



September 10, 2020

Dear Commissioner Sullivan:

The undersigned mental health provider associations are grateful for TDI's adoption on an emergency basis, and one-time extension on June 24, 2020, of 28 TAC §35.1, concerning Telemedicine and Telehealth Services, including mental health services and conforming to legislative requirements of parity. We appreciate TDI's finding that "the emergency adoption is necessary to ensure adequate access to telemedicine medical and telehealth service in response to the COVID-19 pandemic." The emergency rule has ensured payment for services via telemedicine and telehealth and, in conjunction with the Governor's waiver, allowed providers to use audio-only telephone to support clients without technology or broadband access.

As you know, the pandemic continues, and no vaccine is yet available. The public still requires adequate access to telemedicine medical and telehealth services, both for the protection of the providers and the clients they serve. Our members treat many individuals in need of mental health services who have compromising immune conditions that place them at greater risk of exposure. Their risk can be greatly minimized through telemedicine and telehealth. Texans need continued and consistent access to mental health services especially those grieving lost loved ones, coping with the effects of the virus, dealing with the added stress of students returning to schools or studying online, and facing economic uncertainty. There remains an imminent peril to the public health, safety or welfare due to the virus, and access to telemedicine and telehealth services, including mental health services, remains critical.

We greatly appreciate all that TDI has done to support telemedicine and telehealth during these unprecedented circumstances. However, more is needed to ensure that clients can maintain access to mental health services delivered remotely and covered by insurance. While we understand that the identical rule may not be simply extended again, we ask that a substantially similar, but not identical, proposed rule be considered. A draft is attached for your convenience. We respectfully ask that you immediately adopt this language as a new rule on an emergency basis. It is vital that members of the public in need of mental health services through telemedicine and telehealth be able to receive them without interruption, in the place safest for them, and for providers of telemedicine and telehealth services to be reimbursed for their work.

Sincerely,

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SUBCHAPTER A.
COVID-19 EMERGENCY RULES.
28 TAC §35.1

§35.1. Telemedicine Medical and Telehealth Services.

(a) This section applies to health benefit plans as specified in Insurance Code §1455.002 and §1455.003.

(b) The requirements of this section apply only to a health care service or procedure delivered on or after the effective date of this section.

(c) Words and terms defined in Insurance Code §1455.001 have the same meaning when used in this section. The term "health professional" includes a mental health professional providing services under 22 TAC §174.9.

(d) A health benefit plan must provide coverage for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service or telehealth service on the same basis and to the same extent that the plan provides coverage for the service or procedure in an in-person setting.

(e) A health benefit plan must reimburse a preferred or contracted health professional for providing a covered health care service or procedure to a covered patient as a telemedicine medical service or telehealth service on the same basis and at least at the same rate that the plan is responsible for reimbursement to that health professional for the same service or procedure in an in-person setting.

(f) Notwithstanding subsection (e) of this section, a health benefit plan is not required to pay more than the billed charge on a claim.

(g) Except as provided by Insurance Code §1455.004(c), to the extent §1455.004(c) is not suspended, a health benefit plan may not limit, deny, or reduce coverage for a covered health care service or procedure delivered as a telemedicine medical service or telehealth service based on the health professional's choice of platform for delivering the service or procedure.

(h) For purposes of processing payment of a claim, a health benefit plan may not require a health professional to provide documentation of a health care service or procedure delivered as a telemedicine medical service or telehealth service beyond what is required for the same service or procedure in an in-person setting.

(i) The provisions of this section may not be waived, voided, or nullified by contract.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be within the agency's authority.