ODM or a Medicaid managed care plan with a date of service prior to the effective date of the rule may use telehealth to deliver peer recovery support services.

For its part, OMHAS amended its interactive video conferencing rule – O.A.C 5122-29-31. Under this emergency amendment, “teleconferencing” now includes real time audiovisual communications, telephone calls, images transmitted through fax, and email. Both new and established patients may be provided with services through these methods. The rule states that the following services may be provided in this manner:

- General Services defined in O.A.C. 5122-29-03
- CPST services
- Therapeutic behavioral services and psychosocial rehabilitation services
- Peer Recovery services
- SUD Case management services
- Crisis Intervention
- Assertive community treatment
- Intensive home based treatment

Importantly, OMHAS requires the progress note documentation to reflect that the service was conducted by telehealth. Prior to providing the services, the provider must be sure to describe the potential risks associated with receiving services by telehealth, and document that the client was provided with the risks and agreed to assume those risks.

Vorys is continuing to monitor the COVID-19 outbreak and related guidance to clients in the health care industry. We strongly urge providers to continually monitor developments that pertain to your specific organization. If you have questions about COVID-19 or its impact on your organization, please contact Suzanne Scrutton, Jolie Havens, Liam Gruzs, Robin Canowitz, Robin Amicon, or Mairi Mull.

The amended O.A.C. 5122-29-31 can be found here: <http://www.registerofohio.state.oh.us/rules/search/details/312399>

The emergency Medicaid rule (O.A.C. 5160-1-21) can be found here: http://www.registerofohio.state.oh.us/pdfs/5160/0/1/5160-1-21_PH_EM_NE_RU_20200320_1032.pdf

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We are taking significant steps to ensure we remain proactive during this extremely fluid environment. The business and legal challenges our clients are facing are changing each day.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).