

OMH Proposed Telehealth and Covid-19 Vaccination Program Regulations

OVERVIEW

On December 1st, the New York State Office of Mental Health (OMH) published in the State Register the following proposed regulations under Title 14 of the New York Codes, Rules, and Regulations (NYCRR):

- An update to Part 596 regulating telehealth services; and
- An addition of Part 557 titled “Covid-19 Vaccination Program.”

The notice in the State Register is available [here](#). The texts of the proposed regulations are available [here](#). A summary of the provisions of these regulations is provided below.

PART 596 TELEHEALTH SERVICES

Telephonic (Audio-Only) Delivery

OMH proposes to allow for the delivery of telephonic (audio-only) services under telehealth, which has been permitted on an emergency basis during the Covid-19 pandemic. Providers would be required to indicate in the clinical record whether audio-only services were provided. Electronic messages, text messages, and facsimile transmissions are still not included under the definition of telehealth; however, OMH notes that these activities may support the delivery of services via telehealth.

Provider Qualifications

The proposed regulations would allow any authorized provider (previously only designated or licensed providers) to deliver mental health services under their scope of practice via telehealth. Providers will still require approval from OMH to deliver telehealth services via the submission of policies and procedures and an attestation to provide telehealth services consistent with OMH guidelines and regulations. To deliver services via telehealth, providers would be required to have immediate access to the recipient health record.

OMH also proposes to remove the additional requirements that currently apply to Personalized Recovery Oriented Services (PROS) and Assertive Community Treatment (ACT) programs. Currently, PROS and ACT program may only deliver telehealth services for a limited period of time, and only upon demonstration of a shortage of psychiatrists and nurse practitioners.

Originating/Distant Sites

The definition for the originating site where the recipient is located at the time of the telehealth would be expanded to now include “a provider site licensed by the Office, or the recipient’s place of residence, other identified location, or other temporary location out-of-state.”

All providers would be permitted to deliver services from anywhere in the United States or its territories, including the provider’s place of residence, office, or other identified space approved by OMH.

Previously, only psychiatrists and nurse practitioners were permitted to deliver services via telehealth outside of New York State.

Consent and Initial Assessment

In the proposed regulations, OMH clarifies the language regarding informed consent and indicates that telehealth services may be provided only where clinically appropriate and with informed consent by the recipient. If the recipient is a minor, consent must also be provided by the parent/guardian. Recipients may withdraw consent at any time and providers are not permitted to deny services to an individual who prefers to receive services in-person. OMH also adds a definition for “collateral” and includes telehealth encounters with collaterals as allowable services.

OMH proposes to remove the required in-person initial assessment, and instead proposes that recipients be evaluated to determine whether the provision of telehealth services is appropriate prior to delivery.

Reimbursement

OMH proposes to remove the ability for the originating site to bill for administrative expenses if the recipient is located onsite and the telehealth practitioner is located at a distant site.

In the proposed regulations, OMH also included language indicating that payment for services delivered via telehealth will be the same for identical procedures provided by the provider in-person, unless otherwise established by OMH.

Limitations

Under the proposed update, telehealth services would not be permitted for:

- Purposes of seeking a court order for treatment (previously “ordering medication”); or
- Restraint or seclusion.

OMH proposes to remove the previous constraint and allow telehealth services to be used to satisfy specific statutory examination, evaluation, or assessment requirement necessary for the involuntary removal from the community or involuntary retention in a hospital if such services are utilized in compliance with the following:

- The telehealth practitioner is a physician licensed to practice in New York State;
- Telehealth services are only used to fill one of the three physician-required activities in a removal or retention action;
- The individual is asked to consent to the use of telehealth technology for the purposes of the examination, which can be embedded within the hospital’s general consent for treatment (if the individual refuses or is not able to consent, the effort to obtain consent must be documented in the clinical record and the examination may proceed);
- All three physicians must sign the form, regardless of whether they are at the originating or distant site (electronic signature is permitted); and
- For retention actions, forms are used to account for the use of telehealth services.

The additional use of telehealth services in retention actions on a consultative basis remains allowable.

OMH also proposes to allow for the provision of telehealth services to satisfy statutory examination, evaluation, or assessment requirement for the immediate observation, care, and treatment in a hospital in compliance with similar provisions as above.

PART 557 COVID-19 VACCINATION PROGRAM

The proposed regulations include the following testing and vaccination requirements for psychiatric hospitals:

- All hospital staff will be required to receive at least one Covid-19 vaccine dose by November 1, 2021 and be fully vaccinated by December 10, 2021.
- A reasonable accommodation may be made for staff who have a documented pre-existing health condition that prevents them from complying with the vaccine requirements.
- Starting on October 12, 2021, all hospital staff who are not fully vaccinated and who are granted a reasonable accommodation must be tested for Covid-19 weekly.
- Staff who work in hospitals who do not comply with testing and vaccination requirements are not permitted to report to work.
- Staff who receive a positive test result must comply with applicable New York State Department of Health and OMH regulations and guidance.
- Starting November 1, 2021, hospitals must verify the vaccination status of all staff.
- Staff who are not fully vaccination, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.
- Hospitals must maintain records of their compliance with these regulations.