



Texas Association of Health Plans
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September 13, 2022

re: *House Bill 4 (87R)*

Dear Chairwoman Klick and Members of the Public Health Committee,

Thank you for the opportunity to provide testimony regarding the implementation of HB 4 (87R), relating to the provision and delivery of telemedicine and telehealth services. The COVID-19 crisis has demonstrated the importance of telehealth in the Medicaid program. Over the past few years, we have learned that telehealth is an effective and safe tool to ensure patients receive the care they need. Additionally, the crisis has demonstrated that telehealth can be used to safely and effectively conduct service coordination activities and assessments for Medicaid members and may even be a preferred option for some families.

We applaud the Texas Legislature's work expanding telehealth for use in assessments and service coordination, further modernizing Texas Medicaid. By expanding telehealth options, HB 4:

- Empowers members with more health care delivery options,
- Provides additional protections and options for at-risk patients and families who view in-home assessments as unnecessary risks,
- Provides a strategy to address nursing workforce shortages, including allowing regions with more significant nursing shortages to be supported virtually by nurses in other areas of the state, and
- Improves the timeliness of assessments by making it easier to increase access.

While HHSC's proposed implementation of HB 4 allows some expansion of telehealth for service coordination, it misses important opportunities to take advantage of the flexibility and modernization provided by the legislation.

Instead, HHSC is requiring all STAR+PLUS, STAR Kids, and STAR Health members to return to in-person visits for initial and annual assessments, as well as for any change in condition assessment that results in a resource utilization group (RUG) change. HHSC is only allowing



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MCOs to conduct assessments via telehealth if they do not result in a change in condition. If no additional exceptions are adopted, MCOs will have to conduct all other assessments in-person.

Requiring all annual assessments and any assessments that result in a change in condition to be conducted in-person with no telehealth option will increase costs to the state. MCOs will also be forced to hire more nurses, further exacerbating the nursing workforce shortage. It also imposes additional burdens on Medicaid families, who may agree that telehealth is preferable to an in-person visit in their homes. Most importantly, members who decline in-person assessments due to health risk concerns may miss out on the care and services they need to stay healthy in their homes and communities if assessments are not allowed to be conducted via telehealth. Likewise, if a member's condition worsens and they need additional services, that member will be forced to make a difficult decision: risk exposure or forfeit additional health care services and supports. The state should not be putting members in this position when telehealth is a safe and effective alternative.

The relevant section of HB 4, codified at Government Code Sec. 533.039(e), states:

A Medicaid managed care organization shall... conduct: (1) at least one in-person visit with the recipient to make an initial waiver eligibility determination; and (2) additional in-person visits with the recipient if necessary, as determined by the managed care organization.

The agency has required one in-person visit in the draft rules for the initial assessment, but then goes on to require additional in-person visits, regardless of the determination of the MCO.

While it is not unreasonable to require at least one in-person visit per year for Level 1 service coordination assessments, the current implementation plan will result in multiple in-person visits each year for all levels of service coordination, which is unnecessary, inefficient, and intrusive. As the public health emergency (PHE) nears its fourth year, MCOs have effectively used HHSC's COVID-19 flexibilities to safely and successfully conduct all assessments through telehealth, including those that resulted in RUG changes. **Over 80% of STAR Kids families, including MDCP families, have been proactively choosing telehealth for service coordination.** We believe it is reasonable to allow members the option to choose telehealth for all non-Level 1 assessments based on the state's successful experience over these past three years. This has more than demonstrated that telehealth is a safe and effective tool to conduct



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services coordination and assessments. **The state should not be forcing MCO staff into members' family homes when there is evidence and experience that it is safe and effective to use telehealth.** Eliminating this personal option for them will create huge dissatisfaction with the program. Medicaid enrollees should have the option to use telehealth for all ongoing assessments.

In HB 4, the legislature also instructed HHSC, "to the extent permitted by federal law," to establish policies allowing MCOs to conduct virtual assessments.¹ Not only does federal law permit virtual assessments, but when HHSC requested written guidance from CMS regarding whether assessments should be conducted virtually or in-person, the agency responded by saying that the state can make that determination. "In either case," CMS noted, "the state must meet the health and welfare assurance for each participant."² HHSC has taken a more conservative approach to allowing the use of telehealth by prohibiting its use for ongoing assessments.

The legislature acknowledged that there are situations where virtual assessments are not "appropriate under the circumstances,"³ and we agree. However, the legislature instructed HHSC to consider "whether the recipient consents" to receiving the virtual assessment⁴ and to consider "whether the recipient requests" a virtual assessment.⁵ We believe the rules and implementation plan should allow Medicaid families to make this decision for themselves, if it is safe and effective to do so.

TAHP's member plans believe HHSC should use the flexibilities made possible by HB 4 to fully modernize the Medicaid service coordination process. **We recommend that HHSC amend**

¹ Tex. Gov't Code Sec. 533.039(b).

² CMS advised, "The state must deploy an assessment method that is adequate to develop the person-centered service plan which meets requirements at 42 CFR §441.301(c)(2). The state's assessment tool or process may require the visual observations to discern if the individual can or cannot achieve a test. The state must assess its assessment tool and process and determine if only specific assessment questions require in-person observation or if it can be accomplished virtually or a hybrid model (virtually and face-to-face). In either case, the state must meet the health and welfare assurance for each waiver participant. If the beneficiary cannot be assessed by video, the state would need to utilize in-person."

³ Tex. Gov't Code Sec. 533.039(b)(5).

⁴ Tex. Gov't Code Sec. 533.039(b)(3).

⁵ Tex. Gov't Code Sec. 533.039(b)(2).



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their draft rule to the full extent allowable within statute to allow MCOs to conduct assessments and service coordination activities via telehealth for Medicaid members who can be assessed by video and personally choose to receive non-medical service coordination via telehealth. Plans are seeing an increase in concerns from caretakers and members who are hesitant to be seen in-person when they have grown accustomed to the safety a virtual assessment provides and are satisfied with their service coordination.

In addition to giving Texas Medicaid consumers and their families the choice to use telehealth for ongoing assessments, the rule should also include an exception process to allow telehealth in areas of the state where nursing workforce shortages have been identified, as well as an exception that allows a member to receive telehealth assessments if the member would be put at greater risk for infection if in-person visits are required.

There is no evidence that conducting assessments via telehealth jeopardizes the safety or welfare of patients who receive them, and in reality, many Medicaid members will be put at greater risk if in-person visits are required. Members who have a high risk of contracting or developing serious complications from a communicable disease could be put in serious danger by in-person assessments. HHSC also has an additional oversight tool to ensure member safety. HHSC Managed Care LTSS Utilization Review staff already complete utilization reviews annually in STAR+PLUS Home and Community Based Services and the STAR Kids MDCP to determine if MCOs are assessing and enrolling members in services appropriately and accurately. If telehealth is considered safe and effective for medical and psychiatric care, then it should be a safe and effective tool for assessments that are not clinical and do not involve a physical assessment, medical care, or hands-on care.

Further, the State Medicaid Managed Care Advisory Committee (SMMCAC) strongly supports telehealth assessments. SMMCAC includes a wide variety of stakeholders and serves as the central source for stakeholder input on the implementation and operation of Medicaid managed care. SMMCAC voted in favor of a recommendation that “HHSC permanently allow service coordination assessments and face-to-face visits to occur by way of a telehealth modality if medically appropriate, is the member’s choice, and is technologically and physically feasible for the member; in order to reduce costs, improve access to service coordination, and improve efficiency.”



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MCOs are also concerned the nursing shortage will have an impact on any policy that does not encourage the modernization of service coordination. Nursing shortages in various regions of the state will result in additional drive time for in-person assessments, which could affect the timeliness of service coordination. COVID-19 variants continue to be highly contagious, which has resulted in a further decrease in the availability of nurses. Vaccination status has also had an impact on availability—some families refuse to let unvaccinated individuals into their homes.

We need solutions that expand—not limit—the use of telehealth to modernize the Texas Medicaid program, improve access to care, reduce costs, and increase innovation and efficiency in our health care system. We hope the legislature will continue its leadership on this issue by ensuring that Medicaid members receive the full benefits associated with telehealth, delivered in the most clinically appropriate and cost-effective manner. This includes fully utilizing telehealth to conduct assessments and services coordination for Medicaid clients that can use and choose this delivery model.

Sincerely,

A handwritten signature in black ink that reads "Jessica Lynch". The signature is written in a cursive, flowing style.

Jessica Lynch
Director of Policy and Medicaid Operations
Texas Association of Health Plans