

## OMH Telemental Health Service Regulations

### OVERVIEW

On July 3<sup>rd</sup>, the New York State (NYS) Office of Mental Health (OMH) released a Notice of Adoption in the State Register with final revisions to 14 NYCRR Part 596, which contains OMH's regulations on Telemental Health Services (formerly called telepsychiatry services). The final revisions are based on public comments received on the proposed regulations published by OMH in January. These regulations:

- Expand the types of practitioners who can provide Telemental Health Services;
- Allow services to be performed in additional types of recipient 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 exclude:

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

The final regulations are available [here](#). A summary of changes made to the final regulations from the proposed regulations and responses to public comments are available in the State Register [here](#). Major changes from the draft to final version include:

- OMH added licensed creative arts therapists (LCATs) and licensed marriage and family therapists (LMFTs) to the list of practitioner types who may perform Telemental Health Services.
- OMH clarified that these regulations also cover non-licensed designated or authorized providers. As such, the new Children's Mental Health Rehabilitation Services (CMHRS) certification category of providers, which will offer Children and Family Treatment and Support Services (CFTSS), is now included under these regulations.
- OMH will authorize providers to provide Telemental Health Services based on a demonstration of workforce shortages (in addition to the original justification to improve care quality).

The below document summarizes the final regulations. There will be a multiagency guidance document released later this year that will provide telehealth/telemental health guidelines for providers designated or licensed across multiple NYS agencies.

### LOCATION REQUIREMENTS

OMH Part 596 regulations apply to any licensed or designated Article 31 provider who has been authorized by OMH to deliver services through telemental health, including CMHRS programs providing services from the CFTSS benefit. Providers must obtain prior written approval from OMH before rendering Telemental Health Services and will need to demonstrate that the services are not being offered because they are needed to fulfill regulatory staffing requirements, but rather that they are

necessary to improve quality of care or to address workforce shortages. Providers must also comply with ethical and scope of work requirements.

In general, Telemental Health Services are delivered by a practitioner located at a distant site to a recipient who is located at an originating site. Both the distant provider and the originating site provider (if applicable) take direct responsibility for the recipient's care; however, the provider to which the recipient is 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.

Previously, the distant site location was required to participate in NYS Medicaid, while the originating site location had to 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 OMH licensed or designated provider locations and the recipient'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 Practitioner of licensed and designated 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 if the PROS provider demonstrates a shortage of psychiatrists and nurse practitioners. 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 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 recipient must be physically located onsite of the PROS program in which the recipient is admitted.

### **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 psychiatrists and nurse practitioners. ACT services may only be delivered by psychiatrists and nurse practitioners 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 licensed or designated provider to the OMH Field Office serving the area where the program is located. The Field Office may conduct a remote readiness review to either or both the originating site and distant site prior to issuing approval.

Previously, Telemental Health Practitioners could only be physicians or psychiatric nurse practitioners. Under the revised Part 596 regulations, they may now also include mental health counselors, psychologists, psychoanalysts, marriage and family therapists, creative arts therapists, 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, permit, or limited permit 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;
- Use evidence-based telehealth or telemental health practice guidelines and standards of practice, if available; and
- Deliver services from a secure site/location which ensure the minimum standards for privacy for recipient-clinician interaction are met.

In addition, neither the distant site provider nor the originating site provider 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 recipient verification, notation of the start and end time of the service, and having interpreter services available. Telemental Health Services provided to recipients 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 recipient.

The Telemental Health Practitioner providing services at a distant site should be considered an active part of the recipient'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 recipient 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 Services may not be used to fulfill regulatory staffing requirements and may only be used because they are necessary to improve the quality of care of individuals receiving services or because they are necessary to address workforce shortages.

Telemental Health Practitioners must 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).

The final regulations specify that informed consent for Telemental Health Services may be incorporated into the program's existing consent process for in-person care, or may be a new and separate process.

## **REIMBURSEMENT**

For Telemental Health Services, the licensed or designated provider to which the recipient is admitted 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 person receiving services is present during the telemental health encounter;
- 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 encounter occurred; and
- The Telemental Health Practitioner at the distant site is:
  - Authorized 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 provider 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 recipient 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.