

OMH Telemental Health Service Regulations

OVERVIEW

On January 23rd, the New York State (NYS) Office of Mental Health (OMH) released a proposed rule for public comment in the State Register with revisions to 14 NYCRR Part 596, which contains OMH's regulations on telemental health services (formerly called telepsychiatry services). The new regulations:

- Expand the types of practitioners who can provide telemental health services;
- Allow services to be performed in additional types of patient and provider locations; and
- Permit additional OMH programs, including Personalized Recovery Oriented Services (PROS) and Assertive Community Treatment (ACT), to provide services through telemental health.

Under these regulations, OMH defines “telemental health services” as the use of two-way real-time interactive audio and video equipment to provide and support mental health services at a distance. Telemental health services excludes:

- Phone calls, emails, or faxes between a provider and a recipient; and
- Consultations between two professionals or clinical staff.

The below document summarizes these proposed regulations. Once the regulations are finalized, OMH will publish further guidance on how providers may comply with these regulations while providing telemental health services in the future. The regulations are available [here](#). Public comment will be received until March 10th.

LOCATION REQUIREMENTS

OMH Part 596 regulations apply to any licensed Article 31 provider who has been authorized by OMH to deliver services through telemental health. Providers must obtain prior written approval from OMH before rendering telemental health services and will need to ensure their compliance with ethical and scope of work requirements.

In general, telemental health services are delivered by a practitioner located at a distant site to a patient who is located at an originating site. Both the distant and originating site take direct responsibility for the patient's care, but the originating site, where the patient has been admitted, is responsible for billing and follow-up care. Telemental health services delivered in accordance with the Part 596 requirements are considered face-to-face contacts.

Currently, the distant site location must participate in NYS Medicaid, while the originating site location must be licensed by OMH. Under the revised Part 596 regulations, the distant site location no longer needs to participate in NYS Medicaid, and the originating site may now include the patient's place of residence or another temporary location within or outside NYS.

Once approved to provide telemental health services, an Article 31 provider may serve as a distant site telemental health provider of assessment and treatment services as part of a contract with a non-OMH-licensed originating site provider, as long as the originating site provider is enrolled in NYS Medicaid. Providers do not require prior approval from OMH for such contracts or agreements, but they should

notify their OMH Field Office of the contract within 30 days after execution. Reimbursement for such services will be pursuant to the contract and are not separately billable by the distant site.

Personalized Recovery Oriented Services (PROS)

The revised Part 596 regulations explicitly permit clinical treatment services to be delivered in a PROS setting via telemental health. PROS may only be delivered through telemental health for a limited period of time, not to exceed one year. However, if there is adequate demonstration of a continued provider or service shortage, telemental PROS may be extended up to one more year.

Telemental PROS should only be delivered by psychiatrists and psychiatric nurse practitioners at the distant site. The originating site must be the physical location of the patient's PROS program.

Assertive Community Treatment (ACT) Teams

The revised Part 596 regulations also permit ACT teams to deliver services through telemental health when there is a demonstrated shortage of such providers. ACT services may only be delivered through telemental health for a limited period of time, not to exceed one year. However, if there is adequate demonstration of a continued provider shortage, telemental ACT services may be extended up to one more year.

If the originating site is in the community, the ACT team must have staff who are present during the delivery ACT services through telemental health.

PROVIDER REQUIREMENTS

Article 31 providers must be approved to offer telemental health services. Requests for approval should be submitted by the provider to the OMH Field Office serving the area where the originating site will be located. The Field Office may make an on-site visit to either or both the originating site and distant site prior to issuing approval.

Currently, telemental health practitioners must be either physicians or psychiatric nurse practitioners. Under the revised Part 596 regulations, they may also include licensed mental health counselors (LMHCs), psychologists, and/or social workers (including clinical social workers and master social workers).

Psychiatrists and psychiatric nurse practitioners are permitted to deliver services from a distant site located anywhere in the United States, inside or outside NYS. All other telemental health practitioners must be located at a site within NYS. The distant site may include spaces in a place of residence, if approved by OMH.

The telemental health practitioner at the distant site must also:

- Possess a current, valid license to practice in NYS;
- Directly render the telemental health service;
- Adhere to the same laws, rules, and regulations and exercise the same standards of care and competencies required for in-house delivered services; and
- Use evidence-based telehealth or telemental health practice guidelines and standards of practice, if available.

In addition, neither the distant site provider nor the originating site provider (if different) may have been terminated, suspended, or barred from the Medicaid or Medicare programs. If the originating site is a

hospital, the telemental health practitioner at the distant site must be credentialed and privileged by the hospital, as necessary and consistent with applicable accreditation standards.

TECHNOLOGY REQUIREMENTS

The revised Part 596 regulations now include basic requirements for telemental health technologies:

- Technology and equipment must be of sufficient quality, size, resolution, and clarity such that the provider of services can safely and effectively provide the telemental health services; and
- Technology and equipment must be compliant with the Health Insurance Portability and Accountability Act (HIPAA).

SERVICE REQUIREMENTS

When providing services through telemental health technologies, providers must ensure that they follow various service requirements, including patient verification, notation of the start and end time of the service, displaying the practitioner's license information (at the distant site, in clear view), and having interpreter services available. Telemental health services provided to patients under age 18 may include other qualified mental health professionals (who are not eligible to bill telehealth services) or other appropriate staff of the originating site in the room with the patient.

The telemental health practitioner providing services at a distant site should be considered an active part of the patient's treatment team and must be available for discussion of the case or for interviewing family members and others, and the practitioner should prepare appropriate progress notes and securely forward them to the originating provider as a condition of reimbursement.

Service Limitations

The revised Part 596 regulations include a list of restrictions on the use of telemental health services over patient consent. Telemental health services may not be used:

- For purposes of ordering medication over objection;
- Restraint or seclusion; or
- To satisfy requirements for involuntary removal from the community and/or retention in a hospital, unless a specific set of conditions are met and the usage is reported appropriately.

Telemental health providers must also have a set of written protocols and procedures for telemental health services (covering topics such as informed consent, required initial assessments, confidentiality, security of the transmission, medications, and other issues).

REIMBURSEMENT

For telemental health services, the originating site is authorized to bill NYS Medicaid. Services must be medically necessary and provided under the following conditions:

- The person receiving services is located at the originating site and the telemental health practitioner is located at the distant site;
- The originating site is the provider of services where the person receiving services is located;
- The distant site is the site where the telemental health practitioner is located;
- The person receiving services is present during the telemental health encounter or consultation;

- The service is not taking place at the originating site;
- The request for telemental health services and the rationale for the request are documented in the individual's clinical record;
- The clinical record includes documentation that the telemental health service encounter or consultation occurred and that the results and findings were communicated to the requesting provider of services; and
- The telemental health practitioner at the distant site is:
 - Licensed in New York State;
 - Practicing within his/her scope of specialty practice;
 - Affiliated with the originating site facility; and
 - If the originating site is a hospital, credentialed and privileged by the hospital.

The originating site may bill for administrative expenses only when a telemental health service connection is being provided and a qualified mental health professional is not present at the originating site with the patient at the time of the encounter. Reimbursement will not be provided if a telemental health service cannot be delivered due to a failure of transmission or other technical difficulty.