Texas Continues to Expand Telemedicine and Telehealth Opportunities with New Rule for Occupational Therapy Services

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Support for telemedicine and telehealth services continues to gain traction in Texas, as evidenced by the Texas Health and Human Services Commission's ("**HHSC**") willingness to consider the use of telemedicine services to increase access to care and the adoption of rules allowing for occupational therapy services to be delivered via telehealth ("**Rules**").

Network Adequacy

During the HHSC Medicaid Forum held on June 6, 2016, HHSC released a draft proposal of recommendations to implement new rules issued by the Centers for Medicaid and Medicare Services ("**CMS**") and Senate Bill 760, 84th Legislature. Part of the CMS rules require states to consider a number of specific factors—including the use of telemedicine—when establishing provider access standards. Accordingly, HHSC emphasized its commitment to continuing to research and develop innovative access standards and methods to increase access to care, specifically identifying telemedicine. To develop appropriate standards for such innovative means of delivering care, HHSC requested feedback from stakeholders on these types of services, including recommendations for establishing standards and monitoring the services provided through telemedicine.

Occupational Therapy Services – Adopted Rules

On June 3, 2016, the Texas Board of Occupational Therapy Examiners ("**BOTE**") adopted the Rules to include telehealth as a mode of delivering occupational therapy services. The Rules outline the parameters within which telehealth services may be offered in occupational therapy settings. Specifically, telehealth services must be provided using "visual and auditory, synchronous, real-time, interactive electronic information/communications technologies." Thus, while telehealth occupational therapy need not be provided face-to-face and in-person, telehealth services must still feature simultaneous interactions between the client and the occupational therapy practitioner.

Further, the Rules require that a licensed occupational therapy practitioner still provide and supervise the telehealth services. In particular, the occupational therapist is in charge of making the initial determination on whether any aspect of the occupational therapy services can be conducted via telehealth. However, the initial evaluation for a medical condition can be conducted only in person—not via telehealth. Otherwise, an occupational therapist may provide an evaluation or intervention via telehealth, provided that the therapist has real-time interaction with the client during the process.

The Rules also specify that the occupational therapist must be on-site and present for the initial application of devices requiring sustained skin contact with the client. Finally, while supervising

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occupational therapy aides, the occupational therapist must be able to respond immediately to the needs of the client. While supervising other non-licensed personnel, the occupational therapist must maintain line of sight, even while providing services via telehealth.

The Rules have been adopted amidst Texas' growing support for telemedicine and telehealth services as a method of improving access to healthcare. Earlier this year, the HHSC adopted a new Medicaid rule clarifying that physicians must be reimbursed for telemedicine services provided in certain school-based settings. As the Texas House of Representatives and Senate committee meetings continue to address interim charges related to telemedicine and telehealth services, opportunities for healthcare providers to engage in telemedicine and telehealth services will likely continue to expand.

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[1] The Rules became effective on July 1, 2016. Through these Rules, the Texas Board of Occupational Therapy Examiners ("**BOTE**") adopted amendments to § 362.1, concerning definitions, with changes to the proposed text as published in the March 18, 2016, issue of the Texas Register. *See* 41 Tex. Reg. 4046 (2016) (to be codified at 40 Tex. Admin. Code § 362.1). The BOTE also adopted amendments to § 372.1, concerning provision of services, and § 373.1, concerning supervision of non-licensed personnel and occupational therapy assistants, without changes to the proposed text as published in the March 18, 2016, issue of the Texas Register. The rule will not be republished. *See* 41 Tex. Reg. 2142 (2016), *adopted* 41 Tex. Reg. 4050 (2016) (to be codified as an amendment to 40 Tex. Admin. Code § 372.1); 41 Tex. Reg. 2144 (2016), adopted 41 Tex. Reg. 4052 (2016) (to be codified as an amendment to 40 Tex. Admin. Code § 373.1). To view the adopted Rules, click here.

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