

Oklahoma Health Care Authority

It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments are directed to the [Oklahoma Health Care Authority \(OHCA\) Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: January 15, 2017

The proposed policy is a Permanent Rule. This proposal policy was presented at the November 1, 2016 Tribal Consultation and is scheduled to be presented to the Medical Advisory Committee on January 19, 2017 and the Board of Directors on February 9, 2017.

Reference: APA WF 16-23

SUMMARY:

16-23 I/T/U and FQHC cleanup - Proposed Indian Health Services, Tribal Program and Urban Indian Clinics (I/T/U) and Federally Qualified Health Centers (FQHC) policy is amended to remove the minimum 45-50 minute time requirement for outpatient behavioral health encounters. Rules are also revised to include parameters to assure quality of care and appropriate billing for pharmacy outpatient encounters. In addition, revisions add requirements for I/T/U providers who render home health services. Revisions also include changes to policy references. Further, rules are revised to replace the term telemedicine with telehealth.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR Part 136; 42 CFR Subpart X; The Oklahoma Telemedicine Act of 1997

RULE IMPACT STATEMENT:

**STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY**

TO: Tywanda Cox
Federal and State Policy

FROM: Tatiana Reed
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 16-23

A. Brief description of the purpose of the rule:

The proposed Indian Health Services, Tribal Program and Urban Indian Clinics (I/T/Us) and Federally Qualified Health Centers policy is amended to remove the minimum 45-50 minute time requirement for outpatient behavioral health encounters. Rules are also added to indicate that behavioral health services must be billed on an appropriate claim form using the appropriate Current (CPT) Procedural Code and guidelines. In addition, revisions add requirements for I/T/U providers that render home health services. Revisions also include cleanup to outdated policy references. Further, rules are revised to replace the term telemedicine with telehealth to be more inclusive of an array of telehealth technologies that could potentially be used to deliver healthcare services to SoonerCare members.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

I/T/U and FQHC providers who provide outpatient behavioral health services may be affected by the proposed rule.

Providers using telehealth technology to deliver compensable SoonerCare services may also be affected by the proposed rule. This rule should not place any cost burden on private or public entities. No information on any cost impacts were received from any entity.

- C. A description of the classes of persons who will benefit from the proposed rule:

Contracted behavioral health I/T/U and FQHC providers may benefit from the rule, as the change may increase access to behavioral health services provided at I/T/U and FQHC facilities.

SoonerCare members may benefit from the proposed rule as the intent is to assure continuity and enhanced access to care as more healthcare services are delivered using telehealth.

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

The Agency has determined that there are no probable net costs to OHCA or other agencies expected as a result of the proposed rules nor is there an anticipated effect on State revenues.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

Services provided to the Native American population are 100% federally funded therefore, no impact on state revenue is expected.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

There is no economic impact on political subdivisions.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The proposed rule will not have an adverse effect on small businesses as provided by the Oklahoma Small Business Regulatory Flexibility Act.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

- I. A determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should have no adverse effect on the public health, safety, and environment. The proposed rule may have a positive impact on public health, safety and environment for soonercare members in terms of quality of care with behavioral health encounters time requirements removed.

J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

OHCA does not believe there is a detrimental effect on the public health and safety if the rule is not passed.

K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared: October 19, 2016

Modified: November 20, 2016

RULE TEXT

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-660.3. Health Center enrollment requirements for specialty behavioral health services

(a) For the provision of behavioral health related case management services and psychosocial rehabilitation services, Health Centers must contract as an outpatient behavioral health agency and meet the requirements found at OAC ~~317:30-5-240 through 317:30-5-249~~ 317:30-5-241.3 and 317:30-5-241.6.

(b) Health Centers which provide substance ~~abuse~~ abuse treatment services must also be certified by the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS).

317:30-5-661.4. Behavioral health professional services provided at Health Centers and other settings

(a) Medically necessary behavioral health services that are primary, preventive, and therapeutic and that would be covered if provided in another setting may be provided by Health Centers. Services provided by a Health Center (refer to OAC ~~317:30-5-240-3~~ 317:30-5-241 for a description of services) must meet the same requirements as services provided by other behavioral health providers. Rendering providers must be eligible to individually enroll or meet the requirements as an agency/organization provider specified in OAC 317:30-5-240.2 and 317:30-5-280. Behavioral Health Services include:

- (1) Assessment/Evaluation;
- (2) Crisis Intervention Services;
- (3) Individual/Interactive Psychotherapy;
- (4) Group Psychotherapy;

- (5) Family Psychotherapy;
- (6) Psychological Testing; and
- (7) Case Management (as an integral component of services 1-6 above).

(b) Medically necessary behavioral health professional therapy services are covered when provided in accordance with a documented individualized treatment plan, developed to treat the identified behavioral health disorder(s). ~~A minimum of a 45 to 50 minute~~ A one-on-one standard clinical session must be completed by a health care professional authorized in the approved FQHC State Plan pages in order to bill the PPS encounter rate for the session. Services rendered by providers not authorized under the approved FQHC state plan pages to bill the PPS encounter rate will be reimbursed pursuant to the SoonerCare fee-for-service fee schedule and must comply with rules found at OAC 317:30-5-280 through 317:30-5-283. Behavioral health services must be billed on an appropriate claim form using appropriate Current Procedural Terminology (CPT) procedure code and guidelines. The time indicated on the claim form must be the time actually spent with the member.

(c) Centers are reimbursed the PPS rate for services when rendered by approved health care professionals, as authorized under FQHC state plan pages, if the Health Center receives funding pursuant to Section 330 or is otherwise funded under Public Law to provide primary health care services at locations off-site (not including satellite or mobile locations) to Health Center patients on a temporary or intermittent basis, unless otherwise limited by Federal law.

(d) Health Centers that operate day treatment programs in school settings must meet the requirements found at OAC 317:30-5-240.2(b)(7).

(e) In order to support the member's access to behavioral health services, these services may take place in settings away from the Health Center. Off-site behavioral health services must take place in a confidential setting.

317:30-5-664.1. Provision of other health services outside of the Health Center core services

(a) If the Center chooses to provide other SoonerCare State Plan covered health services which are not included in the Health Center core service definition in OAC 317:30-5-661.1, the practitioners of those services are subject to the same program coverage limitations, enrollment and billing procedures described by the OHCA, and these services (e.g., home health services) are not included in the PPS settlement methodology in OAC 317:30-5-664.12.

(b) Other health services include, but are not limited to:

- (1) dental services (refer to OAC 317:30-5-696) except for primary preventive dental services;
- (2) eyeglasses (refer to OAC 317:30-5-450); (OAC 317:30-5-430 and OAC 317:30-5-450);

- (3) clinical lab tests performed in the Center lab (other than the specific laboratory tests set out for Health Centers' certification and covered as Health Center services);
- (4) technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the Center physician is included as physician professional services);
- (5) durable medical equipment (refer to OAC 317:30-5-210);
- (6) emergency ambulance transportation (refer to OAC 317:30-5-335);
- (7) prescribed drugs (refer to OAC 317:30-5-70);
- (8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;
- (9) specialized laboratory services furnished away from the clinic;
- (10) Psychosocial Rehabilitation Services ~~{refer to OAC 317:30-5-241(a)(7)}~~[refer to OAC 317:30-5-241.3]; and
- (11) behavioral health related case management services ~~(refer to OAC 317:30-5-240 through 317:30-5-249).~~(refer to OAC 317:30-5-241.6).

**PART 110. INDIAN HEALTH SERVICES, TRIBAL PROGRAMS, AND
URBAN INDIAN CLINICS (I/T/Us)**

317:30-5-1087. Terms and definitions

The following words and terms, when used in this Part, have the following meaning, unless the context clearly indicates otherwise:

- (1) **"American Indian/Alaska Native (AI/AN)"** means an individual of Native American descent who has or is eligible for a Certificate of Degree of Indian Blood (CDIB) card.
- (2) **"Behavioral Health services"** means professional medical services for the treatment of a mental health and/or ~~addiction disorder(s).~~substance use disorder.
- (3) **"CFR"** means the Code of Federal Regulations.
- (4) **"CMS"** means the Centers for Medicare and Medicaid Services.
- (5) **"Encounter"** means a face to face contact between a health care professional and an IHS eligible SoonerCare member for the provision of medically necessary Title XIX or Title XXI covered services through an IHS or Tribal 638 facility or an urban Indian clinic within a 24-hour period ending at midnight, as documented in the patient's record.
- (6) **"Licensed Behavioral Health Professional (LBHP)"** means a licensed psychologist, licensed clinical social worker(LCSW), licensed marital and family therapist (LMFT), licensed professional counselor (LPC), licensed behavioral practitioner (LBP) or licensed alcohol and drug counselor (LADC).
- (7) **"OHCA"** means the Oklahoma Health Care Authority.

(8) **"OMB rate"** means the Medicaid reimbursement rate negotiated between CMS and IHS. Inpatient and outpatient Medicaid reimbursement rates for ~~I/T/US~~I/T/Us are published annually in the Federal Register or Federal Register Notices. The outpatient rate is also known as the I/T/U encounter rate. The encounter rate is available only to I/T/U facilities that appear on the IHS maintained listing of IHS-operated and Indian health care facilities operating under a 638 agreement. It is the sole responsibility of the facility to petition IHS for placement on this list.

(9) **"Physician"** means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery or who is a licensed physician employed by the Federal Government in an IHS facility or who provides services in a 638 Tribal Facility.

(10) **"State Administering Agency (SAA)"** is the Oklahoma Health Care Authority.

(11) **"638 Tribal Facility"** is a facility that is operated by a tribe or tribal organization and funded by Title I or Title III of the Indian Self Determination and Education Assistance Act (Public Law 93-638).

317:30-5-1090. Provision of other health services outside of the I/T/U encounter

(a) Medically necessary SoonerCare covered services that are not included in the I/T/U outpatient encounter rate may be billed outside the encounter rate within the scope of the SoonerCare fee-for-service contract. The services will be reimbursed at the fee-for-service rate, and will be subject to any limitations, restrictions or prior authorization requirements. Examples of these services include but are not limited to:

- ~~(1) pharmaceuticals/drugs;~~
- ~~(2)(1) durable medical equipment;~~
- ~~(3)(2) glasses;~~
- ~~(4)(3) ambulance;~~
- ~~(5)(4) home health; [refer to OAC 317:30-5-546];~~
- ~~(6)(5) inpatient practitioner services;~~
- ~~(7)(6) non-emergency transportation [refer to OAC 317:35-3-2];~~
- ~~(8)(7) behavioral health case management [refer to OAC 317:30-5-240 through 317:30-5-249]; [refer to OAC 317:30-5-241.6];~~
- ~~(9)(8) psychosocial rehabilitative services [refer to OAC 317:30-5-240 through 317:30-5-249]; [refer to OAC 317:30-5-241.3]; and~~
- ~~(10)(9) psychiatric residential treatment facility services [refer to OAC 317:30-5-96.3]. [refer to OAC 317:30-5, Part 6, Inpatient Psychiatric Hospitals].~~

(b) If the I/T/U facility chooses to provide other SoonerCare State Plan covered health services which are not included in the I/T/U encounter definition, those service providers must be contracted with OHCA and bill for those services under their assigned provider

number consistent with program coverage limitations and billing procedures described by the OHCA.

317:30-5-1094. Behavioral health services provided at I/T/USI/T/Us

(a) Behavioral health services that are primary, preventive, and therapeutic and would be covered if provided in another setting may be provided by I/T/U providers. Services provided by an I/T/U (refer to OAC 317:30-5-241 for a description of services) must meet the same requirements as services provided by another provider. Services include:

- (1) Mental Health and/or Substance Use Assessment/Evaluation and Testing;
- (2) ~~Alcohol and/or Substance Abuse Services Assessment and Treatment~~ Service Plan Development;
- (3) Crisis Intervention Services;
- (4) Medication Training and Support;
- (5) Individual/~~interactive~~ Interactive Psychotherapy;
- (6) Group Psychotherapy; and
- (7) Family Psychotherapy.

(b) Behavioral health professional therapy services are covered when provided in accordance with a documented individualized treatment plan, developed to treat the identified mental health and/or substance ~~abuse~~ use disorder(s). ~~A minimum of a 45 to 50 minute standard clinical session must be completed by an I/T/U in order to bill an encounter for the session. Treatment must be documented in accordance with OAC 317:30-5-248.~~ Behavioral health services must be billed on an appropriate claim form using appropriate Current Procedural Terminology (CPT) procedure code and guidelines. The time indicated on the claim form must be the time actually spent with the member.

(c) In order to support access to mental health services, these services may be provided in settings outside of the I/T/U. Offsite services must take place in a confidential setting.

(d) The outpatient behavioral health services' provider enrollment and reimbursement process in no way changes the OHCA's policy with regard to reimbursement of practitioners. Licensed clinical social workers (LCSW), licensed marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral practitioners (LBP), licensed alcohol and drug counselors (LADC), and licensure candidates are not eligible for direct reimbursement as practitioners. Their services are compensable only when billed by their employers and when provided in those clinical settings in which they are currently approved to render services. Licensure candidates must meet the requirements contained in OAC 317:30-5-240.3.

(e) For the provision of behavioral health related case management services, I/T/U providers must meet the requirements found at OAC ~~317:30-5-240 through 317:30-5-249,~~ 317:30-5-241.6, and be contracted as such. The provision of these services is considered to be

outside of the I/T/U encounter. Contracted behavioral health case management providers are responsible for obtaining all necessary prior authorizations, if needed, and will be paid at the current fee-for-service rate.

(f) For the provision of psychosocial rehabilitation services, I/T/U facilities meet the requirements found at OAC ~~317:30-5-240 through 317:30-5-249~~, 317:30-5-241.3, and must contract as an outpatient behavioral health agency. The provision of these services is considered to be outside of the I/T/U encounter. Contracted psychosocial rehabilitation service providers are responsible for obtaining all necessary prior authorizations, if needed, and will be paid at the current fee-for-service rate.

317:30-5-1098. I/T/U outpatient encounters

(a) I/T/U outpatient encounters that are billed to the OHCA must meet the definition in this Section and are limited to services covered by the OHCA. These services include health services included in the State Plan under Title XIX or Title XXI of the Social Security Act.

~~(b) The following words and terms have the following meaning unless the context clearly indicates otherwise:~~

(1) An I/T/U encounter means a face to face or telemedicine/telehealth contact between a health care professional and an IHS eligible SoonerCare member for the provision of medically necessary Title XIX or Title XXI covered services through an IHS or Tribal 638 facility or an urban Indian clinic within a 24-hour period ending at midnight, as documented in the patient's record.

(2) An I/T/U outpatient encounter means outpatient services that may be covered when furnished to a patient by a contracted SoonerCare provider employed by the I/T/U facility and rendered at the I/T/U facility or other location, including the patient's place of residence.

~~(e)~~(b) The following services may be considered reimbursable encounters subject to the limitations of the Oklahoma State Plan and include any related medical supplies provided during the course of the encounter:

- (1) Medical;
- (2) Diagnostic;
- (3) Behavioral Health services [refer to OAC 317:30-5-1094];
- (4) Dental, Medical and Mental Health Screenings;
- (5) Vision;
- (6) Physical Therapy;
- (7) Occupational Therapy;
- (8) Podiatry;
- (9) Speech;
- (10) Hearing;
- (11) Visiting Nurse Service [refer to OAC 317:30-5-1093];
- (12) Smoking and Tobacco Use Cessation Counseling;

(13) Other Title XIX or XXI services as allowed under OHCA's SoonerCare State Plan and OHCA Administrative Rules;

(14) Drugs or medication treatments provided during a clinic visit are part of the encounter rate. For example, a member has come into the clinic with high blood pressure and is treated at the clinic with a hypertensive drug or drug sample. Drug samples are included in the encounter rate. ~~Prescriptions are not included in the encounter rate and must be billed through the pharmacy program by a qualified enrolled pharmacy;~~ Prescription drugs are reimbursed pursuant to OAC 317:30-5-78(b)(4)(B).

(15) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound members; and

(16) I/T/U Multiple Outpatient Encounters.

(A) OHCA will cover one medically necessary outpatient medical encounter per member per day unless if due to an emergency, the same member returns on the same day for a second visit with a different diagnosis. Then, a second encounter is allowed.

(B) OHCA will cover one dental encounter per member per day regardless of how many procedures are done or how many providers are seen unless if due to an emergency, the same member returns on the same day for a second visit and has a different diagnosis. Then, a second encounter is allowed.

(C) OHCA will cover one behavioral health professional outpatient encounter per member per day unless if due to an emergency, the same member returns on the same day for a second visit and has a different diagnosis. Then, a second encounter is allowed.

(D) Each service must have distinctly different diagnoses in order to meet the criteria for multiple I/T/U outpatient encounters.

~~(d)~~(c) More than one outpatient visit with a medical professional within a 24-hour period for distinctly different diagnoses may be reported as two encounters. This does not imply that if a member is seen at a single office visit with multiple problems that multiple encounters can be billed. For example, a member comes to the clinic in the morning for an immunization, and in the afternoon, the member falls and breaks an arm. This would be considered multiple medical encounters and can be billed as two encounters. However, a member who comes to the I/T/U facility for a diabetic wellness screening and is then referred to a podiatrist within the clinic for diabetes-related follow-up on the same date of service would not be considered a distinctly different diagnosis and can only be billed as a single encounter.

~~(e)~~(d) The following services may be considered as separate or multiple encounters when two or more services are provided on the same date of service with distinctly different diagnoses:

- (1) Medical Services;
- (2) Dental Services
- (3) Mental Health and addiction services with similar diagnoses can only be billed as one encounter. In addition, if the member is also seen for a medical office visit with a mental health or addiction diagnosis, then it is considered a single encounter;
- (4) Physical or occupational therapy (PT/OT). If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT (initial referral), then it is considered a single encounter;
- (5) Administration of immunizations. If no other medical office visit occurs on the same date of services; and
- (6) Tobacco cessation limited to state plan services. If no other medical or addiction encounter occurs on the same date of service.

~~(f)~~(e) I/T/U outpatient encounters for IHS eligible SoonerCare members whether medical, dental, or behavioral health, are not subject to prior authorization. Other State Plan covered services that the I/T/U facility chooses to provide but which are not part of the I/T/U encounter are subject to all applicable SoonerCare regulations which govern the provision and coverage for that service.