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<u>, as well as being in accordance with provisions under 653—13.11(147,148,272C)</u>. 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.