Assessment of Public Comment

During the public comment period, the Board received approximately 20 unique public comments.

Several of the comments supported the new permanent telehealth proposal which took into account the feedback received on previous proposal iterations.

A handful of comments objected to the requirement that Board-authorized physicians, podiatrists, nurse practitioners, and physician assistants can only treat via telehealth following an initial in-person encounter. Whether an in-person initial encounter should occur is a topic widely discussed in telehealth circles, and the Board has found that most experts still agree that initial in-person visit provides the opportunity for a more comprehensive history and physical examination and affords a greater ability to detect subtle findings not readily obvious via telehealth. Requiring an initial in-person encounter for these provider types also creates a baseline for future telehealth visits, so no change has been made in response to these comments.

Several comments received expressed a belief that flexibility for telemedicine in behavioral health is necessary and stated in-person visits should not be required on a specific timeline in the behavioral health realm. Because the proposal already reflects this position, no change has been made in response to these comments.

Some comments objected to the requirement that the provider document the reason for use of telehealth in behavioral health visits, opining these visits are just as effective as in-person, as well as objecting to the "no benefit to in-person services" and "risk" language for remote behavioral health visits. As telehealth is still different from normal medical treatment in the past and is still becoming more widely accepted and used, it remains best clinical practice to articulate the reasons for a telehealth visit (versus an in-person visit) and to ensure it is beneficial to the patient, so no change has been made in response to these comments.

One comment disagreed with not allowing assessment of permanent disability via telehealth, especially for behavioral health. As with the above comments, telehealth is still evolving and at this point in time the Board believes best clinical practice is that permanency evaluations of any type should not be done via telehealth.

A few comments disagreed with the requirements for the different phases of illness or injury, opining that the increments requiring in-person visits are too frequent in most instances, and especially in the case of someone too ill or injured to travel to a doctor's office. Over the last few years, the Board has drafted various iterations of telehealth regulations – both emergency adoptions and draft permanent proposals. The requirements for telehealth have ranged from highly proscriptive to a great deal of latitude, and the Board believes this proposal strikes the best balance of all prior versions. For workers unable to travel to a doctor's office, the procedures in effect prior to the pandemic or any prior telehealth proposal remain in effect – this is not a new situation. Therefore, no change has been made in response to these comments.

The Board received a handful of comments objecting to the “reasonable travel time and distance” requirement for providers if an in-person encounter is medically necessary. This requirement is not a new concept and exists in workers’ compensation case law independent of telehealth, so no change has been made in response to these comments.

Two comments requested the COVID-19 emergency adoption be permanently adopted. The COVID-19 emergency adoptions reflected the state of emergency for which greater latitude is afforded with respect to clinical standards to ensure adequate access to care during such an emergency, so no change has been made in response to these comments.

The Board received a few comments objecting to the use of code 99212, opining that it is insufficient. The Board has made a clarifying change to the proposal to reflect that changes in recommended coding may change and be reflected in future iterations of the fee schedule as they are updated.

The board received a few comments opining that the proposal should be changed to allow telehealth treatment by Board-authorized chiropractors, acupuncturists, physical therapists, and/or occupational therapists. Telehealth is still evolving, and like the case of permanency evaluations, the Board believes current best clinical practice is that these treatment types should not use telehealth, so no change has been made in response to these comments.

One comment requested the addition of a definition of “procedure” in subdivision (c)(2) which outlines that any visit requiring a “procedure” is not appropriate for telehealth. The term “procedure” is commonly understood in medical terminology, so no change has been made in response to this comment.

Changes made:

- Clarifying change to include language allowing future flexibility with updated coding