Mike DeWine, *Governor*
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KEY ISSUES: The Future of Behavioral Telehealth in Ohio

PURPOSE

The purpose of this white paper is to:

- summarize changes that were made to state and federal rules and policies related to the delivery of behavioral health services via telehealth that were implemented on an emergency, temporary basis;
- describe the future desired state of telehealth for behavioral health services;
- identify barriers to implementation at both the state and federal levels; and
- offer recommendations for consideration to achieve the desired future state of telehealth.

BACKGROUND

In response to stay at home orders put in place to protect the public during the height of the COVID-19 pandemic, several state emergency rules were enacted, along with federal waivers and other guidance and policy directives, which allowed for the rapid implementation of telehealth modalities for behavioral health services. On March 19, 2020, Ohio Governor Mike DeWine issued an executive order authorizing the Ohio Department of Medicaid (ODM) and the Ohio Department of Mental Health and Addiction Services (OhioMHAS) to file emergency rules related to the provision of telehealth services, considering the COVID-19 pandemic.

ODM and OhioMHAS implemented changes to the Ohio Administrative Code via the emergency rule making authority to expand access to medical and behavioral health services using telehealth. This action was taken to give healthcare providers maximum flexibility to continue critical behavioral healthcare services while limiting the risk of spreading COVID-19 in their communities. In addition to maintaining access to community behavioral health settings, these rules also sought to reduce pressure on Ohio hospitals. The temporary rule amendments allowed more people to be served safely in their homes rather than needing to travel to addiction and mental health treatment centers. These changes helped reduce the

risk of exposure to COVID-19 for patients, their families, and our behavioral health workforce which is an important part of the emergent response and community support to COVID-19.

Other state and federal entities also enacted waivers and/or emergency rules and guidance to allow for the expedited implementation of telehealth services to enable behavioral health services to continue as uninterrupted as possible. The following is overview of Ohio's telehealth rule changes resulting from the COVID-19 pandemic.

EMERGENCY RULES & POLICY CHANGES

State of Ohio

Ohio Department of Mental Health and Addiction Services: OhioMHAS's emergency rule was amended to create additional flexibilities in the agency's regulations governing interactive videoconferencing. The update to OhioMHAS Ohio Administrative Code section 5122-29-31, *Interactive videoconferencing*, does the following:

- Allows the definition of "interactive videoconferencing" to include asynchronous activities that do not have both audio and video elements. Some examples of these asynchronous activities include telephone calls, images transmitted via facsimile machine, and electronic mail.
- Allows both new and established patients to receive services through interactive videoconferencing, and explicitly states that no initial face to face visit is necessary to initiate telehealth services.
- Adds new behavioral health services that can be delivered via interactive videoconferencing, include peer recovery, SUD case management, crisis intervention, assertive community treatment (ACT), and Intensive Home-Based Treatment (IHBT) services.
- Incorporates by reference the Office of Civil Rights' Notification of HIPAA Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency.

Ohio Department of Medicaid: ODM's emergency rule created a new Medicaid telehealth rule that governs reimbursement policies for Medicaid providers rendering services through telehealth. Ohio Administrative Code Section 5160-1-21, *Telehealth during a state of emergency*, does the following:

- Incorporates by reference the Office of Civil Rights' Notification of HIPAA Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency.
- Removes certain Medicaid coverage and billing restrictions for specific behavioral health services including Assertive Community Treatment (ACT), Intensive Home-Based Treatment (IHBT),

therapeutic behavioral services (TBS), psychosocial rehabilitation (PSR), behavioral health crisis intervention services, and peer recovery support services.

State Medical Board of Ohio: The State Medical Board of Ohio made no changes to existing rules, but did issue guidance, https://med.ohio.gov/Telemedicine-Guidance. Effective March 9, 2020, providers can use telemedicine in place of in-person visits. Throughout the declared COVID-19 emergency, the Medical Board will not enforce in-person visit requirements normally required in Medical Board rules. Suspension of these enforcement requirements includes but is not limited to prescribing controlled substances; prescribing for subacute and chronic pain; prescribing to patients not seen by the provider; pain management; medical marijuana recommendations and renewals; and office-based treatment for opioid addiction. Providers must document their use of telemedicine and meet minimal standards of care.

Ohio Board of Psychology: The Ohio Board of Psychology issued guidance related to telehealth on March 11, 2020.— COVID-19 Alert, Options for Ensuring Client Welfare via Telecommunications. Telepsychology Ohio Administrative Code Section 4732-17-01, Paragraph (H) in the Rules of Professional Conduct (http://codes.ohio. gov/oac/4732-17) contains the requirements, prohibitions, and exceptions related to the formal practice of telepsychology, and paragraph (B) of the Supervision Rules (http://codes.ohio.gov/oac/4732-13) lists requirements relative to the conduct of psychological supervision via telepsychology. The board also issued a second alert containing clarifications on March 20, 2020 - COVID-19 Alert 2, Additional Telepsychology Clarifications.

Ohio Counselor, Social Worker, and Marriage and Family Therapist Board: The Ohio Counselor, Social Worker, and Marriage and Family Therapist Board emergency filed amendments to Ohio Administrative Code Section 4557-5-13, *Teletherapy*. The emergency amendments expanded access to teletherapy services for clients by clarifying that no training is required prior to providing teletherapy, however, the rule does require that licensees provide services only if they can competently provide such services. It also waives the requirement to hold a face-to-face meeting in-person or via video prior to rendering services, allows for verbal consent when written consent cannot be obtained, and it follows federal guidance regarding HIPAA-compliant technology.

Ohio Chemical Dependency Professionals Board: The Ohio Chemical Dependency Professionals Board currently does not have a rule that addressed telehealth, nor does it preclude any type of its treatment licensees/certificate holders from providing telehealth services. However, license/certificate holders should follow the OCDP Board website updates. Those providing telehealth services should be cautious to follow all laws, rules, regulations, and executive orders and stay within the bounds of your scope of practice.

Federal Partners

Office of Civil Rights: The Office of Civil Rights (OCR) at the Department of Health and Human Services (HHS) issued a waiver of HIPAA Sanctions and Penalties for the use of non-public facing widely available

applications that may not have secure transmissions, such as FaceTime or Skype, for diagnostic or treatment purposes. The "Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency" says covered health care providers subject to the HIPAA rules may communicate with patients, and provide telehealth services, through remote communications technologies even though some of these technologies, and the manner in which they are used by HIPAA covered health care providers, may not fully comply with the requirements of the HIPAA Rules.

Drug Enforcement Agency (DEA): The DEA issued a waiver of the Ryan Haight Act which requires providers to conduct an in-person exam prior to prescribing controlled substances via telemedicine.

Office of the Inspector General: The Office of Inspector General (OIG) issued a waiver of sanctions and penalties of the anti-kickback statute and civil monetary penalty provision prohibiting inducements to beneficiaries.

Centers for Medicare & Medicaid Services: CMS issued waivers and extended flexibilities for telehealth services, including telephone only services and verbal consents.

STAKEHOLDER FEEDBACK PROCESS

In May and June of 2020, OhioMHAS hosted a series of eight listening sessions with behavioral health providers and individuals who had received behavioral health services via telehealth during the pandemic. The discussions included topics such as the specific types of services provided via telehealth, access and capacity, staff training, workforce development and supervision, documentation and patient consent, the types of technology being utilized, and confidentiality and privacy.

Many of the challenges articulated by the stakeholders were related to access, availability of technology and specific services that were being provided. Despite the challenges, most indicated that the expanded use of telehealth has been positive. Access to services, productivity, quality of the services provided and the level of engagement by the patients have all increased since the expansion of telehealth services. Providers indicated that expanded telehealth services, both video and phone, should be an ongoing tool in the toolbox to serve those patients when and where it is appropriate.

TELEHEALTH CHALLENGES AND DRIVERS

From our stakeholder engagement and literature review OhioMHAS identified the following key challenges and drivers related to implementation of telehealth services.

Clinical Implications

It is important that clinicians utilizing telehealth to provide services follow the same clinical standards as they do in providing in-person care to ensure quality and effectiveness of services. For an individual patient, the use of telehealth services needs to allow for effective engagement, assessment, monitoring, and intervention, including crisis intervention. Some patients present challenges in one or more aspects of care which may warrant in-person evaluation. Telehealth services may still be appropriate for use flexibly with such challenging patients.

Technology Implications

Reliable and cost-effective technology and technical support are required for telehealth programs to be safe and successful. Assuring a robust information technology (IT) infrastructure with appropriate privacy capabilities, updating IT staff responsibilities and purchasing equipment and technical support from vendors are critical. However, these items take time and can be expensive to invest in and maintain. Clinician training on the use of the technology is also critical.

From a patient perspective, it is important to note that not all Ohioans have equal access to phone, internet, or cell service or there may be limitations on minutes or data plans. For more than 300,000 households, which is close to 1 million Ohioans, a major barrier they face is access to high-speed internet. Patients may have other situations which can limit the effectiveness of telehealth treatment, such as language or technology literacy barriers. In addition, some patients may not feel comfortable using technology or may need assistance with understanding how to use the technology. The delivery of behavioral health services telephonically, as allowed in current emergency rules, can address many of these service barriers and represent a service modality warranting continuation as emergency rules expire and new rules and policies are enacted.

Federal Policy

While the state may choose to make permanent the amendments to rules and policies that were initially promulgated on a temporary basis, it is important to note that the federal government must also make permanent the changes that were put into effect as a result of the pandemic. Without both federal and state policies moving forward in a coordinated fashion, there will be a variety of issues threatening to limit expansion of telehealth use in Ohio. These challenges include reduced flexibility due to federal regulations related to allowable technology options for the provision of telehealth, and reduced access to services for patients.

Coverage & Reimbursement of Telehealth

Many payers have realized the advantages of telehealth, but each payer may have differences in coverage and payment policies. This lack of consistency in coverage and reimbursement policies is a significant

barrier to providing behavioral health services via telehealth as well as access to care for certain individuals. Medicaid can define telehealth coverage and reimbursement policies if certain requirements are met related to service characteristics such as efficiency and quality. Under typical circumstances, Medicare only reimburses for live-video conferencing telehealth under specific circumstances that factor in where the patient lives. Services rendered via telephone are not typically covered and there are limits on the providers that qualify to deliver services remotely as well as the number of services they can provide. There is also variability in terms of coverage and reimbursement of telehealth services by commercial payors.

Interstate Reciprocity Issues

Given each state is responsible for regulating and licensing individual practitioners and agencies, there are challenges when providing telehealth services to individuals across state boundaries that can disrupt service continuity. The regulations governing practitioner licensing vary from state to state. For example, in some instances, physicians need a medical license in both the state they are living in as well as the state in which they are providing telehealth services. Some states require specific training associated with telehealth. The requirements and ability to practice across state lines also vary by type of licensure and by licensing/regulating entity. Certain patient populations are disproportionately affected by these factors, such as out-of-state resident Ohio college students receiving behavioral healthcare who return home, those living in areas of behavioral healthcare provider workforce shortage (rural and Appalachian Ohio), and those needing to access specialty behavioral health providers (child psychiatrists and psychologists). Resolution of these interstate reciprocity issues allowing for telehealth practice to reliably extend across state lines would enhance behavioral healthcare access for these underserved Ohioans.

DESIRED STATE OF TELEHEALTH

The desired state for telehealth in Ohio is one in which patients have the option to receive high quality, effective telehealth services in a safe and confidential manner. In addition, patient choice and safety are always considered first and foremost when determining whether a service can and should be delivered via telehealth. The type of technology used in rendering services, whether it be through video-conferencing or using a telephone, is based on patient preference and what is most appropriate for the best clinical care and interaction. The availability of telehealth should not supplant in-person care unless it is determined to be clinically appropriate and is agreed to by the patient.

Clinicians providing telehealth services should be well-trained in effectively delivering services via telehealth and proficient in the use of the various types of technology. Clinicians should be well supported in this work by their supervisors as well as the provider agency's IT staff.

To ensure efficient delivery of telehealth services, there should be a robust technology infrastructure that supports obtaining electronic signatures and consents, securely sharing information across the treatment

team, and entering documentation that describes the treatment needs and progress of the patient.

The desired state is also one in which regulatory authorities at the federal and state level are in alignment. This includes the consistent coverage and reimbursement of telehealth services to maximize the coordination of benefits for the patient and to provide efficiency and sustainability at the provider level.

OPTIONS TO CONSIDER IN ACHIEVING THE DESIRED STATE OF TELEHEALTH IN BEHAVIORAL HEALTHCARE

Make permanent the temporary state regulatory changes: There have been a variety of benefits that have been realized since the expanded implementation of telehealth. Such benefits include: a greater level of engagement between individuals and clinicians; reduction of barriers to treatment attendance, including lack of available transportation, time/expense/effort involved with travel to an office site, patient discomfort with meeting a clinician in person, and time conflicts than can be addressed through extended hours of telehealth availability; decreased wait lists; decreased cancellations and no-show rates; increased clinician productivity; and reduced time between assessment and treatment services. There have also been benefits related to workforce development and job satisfaction, including increased clinician acceptance of telehealth as an effective modality and appreciation of the ability to work flexibly in both office and home office settings. Maintaining the current regulatory and policy changes will continue to support and extend these benefits to both the individual receiving the services as well as to the practitioners delivering the services.

Maintain an emphasis on clinical quality, effectiveness and outcomes in future policy development: As we continue to make policy decisions related to the future of telehealth services, we need to maintain a focus on and dive deeper into issues related to clinical quality, effectiveness and outcomes. Ongoing policy discussions should include , among other things, the types of interventions that are appropriate for telehealth; the overall objectives we are trying to achieve through telehealth; the overall nature of the clinical interaction when services are delivered by telehealth; and policies related to monitoring and protecting against abuse/overuse. In addition, as more and more mobile device applications are being developed to support individuals in their treatment and recovery, it becomes important to provide clarity on the types and nature of the interactions occurring through these applications compared to what is considered a telehealth service or intervention.

Engage in federal advocacy: Without many of the federal waivers currently in place as a result of the COVID-19 emergency, the ability to deliver treatment through telehealth would be severely limited. Most notably, without the continuation of the Office of Civil Rights (OCR) waiver of HIPAA Sanctions and Penalties providers would not have the ability to continue using asynchronous telehealth modalities to deliver services. The delivery of behavioral health services telephonically, has directly addressed technology and

other barriers to services. Moving forward to the time following the lifting of the pandemic emergency declaration, it is critical that both federal and state telehealth regulations and policy remain aligned and be strengthened to continue to achieve the best clinical outcomes. Collaborative engagement with federal officials and policy makers to make permanent the temporary provisions relating to telehealth services will maintain the many gains achieved for individuals with behavioral health needs. A continuation of the federal changes on a permanent basis will also provide ongoing flexibility in service provision for clinicians and increase the ability of behavioral health providers to continue telehealth services efficiently and effectively.

Collaborate across state regulatory authorities: In addition to aligning state and federal policy, enhanced collaboration across state regulatory bodies is necessary to assure on-going access to telehealth services. OhioMHAS-certified community behavioral health centers who utilize telehealth must provide quality, professional services in compliance with all federal, state, and local laws, including the respective Ohio professional licensing board provisions. There needs to be a concerted effort to continue the strong foundation supporting telehealth service delivery provided by OhioMHAS, ODM, the State Medical Board of Ohio, the Ohio Board of Psychology, the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board, and the Ohio Chemical Dependency Professionals Board during the pandemic as well as continued commitment to maintain and increase alignment, when possible, across the state regulatory authorities. This strategy also includes increased joint training and technical assistance related to the regulatory authority requirements and guidance related to the delivery of telehealth.

Address reciprocity issues across state boundaries: Collaborate with state regulatory authorities to develop strategies to maximize opportunities for practitioners to provide, and for individuals to receive, telehealth services across state boundaries.

Develop strategies to assist with technology needs: Develop approaches to expand access to various types of technology to support providers in delivering services via telehealth. Approaches could include training and technical assistance on currently available technology as well as purchasing considerations; funding to support the purchase of technology; facilitation of learning communities related to the use of technology; and facilitation of IT maintenance, technical support and purchasing collaboratives across providers. In addition to supporting the needs of the community behavioral health centers, strategies should also include ways to leverage programs and resources to assure patients have access to the needed technology to participate in telehealth services, including assuring access to broadband technology and allowed use of landlines where cellular service or computers or cell phones are not available.

Expand training and technical assistance to support the clinical workforce and agency workflow: Support clinical best practices and administrative efficiencies by providing telehealth specific training and technical assistance to clinicians related to: quality and safety considerations; engagement strategies for specific populations; telehealth etiquette; privacy and confidentiality; emergency response best practices; documentation and consent requirements; supervision strategies; use of technology; etc. In addition to clinical training and support for practitioners, provide technical assistance to community behavioral health

centers focused on integrating telehealth into the agency's workflow and business practices. The focus of this agency-level technical assistance is on those processes and workflow activities that involve direct patient care and as well as the processes that support the delivery of care when rendering services through telehealth modalities.

Align coverage and reimbursement policies: Continue to coordinate with ODM on rules and policies related to Medicaid coverage and reimbursement of telehealth services. To the extent possible, assure there is coordination of benefits with Medicare and other third-party payors to maximize access to services as well as improve the providers' ability to render telehealth services across payor sources. For example, advocate for coverage of both audio and video technologies across Medicaid, Medicare and other third-party payers. In addition, develop service coding and billing guidance that is clear and concise as well as supports the ability to track services rendered via telehealth and monitor their effectiveness in terms of outcomes for individuals served.