

Update on Covid-19 Health-Related Regulatory Waivers

CURRENT STATUS

Governor Hochul’s Executive Order 4 was issued on September 27, 2021 to address the health care workforce shortage. The Order and its subsequent modifications have reinstated a number of the emergency provisions that had originally lapsed with the end of New York’s original Covid-19 public health emergency that expired on June 24, 2021. On November 26, 2021, Governor Hochul issued Executive Order 11 declaring a disaster emergency in New York State and implementing the State’s Comprehensive Emergency Management Plan due to increased Covid-19 transmission rates and hospital admissions. Various state agencies have issued waivers and guidance clarifying the status of emergency Covid-19 policies.

SPG has updated our Regulatory Waiver Tracker document to show which flexibilities are still in effect and which have expired as of April 2022. This document also includes a summary of NYS agency policy and relevant federal guidance, starting on page 14.

Current New York State Waivers

| Waiver | Effective Date | Waiver Type | Permissions | Expiration |
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| DFS 62nd Amendment to Insurance Regulation 62 | June 4, 2021 | Telehealth Flexibilities | <ul style="list-style-type: none"> Clarifies that the definition of telehealth includes audio-only visits. Clarifies that an insurer may engage in reasonable fraud, waste, and abuse detection efforts, including to prevent payments for services that do not warrant a separate billable encounter. | Made permanent on December 22, 2021 in the State Register . |
| DFS 57th Amendment to Insurance Regulation 62 | March 6, 2020 | Cost Sharing | <ul style="list-style-type: none"> Requires plans to waive cost-sharing for COVID-19 testing. | Extended to June 13 th . |
| DFS Circular Letter No. 9 and Supplements No. 1, No. 2, No. 3, No. 4 | March 25, 2020 | Insurance Producer Flexibilities | <ul style="list-style-type: none"> <i>Suspends the expiration of licenses for insurance producers. EXPIRED September 6, 2020.</i> Suspends the requirement that a monitor be present to complete producer continuing education and pre-licensing course exams. | Made permanent by Supplement No. 4 except as noted. |

Current New York State Waivers

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| <p>DOH Emergency Regulations</p> | <p>July 30, 2021 (August 12, 2021 for Covid-19 Confirmatory testing)</p> | <p>Vaccine and Testing Requirements</p> | <ul style="list-style-type: none"> • <u>Hospital and Nursing Home Personal Protective Equipment (PPE) Supply (here):</u> <ul style="list-style-type: none"> ○ Requires hospitals and nursing homes to have a 60-day supply of PPE by August 31st (hospitals were previously required to have a 90-day stockpile) and authorizes the Commissioner of Health to increase the requirements to 90 days for hospitals during a state or local public health emergency. • <u>Surge and Flex Health Coordination System (here):</u> <ul style="list-style-type: none"> ○ Establishes ongoing emergency planning requirements (“Surge and Flex Health Care Coordination System”) for facilities and agencies regulated by DOH and authorizes the Commissioner of Health to direct health care facilities to increase bed capacity by 50 percent (previously up to 100% within 30 days of emergency declaration) and to postpone all non-essential elective procedures. • <u>Covid-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel (here)</u> <ul style="list-style-type: none"> ○ Requires adult care facilities (within 7 days) and nursing homes (within 14 days) to offer unvaccinated personnel and residents an opportunity to receive a first or second dose of the Covid-19 vaccine. ○ Note: DOH has removed the requirement for nursing homes and adult care facilities to certify on a weekly basis that the facility has complied with the regulation. • <u>Covid-19 Confirmatory Testing (here)</u> <ul style="list-style-type: none"> ○ Requires hospitals and nursing homes to test patients and residents for Covid-19 if they are presenting symptoms or if they have been exposed to Covid-19. ○ Requires hospitals and nursing homes to test deceased patients and residents for Covid-19 within 48 hours after death if there is a clinical suspicion that Covid-19 was the cause of death and if no such test was performed in the 14 days prior to death. ○ Requires funeral directors, coroners, and medical examiners to administer tests for Covid-19 within 48 hours after death if there is a reasonable suspicion that Covid-19 was the cause of death and if no such test was performed in the 14 days prior to death. | <p>Extended on January 11th by the Public Health and Health Planning Council (PHHPC), and scheduled to be renewed again at the April 5th PHHPC meeting.</p> |

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| <p>NYS Executive Order 4</p> | <p>September 27, 2021</p> | <p>Provider Flexibilities</p> | <p>The Order reinstates many workforce and scope of practice flexibilities that applied during the original New York State Covid-19 public health emergency. Specifically, it temporarily suspends or modifies specific regulations that include the following:</p> <p><u>Licensure and Registration</u></p> <ul style="list-style-type: none"> • Allows certain providers who are licensed in other states or in Canada or other approved countries, or who are licensed but not registered in NYS, to practice in NYS, including: <ul style="list-style-type: none"> ○ Physicians and physician assistants; ○ Registered nurses, licensed practical nurses, and nurse practitioners; ○ Clinical nurse specialists, specialist assistants, and similar titles; ○ Radiologic technicians; ○ Respiratory therapists and respiratory therapy technicians; ○ Midwives; and ○ Licensed master social workers and licensed clinical social workers. • Allows recent graduates of certain health care programs to practice in NYS under supervision. • Waives re-registration fees, creating an expedited re-registration process, and eliminates barriers to re-enter the workforce for retirees. <p><u>Scope of Practice</u></p> <ul style="list-style-type: none"> • Allows physician visits for nursing home residents to be conducted via telemedicine. • Allows hospitals to use qualified volunteers or personnel affiliated with different hospitals. • Permits additional personnel (e.g., EMT-paramedics, midwives) to administer Covid-19 and influenza vaccines. • Allows physicians and practitioners to use non-patient specific regimens to facilitate Covid-19 testing and vaccination. • Provides flexibility to emergency medical services personnel, including: <ul style="list-style-type: none"> ○ Allowing the use of community paramedicine, alternative destinations, treatment in place through telemedicine, and other services as approved by the Commissioner of Health, and ○ Allowing EMTs to provide other emergent and non-emergent services beyond settings currently authorized, such as hospitals. <p><u>Prior Authorization</u></p> <ul style="list-style-type: none"> • Suspends requirements for preauthorization review for scheduled surgeries. • Suspends concurrent review for inpatient and outpatient hospital services. • Suspends retrospective review for inpatient/outpatient hospital services at in-network hospitals. • Tolls statutory timeframes for hospitals to submit internal and external appeals. <p><u>Other</u></p> <ul style="list-style-type: none"> • Allows hospitals and nursing homes to safely discharge, transfer, or receive patients as necessary due to staffing shortages. • Provides flexibilities for clinical labs to increase testing capacity, including by employing recent graduates. <p>Executive Order 4.1 adds the following modifications:</p> <ul style="list-style-type: none"> • Expands the authorization for individuals who were temporarily authorized to perform Covid-19 testing to perform any clinical laboratory test, under appropriate supervision. | <p>Extended by Executive Orders 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, and 4.7 through April 30th.</p> |
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Current New York State Waivers

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| EO 4 (continued) | | Provider Flexibilities | <ul style="list-style-type: none"> • Permits initial patient visits for home health to be made within 48 hours of acceptance of a community referral or return home from institutional placement. • Permits home health agencies to conduct in-home supervision “as soon as practicable” or by telephone or video. • Adds further flexibilities related to testing. <p>Executive Orders 4.3 and 4.4:</p> <ul style="list-style-type: none"> • Permit health care facilities to continue to employ surgical technologists who failed to meet the minimum standards within two years of the start of employment or contracting for the performance of surgical technology. • Indicate that failure of a nursing home to meet the daily average staffing hours will not be held in violation of the Public Health Law. EXPIRED per EO 4.7 • Indicate that failure or a residential health care facility to spend a minimum of 70 percent of revenue on direct resident care, and 40 percent of revenue on resident-facing staffing, will not be held to be a violation of the Public Health Law. EXPIRED per EO 4.7 | Extended by Executive Orders 4.1 , 4.2, 4.3 , 4.4 , 4.5 , 4.6 , and 4.7 through April 30 th . |
| NYS Executive Order 11 | November 26, 2021 | Emergency/ Capacity Management | <ul style="list-style-type: none"> • Implements the State’s Comprehensive Emergency Management Plan and the “Surge and Flex” system, which allows DOH to limit non-essential elective procedure at health systems with limited capacity (defined as having below 10% staffed bed capacity available, or as otherwise determined by DOH). • Allows laboratories holding a CLIA certificate and meeting the CLIA quality standards to perform Covid-19 testing. | Extended by Executive Orders 11.1 , 11.2 , 11.3 , and 11.4 through April 15 th . |

Expired New York State Waivers

| Waiver | Effective Date | Waiver Type | Permissions | Expiration |
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| NYS Executive Order 202 | 3/7/2020 | Provider Flexibilities | <ul style="list-style-type: none"> Allows unlicensed individuals, upon completion of appropriate training, to collect throat or nasopharyngeal swab specimens for COVID-19 or influenza testing. (Modified by Executive Order 202.69 to also include the collection of saliva swab specimens). Permits non-nursing staff to perform tasks under the supervision of a nurse that would be otherwise limited to a licensed or registered nurse. (Modified by Executive Order 202.82 to allow non-nursing staff to also: 1) collect throat, nasal, or nasopharyngeal swab specimens to test for COVID-19 or influenza, 2) collect blood specimens for the diagnosis of acute or past COVID-19 disease, and 3) administer approved vaccinations for influenza or COVID-19). Permits individuals who meet the federal requirements for high complexity testing to perform testing for COVID-19. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.1 | 3/12/2020 | Telehealth Flexibilities | <ul style="list-style-type: none"> Permits DOH, OMH, OASAS, and OPWDD to allow for additional telehealth provider categories and modalities, to permit other types of practitioners to deliver services within their scopes of practice, and to authorize the use of certain technologies for the delivery of health care services to established patients. <i>Permits providers to use staff members in the most effective means possible to transport individuals receiving services from OMH or a program/provider under the jurisdiction of OMH during the emergency, provided such facilities take all reasonable measures to protect the health and safety of such individuals.</i> EXPIRED per EO 202.48 | EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under Medicare/federal waivers, DOH, OMH, OASAS, and OPWDD. |
| DFS 58 th Amendment to Insurance Regulation 62 | 3/16/2020 | Cost Sharing | Requires plans to waive cost-sharing for services delivered via telehealth. | EXPIRED on June 4, 2021. |
| NYS Executive Order 202.5 | 3/18/2020 | Provider Flexibilities, Background Checks | <ul style="list-style-type: none"> Allows physicians, RNs, LPNs, NPs, and physician assistants licensed and in current good standing in any state to practice in NYS without penalties related to lack of licensure. Allows physicians licensed and in current good standing but not registered in NYS to practice in NYS without penalties related to lack of registration. Reduces requirements related to nursing home procedures for individuals affected by the emergency, including approvals for admission and comprehensive assessments. Permits delayed in-home supervision of home health aides and personal care aides or allowing supervision to be conducted through telephone or video communication. Extends the time in which home care services entities must submit information to the Home Care Worker Registry. Prevents transportation to and attendance at adult day care programs. Allows for abbreviated training of direct support professionals employed in programs and facilities that serve individuals with intellectual/developmental disabilities (I/DD) that are experiencing staff shortages. Permits providers to temporarily deviate from a service plan of an individual with I/DD or relocating individuals with I/DD to maintain their health and safety during the emergency. Exempts child care programs from having to comply with regulations of OCFS. Criminal background check exemptions for child care programs have EXPIRED per EO 202.48 | EXPIRED per Executive Order 210 . |

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| DFS Circular Letter No. 8 and Supplements No. 1, No. 2 | 3/20/2020 4/22/2020 6/26/2020 | Provider Flexibilities | <i>Suspends various utilization review requirements and requires expedited payment of hospital claims. EXPIRED June 18, 2020; however, certain preauthorization requirements were temporarily reinstated per Circular Letter No. 17 (see below).</i> | EXPIRED June 18, 2020. |
| NYS Executive Order 202.10 | 3/23/2020 | Provider Flexibilities | <ul style="list-style-type: none"> • Permits advance practice registered nurses with a related doctorate or master’s degree to administer anesthesia without the supervision of a qualified physician. • Allows NPs, physician assistants, and special assistants to provide medical services appropriate to their education, training, and experience without oversight from or a collaborating agreement with a physician. • Permits radiologic technologists and respiratory therapists licensed in another state to practice in NYS without penalty. • Allows radiologic technologists, physician assistants, registered professional nurses, licensed practical nurses, and nurse practitioners licensed but not registered in NYS to practice without penalty. • Authorizes certified or registered pharmacy technicians to assist in compounding, preparing, labeling, or dispensing drugs for prescriptions or home infusion medication orders under the supervision of a licensed pharmacist. • <i>Ensures that all physicians, physician assistants, special assistants, nurse practitioners, licensed registered professional nurses, and licensed practical nurses are immune from civil liability during the course of providing medical services related to the COVID-19 outbreak, unless related to gross negligence. EXPIRED per EO 202.28</i> • Authorizes any health care facility to allow students on track to become licensed health care professionals in NYS to volunteer at the facility for educational credit without securing a clinical affiliation agreement. • Removes limits on working hours for physicians and postgraduate trainees. • Allows graduates of foreign medical schools with at least one year of graduate medical education to provide patient care in hospitals. • Waives the responsibilities of the hospital governing body to ensure adequate staffing and allow for the use of qualified volunteers or personnel affiliated with other general hospitals. • Requires licensed health insurance companies to provide a list of all personnel with a professional licensure or degree as a medical doctor, physician assistant, licensed RN, licensed NP, or LPN. • Provides general relief from recordkeeping requirements for health care providers, as long as it is done reasonably and in good faith to respond to COVID-19. <i>Expired per EO 202.28, but reinstated per EO 202.83.</i> | EXPIRED per Executive Order 210 . |

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| NYS Executive Order 202.11 | 3/27/2020 | Provider Flexibilities | <ul style="list-style-type: none"> Suspends or modifies regulations related to operating certificates for providers of individuals with I/DD that limit the provision of certain services in certified settings (with OPWDD approval). Allows for abbreviated training and/or extension of recertification deadlines for direct support professionals providing services to individuals with I/DD that are experiencing staff shortages. Permits pharmacy technicians and pharmacists to practice at an alternative location, including their home, as long as there is adequate security to protect Personal Health Information. Permits graduates of registered professional nurse and licensed practical nurse licensure qualifying education programs to be employed to practice nursing under the supervision of a registered professional nurse and with the endorsement of the employing hospital or nursing home for 180 days immediately following graduation. Allows midwives licensed and in current good standing in any state, or in any province or territory of Canada, to practice in NYS without penalty. Amends previous restrictions on dispensing the drugs under investigation or treatment of COVID-19 (hydroxychloroquine or chloroquine) for prophylactic purposes. Ensures that physicians assisting in the State’s response to COVID-19 in a facility owned or leased by SUNY and operated by SUNY will be provided with defense from the State in an instance of civil action or proceeding. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.13 | 3/30/2020 | Background Checks | Allows employees of programs licensed/certified under State agencies (OPWDD, OCFS, OASAS, OMH) who have previously undergone the appropriate background checks to be employed by a program under a different agency without undergoing new background checks. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.14 | 4/7/2020 | Provider Flexibilities | Allows any physician slated to graduate from a medical education program in 2020 who has been accepted to a residency program within or outside NYS to practice at any institution under the supervision of a licensed physician. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.15 | 4/9/2020 | Provider Flexibilities | <ul style="list-style-type: none"> Allows respiratory therapy technicians licensed in any state to practice in NYS without penalty. Allows mental health counselors, marriage and family therapists, creative arts therapists, and psychoanalysts licensed in any state to practice in NYS without penalty. Allows students who have graduated from registered or accredited medical programs in NYS in 2020 to practice medicine in NYS, without the need to obtain a license and without risk of penalty, provided they are supervised by a licensed physician. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.16 | 4/12/2020 | Provider Flexibilities | Modifies the qualification requirements of medical or clinical laboratory technologists to allow additional individuals to perform testing for the COVID-19 virus or its antibodies. | EXPIRED per Executive Order 210 . |

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| NYS Executive Order 202.18 | 4/16/2020 | Provider Flexibilities | <ul style="list-style-type: none"> Allows nurses (RN, LPN, NP), physicians, physician assistants, radiologic technologists from Canada to practice in NYS. Allows clinical nurse specialists, specialist assistants, and licensed master or clinical social workers from out of state to practice in NYS. Allows a wide variety of licensed professionals with an unencumbered license to practice in NYS without registration. Allows nurse practitioners to practice in a hospital or nursing home for 180 days following graduation and permits clinical laboratory technologists and technicians to practice for 180 days following licensure. Permits pharmacy technicians and pharmacists to practice at an alternative location, including their home. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.24 | 4/25/2020 | Provider Flexibilities | <ul style="list-style-type: none"> Authorizes licensed pharmacists to order tests to detect SARS-CoV-2 or its antibodies, and to administer COVID-19 tests after completion of appropriate DOH training. (Modified by Executive Order 202.92 to allow pharmacists to order FDA-approved COVID-19 tests, including by standing order, under certain conditions). Permits licensed pharmacists to be designated as a qualified health care professional for the purpose of directing a clinical service laboratory to test patients for COVID-19 or its antibodies. (Modified by Executive Order 202.92 to include FDA-approved rapid tests under certain conditions). | EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under the federal HHS PREP Act. |
| DFS Circular Letter No. 10 and DFS 60th Amendment to Insurance Regulation 62 | 5/2/2020 | Cost Sharing | Requires regulated health insurance plans to waive out-of-pocket costs (i.e. cost-sharing, deductibles, copayments, and coinsurance) for in-network mental health services for frontline essential workers during the COVID-19 emergency. | EXPIRED on May 26, 2021. |
| NYS Executive Order 202.32 | 5/21/2020 | Provider Flexibilities | <ul style="list-style-type: none"> Allows physicians to order COVID-19 tests for self-collection, without otherwise having an initial physician-patient relationship with the patient. Allows clinical laboratories to accept and examine specimens for COVID-19 testing from personnel of nursing homes and adult care facilities without a prescription or order from an authorized ordering source, and to report the results of such tests to the appropriate operators and administrators of the nursing home or adult care facility. (Modified by Executive Order 202.92 to allow limited service laboratories to accept and examine specimens for COVID-19 rapid testing without a patient specific order or a prescription or order from an authorized ordering source under certain conditions). | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.36 | 6/2/2020 | Telehealth Flexibilities | Permits a practitioner to establish a patient relationship using only a questionnaire for the purpose of ordering a clinical laboratory test, which may be administered through an asynchronous electronic interface, including email. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.40 | 6/10/2020 | Nursing Homes | Operators and administrators of all nursing homes and all adult care facilities, which are located in regions that have reached Phase Two of reopening, must test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators, and administrators, for COVID-19, once per week. | EXPIRED per Executive Order 210 . |

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| NYS Executive Order 202.55 | 8/6/2020 | Provider Flexibilities | Hospitals, not-for-profit housing providers, and others may offer temporary housing to any individual assisting with COVID-19 response or displaced due to COVID-19 for a period of 30 days or more without creating a landlord-tenant relationship. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.73 | 11/9/2020 | Nursing Homes | Modifies Executive Order 202.40 to require nursing homes located in designated red, orange, or yellow cluster zones to test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators, and administrators for COVID-19 as directed by the Commissioner of Health. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.82 | 12/13/2020 | Provider Flexibilities, Vaccine Requirements | <p><u>Vaccine Ordering and Administration</u></p> <ul style="list-style-type: none"> • Authorizes the use of new/temporary vaccination sites (PODs) for administering the COVID-19 and influenza vaccine and authorizes a broad array of individuals to administer vaccines (with training and supervision), including those who are either: 1) Not currently authorized to administer vaccinations, but who are appropriately licensed or certified health professionals, including midwives, dentists, certain dental hygienists, podiatrists, emergency medical technicians, advanced emergency medical technicians, and certain newly licensed pharmacists; or 2) Enrolled in one of the following educational or training programs and evaluated and trained to administer vaccinations: <ul style="list-style-type: none"> ○ A medical program; ○ A registered professional nursing program or licensed practical nursing program; ○ A physician assistant program; ○ A pharmacy program (pharmacy students who have obtained a limited permit, including a certificate to administer immunizations, are deemed to have the minimum necessary clinical experience to administer COVID-19 and influenza vaccinations); ○ A dentistry program; ○ A podiatric medicine program; or ○ A midwifery program. • Allows non-nursing staff who have completed appropriate training to: <ul style="list-style-type: none"> ○ collect throat, nasal, or nasopharyngeal swab specimens to test for COVID-19 or influenza; ○ collect blood specimens for the diagnosis of acute or past COVID-19 disease; ○ administer approved vaccinations for influenza or COVID-19, and ○ perform tasks, under the supervision of a nurse, that would be otherwise limited to a licensed or registered nurse, in order to provide care for individuals diagnosed or suspected of suffering from a COVID-19 or influenza infection. • Allows licensed physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses, physician assistants, special assistants, pharmacists, or other individuals authorized by this EO to complete the above tasks. • Permits registered professional nurses to prescribe, order, and execute non-patient specific regimens for the administration of the COVID-19 vaccine. • Allows licensed practical nurses, following appropriate training and certification, to prescribe, order, and execute COVID-19 and influenza vaccinations at PODs under supervision and following appropriate training and certification. | EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under the federal HHS PREP Act. |

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| <p>EO 202.82 (continued)</p> | | <p>Provider Flexibilities, Vaccine Requirements</p> | <ul style="list-style-type: none"> • Permits licensed pharmacists to administer COVID-19 vaccines less than 90 days after approval of the vaccine by the Food and Drug Administration (FDA). • Allows patient specific orders or non-patient specific regimens for COVID-19 or influenza vaccination administration to be prescribed, ordered to, and executed by licensed pharmacists certified to administer immunizations and newly licensed pharmacists that received a limited permit with certification to administer immunizations under certain conditions. • Allows licensed pharmacists not certified to administer immunizations to administer COVID-19 and influenza vaccinations at PODs under supervision following appropriate training and certification. • Permits licensed physicians and certified nurse practitioners located within any county to issue a patient specific prescription or a non-patient specific regimen for COVID-19 and influenza vaccination to licensed pharmacists certified to administer vaccines or to newly licensed pharmacists as authorized by this EO unless administering COVID-19 or influenza vaccinations at a POD site. • Permits a physician assistant to provide medical services appropriate to their education, training, and experience without oversight from a supervising physician, including administering COVID-19 and influenza vaccines and medically supervising PODs or other vaccination sites without civil or criminal penalty related to a lack of oversight. • Permits a nurse practitioner to provide medical services appropriate to their education, training, and experience, without a written practice agreement or collaborative relationship with a physician, including administering COVID-19 and influenza vaccines and medically supervising PODs or other vaccination sites without civil or criminal penalty. <p><u>Reporting Requirements</u></p> <ul style="list-style-type: none"> • Allows licensed pharmacists and registered professional nurses to administer influenza and COVID-19 vaccinations without reporting such administrations to patients' attending physicians (but are still required report the vaccination to the City or State). • Removes the requirement for registered professional nurses, licensed pharmacists, and other professionals to ensure that a record is maintained and retained for those to whom they administer influenza and COVID-19 vaccinations, provided that they comply with all DOH recordkeeping requirements. • Suspends the requirement that individuals 19 years of age and older must consent to have their immunization information reported to the New York State Immunization Information Registry (NYSIIS) or the City Immunization Registry (CIR), so that adult immunization information may be included in NYSIIS or the CIR, as applicable, without such consent. • Requires all influenza and COVID-19 vaccinations for any individual (child or adult) to be reported to the NYSIIS or CIR, as applicable, within 24 hours of administration of such vaccine. <p><u>Laboratories</u></p> <ul style="list-style-type: none"> • Upon approval from DOH, allows laboratories holding a Clinical Laboratory Improvement Acts (CLIA) certificate in the relevant specialty of testing and meeting the CLIA quality standards to perform testing for the detection of influenza virus, respiratory syncytial virus | <p>EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under the federal HHS PREP Act.</p> |

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| <p>EO 202.82 (continued)</p> | | <p>Provider Flexibilities, Vaccine Requirements</p> | <p>RNA, or other respiratory panels in specimens collected from individuals suspected of suffering from a COVID-19 infection, including postmortem specimens.</p> <ul style="list-style-type: none"> • Requires all clinical laboratories having more than 25 employees to become qualified entity participants and connect to the Statewide Health Information Network (SHIN-NY) through a qualified entity and allow private and secure bi-directional access to patient information by other qualified entity participants within 60 days of this EO. • Modifies the qualification requirements of medical or clinical laboratory technologists to allow additional individuals to perform any clinical laboratory test on any specimen, provided such individual is under appropriate supervision and meets the federal requirements for testing personnel appropriate to the assay or device authorized by the FDA or DOH. <p><u>Other</u></p> <ul style="list-style-type: none"> • Modifies the provision of EO 202.1 that allowed for construction applications for temporary hospital locations and extensions to be approved by the Commissioner of Health, without considering the recommendation of the health systems agency or the Public Health and Health Planning Council, to also include temporary vaccination sites. • Permits an authorized vaccine provider within New York State to furnish federal COVID-19 vaccine and ancillary supplies (obtained as a result of enrollment in the Centers for Disease Control (CDC) COVID-19 Vaccination Program) to another authorized vaccine provider within New York State who has also enrolled in the CDC COVID-19 Vaccination Program for the purposes of administering such vaccination at no cost in accordance with storage/handling requirements and other CDC and DOH guidance. • Requires any licensed physician, licensed physician assistant, and certified nurse practitioner who is medically supervising PODs or other vaccination sites to have a current certification in cardiopulmonary resuscitation (CPR). • Allows licensed pharmacists to order tests for the detection of influenza virus or respiratory syncytial virus RNA in specimens collected from individuals suspected of suffering from or having recovered from a COVID-19 or influenza infection, and to administer such tests upon completion of appropriate DOH training. • Applies sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) of the Insurance Law to “grandfathered health plans” with regards to COVID-19 immunization coverage. | <p>EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under the federal HHS PREP Act.</p> |
| <p>NYS Executive Order 202.83</p> | <p>12/18/2020</p> | <p>Provider Flexibilities</p> | <p>Reinstates relief around health care providers maintaining recordkeeping requirements. Specifically, providers acting reasonably and in good faith will be afforded absolute immunity from liability for any failure to comply with any recordkeeping requirement, if needed to perform tasks to respond to the COVID-19 outbreak. This includes, but is not limited to, requirements related to:</p> <ul style="list-style-type: none"> • Maintaining medical records that accurately reflect the evaluation and treatment of patients; • Assigning diagnostic codes; or • Creating or maintaining other records for billing purposes. | <p>EXPIRED per Executive Order 210.</p> |

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| DFS Circular Letter No. 17 | 12/23/20 | Provider Flexibilities | <p><i>Directs insurers to suspend the following requirements:</i></p> <ul style="list-style-type: none"> • <i>Preauthorization review for urgent or non-elective scheduled inpatient surgeries, hospital admissions, and transfers between hospitals;</i> • <i>Preauthorization review for inpatient rehabilitation and home health care services following an inpatient hospital admission;</i> • <i>Preauthorization review for inpatient mental health services following an inpatient hospital admission; and</i> • <i>Notification requirements that include the submission of medical records by the hospital to the insurance plan following an emergency hospital admission or financial penalties on a hospital for failure to provide notification of an emergency admission.</i> <p>Expired; however, on March 10th DFS issued guidance (here) that includes new requirements for insurance plans regarding administrative denials, settlement of claims, utilization review timeframes, and retrospective denials.</p> | EXPIRED February 21, 2021 (see note). |
| NYS Executive Order 202.86 | 12/28/20 | Provider Flexibilities, Vaccine Requirements | <ul style="list-style-type: none"> • Authorizes retired physicians, registered professional nurses, licensed practical nurses, and nurse practitioners who are licensed and in good standing in New York State to re-register through an expedited automatic registration form without any registration fees. • Requires health care providers administering the vaccine to ensure that individuals receiving the vaccine are a member of a specific priority group that has been determined by DOH to be eligible for the vaccine. EXPIRED per EO 202.105 | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.87 | 12/30/2020 | Provider Flexibilities | Removes limits on working hours for physicians and postgraduate trainees. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.88 | 01/04/2021 | Nursing Homes | Modifies Executive Orders 202.40 and 202.73 to authorize the Commissioner of Health to set forth testing requirements of all nursing home personnel in any area of the state, irrespective of location in a micro-cluster zone. | EXPIRED per Executive Order 210 . |
| NYS Executive Order 202.90 | 01/12/2021 | | <ul style="list-style-type: none"> • Authorizes licensed pharmacists to supervise up to four unlicensed assistants or pharmacy technicians holding a temporary license; • Requires practitioners, who were authorized by Executive Order 202.82 to administer the COVID-19 vaccine, to meet training requirements and other conditions set by the Commissioner of Health prior to vaccine administration; and • Allows certain individuals with certifications from pharmacy technician programs to be temporarily licensed as “pharmacy technicians” for the sole purpose of administering COVID-19 vaccines under direct supervision at Points of Dispensing (POD) sites overseen by the State or local health departments. Such individuals must complete required training prior to administering vaccines. | EXPIRED per Executive Order 210 . |

Expired New York State Waivers

| Waiver | Effective Date | Waiver Type | Permissions | Expiration |
|---|----------------|------------------------|--|--|
| NYS Executive Order 202.92 | 01/27/2021 | Provider Flexibilities | <ul style="list-style-type: none"> • Permits pharmacist-directed limited service laboratories to also test for COVID-19 infection using a rapid test as part of the enhanced economic activity plan authorized by DOH, provided that such test is FDA-approved and waived for use in a limited service laboratory. • Authorizes licensed pharmacists to order tests for the detection of COVID-19, including by standing order, as part of the enhanced economic activity plan authorized BY DOH, provided that such test is FDA-approved and subject to certificate of waiver requirements. • Permits a limited service laboratory, authorized by DOH to test for COVID-19 infection as part of the enhanced economic activity plan authorized by DOH, to accept and examine specimens for COVID-19 rapid testing without a patient specific order or a prescription or order from an authorized ordering source. Such laboratories must make available to patients (including via an online registration) the guidance to be issued by DOH related to rapid testing under this Executive Order. The laboratory must also report any positive results within 24 hours to the local department of health and DOH through the Electronic Clinical Laboratory System (ECLRS). • Authorizes the Commissioner of Health to direct COVID-19 testing for all staff or to modify or eliminate visitation or leave for residents at any state, local, or voluntary not-for-profit congregate facility supervised or licensed by the Office of Mental Health, Office of Addiction Services and Supports, Department of Corrections and Community Supervision, Office for People with Developmental Disabilities, or the Department of Health on a regular schedule or in order to control an outbreak as necessary. | EXPIRED per Executive Order 210 . |

NEW YORK STATE POLICIES

Department of Health (DOH)

DOH issued emergency telehealth regulations (available [here](#)) to allow Medicaid providers to continue to provide telehealth services, including audio-only telephone services, following the conclusion of the State Covid-19 Disaster Emergency. DOH released updated guidance (available [here](#)), indicating that Medicaid providers will be permitted to continue providing services under the same flexibilities awarded by DOH during the State Disaster Emergency until permanent regulations are promulgated. The guidance largely does not include significant changes but does clarify that Article 29-I health facilities serving children in foster care are eligible to provide services via telehealth.

The guidance and continuation of telehealth flexibilities **will remain in effect until the end of the federal Public Health Emergency (PHE) or until the issuance of subsequent guidance by DOH, whichever comes first.** The federal PHE is currently extended through April 16, 2022, and HHS will provide at least 60 days' notice prior to the conclusion of the PHE. However, DOH has indicated that it intends to publish emergency regulations that will **extend flexibilities and no longer tie the emergency regulations to the end of the federal PHE.**

Proposed Telehealth Regulations

On March 23rd, DOH published proposed permanent regulations in the State Register (available [here](#)) that would add a new Part 538 to Title 18 of the New York Codes, Rules, and Regulations (NYCRR), outlining state reimbursement for telehealth services. The proposed regulation:

- Expands the types of providers who can deliver care via telehealth, as long as such telehealth services are appropriate to meet a patient's needs and are within a provider's scope of practice; and
- Adds audio-only, eConsult, virtual check-in, and virtual patient education as telehealth modalities, as well as parameters for appropriately using these modalities and standards for reimbursement.

The proposed regulations are available [here](#). Public comment may be submitted to regsqa@health.ny.gov through May 22nd.

Other Guidance

For Health Homes serving adults and children, Care Management Agencies (CMAs), and Care Coordination Organizations/Health Homes (CCOs) serving individuals with intellectual and developmental disabilities, DOH has indicated that flexibilities granted to such entities will continue for the duration of the federal PHE, or until notified by DOH, whichever comes first. However, DOH implores Health Homes, CMAs, and CCOs to work towards full reinstatement of non-emergency policy, procedures, and timelines in anticipation of the end of Covid-19 flexibilities. DOH anticipates that providers will have at least 30 days noticed prior to the termination of flexibilities. Such flexibilities that **remain in place** include:

- Use of electronic signatures, which will continue to be an acceptable Health Home practice permanently.
- Verbal consent when all other methods of obtaining consent are exhausted, permitted that a wet or electronic signature is obtained within 60 days of verbal consent.
- Extended timeframe for completion of the comprehensive assessment and plan of care for new members to 120 days from 60 days.
- Waiver of face-to-face requirements.

DOH also released the following updated guidance documents for Health Homes, children’s providers vaccine providers, laboratories, and other providers:

- [Updated Nursing Home Testing Requirements](#)
- [Rescission of Updated COVID-19 Guidance for the Authorization of Community Based Long Term Services and Supports Covered by Medicaid](#)
- [Revised Skilled Nursing Facility Visitation](#)
- [Updated Adult Care Facility Visitation, Communal Dining and Activities and Construction Projects](#)
- [Medicaid Pharmacy Guidance Regarding the End of the Declared Disaster Emergency in the State of New York - COVID-19](#)
- [Expiration of Medicaid Pharmacy Guidance Regarding the Declared Disaster Emergency in the State of New York - COVID-19](#)
- [Notification to Hospital CEOs and Nursing Home Administrators Regarding COVID-19 Discharge Testing](#)
- [Expiration of Suspended Health Plan Utilization Review Requirements](#)
- [DOH Notice to All Laboratories Supporting SAR-CoV-2 Testing](#)
- [DOH Notice to Clinical Laboratories with Temporary Approval](#)
- [DOH Notice to Clinical Laboratories Regarding Remote Supervision](#)
- [DOH Notice to Clinical Laboratories Operating as Patient Service Centers](#)
- [NYSIIS/CIR Reporting Requirements for the COVID-19 Vaccination Program](#)
- [COVID-19 Guidance for Health Homes](#)
- [COVID-19 Guidance Regarding 1915\(c\) HCBS Children’s Waiver](#)
- [COVID-19 Guidance for CFTSS Providers](#)
- [Guidance for 1915\(c\) HCBS Children’s Waiver Respite Providers](#)

Office of Mental Health (OMH)

Following the end of the State Disaster Emergency, OMH released a regulatory waiver (available [here](#)) and a corresponding amendment (available [here](#)) that grants temporary relief from various requirements of Title 14 of NYCRR, in recognition of the ongoing effects of Covid-19 on operations.

The waived provisions that **will continue** include:

- Regulations around the provision of telehealth services, including temporary approvals, expanded practitioner types, and audio-only services.
- Requirements continuing the reduction of minimum service durations and allowing rounding up of service times.
- Requirements to waive timeframes around treatment planning reviews and to waive initial in-person assessments.

OMH has extended the waiver several times, most recently **extending the waiver through June 5th**.

Proposed Regulations

On December 1, 2021, OMH issued an emergency/proposed rule in the State Register (available [here](#)) revising Part 596 of Title 14 of NYCRR that regulates the provision of services via telehealth. The proposed regulations include the following changes, among others:

- Allow for the provision of telephonic (audio-only) services;

- Allow any authorized provider to deliver mental health services under their scope of practice;
- Expand the definitions of originating and distant sites;
- Remove the required in-person initial assessment;
- Remove additional requirements for Personalized Recovery Oriented Services (PROS) and Assertive Community Treatment (ACT) programs; and
- Strengthen language around consent and recipient preference.

The proposed regulations are available [here](#). SPG’s summary of the regulations is available [here](#). **The emergency rule currently expires April 11th.**

OMH is in the process of updating the regulations following a review of public comments received, which will be re-posted once finalized. OMH is also finalizing edits to a telehealth guidance document, which will be released upon final promulgation of the regulations (expected April 2022).

Other Guidance

On October 31, 2021, OMH released supplemental disaster emergency billing and documentation guidance (available [here](#)) for the following programs:

- Assertive Community Treatment (ACT)
- Personalized Recovery Oriented Services (PROS)
- Continuing Day Treatment (CDT)
- Children’s Day Treatment
- Partial Hospitalization Programs (PHP)
- Adult Behavioral Health HCBS
- Adult and Children’s Residential Programs
- Clinics

OMH will continue to allow flexibilities for billing and documentation as outlined in OMH-issued Covid-19 guidance (available [here](#)) for the duration of the federal PHE for these programs. When the federal PHE expires, providers will be immediately required to resume appropriate billing and documentation activities pursuant to pre-pandemic guidance and regulations.

On March 4th, OMH released a revised Covid-19 infection control manual (available [here](#)).

Office of Addiction Services and Supports (OASAS)

On June 25, 2021, OASAS issued a regulatory waiver (available [here](#)) continuing Covid-19 disaster emergency-related flexibilities for OASAS programs. The waiver has been extended several times, and is currently in effect through April 19th (most recent extension available [here](#)).

Final Regulations

On November 24, 2021, OASAS issued an emergency/proposed rule in the State Register (available [here](#)) amending Part 830 of Title 14 of NYCRR to continue telehealth flexibilities allowed during the New York State Disaster Emergency and to make those flexibilities permanent in alignment with the proposed regulations released by OMH. The rule, which was adopted on February 16th, also adds an optional LGBTQ endorsement to

develop a distinction for OASAS-certified programs meeting additional criteria for the provision of LGBTQ-affirming care. The final regulations are available [here](#). OASAS is in the process of finalizing changes to its telehealth guidance.

The following telehealth flexibilities **have been extended permanently through adopted amendments to 14 NYCRR Part 830**:

- Allow for the telehealth practitioner’s distant site to be located anywhere within the United States.
- Allow for the patient’s originating site to include temporary locations out-of-state.
- Allow for telephonic-only services.
- Allow for all OASAS services to be provided via telehealth if appropriate.
- Define telehealth practitioner as any staff credentialed or approved by OASAS providing services consistent with their scope of practice.
- Waive requirement that patients have an initial in-person evaluation prior to receiving telehealth services.

The following flexibilities **remain in place pursuant to the Commissioner’s waiver**:

- Waive requirements for application and operating certificate designation for certified program approval to deliver telehealth services.
- Waive APG requirements regarding minimum time requirements for service delivery.

The following provider flexibilities **will continue for the duration of the federal PHE**:

- Allow DATA 2000 waived practitioners to provide buprenorphine induction via telehealth and telephone-only.
- Allow providers to utilize certain video-conference technologies that are not fully compliant with HIPAA rules.
- Allow providers to use verbal consent to provide services, as documented in the patient record, until written consent can be obtained (written consent is still required to share patient records).

As of June 25, 2021, flexibilities regarding background checks have **ended**:

- OASAS providers must resume routine processing of background checks for all prospective employees, including for staff hired on or after June 24, 2021.
- In cases where background checks were abbreviated, required background checks must be submitted by August 25, 2021.
- Staff members with abbreviated background checks and who have regular and substantial contact with patients must be supervised in accordance with OASAS regulations, beginning September 25, 2021.

In addition, out-of-state practitioners that are not licensed in New York State are no longer permitted to deliver services.

Other Guidance

OASAS has released the following guidance documents for providers:

- [Return to Work Guidance](#)
- [Notification and Attestation Checklist for Staff Return to Work During Quarantine](#)
- [OASAS Guidance on Covid-19 Mask Wearing Requirements in Certified, Funded or Otherwise Authorized Settings](#)
- [Opioid Treatment Program Reopening Guidance](#)
- [Covid-19 Guidance for Outpatient Programs](#)

- [Interim Inpatient and Residential Program Guidance](#)
- [Reopening Guidance for Prevention Services Programs](#)
- [Guidance on Covid-19 Mask Requirements](#)
- [OASAS Reopening Guidance](#)

Office for People with Developmental Disabilities (OPWDD)

OPWDD released guidance on July 2, 2021 (available [here](#), updated September 15, 2021) notifying providers to:

- Operate programs at full capacity to the extent possible;
- Resume unrestricted visitation at community outings from residential facilities; and
- Remove capacity limitations during transportation if all individuals are vaccinated.

Providers should immediately resume the pre-pandemic criminal background check process and all mandatory training requirements. All agencies and operating facilities must require all staff, volunteers, contractors, vendors, visitors, and individuals to wear appropriate face coverings unless exempt due to age, risk, or disability.

OPWDD's Amendment 06 to its 1915(c) waiver, which was approved by CMS and is effective July 1st, includes changes to permanently adopt telehealth and in-residence service delivery models initially used to address Covid-19. Other flexibilities provided in Appendix K may be continued up to **six months after the end of the ongoing federal PHE**.

OPWDD has released the following updated guidance documents regarding the expiration of flexibilities:

- [OPWDD's Emergency Regulation 14 NYCRR Section 633.26 Mandatory Face Coverings in OPWDD Certified Services and Facilities](#)
- [Notification and Attestation Checklist for Staff Return to Work During Quarantine](#)
- [Care Planning and Service Options Post Pandemic](#)
- [Interim Guidance Regarding the Use of Telehealth/COVID-19](#)
- [Expiration of Interim Guidance Regarding the Criminal Background Check Process for Staff Members](#)
- [Updated Interim Training & Recertification Guidance](#)

On October 27, 2021, OPWDD posted a public notice in the State Register (available [here](#)) announcing that, effective November 1, 2021, it will allow reimbursement for the remote delivery of Crisis Services for Individuals with Intellectual and/or Developmental Disabilities (CSIDD). Remote delivery may include telephonic (audio-only) technology in accordance with New York State and federal regulations.

State Education Department (NYSED)

NYSED has published an Advisory Notice (available [here](#)) stating that licensure and scope of practice exemptions pursuant to Executive Order 202 have expired and Title VIII professionals should return to compliance with all statutory and regulatory requirements without delay, unless specifically suspended or waived pursuant to Executive Order 4. However, the federal PREP Act remains in effect and continues to provide certain authorizations and exemptions for many professions and activities related to the ongoing Covid-19 emergency response.

FEDERAL POLICIES

HHS PREP Act Declaration

HHS issued a Declaration under the PREP Act in March 2020 to expand flexibility and waive liability for health care providers to offer “covered countermeasures” for Covid-19. Such countermeasures include any drug, biological product, or device used to address the pandemic, as authorized for use by the Food and Drug Administration. A January 28, 2021 amendment to this Declaration (available [here](#)) explicitly authorized additional personnel to prescribe, dispense, and administer Covid-19 vaccinations and other “covered countermeasures” for Covid-19. The amendment:

- Authorizes any health care provider licensed in a state to administer Covid-19 vaccinations in any other state or territory;
- Authorizes any physician, registered nurse, or practical nurse whose license or certification expired within the past five years to administer Covid-19 vaccinations, as long as the license was in good standing at the time of expiration; and
- Requires such personnel to complete Covid-19 vaccination training and, if their license is expired, complete an on-site observation period under a currently practicing professional.

The PREP Act Declaration preempts any state law that would otherwise prohibit healthcare professionals who are “qualified persons” from prescribing, dispensing, or administering Covid-19 vaccines or other covered countermeasures. As such:

- State-licensed pharmacists may order and administer, and licensed or registered pharmacy interns may administer under supervision, FDA authorized, licensed, or approved Covid-19 vaccines following immunization training.
- State-licensed pharmacists may order and administer Covid-19 tests, including serology tests.
- Healthcare personnel using telehealth to order or administer covered countermeasures for patients in a state other than the state where the healthcare personnel are licensed or permitted to practice.

Medicare

Current Status of Telehealth Waivers

Since the federal PHE remains in place, Medicare’s Covid-19 telehealth policies and flexibilities remain in effect, including the ability to deliver services via telehealth to Medicare beneficiaries regardless of geographic restrictions or distant/originating site limitations and to deliver certain services via audio-only telephonic modalities. In December 2020, CMS [added](#) a large number of services to the telehealth permissible list, some on a permanent basis, some temporarily for the emergency, and some that will be available until the end of the calendar year in which the PHE ends.

CMS finalized its proposal to maintain much of the Medicare telehealth expansion that occurred during the Covid-19 public health emergency for two years, through December 31, 2023. This includes allowing all services defined by CPT code that have been temporarily added to the Medicare telehealth list (on a “Category 3” basis) to continue through that date, allowing CMS to gather more information to consider adding them permanently. A complete list of allowable telehealth services is available [here](#).

Medicare Telehealth After the End of the PHE: Mental Health

CMS finalized implementation of provisions in the 2020 Consolidated Appropriations Act (CAA) to permanently expand telehealth, with restrictions, for certain mental health services. CMS finalized removal of Medicare geographic restrictions on telehealth for mental health providers who have an

existing and ongoing in-person relationship with a patient. This requires an in-person, non-telehealth service to be conducted by the provider within six months prior to the initial telehealth service, and every 12 months thereafter. The in-person follow-up exam requirement may be waived based on the provider's professional judgment that the patient may be at risk for disengagement with care, that the service would be likely to disrupt service delivery, or that it might create risks and burdens for the patient. Practitioners must document the exception and the patient's ability to obtain point-of-care testing during each 12-month interval.

CMS has also clarified that mental health services include services for treatment of substance use disorders (SUD). Additionally, CMS finalized a revised definition of "interactive telecommunications system" to include audio-only communication technology when used for the diagnosis, evaluation, or treatment of mental health disorders furnished to established patients in their homes. However, the use of audio-only is limited to providers who can provide two-way audio and video communications but use audio-only communications due to beneficiary choice.

Medicare Telehealth After the End of the PHE: Temporary Extension

In March 2022, Congress passed and President Biden signed an omnibus spending package that includes an extension of pandemic-related telehealth services in Medicare. The bill extends, for 151 days following the end of the Covid-19 PHE, the expansion of Medicare coverage of telehealth services that has been in place during the PHE. During this period:

- The lifting of the rural geographic restriction on Medicare telehealth will remain in effect.
- Medicare will continue to reimburse FQHCs and rural health clinics will for services provided through telehealth.
- Medicare will continue to pay for audio-only telehealth and physical, occupational, and speech therapy services delivered through telehealth.
- Medicare will continue not to enforce the requirement that beneficiaries receiving telehealth for mental health services must be seen in person by their provider within six months of starting treatment, and every year thereafter.
- Prescription of controlled substances will not be allowed via telehealth.

The omnibus bill text is available [here](#) and a summary is available [here](#).