

SUBCHAPTER A. COVID-19 EMERGENCY RULES
28 TAC §35.1

INTRODUCTION. The Commissioner of Insurance adopts new 28 TAC §35.1, concerning Telemedicine and Telehealth Services, on an emergency basis, effective immediately. The emergency adoption is necessary to ensure adequate access to telemedicine medical and telehealth service in response to the COVID-19 pandemic.

REASONED JUSTIFICATION. On March 13, 2020, Governor Abbott issued a statewide disaster declaration due to the COVID-19 pandemic. As the governor noted, it is critical to take steps to prepare for, respond to, and mitigate the spread of COVID-19, particularly by increasing Texans' access to treatment and testing. Telemedicine has emerged as a vital tool in combating the spread of infectious diseases, in part because it limits physical contact between a patient and their physician and other patients. Limiting person-to-person contact is key to slowing the spread of this virus.

It is critical to preserve physician capacity during the COVID-19 disaster, thus physicians' exposure to the virus must be reduced to the greatest extent possible. Furthermore, the efficient use of telemedicine would allow physicians to focus more of their time on those in greatest need of in-person care. Finally, telemedicine could allow those physicians who do become ill to continue treating patients in some circumstances.

Unfortunately, limited reimbursement rates for telemedicine services serve as a barrier to the expanded use of such technology because physicians are reluctant to accept significantly reduced payment for such services. Some physicians may also be reluctant to engage in telemedicine because of health benefit plans' different documentation requirements for telemedicine services as opposed to in-person services.

The new rule is intended to reduce these barriers and expand telemedicine by implementing parity with payment and documentation requirements applicable to in-person services. Under the rule, services that are the same must be reimbursed at the same rate whether provided in-person or through telemedicine. Similarly, the new rule does not permit health benefit plans to require documentation for telemedicine services beyond what the plan already requires for in-person services.

The new rule also reflects requirements from Texas Insurance Code Chapter 1455, including requirements that: (1) require health benefit plans to provide coverage for covered services or procedures delivered by telemedicine on the same basis and to the same extent that the plan provides coverage for the same service or procedure in an in-person setting; and (2) prohibit health benefit plans from limiting, denying, or reducing coverage based on the telemedicine platform used by the physician, with limited exceptions.

An emergency rule is necessary

Pursuant to Government Code §§2001.034 and 2001.036(a)(2), the new rules are adopted on an emergency basis and with an immediate effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

As noted in Governor Abbott's disaster declaration, COVID-19 poses an imminent threat to the public health and welfare. COVID-19 is spreading at an exponential rate, and it is vital that actions be taken to prepare for, respond to, and mitigate the spread of the virus. The new rule is adopted to eliminate barriers to the expanded use of telemedicine, which is widely recognized as an effective tool to combat the spread of COVID-19.

Therefore, it is vital to the public health and welfare that the new rule goes into effect immediately.

Under Government Code §2001.034, this emergency rule may not be in effect for longer than 120 days, with the possibility for a 60-day extension.

STATUTORY AUTHORITY. The new rule is adopted on an emergency basis with an immediate effective date under Insurance Code §36.001 and §1455.005; and Government Code §2001.034 and §2001.036(a)(2).

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Insurance Code §1455.005 provides that the Commissioner may adopt rules as necessary to implement Insurance Code Chapter 1455, concerning Telemedicine and Telehealth, subject to Occupations Code §111.004.

Government Code §2001.034 provides that a state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice.

Government Code §2001.036(a)(2) provides that if a state agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date.

TEXT.

SUBCHAPTER A. COVID-19 EMERGENCY RULES.
28 TAC §35.1

§35.1. Telemedicine Medical and Telehealth Services.

(a) This section applies as follows:

(1) This section applies to health benefit plans as specified in Insurance Code §1455.002 and §1455.003.

(2) The requirements of this section apply only to a health care service or procedure delivered on or after the effective date of this section.

(b) Words and terms defined in Insurance Code §1455.001 have the same meaning when used in this section. The term "health professional" includes a mental health professional.

(c) A health benefit plan must provide coverage for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service or telehealth service on the same basis and to the same extent that the plan provides coverage for the service or procedure in an in-person setting.

(d) A health benefit plan must reimburse a preferred or contracted health professional for providing a covered health care service or procedure to a covered patient as a telemedicine medical service or telehealth service on the same basis and at least at the same rate that the plan is responsible for reimbursement to that health professional for the same service or procedure in an in-person setting.

(e) Notwithstanding subsection (d) of this section, a health benefit plan is not required to pay more than the billed charge on a claim.

(f) Except as provided by Insurance Code §1455.004(c), to the extent §1455.004(c) is not suspended, a health benefit plan may not limit, deny, or reduce coverage for a

covered health care service or procedure delivered as a telemedicine medical service or telehealth service based on the health professional's choice of platform for delivering the service or procedure.

(g) For purposes of processing payment of a claim, a health benefit plan may not require a health professional to provide documentation of a health care service or procedure delivered as a telemedicine medical service or telehealth service beyond what is required for the same service or procedure in an in-person setting.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be within the agency's authority.

Issued at Austin, Texas, on March 17, 2020.

James Person, General Counsel
Texas Department of Insurance

The Commissioner adopts new §35.1 on an emergency basis, effective immediately.

Kent C. Sullivan
Commissioner of Insurance

Commissioner's Order No. _____