

## **Emergency Rules Expand Access to Behavioral Health Services Using Telehealth**

The Ohio Departments of Mental Health and Addiction Services and Medicaid, in partnership with the Governor's Office, have developed emergency rules to expand and enhance telehealth options for Ohioans and their providers. These rules will relax regulations so that more people can be served safely in their homes rather than needing to travel to addiction and mental health treatment centers. This is a regulatory change that we are collectively rolling out to help reduce risk of exposure to COVID-19 for patients, their families, and our behavioral health workforce which is an important part of the emergent response and community support to COVID-19.

Governor DeWine's Emergency Order can be found here:

<https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/executive-order-2020-05d>

The OAC rules for OhioMHAS and ODM can be found here:

- OhioMHAS: <http://www.registerofohio.state.oh.us/rules/search/details/312399> and
- ODM: [http://www.registerofohio.state.oh.us/pdfs/5160/0/1/5160-1-21\\_PH\\_EM\\_NE\\_RU\\_20200320\\_1032.pdf](http://www.registerofohio.state.oh.us/pdfs/5160/0/1/5160-1-21_PH_EM_NE_RU_20200320_1032.pdf)

### **Summary of Emergency Rule Provisions**

OhioMHAS's emergency rule creates additional flexibilities in the agency's regulations governing interactive videoconferencing. ODM's emergency rule creates a new Medicaid telehealth rule that governs reimbursement policies for Medicaid providers rendering services through telehealth. Emergency rules do not follow the typical OAC rule review process because they are necessary to preserve the health and safety of the general public. Both rules will be in effect for 120 days and become effective on March 9, 2020, the date the Governor declared an emergency to exist.

ODM and OhioMHAS are implementing these emergency rules to expand access to medical and behavioral health services using telehealth. This action is being taken to give healthcare providers maximum flexibility as they shift as many services as possible away from in-person visits. In addition, to increasing access to care, these rules seek to also reduce pressure on Ohio hospitals. Specifically, the rules do the following:

#### ***OhioMHAS Emergency Rule 5122-29-31 Interactive videoconferencing***

- Allows the definition of "interactive videoconferencing" to include asynchronous activities that do not have both audio and video elements. Some examples of these asynchronous activities include telephone calls, images transmitted via facsimile machine, and electronic mail.
- Allows both new and established patients to receive services through interactive videoconferencing, and explicitly states that no initial face to face visit is necessary to initiate telehealth services.
- Adds new behavioral health services that can be delivered via interactive videoconferencing, include peer recovery, SUD case management, crisis intervention, assertive community treatment (ACT), and Intensive Home-Based Treatment (IHBT) services.
- Prior to consolidation of the ODADAS and ODMH rules, SUD case management could be provided via interactive videoconferencing. While this rule is temporary, the inclusion of SUD case management will be made permanent as soon as possible and any provider who provided SUD case management by interactive videoconferencing during the omission period will be held harmless.

- Incorporates by reference the Office of Civil Rights' Notification of HIPAA Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency.

### ***ODM Emergency Rule 5160-1-21 Telehealth during a state of emergency***

- Incorporates by reference the Office of Civil Rights' Notification of HIPAA Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency.
- Removes certain Medicaid coverage and billing restrictions for specific behavioral health services including Assertive Community Treatment (ACT), Intensive Home-Based Treatment (IHBT), therapeutic behavioral services (TBS), psychosocial rehabilitation (PSR), behavioral health crisis intervention services, and peer recovery support services.

### **Medicaid Behavioral Health Services Available Using Telehealth**

With the emergency rule in effect, OhioMHAS certified entities can bill Medicaid for delivering the following services via telehealth. All the Medicaid changes apply to Medicaid fee-for-service (FFS), Managed Care Plan (MCP), and MyCare Ohio Plan (MCOP) services.

- Evaluation and management of new and existing patients
- Psychiatric diagnostic evaluation
- Psychotherapy (individual, group, and family)
- Psychological testing
- Smoking cessation
- Community psychiatric supportive treatment (CPST)
- Therapeutic Behavioral Services (TBS) and psychosocial rehabilitation (PSR)
  - Please note: TBS group service – hourly and per diem, as defined in 5160-27-06, is *not* included in the list of services that can be billed to Medicaid when delivered via telehealth.
- RN and LPN nursing services
- SUD assessment
- SUD counseling (individual, group, intensive outpatient group, and partial hospitalization group)
- SUD case management
- Assertive community treatment (ACT)
- Intensive home-based therapy (IHBT)
- Peer recovery support
- Behavioral health crisis intervention
- SBIRT (screening, brief intervention and referral to treatment)
- Practitioner services rendered to individuals in SUD residential treatment
- Specialized Recovery Services (SRS)
- All associated add on codes
- **TBS group service – hourly and per diem (added per [Mar. 31 MITS Bits](#))**

Outpatient hospital behavioral health (OPHBH) services will be allowed to the same extent they are allowed for OhioMHAS-certified providers.

**Practitioner and Patient Site Locations** There will be no limitations on practitioner or patient site locations for Medicaid reimbursable services delivered via telehealth with the exception of patients who are located in a penal facility or a public institution as defined in rule 5160:1-1-03 of the Administrative Code

## Allowable Telehealth Delivery Methods

Through the emergency rules, ODM and OhioMHAS are permitting the use both synchronous and asynchronous communications involving any combination of audio, video, and text.

Paragraph (P) (2) of the OhioMHAS rule and paragraph (C) of Medicaid's emergency rule incorporates 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 by reference. At the time this FAQ is being issued, OCR's "[Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency](#)" says 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.

## Medicaid Claims Submission

Medicaid and the Medicaid Managed Care Plans (MCPs) and MyCare Ohio Plans (MCOPs) will be working expeditiously to configure the emergency rule's changes in their respective claim processing systems (system changes) in a consistent manner to ease administrative burden on providers. ODM will be announcing a future implementation date for system changes to support telehealth services that will be the same for Medicaid fee-for-service claims submission, MCPs, and MCOPs.

Prior to the implementation date for the system changes, providers may either hold claims until the system changes are implemented or submit claims for telehealth services using existing billing guidance. **If providers choose to submit claims for telehealth service prior to implementation of the system changes, please note the it is very important for providers to continue to use the existing billing guidance.** For example, providers **should NOT** add the GT modifier to services that are being added as new telehealth services under the emergency rules. If the GT modifier is added to the new services prior to the implementation date of the system changes claims may be denied. Additionally, until the system changes are made, providers should continue to use allowable place of service codes in existing billing guidance when submitting claims. Providers must maintain documentation of services delivered via telehealth prior to and after the system changes are made.

After the system changes are implemented, to the extent possible, providers should comply with the new billing guidance for telehealth services. Providers should maintain documentation to support any exceptions to the billing guidance necessary to maintain access to services to individuals during the emergency.

## Questions

For questions related to changes to OhioMHAS interactive videoconferencing policy as well as questions related to clinical and technical implementation of telehealth, please e-mail [COVID19BHTelehealth@mha.ohio.gov](mailto:COVID19BHTelehealth@mha.ohio.gov).

Questions about the Medicaid coverage, billing, and reimbursement under the new policy can be submitted to [BH-Enroll@medicaid.ohio.gov](mailto:BH-Enroll@medicaid.ohio.gov).

ODM and OhioMHAS staff will offer training and technical assistance related to the rules via webinar to any interested parties. OhioMHAS will also be providing training and technical assistance on the clinical and technical implementation of telehealth. Additional information on the ODM/OhioMHAS rules webinar and the OhioMHAS clinical and technical implementation technical assistance opportunities will be forthcoming. Resources related to telehealth may be found at <http://mha.ohio.gov/coronavirus> .