

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-1-18

Rule Type: New

Rule Title/Tagline: Telehealth.

Agency Name: Ohio Department of Medicaid

Division:

Address: 50 Town St 4th floor Columbus OH 43218-2709

Contact: Tommi Potter **Phone:** 614-752-3877

Email: tommi.potter@medicaid.ohio.gov

I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?**
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5164.02, 5164.95
5. **What statute(s) does the rule implement or amplify?** 5164.02, 5164.95
6. **What are the reasons for proposing the rule?**

Rule 5160-1-18, entitled "Telehealth" is a new rule that is being proposed to replace the existing rule of the same number and title that is being proposed for rescission. This new rule expands existing telehealth provisions and resulted in changes to more than fifty per cent of the existing rule language.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This new rule provides definitional information, identifies eligible rendering and billing providers, identifies covered telehealth services, and provider responsibilities for

services rendered using telehealth and payment for telehealth services. It includes the same provisions as rule 5160-1-18 that is being proposed for rescission with the following exceptions:

This new rule expands the definition of telehealth to include the following asynchronous activities that do not have both audio and video elements: telephone calls, remote patient monitoring, and communication through secure electronic mail or a secure patient portal.

This new rule expands the type of practitioners eligible to render services using telehealth to include supervised practitioners such as trainees and aides, Medicaid school program (MSP) providers, audiologists, speech-language pathologists, occupational therapists, physical therapists, home health and hospice aides, private duty nurses working in a home health or hospice setting, dentists, dietitians, behavioral health practitioners, and optometrists. This rule provides fewer restrictions on patient and practitioner site locations.

This new rule identifies the provider types eligible to bill for services rendered through telehealth and sets forth provider responsibilities when providing and billing for services delivered through telehealth. To the current list, it adds professional dental groups, outpatient hospitals on behalf of licensed psychologists and independent behavioral health practitioners, Medicaid school program (MSP) providers, private duty nurses, home health and hospice agencies, behavioral health provider agencies, and hospitals operating an outpatient hospital behavioral health program. It exempts the following practitioners from eligibility to bill for services rendered through telehealth: supervised practitioners and supervised trainees, occupational therapy assistants, physical therapy assistants, speech-language pathology aides, audiology aides, and individuals holding a conditional license. It removes active patient requirements and replaces it with modified provisions to state that when a patient is seen for a period longer than twelve consecutive months through telehealth, the patient is expected to have at least one in-person annual visit by the telehealth practitioner or practice, or by the individual's usual source of clinical care.

This new rule expands the services that may be paid for when delivered using telehealth to include the following services: remote evaluation of recorded video or images submitted 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 services for an established patient, remote patient monitoring, physical therapy, occupational therapy, audiology, speech-language therapy, additional behavioral health services, medical nutrition services, lactation counseling provided by dietitians, psychological and neuropsychological testing, smoking and tobacco cessation

counseling, developmental test administration, oral evaluations provided by dentists, hospice, state plan home health, dialysis related services, services under the Specialized Recovery Services (SRS) program, and optometry services. The appendix to this rule has been expanded to include additional procedure codes reflecting services added to telehealth under this proposed rule.

This new rule provides requirements for claims submitted for health care services utilizing telehealth. This rule requires the claim to include a "GT" modifier, a place of service code that reflects the physical location of the treating practitioner, and a modifier as identified in the appendix to reflect the physical location of the patient. This new rule allows for a facility claim to be submitted by an outpatient hospital for telehealth services delivered by licensed psychologists and independent behavioral health practitioners.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule incorporates one or more references to another rule or rules of the Ohio Administrative Code. This question is not applicable to any incorporation by reference to another Ohio Administrative Code rule because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(d).

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation reference to the Ohio Revised Code because such reference is exempt from compliance with RC 121.71 to 121.74 pursuant to RC 121.75(A)(1)(a).

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

In direct response to testimony and comments received from stakeholders, the Department is making the following revisions to the proposed telehealth rule 5160-1-18:

Paragraph (A)(3): The definition of telehealth is modified to clarify that telehealth involves the patient and is the direct delivery of health care services to a patient related to diagnosis, treatment, and management of conditions.

Paragraph (A)(3)(c): added a reference to the definition of telehealth for OhioMHAS certified providers in 5122-29-31.

Paragraph (A)(3)(d): added clarification that conversations between practitioners without the patient present is not considered telehealth unless the service would allow billing for practitioner to practitioner communication in a non-telehealth setting.

Paragraph (B)(1): added (q) which allows other practitioners if specifically authorized in rule promulgated under Agency 5160 of the Administrative Code.

Paragraph (B)(1)(g): Added reference to supervised practitioners in 5160-4-05 allowing residents to provide telehealth services.

Paragraph (C)(2): added language "and accepted standards of clinical practice"

Paragraph (C)(4): modified language to clarify provider responsibilities when an individual receives telehealth services over a prolonged period of time.

Paragraphs (E)(1) and (E)(2): Clarified that either an institutional or professional claim may be submitted for services delivered through telehealth. Also clarified that hospitals can bill on behalf of any independent practitioner who is not eligible to separately bill when practicing in an outpatient hospital setting.

Paragraph (E)(10): added clarification related to procedure codes and reimbursement for services.

Appendix A: Corrected an OAC reference and added procedure codes 97542, 90849, and 90853

The Department provided additional clarification related to agency expenditures in question 11 of the RSFA.

II. Fiscal Analysis

11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.

This will increase expenditures.

\$12,500,000

This rule is expected to increase expenditures by \$12.5 million for the remainder of the biennium however over the long term, it is expected to result in savings. As

individuals have easier access to care through telehealth, the Department anticipates expenditures related to transportation and emergency department use will decrease.

12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?

There is no estimated cost of compliance.

13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No

14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No

15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

This rule does not impose regulation fees.

III. Common Sense Initiative (CSI) Questions

16. Was this rule filed with the Common Sense Initiative Office? No

17. Does this rule have an adverse impact on business? No

A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No

B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

C. Does this rule require specific expenditures or the report of information as a condition of compliance? No

D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

A. How many new regulatory restrictions do you propose adding? 3

(E)(9)(a) Claims for telehealth must include a "GT" modifier.

(E)(9)(b) A place of service code reflecting the physical location of the practitioner must be included on claims for services delivered through telehealth.

(E)(9)(c) If the patient is in certain locations, a modifier reflecting the location of the patient must be included on claims for services delivered through telehealth.

B. How many existing regulatory restrictions do you propose removing? 0