



CENTER FOR CONNECTED HEALTH POLICY

The Center for Connected Health Policy (CCHP) is a public interest nonprofit organization that develops and advances telehealth policy solutions to promote improvements in health and health care systems.

Telehealth expands access, particularly among underserved communities, and improves the efficiency and cost effectiveness of health care systems. With these benefits in mind, CCHP:

- Promotes policies that expand telehealth program adoption;
- Conducts objective research and policy analysis;
- Develops nonpartisan policy recommendations;
- Serves as a state and national resource on telehealth policy issues.

In its work as the federally designated National Telehealth Policy Resource Center (NTRC-P), CCHP provides technical assistance to twelve regional telehealth resource centers (TRCs) nationwide. The NTRC-P project is made possible by Grant #G22RH24746 from the Office of the Advancement of Telehealth, Health Resources and Services Administration, Department of Health and Human Services.

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California Board of Occupational Therapy

Standards of Practice for Telehealth

On December 30, 2013, the California Board of Occupational Therapy adopted a new rule titled, "Standards of Practice for Telehealth." The rule is in response to the passage of The Telehealth Advancement Act of 2011, which made occupational therapists eligible providers of telehealth-delivered services in California.

Who it affects: Occupational therapists (OTs) and occupational therapy assistants (OTAs).

Purpose: **To establish and clarify standards and expectations associated with the delivery of occupational therapy services via information and communication technologies.** Failure of OTs and OTAs to comply with this regulation will be considered unprofessional conduct.

WHAT IT DOES

The rule clarifies that the regulations and requirements that OTs and OTAs are already expected to adhere to during in-person services also apply for telehealth-delivered services. OTs and OTAs must:

- Have a valid and current license issued by the Board;
- Exercise the same standard of care for telehealth-delivered services as in-person services;
- Provide services consistent with the section of California's Business and Professions Code relating to occupational therapy;
- Comply with all other provisions of the Occupational Therapy Practice Act and related regulations.

As already required in California Business and Professions Code 2290.5, **oral informed consent must be obtained prior to the use of telehealth** to deliver health services.

The rule directs OTs to make a determination of whether an in-person evaluation or intervention is necessary prior to providing occupational therapy services via telehealth. If necessary, a therapist must be available on-site (in the case of an evaluation), or an OT or OTA must be on-site (in the case of an intervention).

WHAT IT DOES

In making this determination, the rule directs OTs and OTAs to consider:

- The complexity of the patient's condition;
- Their own knowledge, skills and abilities;
- The nature and complexity of the intervention;
- The requirements of the practice setting; and
- The patient's context and environment.

Analysis

A large portion of this rule simply restates laws and regulations that OTs and OTAs would have to comply with, regardless of whether or not this regulation exists. However, two areas appear to impose additional burdens on OTs.

Informed consent presents the first issue. California Business and Professions Code 2290.5(b) requires the OT to obtain oral informed consent prior to using telehealth to deliver health services. However, the provision in Section 2290.5(b) states that the health care provider at the originating site shall obtain the oral informed consent. The OT regulations now place an additional burden on the OT who presumably would be at the distant site if telehealth is used.

The second issue is the **requirement that an OT must assess whether or not an in-person evaluation or intervention is necessary, while considering a number of specific factors described above, before a telehealth visit can take place.** If an in-person encounter is determined to be more appropriate, an on-site therapist, OT, or OTA (depending on whether the visit is an evaluation or intervention) must be available.

This raises a number of concerns:

- In order to sufficiently take these factors into consideration, the OT may need to evaluate the patient. If this evaluation cannot take place via telehealth (since these factors need to be taken into account prior to a telehealth encounter), then it must take place in person, **eliminating telehealth as an option.**
- It is unclear whether the regulations require that this determination be made before each and every time a service is delivered through telehealth. **The current language appears to require the in-person evaluation to take place before any telehealth-delivered service occurs,** regardless of whether it is the first treatment or one in a series.
- **Telehealth is often used when patients do not have local access to a particular provider.** Therefore, it may not be feasible for an OT or OTA to be on-site in the case that the distant site OT or OTA makes that determination.

As other professional boards in California look at their professionals becoming eligible telehealth providers, these regulations could potentially become the template for additional proposed regulations in other specialties.

Effective Date: April 1, 2014