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BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF AN EMERGENCY)
RULEMAKING OF THE OKLAHOMA)
CORPORATION COMMISSION AMENDING) CAUSE NO. RM 201600005
OAC 165:59, OKLAHOMA UNIVERSAL SERVICE)
AND LIFELINE RULES)
)

INITIAL COMMENTS OF THE OKLAHOMA HOSPITAL ASSOCIATION

The Oklahoma Hospital Association (OHA) was established in 1919 and represents more than 130 hospitals and health care entities across the state of Oklahoma. OHA's primary objective is to promote the welfare of the public by leading and assisting its members in the provision of better health care and services for all people. OHA members have a shared interest in protecting the Oklahoma Universal Service Fund (OUSF) for the benefit of Oklahoma Health Care providers and the many Oklahomans they serve. The OHA believes telemedicine improves the care of patients and access to healthcare throughout Oklahoma. The OUSF has provided vital funding to not for profit healthcare entities including cities and counties, allowing for the development of telemedicine practices across the state.

The following comments are submitted by OHA regarding the Proposed Emergency Rulemaking in which we generally oppose any attempt to reduce the quality of bandwidth and the amount not-for-profit hospitals, not-for-profit mental health and substance abuse facility, or Federally Qualified Health Centers (FQHC's) receive through the OUSF. This coalition of health care providers worked along with schools, libraries, telephone companies and Commission Staff during the legislative process to develop legislation that could meet the needs of beneficiaries serving Oklahomans in school and healthcare

settings. The language in HB 2616 was vetted during the legislative process and signed into law by Governor Fallin on May 9, 2106. The competitive bidding language for OUSF beneficiaries agreed to by most all parties during the legislative process and now contained in statute is far exceeded in the emergency rulemaking that is proposed by PUD staff. If the PUD staff disagrees with the language in the statute then the OCC should seek a legislative change to the OUSF in the 2017 Session which begins in February.

The OHA generally concurs with the "Initial Comments of Atlas Telephone Company, et al" filed February 4, 2014 in a prior case, RM 201400003 "In the Matter of Permanent Rulemaking of the Oklahoma Corporation Commission Amending OAC 165:59 OUSF" in which Atlas questioned the statutory basis for certain proposed rules. In *Public Service Co. of Oklahoma v. State*, 948 P.2d 713 (1997) the Oklahoma Supreme Court held, "The Commission is a tribunal of limited jurisdiction and when promulgating rules it can only exercise its power within confines its limited jurisdiction." As stated in the Administrative Procedures Act, Title 75. O.S. Section 250.4:

"A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act.
2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and E of Section 303 of this title and Section 306 of this title. To the extent of any conflict or inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution, it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution."

Commissioner Bob Anthony, at the technical conference in RM 201400003 on February 5, 2014 stated that the rulemaking should not be broader than statute. The OHA agrees with Commissioner Anthony. "The fundamental rule of statutory construction is to ascertain and give effect to the

legislative intent, and that intent is first sought in the language of a statute." *In re City of Durant v. Cicio*, 50 P.3d 218, 221 (Okla. 2002). According to the "Initial Comments of Atlas Telephone et al" Commissioner Anthony on January 30th, 2014 also stated that "the rules should not reach beyond the authority granted by statute and where such rules many have over-reached, such rules should be changed to be consistent with statutory authority without reciting information that is already set forth in a statute." "While it is well settled that the power to formulate laws within this jurisdiction is legislative, 'the power to make rules of a subordinate character in order to carry out that policy and apply it to varying conditions, although partaking of a legislative character, is in its dominant aspect administrative and can be delegated.'" *J. Brotton Corp. v. Okla. Alcoholic Beverage Laws Enforcement Comm'n*, 822 P.2d 683, 685-86 (Okla. 1991) (quoting *State ex rel. Hart v. Parham*, 412 P.2d 142, 150 (Okla. 1966). Basic rules of statutory construction are useful in order to determine the effect of rule promulgation requirements on the Commission. "The primary goal of statutory construction is to determine [the] legislative intent" of a statute "in light of its general purpose and object." *TXO Production v. Oklahoma Corporation Commission*, 829 P.2d 964, 968-69 (Okla.1992). Words in a statute must be understood in their ordinary meaning, except when a contrary intent plainly appears or when otherwise defined by the Legislature. 25 O.S.1991, § 1. Intent must be ascertained from the entire act in light of its purpose. *Midwest City v. Harris*, 561 P.2d 1357, 1358 (Okla.1977). Interpretation must be done in such a way as to make every word and sentence operative rather than render a statutory provision nugatory. *TWA v. McKinley*, 749 P.2d 108, 110 (Okla.1988).

Emergency Rulemaking General Comments

OHA is aware of the immediate need for emergency rules to govern the new application process for beneficiaries such as hospitals to receive funds from the OUSF. One thought for healthcare that should not be overlooked is the provision of medicine through the telemedicine services paid in part by the OUSF saves the lives and money of Oklahomans. The saving of lives is important to remember as we discuss what services are being provided in telemedicine across the state and what services are necessary for the provision of those services. When hospitals are monitoring fetal heartbeats or a stroke patient remotely the images and data must be consistent and not subject to service interruption or the medical profession monitoring the remote patient will miss data that could end in death of the patient. Service reliability in telemedicine is truly a life and death matter for vulnerable patients. Service reliability and the ability of the hospital to request that the last mile of service be buried instead of ariel is a crucial criteria that should not be excluded from the RFP process. The issue of criteria in awarding competitive bids came up several times at the OUSF Industry meeting OHA attended on June 15, 2016. PUD Director Brandy Wreath's comment was essentially "You get what you pay for with State funds." OHA interpreted that comment by Mr. Wreath to mean the OUSF will only pay for a certain level of service but not the service necessary to perform the function according to the beneficiary. If true, the PUD staff imposing criteria upon what is needed to provide telemedicine services is the opposite of the legislative intent the Oklahoma Telecommunications Act of 1997 and its reform in HB 2616. The thought that "you only get what you pay for with state funds" is the antitheses of every thought process in state funding that if funds are provided the service must meet the criteria required. For example, would the state Medicaid agency, OHCA, find acceptable

putting a cast on a child's broken leg that only covers the appendage one-half the way and expect payment? No, OHCA, would say the care did not meet the criteria for care and would not make payment to the provider. A job one-half way finished is unfinished.

Further, the providers of telemedicine services are required to meet technical standards by a myriad of other state agencies in the provisioning of care through telemedicine. The Oklahoma Board of Medical Licensure and Supervision (OBMLS), the Oklahoma State Board of Osteopathic Examiners (OSBOE), and the Oklahoma Health Care Authority (OHCA) have requirements regarding the provision of telehealth. Both the OHCA and OBMLS have technical standards in common including the requirement that audio and video equipment must permit interactive communications and the network connection must have sufficient bandwidth so that no audio or video latency (i.e. delay) exists. "The telemedicine equipment and **transmission speed and image** must be technically sufficient to support the service billed." See OAC 317:30-3-27, Telemedicine rules of the OHCA (emphasis added), attached as Appendix A. The OBMLS states that "Telemedicine technology must be sufficient to provide the same information to the provider **as if the exam has been performed face-to-face.**" See 435:10-7-13(B)(2), Telemedicine rules of the OBMLS attached as Appendix B. The OBMLS further addresses equipment for use in telemedicine by physicians in stating "Audio and video equipment must permit interactive, real-time communications." See 435:10-7-13(B)(3) attached as Appendix B. The OHA asks the OCC in reviewing the legislative reform of the OUSF found in HB 2616 and performing the role of rulemaking that the beneficiaries of the OUSF should be determining the business need for telecommunication services within the parameters of the statute and then

participating in competitive bidding accordingly. The OCC should not be in the position of rulemaking which dictates the business needs of beneficiaries.

Emergency Rulemaking General Comments

The specific concern by OHA in the OUSF Emergency Rulemaking is the section on competitive bidding. The OHA supports and echoes the statements of the Oklahoma Technology Directors filed June 23, 106 in the instant rulemaking:

“The proposed rules specifically forbid the inclusion of appropriate and customary criteria detailing the specific requirements of the beneficiary. The result would jeopardize the quality and reliability of service since, according to the proposed rules, the bid can only include bandwidth criteria and may not include specific requirements of the beneficiary. The fundamental purpose of an RFP is to detail beneficiary requirements to ensure that a reliable and quality service is bid.”

For the convenience of the reader, the OHA provides the exact language of the statute herein and then contrasts that with the proposed rules. The OUSF competitive bidding language in Section 139.109.1(B)(5) of Title 17 as found in Section 6 of the Enrolled version of HB 2616 contains the following language:

“5. Oklahoma Universal Service Fund Beneficiaries shall conduct a fair and open competitive bidding process to select the services and carrier eligible for support. The competitive bidding process shall meet the following standards:

- a. the solicitation of bids shall clearly identify the bandwidth range requested by the Oklahoma Universal Service Fund Beneficiary or consortium,
- b. the Oklahoma Universal Service Fund Beneficiary shall not limit bidders based upon technology,
- c. the bidding shall be open to all carriers authorized to receive OUSF funding in the telephone exchange where the Oklahoma Universal Service Fund Beneficiary is located or where the members of the consortium are located, and
- d. the bidding shall not be structured in a manner to exclude carriers eligible to receive OUSF funding in the telephone exchange where the Oklahoma Universal Services Fund Beneficiary is located.”

Section 139.109.1(B)(7) of Title 17 as found in Section 6 of the Enrolled version of HB 2616 contains the following language regarding competitive bidding in the OUSF:

- “7. For purposes of this act, "lowest cost reasonable qualifying bid" means a bid that:
- a. represents the lowest total cost proposal including monthly recurring and nonrecurring charges for eligible services,
 - b. is reasonable to meet the needs of the Oklahoma Universal Service Fund beneficiary as listed in the request for bids,
 - c. is submitted during the same competitive bidding period as the awarded bid,
 - d. is for a bandwidth within the range requested for bid and selected by the Oklahoma Universal Service Fund Beneficiary,
 - e. is for the same contract term as the bid that was selected by the Oklahoma Universal Service Fund Beneficiary,
 - f. meets the requirements specified in the request for bid by the Oklahoma Universal Service Fund Beneficiary, and
 - g. was the result of a fair and open competitive bidding process as defined in this act.”

In contrast to the statute, the OCC in the instant rulemaking as of June 21, 2016 had proposed the following rules on Competitive Bidding in 165:59-7-19. The OHA notes the OCC proposed rules which do relate back to a statutory citation when verifiable and also note when such a statutory reference is not verifiable.

165:59-7-19. Competitive Bidding

(a) In the interest of fostering a fair and open bidding process from all qualified bidders eligible to receive OUSF funding under the Oklahoma Telecommunications Act, the following are requirements for requests for bids:

- (1) The bidder must be an eligible provider, as defined in 17 O.S. § 139.102. [Verified Cite: 17 O.S. §139.109.1(B)(4)]
- (2) Bidding shall not be structured in a manner to exclude carriers eligible to receive OUSF funding in the telephone exchange where the OUSF Beneficiary is located. [Verified Cite: 17 O.S. §139.109.1(B)(5)(d)]

(A) The bid request shall not require that the eligible provider provide services which are ineligible for funding from the OUSF. **[Not referenced in statute]**

(B) The bid request shall not require that the Internet and WAN be provided by the same eligible provider. **[Not referenced in statute]**

(C) The bid request shall not limit bidders based upon technology. **[Verified Cite: 17 O.S. §139.109.1(B)(5)(b)]**

(D) The bid request shall not exclude bidders that are technically qualified to deliver the services requested. **[Not directly referenced in statute, perhaps a rewrite of 17 O.S. §139.109.1(B)(5)(c)]**

(E) The bid shall not include other criteria which have the effect of excluding an eligible provider from bidding. **[Not referenced in statute]**

(F) The bid request shall not require a walk-through prior to bid selection. **[Not referenced in statute]**

(G) The bid request shall clearly identify the bandwidth range requested by the OUSF beneficiary. **[Verified Cite: 17 O.S. §139.109.1(B)(5)(a)]**

(b) OUSF Administrator Bid Evaluation:

(1) In order to avoid bidders creating balloon payments or unreasonable termination charges, the OUSF Administrator may consider all costs throughout the term of any contract to be incurred during the first year of the contract when evaluating a bid to determine whether the bid is the lowest cost reasonable qualifying bid. **[Not referenced in statute]**

(2) The OUSF Administrator shall consider all costs, including but not limited to installation charges, construction charges, early termination fees, and charges assessed upon the expiration of a contract, throughout the term of any multiyear contract for telemedicine to be incurred over the life of the contract when evaluating a bid to determine whether the bid is the lowest cost reasonable qualifying bid. **[Not referenced in statute]**

(c) Bids must contain all costs to provide the Special Universal Services. Any bid containing estimated costs will be disregarded as not meeting the bid requirements. **[Not referenced in statute]**

(d) Bidders are presumed to know statutory requirements for contracts for public entities; bids that do not conform to requirements for public entities may be disregarded. **[Not referenced in statute]**

(e) When determining the Lowest Cost Reasonable Qualifying Bid, the following may be considered:

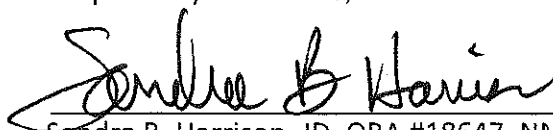
- (1) the effect that selecting or rejecting a particular bid may have on other eligible services that have been bid, **[Not referenced in statute]**
- (2) costs that may be incurred by the beneficiary as a result of selecting a particular bid, **[Not referenced in statute]**
- (3) bids for two or more eligible services by the same service provider deemed as one bid by the Administrator, **[Not referenced in statute]**
- (4) the beneficiary's documented recent service history with a service provider, or other factors or issues that may affect one or more bids. **[Not referenced in statute]**

The OHA was only able to verify in proposed rule 165:59-7-19 the references to the statute in five sentences of the proposed approximately seventeen stand-alone sentences in the rulemaking on competitive bidding. OHA supports the 165:59-7-19 changes on competitive bidding submitted to PUD Staff titled "Draft Emergency Rules 5-2-16, with RLEC edits shown as redline 6-14-16."

Conclusion

In conclusion, the OHA states the emergency rulemaking found in 165:59-7-19 regarding competitive bidding far exceeds the statutory authority of the OCC granted in 17 O.S. §139.109.1. In order for the PUD proposed rules to be enacted the statute would have to be changed to reflect the extra demands placed on the OUSF beneficiaries and telecommunication providers. As of the date of this submittal, the OHA does not agree with the structure of the competitive bidding in the rules which exceeds the confines of the statute. The OHA does support the proposed draft rulemaking submitted by RLEC on 6-14-16 on the competitive bidding rules. The OHA does offer as part of the emergency rulemaking process to work with staff and the other stakeholders on further refining the OUSF. The undersigned reserves the right to submit further comments and recommended edits to the Chapter 59 rules as this rulemaking proceeds.

Respectfully Submitted,



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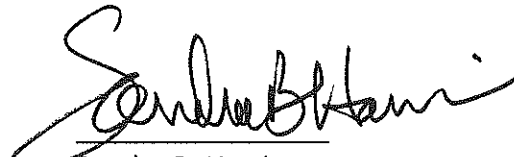
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Appendix A: Telemedicine Rules of the Oklahoma Healthcare Authority

317:30-3-27. Telemedicine

(a) **Applicability and scope.** The purpose of this Section is to implement telemedicine policy that improves access to health care services, while complying with all applicable federal and state statutes and regulations. Telemedicine services are not an expansion of SoonerCare covered services but an option for the delivery of certain covered services. However, if there are technological difficulties in performing an objective thorough medical assessment or problems in the member's understanding of telemedicine, hands-on-assessment and/or in person care must be provided for the member. Any service delivered using telehealth technology must be appropriate for telemedicine delivery and be of the same quality and otherwise on par with the same service delivered in person. A telemedicine encounter must comply with the Health Information Portability and Accountability Act (HIPAA). For purposes of SoonerCare reimbursement telemedicine is the use of interactive audio, video or other electronic media for the purpose of diagnosis, consultation or treatment that occur in real-time and when the member is actively participating during the transmission. Telemedicine does not include the use of audio only telephone, electronic mail, or facsimile transmission. Transfer of data from one site to another through the use of a camera or similar device that records (stores) an image that is sent (forwarded) via telecommunication to another site for consultation. Asynchronous or "store and forward" applications would not be considered telemedicine but may be utilized to deliver services.

(b) **Conditions.** The following conditions apply to all services rendered via telemedicine.

(1) Interactive audio and video telecommunications must be used, permitting encrypted real-time communication between the physician or practitioner and the SoonerCare member. The telecommunication service must be secure and adequate to protect the confidentiality and integrity of the telemedicine information transmitted. As a condition of payment the member must actively participate in the telemedicine visit.

(2) The telemedicine equipment and transmission speed and image must be technically sufficient to support the service billed. If a peripheral diagnostic scope is required to assess the member, it must provide adequate resolution or audio quality for decision making. Staff involved in the telemedicine visit need to be trained in the use of the telemedicine equipment and competent in its operation.

(3) The medical or behavioral health related service must be provided at an appropriate site for the delivery of telemedicine services. An appropriate telemedicine site is one that has the proper security measures in place; the appropriate administrative, physical and technical safeguards should be in place that ensure the confidentiality, integrity, and security of electronic protected health information. The location of the room for the encounter at both ends should ensure comfort, privacy, and confidentiality. Both visual and audio privacy are important, placement and selection of the rooms should consider this. Appropriate telemedicine equipment and networks must be used considering factors such as appropriate screen size, resolution, and security. Providers and/or members may provide or receive telemedicine services outside of Oklahoma when medically necessary.

(4) The provider must be contracted with SoonerCare and appropriately licensed for the service to be provided. If the provider is outside of Oklahoma, the provider must comply with all laws and regulations of the provider's location, including health care and telemedicine requirements.

(5) The health care practitioner must obtain written consent from the SoonerCare member that states he or she agrees to participate in the telemedicine-based office visit. The consent form must include a description of the risks, benefits and consequences of telemedicine and be included in the member's medical record.

(6) If the member is a minor child, a parent/guardian must present the minor child for telemedicine services unless otherwise exempted by State or Federal law. The parent/guardian need not attend the telemedicine session unless attendance is therapeutically appropriate.

(7) The member retains the right to withdraw at any time.

(8) All telemedicine activities must comply with the HIPAA Security Standards, OHCA policy, and all other applicable state and federal laws and regulations.

(9) The member has access to all transmitted medical information, with the exception of live interactive video as there is often no stored data in such encounters.

(10) There will be no dissemination of any member images or information to other entities without written consent from the member.

(c) Reimbursement.

(1) Services provided by telemedicine must be billed with the appropriate modifier.

(2) If the technical component of an X-ray, ultrasound or electrocardiogram is performed during a telemedicine transmission, the technical component can be billed by the provider that provided that service. The professional component of the procedure and the appropriate visit code should be billed by the provider that rendered that service.

(3) The cost of telemedicine equipment and transmission is not reimbursable by SoonerCare.

(d) Documentation.

(1) Documentation must be maintained by the rendering provider to substantiate the services rendered.

(2) Documentation must indicate the services were rendered via telemedicine, and the location of the services.

(3) All other SoonerCare documentation guidelines apply to the services rendered via telemedicine. Examples include but are not limited to:

(A) Chart notes;

(B) Start and stop times;

(C) Service provider's credentials; and

(D) Provider's signature.

(e) The OHCA has discretion and the final authority to approve or deny any telemedicine services based on agency and/or SoonerCare members' needs.

[Source: Added at 26 Ok Reg 249, eff 1-1-09 (emergency); Added at 26 Ok Reg 1053, eff 5-11-09; Amended at 26 Ok Reg 3025, eff 7-21-09 (emergency); Amended at 27 Ok Reg 931, eff 5-13-10; Amended at 28 Ok Reg 1397, eff 6-25-11; Amended at 30 Ok Reg 1124, eff 7-1-13; Amended at 32 Ok Reg 1026, eff 8-27-15]

**Appendix B:
Telemedicine Rules of the Oklahoma Board of Medical Licensure
and Supervision**

435:10-1-4. Definitions

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

"**Act**" means the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. §§ 480 **et seq.**

"**APA**" means either or both Article I and Article II, as applicable of the Administrative Procedures Act, 75 O.S.1991, §§ 250 **et seq.**, as amended.

"**Applicant**" means a person who applies for licensure from the Board.

"**Board**" means the Oklahoma Board of Medical Licensure and Supervision.

"**Distant site**" means the location of medical doctor providing care via telecommunications systems.

"**Foreign applicant**" means an applicant who is a graduate of a foreign medical school.

"**Foreign medical school**" means a medical school located outside of the United States.

"**Originating site**" means the location of the patient at the time the service being furnished via a telecommunications system occurs.

"**Patient**" means the patient and/or patient surrogate.

"**Physician/patient relationship**" means a relationship established when a physician agrees by direct or indirect contact with a patient to diagnose or treat any condition, illness or disability presented by a patient to that physician, whether or not such a presenting complaint is considered a disease by the general medical community. The physician/patient relationship shall include a medically appropriate, timely-scheduled, actual face-to-face encounter with the patient, subject to any supervisory responsibilities established elsewhere in these rules except as allowed in OAC 435:10-7-12 in this Subchapter. The act of scheduling an appointment, whether by a physician or by a physician's agent, for a future evaluation will not in and of itself be considered to establish a physician/patient relationship.

"**Supervision and Control**" means the physical presence of the supervising physician in the office or operating suite before, during and after the treatment or procedure and includes diagnosis, authorization and evaluation of the treatment or procedure with the physician/patient relationship remaining intact.

"**Surrogate**" means individuals closely involved in patients' medical decision-making and care and include:

- (A) spouses or partners;
- (B) parents;
- (C) guardian; and
- (D) other individuals involved in the care of and/or decision-making for the patient.

"**Telemedicine**" means the practice of healthcare delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of conditions appropriate to treatment by telemedicine management, transfer of medical data, or exchange of medical

education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine (Oklahoma Statutes, Title 36, Sec. 6802). This definition excludes phone or Internet contact or prescribing and other forms of communication, such as web-based video, that might occur between parties that does not meet the equipment requirements as specified in OAC 435:10-7-13 and therefore requires an actual face-to-face encounter. Telemedicine physicians who meet the requirements of OAC 435:10-7-13 do not require a face to face encounter

[Source: Added at 11 Ok Reg 4535, eff 7-27-94 (emergency); Added at 12 Ok Reg 1223, eff 5-11-95; Amended at 24 Ok Reg 2246, eff 6-25-07; Amended at 27 Ok Reg 856, eff 4-25-10; Amended at 29 Ok Reg 353, eff 2-1-12 through 5-25-12 (emergency)¹; Amended at 31 Ok Reg 1975, eff 9-12-14]

EDITOR'S NOTE: ¹[The expiration date of this emergency action was published in error in the 2012 OAC Supplement. The expiration date was corrected for publication in the 2013 and subsequent OAC Supplements, and the Editor's Note was updated accordingly, as follows.]

Upon sine die adjournment of the Legislature on 5-25-12, these emergency amendments were terminated due to the Legislature's failure to approve the proposed permanent amendments that were intended to supersede the emergency amendments, as set forth in 75 O.S. 2011, §308(F) for proposed rules authorized by Title 59 of the Oklahoma Statutes. Upon disapproval of a proposed permanent rule intended to supersede an emergency action, the emergency action is considered terminated [75 O.S. §253(H)(2)(c)], and upon termination of an emergency amendatory action, the last effective permanent text is reinstated. Therefore, on 5-25-12 (after sine die adjournment of the Legislature), the text of 435:10-1-4 reverted back to the permanent text that became effective 4-25-10, as was last published in the 2011 Edition of the OAC. For the text of the emergency amendments that were effective from 2-1-12 through 5-25-12, see 29 Ok Reg 353.

435:10-7-13. Telemedicine

(a) Physicians treating patients in Oklahoma through telemedicine must be fully licensed to practice medicine in Oklahoma; and

(b) Must practice telemedicine in compliance with standards established in these rules. In order to be exempt from the face-to-face meeting requirement set out in these rules, the telemedicine encounter must meet the following:

(1) **Telemedicine encounters.** Telemedicine encounters require the distant site physician to perform an exam of a patient at a separate, remote originating site location. In order to accomplish this, and if the distant site physician deems it to be medically necessary, a licensed healthcare provider trained in the use of the equipment may be utilized at the originating site to "present" the patient, manage the cameras, and perform any physical activities to successfully complete the exam. A medical record must be kept and be accessible at both the distant and originating sites, preferably a shared Electronic Medical Record, that is full and complete and meets the standards as a valid medical record. There should be provisions for appropriate follow up care equivalent to that available to face-to-face patients. The information available to the distant site physician for the medical problem to be addressed must be equivalent in scope and quality to what would be obtained with an original or follow-up face-to-face encounter and must meet all applicable standards of care for that medical problem including the documentation of a history, a physical exam, the ordering of any diagnostic tests,

making a diagnosis and initiating a treatment plan with appropriate discussion and informed consent.

(2) Equipment and technical standards

(A) Telemedicine technology must be sufficient to provide the same information to the provider as if the exam has been performed face-to-face.

(B) Telemedicine encounters must comply with HIPAA (Health Insurance Portability and Accountability Act of 1996) security measures to ensure that all patient communications and records are secure and remain confidential.

(3) Technology guidelines

(A) Audio and video equipment must permit interactive, real-time communications.

(B) Technology must be HIPAA compliant.

(4) Board Approval of Telemedicine. In the event a specific telemedicine program is outside the parameters of these rules, the Board reserves the right to approve or deny the program.

[Source: Added at 31 Ok Reg 1975, eff 9-12-14]