

April 4, 2018

## **PUBLIC COMMENT LETTER**

### **Texas Health and Human Services Commission**

Medicaid and CHIP Services Department

Brown-Heatly Building

4900 N. Lamar Blvd.

Austin, TX 78751-2316

*Submitted Electronically: MCDMedicalBenefitsPolicyComment@hhsc.state.tx.us*

Re: Texas Health and Human Services Commission Draft Telemedicine and  
Telehealth Service Medical Policies; Published March 20, 2018.

Dear Sir or Madam:

On behalf of our more than 450 member hospitals and health systems, including rural, urban, children's, teaching and specialty hospitals, the Texas Hospital Association appreciates the opportunity to provide comments on the above-referenced draft policies, published March 20, 2018, to implement Senate Bill 1107, 85<sup>th</sup> Texas Legislature. Texas hospitals have long supported the use of telemedicine and telehealth to increase access to essential health care services and welcome the opportunity to provide the following comments to strengthen and clarify the rules:

1. In both draft policies, the definition of "Patient Site" should make clear that the patient's home is an appropriate patient site. Both draft policies contain lists of "Places of Service" that include the home as a valid place of service. Although a list that includes the home as an acceptable place of service is helpful, such a list is not necessary because a valid place of service includes any location that allows the patient to receive the appropriate standard of care. THA suggests the following change to both policies: "A valid patient site is ~~the~~ any place where a patient is physically located, including the patient's home." See Draft Telemedicine Services Medical Policy at 3111; Draft Telehealth Services Medical Policy at 3091.
2. Both draft policies require the distant site provider to obtain informed consent prior to the delivery of services. THA seeks clarification on how this consent, or any other consent, may be obtained. For example, could consent be written or oral and could the provider simply note such consent in the medical record? THA also seeks clarification on documenting consent in situations where a parent or guardian must consent on behalf of a minor.
3. THA agrees that patients should always be provided guidance on appropriate follow-up care. However, the draft policies should be clear that guidance on appropriate follow-up

care is required when a new practitioner-patient relationship is established through an initial telemedicine encounter under Tex. Occ. Code § 111.005(a)(3).

4. The draft policies state that prior authorization is not required for the provision of telemedicine services, but prior authorization may be required for the use of individual billing or procedure codes. Although certain procedure codes may require prior authorization, SB 1107 struck language conditioning reimbursement for telemedicine services on prior authorization. THA requests a clarifying statement indicating that prior authorization is never required solely because a service is provided through telemedicine.
5. The draft policies require audio and visual fidelity and clarity, and a field of view that is functionally equivalent to an in-person evaluation. THA requests instructions on how a provider should document compliance with this requirement. For example, would the patient's indication that the transmission is adequate and a notation by the provider in the medical record suffice?
6. Paragraph 7 of the Telemedicine Service Medical Policy states: "A valid practitioner-patient relationship exists between the distant site provider and the patient if the distant site provider meets the same standard of care required for an in-person service." This statement omits SB 1107's additional requirements to establish a valid practitioner-patient relationship, which requires compliance with all applicable provisions in Tex. Occ. Code § 111.005.
7. Paragraph 10.1 of the Draft Telemedicine Service Medical Policy states: "A good faith effort must be made to obtain the patient's written acknowledgment, including by email response, of the notice." THA seeks clarification on how a provider should document this effort.
8. Paragraph 28 of the Draft Telemedicine Service Medical Policy indicates that providers may not disclose any information produced during treatment without proper authorization from the patient. THA believes this statement is inaccurate. At a minimum, HIPAA would allow the use of patient health information – without the patient's consent – for treatment, payment, or operations. THA requests a clarifying statement that patient information may be used in any HIPAA-compliant manner.

THA looks forward to working with the Texas Health and Human Services Commission on these policies. Please feel free to contact me with any questions or comments.

Very truly yours,

Cesar J. Lopez  
Associate General Counsel  
(512) 465-1027  
clopez@tha.org