

Behavioral Health Services - Medicaid

The 2 week comment period for the Behavioral Health Services Medicaid medical policies ended June 15, 2022. During this period, HHSC received multiple comments from stakeholders. A summary of comments relating to the proposed policies and HHSC's responses follow.

Policy Comment Responses

- 1. Comment:** Some stakeholders expressed support and appreciation of HHSC's efforts to allow the delivery of many behavioral health services by telemedicine or telehealth, specifically by synchronous telephone (audio-only) technology. One stakeholder stated that the changes are "forward-thinking and person-centered, and the documentation requirements are reasonable".

Response: HHSC thanks the stakeholders for their comments and support.

- 2. Comment:** Several stakeholders commented on the Declaration of State of Disaster language with minor clarifying edits.

Response: HHSC thanks the stakeholders for their comments. HHSC agrees with the stakeholders' request for clarifying edits to the Declaration of State of Disaster language. HHSC makes the following clarifying edits: During a Declaration of State of Disaster, HHSC may issue direction to providers regarding the use of a telemedicine or telehealth service to include the use of a synchronous telephone (audio-only) platform to provide covered services outside of the allowances described herein to the extent permitted by Texas law. A Declaration of State of Disaster is when an executive order or proclamation is issued by the governor declaring a state of disaster in accordance with Section 418.014 of the Texas Government Code."

- 3. Comment:** One stakeholder expressed appreciation to HHSC for including synchronous audiovisual technology as an option in the definition of an 'existing clinical relationship' which is a requirement of most behavioral health services that are delivered by synchronous telephone (audio-only) technology. The stakeholder also expressed support of HHSC's decision to require providers to conduct at least one in-person or synchronous audiovisual service every rolling 12 months from the date of the initial service delivered by synchronous telephone (audio-only) technology except when to do so is clinically contraindicated or the risks or burdens outweigh

the benefits. The commenter stated that it's "realistic for even the most difficult of circumstances for a patient to be seen at least one time a year this way". However, the stakeholder requested for HHSC to include language that would allow providers "to request an exception through the prior authorization peer to peer process" of the 12-month requirement, stating that there may be situations in which a person may not be able to leave their residence and broadband access in their service area is poor.

Response: HHSC thanks the stakeholder for their comments and support. The requirement of providers to conduct an in-person or synchronous audiovisual service every rolling 12-months from the initial service delivered by synchronous telephone (audio-only) technology may be waived by the provider if the provider and the person receiving services agree that the requirement is clinically contraindicated, or the risks or burdens outweigh the benefits. Other than documenting the reasons the 12-month requirement was waived, no other action by the provider is required. Therefore, submitting a request to HHSC for an "exception through the prior authorization peer to peer process" is not necessary.

- 4. Comment:** One stakeholder requested clarification for why some behavioral health services that include a determination of medication, such as psychiatric diagnostic evaluation and pharmacological management services, will be allowed by synchronous telephone (audio-only) technology if certain conditions are met; whereas other behavioral health services that do not include medication decisions will not be allowed by synchronous telephone (audio-only) technology except during a declaration of disaster. The stakeholder also proposed including a list of exclusions for when synchronous telephone (audio-only) technology may not be used to avoid different interpretations by different payor sources.

Response: HHSC thanks the stakeholder for their comment. Only a couple of behavioral health services that were posted for public comment will not be allowed via synchronous telephone (audio-only) technology, except during a declaration of disaster. Most of the behavioral health services posted for public comment will be allowed via synchronous telephone (audio-only) technology—regardless of a declaration of disaster—if certain conditions are met and if clinically appropriate and safe, as determined by the provider, and agreed to by the person receiving services.

Regarding a list of exclusions for when a behavioral health service may not be delivered via synchronous telephone (audio-only) technology, HHSC declines to revise the behavioral health policies in response to this

comment. The services that will be allowed via synchronous telephone (audio-only) technology are indicated in the 'Synchronous Telephone (Audio-Only) Technology' subsection of the 'Reimbursement/Billing Guidelines' section of each behavioral health policy. This subsection also includes any limitations or requirements for delivering a behavioral health service via synchronous telephone (audio-only) technology.

- 5. Comment:** One stakeholder requested HHSC to reconsider the decision to not allow the delivery of neuropsychological testing services (procedure code 96132 and 96133) by synchronous audiovisual technology.

Response: HHSC thanks the stakeholder for their comment. In response to this comment, HHSC will revise the Outpatient Mental Health Services benefit to allow for the delivery of neuropsychological testing services (procedure codes 96132 and 96133) via synchronous audiovisual technology if the following conditions are met:

- The psychometric test is available in an online format, except for tests that are administered and responded to orally.
- The provider, or test administrator, observes the person, in real-time, for the duration of the test.
- The provider delivers the psychometric test in accordance with their licensing board and professional guidelines.

- 6. Comment:** Regarding the waiver of the 12-month requirement of an in-person or synchronous audiovisual delivered service for behavioral health services delivered by synchronous telephone (audio-only) technology, one stakeholder requested an expanded list of examples to include limited access to broadband services, transportation issues, and so forth. The stakeholder also requested clarification about whether the example of a person living in a health professional shortage area applies to both mental health and substance use providers.

Response: HHSC declines to revise the behavioral health policies in response to the first comment. The list of examples that were included in the draft behavioral health policies was not intended to be exhaustive and may include issues with broadband access, transportation, and other possible scenarios. Therefore, HHSC is only requiring providers to document the reasons for waiving the 12-month requirement in the medical record of the person receiving services.

Regarding the second comment, a "Health Professional Shortage Area (HPSA) is a geographic area, population group, or health care facility that

has been designated by the Health Resources and Services Administration (HRSA) as having a shortage of health professionals”. There are three categories of HPSAs which are primary care, dental health, and mental health. For more information about HPSAs, please refer to the [\(HRSA\) National Health Service Corps](#).

- 7. Comment:** One stakeholder recommended for HHSC to include “options” for documenting the reason(s) for why a behavioral health service was delivered by synchronous telephone (audio-only) technology, such as “technical literacy limitations, broadband connectivity”, and so forth.

Response: HHSC thanks the stakeholder for their comment. HHSC declines to revise the behavioral health policies in response to this comment. However, HHSC would like to clarify the reasons for delivering a service via synchronous telephone (audio-only) technology could include the options provided by the stakeholder and more. Therefore, in lieu of including specific reasons, HHSC defers to the provider’s clinical judgement and the needs and preferences of the person receiving services to determine if delivery of a service by synchronous telephone (audio-only) technology is appropriate and safe.

- 8. Comment:** One stakeholder commented on the location of the information about telemedicine or telehealth documentation requirements, stating that in multiple policies the information is in their own sections of the policy, separate from the section on general documentation requirements. Therefore, the stakeholder recommended combining the telemedicine and telehealth documentation requirements with the general requirements section. The stakeholder also recommended edits to the language for the telemedicine and telehealth services documentation requirements.

Response: HHSC thanks the stakeholder for their response. To ensure providers are aware that the documentation requirements for a service delivered by telemedicine or telehealth are the same as for a service delivered in person, HHSC declines to remove this language from the documentation requirements section of the policies. As for the location of the documentation information, HHSC will ensure that the language is appropriately placed in each policy that will be published in the Texas Medicaid Provider Procedures Manual (TMPPM).

- 9. Comment:** One stakeholder requested clarification about the six-month and 12-month requirements that are applicable to certain behavioral health services when delivered by synchronous telephone (audio-only) technology.

Response: HHSC thanks the stakeholder for their comment. To deliver certain behavioral health services by synchronous telephone (audio-only) technology, the person must have already had a service delivered in-person or by synchronous audiovisual technology by the same provider in the six months prior to the initial service delivered by synchronous telephone (audio-only). To continue delivery of a service by synchronous telephone (audio-only), the provider must conduct an in-person or synchronous audiovisual follow-up service at least once every rolling 12 months from the date of the initial audio-only service. For example, if a person's first synchronous (telephone) audio-only visit occurred in May, then the provider must conduct either an in-person visit or a synchronous audiovisual visit by the end of the following May (a rolling 12-month period versus a calendar year). This is required unless the person receiving the service and the provider agree that an in-person or synchronous audiovisual service is clinically contraindicated, or the risks or burdens of an in-person or synchronous audiovisual service outweigh the benefits. The provider must document the reason(s) for waiving the 12-month requirement for an in-person or synchronous audiovisual service in the medical record, and the decision to waive the requirement applies only to that particular 12-month period. The decision to waive the 12-month requirement must be reassessed every rolling 12 months (annually).

- 10. Comment:** One stakeholder expressed support for the language at the beginning of each policy that states "providers must defer to the needs of the person receiving services, allowing the mode of service delivery to be accessible, person- and family-centered, and primarily driven by the person's choice and not provider convenience". However, the stakeholder noted that there may be times when a provider and the person/family receiving services disagree on the most appropriate means of delivery.

Response: HHSC thanks the stakeholder for their comment. HHSC includes language in all the behavioral health policies stating the method of delivery must be "clinically appropriate and safe, as determined by the provider, and agreed to by the person receiving services". If, in the provider's professional opinion, the provider does not believe it is clinically appropriate or safe to deliver a service to a particular person via synchronous audiovisual or audio-only technology, then the provider should defer to their professional judgment and expertise.

- 11. Comment:** Two stakeholders requested confirmation that the requirement of managed care organizations (MCOs) to develop a network of public and private providers of behavioral health services to ensure adults

with serious mental illness and children with serious emotional disturbance have access to a comprehensive array of services (as mandated Senate Bill (SB) 58, 83rd Legislature, Regular Session, 2013) applies to private providers (also referred to as non-Local Mental Health Authorities) of Mental Health Targeted Case Management (MHTCM) and Mental Health Rehabilitation (MHR) services to persons in fee-for-service (FFS) Medicaid (as mandated by SB 1921, 87th Legislature, Regular Session, 2021).

- 12. Response:** HHSC thanks the stakeholders for their comments. SB 1921 directed HHSC to provide medical assistance reimbursement to public and private providers of behavioral health services to include MHTCM and MHR services, to persons enrolled in FFS Medicaid until the person is enrolled and begins receiving services through an MCO. The requirements of SB 58, 83rd Legislature, Regular Session, 2013, apply solely to managed care organizations. However, private providers of MTHCM and MHR services to persons in FFS Medicaid must adhere to current policy which requires public and private providers to use the Texas Resilience and Recovery Guidelines, in addition to the uniform assessment and the needs of the person, to determine eligibility for services. They will also be required to follow prior authorization and reauthorization processes, as indicated in the public posting of the policy, to deliver these services to persons in FFS Medicaid.

As required in the Uniform Managed Care Manual 15.1, provider entities must attest to MCOs that the organization is able to provide, either directly or through sub-contract, members with the full array of Medicaid services outlined in the Texas Resilience and Recovery Guidelines.

- 13. Comment:** One stakeholder commented that there are instances where the draft policy language contains unclear syntax or repetitive language, and there are instances where clarification is needed to ensure compliance with state scope-of-practice laws and state laws governing the agency's authority during a disaster declaration.

Response: HHSC thanks the stakeholder for their comment. HHSC will review all policies and make edits where needed to ensure the language is clear to the reader and absent of any syntax errors or repetitive language. HHSC will also add the following language to policy regarding authority during a declaration of disaster: Providers are expected to exercise their clinical judgment to render the most appropriate care in accordance with their scope of practice as designated by their regulatory and governing boards.

14. Comment: One stakeholder requested the removal of the requirement for providers to document the reason(s) a behavioral health service was delivered by synchronous telephone (audio-only) technology, stating that the requirement is “overly burdensome as it requires an extra administrative step and gives the impression that synchronous telephone (audio-only) is not as clinically appropriate as an in-person clinical visit”.

Response: HHSC thanks the stakeholder for their comment. HHSC declines to revise the behavioral health policies in response to this comment. Whenever possible, HHSC encourages face-to-face interaction. HHSC found certain services are most effective when provided in-person or via synchronous audio-visual technology. However, for those same services, a clinician may determine that synchronous telephone (audio-only) technology is clinically effective based on different client factors. HHSC is requiring providers to document the reasons a service was delivered via synchronous telephone (audio-only) technology in the medical record. This documentation requirement will also support that the client consented to this method of delivery. HHSC will not provide an exclusive list of circumstances that must be documented to justify the use of synchronous telephone (audio-only) technology. Instead, HHSC defers to the provider’s clinical judgement and the needs and preferences of the person receiving services.