

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2015 Iowa Legislature CCS 505, the Department of Human Services amends Chapter 78, “Amount, Duration, And, Scope Of, Medical And Remedial Services,” Iowa Administrative Code.

This amendment is related to a 2015 mandate by the General Assembly that administrative rules be adopted to provide for coverage of telehealth under the Medicaid program. The rules must provide that an in-person contact between a health care professional and a patient is not required as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided. The mandate also directed that health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

This amendment will formalize a long-standing (non-rule-based) coverage standard that payment may be made for services rendered via telehealth, to the same extent as such services are covered under Medicaid when rendered in-person and where provision of such services via telehealth are considered appropriate by the current standards in the medical community.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2096C** on August 5, 2015.

The Department received comments from three respondents during the comment period. The respondent’s comments and the Department’s responses to those comments are as follows:

Respondent 1 Comments. The respondent stated that a definition of telehealth should be included in the rule that is consistent with accepted telehealth technologies including, store

and forward technology, remote monitoring and real-time observation. The respondent urged the department to adopt a definition consistent with Iowa Administrative Code 653-13.11(1) which defines telemedicine and provides for all three categories of telemedicine technologies. The respondent believes that adding this language would be beneficial for providers and patients. Additionally, the respondent believes the rule should make clear that all provider types are included under the proposed rule. The respondent indicated that the current proposed rule is vague and needs to be specific. The respondent represents Iowa hospitals that report inconsistent reimbursement policies from Iowa Medicaid for telehealth services. The respondent noted that this has a negative impact on the health care continuum—affecting the ability of patients to receive timely and efficient care, prohibiting providers from providing the best health care to their patients, and slowing down the overall delivery of care.

Department Response to Respondent 1’s Comments. The Department believes the current proposed rule amendment is consistent with the mandate in 2015 Iowa Acts, Senate File 505 (Conference Committee Report), Division V, Section 12, Subsection 23, regarding what the rule needs to address. Specifically, the proposed rule amendment formalizes a long-standing (non-rule-based) Iowa Medicaid coverage standard that payment may be made for services rendered via telehealth. Telehealth services are to be rendered to the same extent as such services are covered under Medicaid when rendered in an “in-person” setting AND where provision of such services via telehealth is considered appropriate by the current standards in the medical community.

Relative to the portion of the comment concerning the rule providing more specificity, it is noted that there was no further direction from the Legislature indicating what further

specification was needed or required to be in the rule, such as specifying what particular “telehealth” services must be covered.

As to the concern noted regarding the respondent’s represented organizations having reported inconsistent reimbursement policies from Iowa Medicaid for telehealth services, specifics were not provided in this regard.

This respondent’s comment also mentioned the need for inclusion in the administrative rule for language specifying “store and forward technology” and “remote monitoring and real-time observation” as examples of telehealth services, consistent with Iowa Board of Medicine (IBoM) rules defining different telemedicine technologies under 653—13.11(1). As will be noted in the responses to the additional comments below, the Department is willing to further amend the proposed rule amendment to include general reference to IBoM’s rules regarding telemedicine under 653—13.11(147,148,272C).

Lastly the comment notes that the proposed rule should make clear that all provider types are included under the proposed rule. The Department does not believe this is necessary, since the proposed rule is a stand-alone rule under Chapter 78.

Respondent 2 Comments. As the Department moves forward with the transition to Medicaid managed care, it is imperative that there is consistency in the policy and payment for these services across the four Managed Care Organizations. To ensure consistency in claims processing, this respondent recommends that “telehealth” be clearly defined in the rule. The definition must include that the telehealth technologies of store and forward, remote monitoring, and real-time observation are all appropriate forms of telehealth services for the purposes of provider payment. This respondent encouraged the Department to adopt a definition that includes these three technologies and is consistent with Iowa Administrative Code 653-13.11(1).

Department Response to Respondent 2’s Comments. As noted above in the response to the previous comment, the legislative mandate did specify a standard for telehealth coverage. The Department believes that this standard would be consistent with the rules cited under Iowa Board of Medicine (IBoM) rules (i.e., 653—13.11(1)). The Department notes that subrule 653—13.11(1) is related to “definitions” associated with telehealth. The Department will amend the proposed rule amendment to add the IBoM rule reference, as follows:

441—78.55(249A) Services rendered via telehealth. An in-person contact between a health care professional and a patient is not required as a prerequisite for payment for otherwise-covered services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided, as well as being in accordance with provisions under 653—13.11(147,148,272C). Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

Adding the reference to 653—13.11(147,148,272C) in the proposed rule amendment incorporates by reference the subrules of the reference and as such addresses the different types of technologies as mentioned by the respondents.

Respondent 3 Comments. Telehealth is a critical tool as our system moves toward integrated, person-centered, outcome-driven healthcare. Many providers rely on telehealth to deliver the best services possible for the individuals they serve. This proposed rule is a step in the right direction and will help achieve the overall goal of healthcare transformation. This respondent was seeking confirmation that this proposed rule amendment is for all Medicaid covered services, including substance use disorder and other behavioral health services.

Department Response to Respondent 3's Comments. The Department notes that telehealth services (i.e., telepsychiatry services) have been available under the Iowa Plan for Behavioral Health, which has been administered by Magellan Behavioral Care of Iowa. As noted in the responses above to previous comments, the coverage standard would be that specified by the Legislature. The addition, as noted above, of the reference to the IBOM's rules regarding telemedicine, under 653—13.11(147,148,272C) address the use of telemedicine for substance use disorder and other behavioral health services.

The Council on Human Services adopted this amendment on September 9, 2015.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A, 217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2015 Iowa Legislature, CCS 505, Division V, section 12 (23).

This amendment will become effective November 4, 2015.

The following amendment is adopted.

Adopt new rule **441—78.55(249A)**, as follows:

441--78.55(249A) Services rendered via telehealth. An in-person contact between a health care professional and a patient is not required as a prerequisite for payment for otherwise covered services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided, as well as being in accordance with provisions under 653—

13.11(147,148,272C). Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

Information on Proposed Rules

Name of Program Specialist Marty Swartz	Telephone Number 515-256-4651	E-mail Address mswartz@dhs.state.ia.us
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1.	<p>Give a brief summary of the rule changes:</p> <p>The rule changes being proposed are related to a 2015 mandate by the General Assembly that rules be adopted to provide for coverage of telehealth under the Medicaid program. The rules must provide that an in-person contact between a health care professional and a patient is not required as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided. The mandate also directed that health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.</p>
2.	<p>What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):</p> <p>249A.4</p>
3.	<p>Why is the Department requesting these changes?</p> <p>Per the Legislature's mandate.</p>
4.	<p>What will be the effect of this rule making (who, what, when, how)?</p> <p>This rule change will formalize a long-standing (non-rule-based) coverage standard that payment may be made for services rendered via telehealth, to the same extent as such services are covered under Medicaid AND where provision of such services via telehealth are considered appropriate by the current standards in the medical community.</p>
5.	<p>What are the potential costs and benefits of this rule making to the persons affected?</p> <p>The benefit is a clearly articulated coverage and reimbursement standard for providers rendering otherwise covered services via telehealth.</p>
6.	<p>What are the potential costs and benefits of this rule to the state?</p> <p>The benefit to the state will be clarity regarding Medicaid coverage of and payment for services rendered via telehealth. There is not "cost" to the state, per se, since reimbursement for an otherwise covered service will be the same, whether rendered in-person or via telehealth. Also, it is not anticipated that there would be any increase in expenditures by virtue of this new rule provision, since availability of services via telehealth would essentially mean that instead of paying for a service rendered in-person, the service would be rendered via telehealth. In other words, it is not anticipated that there would be any duplication of services.</p>
7.	<p>What are the likely areas of public comment or controversy?</p> <p>Telehealth providers would prefer additional reimbursement for specific telehealth "components of service" (e.g., line charges, site coordination services, other technical aspects), similar to such additional reimbursement provided under the Medicare program.</p>
8.	<p>Are there any alternatives to making these changes in rules that you considered and rejected?</p> <p>No, in light of the mandate from the General Assembly.</p>

<p>9. What will be the effect on other governmental bodies (federal or state agencies, county governments)? Not aware of any effect on other governmental bodies.</p>
<p>10. If rules do not contain waiver provisions, explain why: This amendment does not provide for waiver in specified situations because such may be requested under the department's general rule on exceptions at Iowa Admin. Code r. 441—1.8.</p>
<p>11. Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee) No known impact on private-sector jobs and employment opportunities in Iowa.</p>

ADMINISTRATIVE RULE FISCAL IMPACT STATEMENT

Date: July 2, 2015

Agency: Human Services

IAC citation: 441 IAC 78.56 (249A) (This would be a new rule)

Agency contact: Marty Swartz

Summary of the rule:

The rule changes being proposed are related to a 2015 mandate by the General Assembly that rules be adopted to provide for coverage of telehealth under the Medicaid program. The rules must provide that an in-person contact between a health care professional and a patient is not required as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided. The mandate also directed that health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

Fill in this box if the impact meets these criteria:

No fiscal impact to the state.

Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.

Fiscal impact cannot be determined.

Brief explanation:

This rule change will formalize a long-standing (non-rule-based) coverage standard that payment may be made for services rendered via telehealth, to the same extent as such services are covered under Medicaid and where provision of such services via telehealth are considered appropriate by the current standards in the medical community.

Since the legislative mandate concerning coverage of telehealth services specifically provides that such services shall be treated equivalently with the same services rendered in an in-person setting, there is no additional payment for the former and, hence, no fiscal impact.

Fill in the form below if the impact does not fit the criteria above:

Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	Year 1 (SFY16)	Year 2 (SFY17)
Revenue by each source:		
General fund		
Federal funds		
Other (specify):		
TOTAL REVENUE		
Expenditures:		
General fund		
Federal funds		
Other (specify):		
TOTAL EXPENDITURES		
NET IMPACT	No Impact	No Impact

This rule is required by state law or federal mandate.
Please identify the state or federal law:
 2015 Senate File 505.

Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
 There is no fiscal impact.

Fiscal impact to persons affected by the rule:

No impact is anticipated, although telehealth providers would prefer additional reimbursement for specific telehealth "components of service" (e.g., line charges, site coordination services, other technical aspects), similar to such additional reimbursement provided under the Medicare program.

Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):

No impact is anticipated.

Agency representative preparing estimate: Joe Havig
 Telephone number: 515-281-6022

Comments and Responses on ARC 2096C
Human Service Department Rule 441—78.55(249A)
Received through August 25, 2015

The following persons/organizations provided written comments, which are included in the summary below:

1. Sara Allen, J.D.
Iowa Hospital Association (IHA)
Title: Director of Government Relations/Staff Attorney
2. Kate Strickler, J.D.
Iowa Medical Society (IMS)
Title: General Counsel
3. Kelsey Clark
Iowa Behavioral Health Association (IBHA)
Title: Executive Director

COMMENT:

IHA believes a definition of telehealth should be included in the rule that is consistent with accepted telehealth technologies including, store and forward technology, remote monitoring and real-time observation. IHA urges the department to adopt a definition consistent with Iowa Administrative Code 653-13.11(1) which defines telemedicine and provides for all three categories of telemedicine technologies. Adding this language would be beneficial for providers and patients. Additionally, IHA believes the rule should make clear that all provider types are included under the proposed rule. Currently the rule is vague and needs to be specific. IHA member hospitals report inconsistent reimbursement policies from Iowa Medicaid for telehealth services. This has a negative impact on the health care continuum— affecting the ability of patients to receive timely and efficient care, prohibiting providers from providing the best health care to their patients, and slowing down the overall delivery of care.

RESPONSE:

The Department believes the current proposed rule is consistent with the Legislature's mandate in S.F. 505 (Conference Committee Report), Division V, Section 12, Subsection 23, regarding what the rule needs to address. The Legislature's mandate provides as follows:

“The department of human services shall adopt rules to provide for coverage of telehealth under the Medicaid program. The rules shall provide that in-person contact between a health care professional and a patient is not required as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided. Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.”

The current proposed rule provides as follows:

441—78.55(249A) Services rendered via telehealth. An in-person contact between a health care professional and a patient is not required as a prerequisite for payment for otherwise-covered services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided. Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

This proposed rule change formalizes a long-standing (non-rule-based) Iowa Medicaid coverage standard that payment may be made for services rendered via telehealth, to the same extent as such services are covered under Medicaid when rendered in an “in-person” setting AND where provision of such services via telehealth is considered appropriate by the current standards in the medical community.

Relative to the portion of the comment concerning the rule providing more specificity, it is noted that there was no further direction from the Legislature indicating what further specification was needed or required to be in the rule, such as specifying what particular “telehealth” services must be covered. There was also no further legislative direction regarding the need or requirement for the rule to address specific definitions of “telehealth”, beyond what the language in the legislation provided regarding telehealth coverage being “...in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided.” It is noted that the rule already reflects that standard.

As to the concern noted regarding IHA member hospitals having reported inconsistent reimbursement policies from Iowa Medicaid for telehealth services, specifics were not provided in this regard. In fact, whether under the previous non-rule based Iowa Medicaid telehealth coverage standard, or under the proposed rule-based standard, if the underlying service was one that is otherwise covered in an “in-person” setting, it would be covered when rendered via telehealth, so long as such was consistent with the existing standards in the medical community regarding the use of telehealth technology. Consistent with the portion of the legislative mandate specifying that “...services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.”, the IME has not previously, nor does it plan going forward, to pay for particular technical components of service associated with telehealth. Consistent with this portion of the Legislature’s mandate, it did not appropriate additional funds for the purpose of Iowa Medicaid paying for those additional services.

This comment also mentioned the need for inclusion in the rule of language specifying “store and forward technology” and “remote monitoring and real-time observation” as examples of telehealth services, consistent with Iowa Board of Medicine (IBoM) rules defining different telemedicine technologies under 653—13.11(1). As will be noted in the responses to the additional comments below, the Department is willing to further amend the proposed rule to include general reference to IBoM’s rules regarding telemedicine under 653—13.11(147,148,272C).

The Legislature did not direct the Department to expand coverage of telehealth services, nor did it appropriate funds to provide for expanded reimbursement for the various telehealth “technical components” of service similar, for instance, to what Medicare currently provides.

In fact, the legislative mandate specifies that “Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.” Therefore, the Department/IME was not provided with any additional funding to undertake any such expansion.

Lastly the comment notes that the proposed rule should make clear that all provider types are included under the proposed rule. The Department does not believe this is necessary, since the proposed rule is a stand-alone rule under Chapter 78 and not one included under specific rules for different types of providers or services, such as under 441—78.1(249A) related to physician services , 441—78.3(249A) related to inpatient hospital services, or 441—78.31(249A) related to outpatient hospital services.

COMMENT:

As DHS moves forward with the transition to Medicaid managed care, it is imperative that there is consistency in the policy and payment for these services across the four Managed Care Organizations. To ensure consistency in claims processing, IMS recommends that “telehealth” be clearly defined in the rule. The definition must include that the telehealth technologies of store and forward, remote monitoring, and real-time observation are all appropriate forms of telehealth services for the purposes of provider payment. IMS encourages DHS to adopt a definition that includes these three technologies and is consistent with Iowa Administrative Code 653-13.11(1).

RESPONSE:

As noted above in the response to the previous comment, the legislative mandate did specify a standard for telehealth coverage; that “...services appropriately provided through telehealth [be] in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided.” The Department believes that this standard would be consistent with that which you cited under Iowa Board of Medicine (IBoM) rules (i.e., 653—13.11(1)), such that referencing that IBoM rule under the Department’s proposed telehealth rule is arguably unnecessary. It is noted that subrule 653—13.11(1) which the comment specifically cited is actually related to “definitions” associated with telehealth. However, that caveat notwithstanding, the Department would be willing to further amend the proposed rule to generally reflect the IBoM rule reference, as follows:

441—78.55(249A) Services rendered via telehealth. An in-person contact between a health care professional and a patient is not required as a prerequisite for payment for otherwise-covered services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided, as well as being in accordance with provisions under 653—13.11(147,148,272C). Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

The Department believes that incorporating reference to 653—13.11(147,148,272C) in the proposed rule addresses the concerns raised regarding specific mention of particular telemedicine technologies, because reference to this main rule incorporates by reference the

subrules thereunder addressing the different types of technologies, such as “store and forward, remote monitoring, and real-time observation”, which are addressed under 653—13.11(1), under the definition of “telemedicine.” Inclusion of this reference provides a basis to ensure a specific consistency of the coverage standard and should address the concern around Medicaid’s transition to managed care.

COMMENT:

Telehealth is a critical tool as our system moves toward integrated, person-centered, outcome-driven healthcare. Many providers rely on telehealth to deliver the best services possible for the individuals they serve. This proposed rule is a step in the right direction and will help achieve the overall goal of healthcare transformation. IBHA would seek confirmation that this proposed rule is for all Medicaid covered services, including substance use disorder and other behavioral health services.

RESPONSE:

It is noted that telehealth services (i.e., telepsychiatry services) have been available under the Iowa Plan for Behavioral Health, which has been administered by Magellan Behavioral Care of Iowa. As noted in the responses above to previous comments, the coverage standard would be that specified by the Legislature, which provided that “...services appropriately provided through telehealth [be] in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided.” As also noted above, the Department will further amend the proposed rule to add reference to the IBoM’s rules regarding telemedicine, under 653—13.11(147,148,272C). The Department believes that this would address use of telemedicine for substance use disorder and other behavioral health services.



August 13, 2015

Harry Rossander
Department of Human Services
Hoover State Office Building
1305 E. Walnut Street
Des Moines, IA 50319-0114

RE: ARC 2096C

Dear Mr. Rossander:

On behalf of the 118 hospitals providing medical care in Iowa, the Iowa Hospital Association (“IHA”) writes to provide the following comments regarding the department’s proposed telehealth rule (ARC 2096C).

IHA’s members report inconsistent reimbursement policies from Iowa Medicaid for telehealth services. This has a negative impact on the health care continuum—affecting the ability of patients to receive timely and efficient care, prohibiting providers from providing the best health care to their patients, and slowing down the overall delivery of care.

IHA believes a definition of telehealth should be included in the rule that is consistent with accepted telehealth technologies including, store and forward technology, remote monitoring and real-time observation. IHA urges the department to adopt a definition consistent with Iowa Administrative Code 653-13.11(1) which defines telemedicine and provides for all three categories of telemedicine technologies. Adding this language would be beneficial for providers and patients.

Additionally, IHA believes the rule should make clear that all provider types are included under the proposed rule. Currently the rule is vague and needs to be specific.

Per the legislation passed by the General Assembly, the department has the authority to make these changes offered by IHA. SF 505 states, “The department of human services shall adopt rules to provide for coverage of telehealth under the Medicaid program”.

IHA appreciates the department’s time and consideration of these comments.

Sincerely,

Sara Allen
Director of Government Relations/Staff Attorney

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August 20, 2015

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Harry Rossander
Department of Human Services
Hoover State Office Building
1305 East Walnut Street
Des Moines, IA 50319

RE: ARC 2096C – Services Rendered via Telehealth

Dear Mr. Rossander:

The Iowa Medical Society (IMS), on behalf of its over 6,400 physician members, appreciates the opportunity to comment on the proposed rulemaking regarding telehealth. IMS appreciates and applauds the Department of Human Services (DHS) for addressing the need for payment parity with regard to telehealth services.

As DHS moves forward with the transition to Medicaid managed care, it is imperative that there is consistency in the policy and payment for these services across the four Managed Care Organizations. To ensure consistency in claims processing, IMS recommends that “telehealth” be clearly defined in the rule. The definition must include that the telehealth technologies of store and forward, remote monitoring, and real-time observation are all appropriate forms of telehealth services for the purposes of provider payment. IMS encourages DHS to adopt a definition that includes these three technologies and is consistent with Iowa Administrative Code 653-13.11(1).

Thank you for this opportunity to comment. IMS supports DHS’ adoption of telehealth rules, and encourages DHS to include a definition of “telehealth.” Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Kate Strickler". The signature is written in a cursive, flowing style.

Kate Strickler, JD, LLM
General Counsel

Rossander, Harry V

From: Kelsey Clark <kelsey@ibha.org>
Sent: Tuesday, August 25, 2015 2:03 PM
To: Policy Analysis
Subject: Public Comment ARC 2096C

The Iowa Behavioral Health Association (IBHA) is Iowa's statewide association of substance use disorder & addiction treatment programs, community mental health centers & problem gambling services.

IBHA is pleased & thankful to see promulgation of ARC2096C. Telehealth is a critical tool as our system moves toward integrated, person-centered, outcome-driven healthcare. Many providers rely on telehealth to deliver the best services possible for the individuals they serve.

This proposed rule is a step in the right direction and will help achieve the overall goal of healthcare transformation. IBHA thanks the General Assembly for passing the legislation and the Department for their work on the rule.

IBHA would seek confirmation that this proposed rule is for all Medicaid covered services, including substance use disorder and other behavioral health services.

Thank you.

Kelsey Clark
Executive Director
Iowa Behavioral Health Association
[Kelsey@ibha.org](mailto:kelsey@ibha.org)
[515-223-6211](tel:515-223-6211)

Sent from my Sprint Phone.

