



14 NYCRR 596.1

Section 596.1. Background and intent

(Effective September 12, 2022)

(a) *Telehealth* is defined as the use of telehealth technologies by telehealth practitioners to provide mental health services at a distance. Such services do not include an electronic mail message, text message, or facsimile transmission between a provider and a recipient, or a consultation between two professionals or clinical staff although these activities may support the delivery of services via telehealth. Additionally, such services do not include services provided where the originating and distant sites are the same location.

(b) Telehealth services may be provided only where clinically appropriate and with informed consent by the recipient. Where the recipient is a minor consent shall also be provided by the parent/guardian or other person who has legal authority to consent to health care on behalf of the minor. The recipient may withdraw consent at any time. A provider may not deny services to an individual who has a preference to receive services in-person.

(c) The Office of Mental Health (the Office) supports the use of telehealth services where it is in the best interests of the person served, in accordance with Office guidance, and is performed in compliance with applicable federal and state laws and regulations and the provisions of this Part in order to address legitimate concerns about privacy, security, recipient safety, and interoperability.

(d) Audio-only or audio-video communication is an acceptable option only when determined appropriate by the provider of service, in accordance with guidelines established by the Office, and with informed consent from the recipient. Where the recipient is a minor, consent shall also be provided by the parent/guardian or other person who has legal authority to consent to health care on behalf of the minor.

(e) Audio-only or audio-video communication is covered by Medicaid and the Child Health Insurance Plan to the extent consistent with regulations promulgated by the New York State Commissioner of Health pursuant to Section 2999-cc of the Public Health Law.

14 NYCRR 596.2

Section 596.2. Legal base

(a) Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(b) Sections 31.02 and 31.04 of the Mental Hygiene Law authorize the Commissioner of Mental Health to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate.

(c) Section 2999-dd of the Public Health Law provides that health care services delivered by means of telehealth are entitled to Medicaid reimbursement under Social Services Law Section 367-u.

(d) Section 829 of Title 21 of the United States Code governs the law concerning internet prescribing of controlled substances.

14 NYCRR 596.3

Section 596.3. Applicability

(a) The provisions of this Part shall apply to any licensed, designated, or authorized provider of services pursuant to Article 31 of the Mental Hygiene Law who has been authorized by the Office under this Part to include the use of

Telehealth Services as a means of rendering services licensed, designated, or authorized by the Office.

(b) The provisions of this Part shall not be construed to alter the scope of practice of any licensee or authorize the delivery of services in a setting, or in a manner, not otherwise authorized by law.

14 NYCRR 596.4

Section 596.4. Definitions

For purposes of this Part:

(a) Collateral means a person who is a member of the recipient's family or household, or other individual who interacts with the recipient and is directly affected by or has the capability of affecting their condition and is identified in the treatment plan as having a role in treatment and/or is necessary for participation in the evaluation and assessment of the recipient.

(b) Distant or "hub" site means the distant secure location, as defined in Section 596.6(a)(1)(vi) of this Part, at which the practitioner rendering the service using Telehealth Services is located.

(c) Encounter means a recipient or collateral contact in which services are provided using telehealth services, and whereby the care of the recipient is the direct responsibility of both the Article 31 licensed, designated, or authorized provider of services in which the recipient is admitted at the time of the encounter and the distant telehealth practitioner.

(d) Encryption means a system of encoding electronic data where the information can only be retrieved and decoded by the person or computer system authorized to access it.

(e) Originating or "spoke" site means a site where the recipient is physically located at the time mental health services are delivered to them by means of telehealth services, which may include the recipient's place of residence, other identified location, or other temporary location out-of-state.

(f) Provider of services means a provider of mental health services licensed pursuant to Article 31 of the Mental Hygiene Law or designated or authorized by the Office to provide mental health services.

(g) Recipient means a person who is receiving telehealth services.

(h) Telehealth Technologies means a dedicated secure interactive audio and/or video linkage system approved by the Office to transmit data between an originating/spoke site and distant/hub site for purposes of providing telehealth services.

(i) Telehealth Practitioner means:

(i) a prescribing professional eligible to prescribe medications pursuant to federal regulations; or

(ii) staff authorized by OMH to provide in-person services are authorized to provide behavioral health services via telehealth, consistent with their scope of practice where applicable, and in accordance with guidelines established by the Office.

(j) Telehealth Services means the use of telehealth technologies by telehealth practitioners to provide and support mental health services at a distance. Such services do not include an electronic mail message, text message, or facsimile transmission between a provider and a recipient, services provided where the originating and distant sites are the same location, or a consultation between two physicians or nurse practitioners, or other staff, although these activities may support telehealth services.

14 NYCRR 596.5

Section 596.5. Approval to Utilize Telehealth Services

(a) Telehealth services may be authorized by the Office for licensed, designated or otherwise approved services provided by telehealth practitioners, as defined in section 596.4 of this Part, from a site distant from the location of a recipient, where the recipient is physically located at a provider site licensed by the Office, or the recipient's place

of residence, other identified location, or other temporary location out-of-state. Services may be delivered via telehealth unless otherwise specified by guidelines established by the Office.

(b) A provider of services must obtain prior written approval of the Office before utilizing telehealth services. Once approved, such provider shall be accountable for ensuring compliance with all ethical and scope of practice requirements for the provision of such services by the telehealth practitioner.

(c) Approval shall be based on receipt by the Office of the following:

(1) Sufficient written demonstration that telehealth services will be used for assessment and treatment services licensed, designated, or authorized by the Office consistent with the provisions of this Part, guidelines established by the Office and that the services are being requested not to fulfill regulatory staffing requirements but because they are necessary to improve access and the quality of care of individuals receiving services or because they are necessary to address workforce shortages;

(2) Submission of policies and procedures and an attestation found in the guidelines established by the Office to provide telehealth services that satisfies the provisions of this Part and includes:

(i) confidentiality protections for persons who receive telehealth services, including measures to ensure the security of the electronic transmission;

(ii) procedures for assessing recipients to determine whether a recipient may be properly treated via telehealth services;

(iii) informed consent of persons who receive telehealth services and procedures for the withdrawal of such consent;

(iv) procedures for handling emergencies with persons who receive telehealth services; and

(v) contingency procedures to use when the delivery of telehealth service is interrupted, or when the transmission of the two-way interactions is deemed inadequate for the purposes of service provision.

(d) Requests for approval to offer telehealth services shall be submitted by licensed, designated, or authorized providers to the Field Office serving the area in which the program is located. Such Field Office may conduct a remote readiness review to either or both the originating, where non-residential, and distant sites prior to issuing approval.

(e) The Office shall provide its approval to utilize telehealth services in writing. The provider of services must retain a copy of the approval document and shall make it available for inspection upon request of the Office.

(f) Failure to adhere to the requirements set forth in this Part may be grounds for revocation of such approval. In the event that the Office determines that approval to utilize telehealth services must be revoked, it will notify the provider of services of its decision in writing. The provider of services may request an informal administrative review of such decision. The Commissioner may direct the provider to immediately suspend the provision of telehealth services pending review of a decision to revoke if there is reason to believe the safety or privacy of any recipient has been compromised as a result of telehealth service provision.

(1) The provider of services must request such review in writing within 15 business days of the date it receives notice of revocation of approval to utilize telehealth services to the Commissioner or designee. The request shall state specific reasons why such provider considers the revocation of approval incorrect and shall be accompanied by any supporting evidence or arguments.

(2) The Commissioner or designee shall notify the provider of services, in writing, of the results of the informal administrative review within 20 business days of receipt of the request for review. Failure of the Commissioner or designee to respond within that time shall be considered confirmation of the revocation of deemed status.

(3) The Commissioner's determination after informal administrative review shall be final and not subject to further administrative review.

Section 596.6. Requirements for Telehealth Services

(a) General requirements.

(1) The distant/hub site telehealth practitioner must:

- (i) possess a current, valid license, permit, or limited permit to practice in New York State, or is designated or approved by the Office to provide services;
- (ii) directly render the telehealth service;
- (iii) abide by the laws and regulations of the State of New York including the New York State Mental Hygiene Law and any other law, regulation, or policy that governs the assessment or treatment service being provided;
- (iv) adhere to the same laws, rules, and regulations and exercise the same standards of care and competencies required for in-person delivered services;
- (v) utilize evidence-based telehealth practice guidelines and standards of practice, to the degree they are available, to ensure recipient safety, quality of care, and positive outcomes; and
- (vi) deliver services from a secure site/location which ensures the minimum standards for privacy for recipient-telehealth practitioner interaction are met.

Telehealth practitioners may deliver services from a site located within the United States or its territories, which may include the practitioner's place of residence, office, or other identified space approved by the Office of Mental Health and in accordance with guidelines established by the Office.

(2) The telehealth practitioner must not be terminated, suspended, or barred from the Medicaid or Medicare program.

(3) If the originating/spoke site is a hospital, the telehealth practitioner at the distant/hub site must be credentialed and privileged by such hospital, as necessary and consistent with applicable accreditation standards.

(4) Telehealth services must be rendered using telehealth technologies. A provider of services approved to offer telehealth services shall adopt and implement technology in a manner that supports the standard of care to deliver the services, the features of which include at least:

- (i) The technology and equipment utilized in the provision of telehealth services must be of sufficient quality, size, resolution and clarity where applicable such that the provider of services can safely and effectively provide the telehealth services;
- (ii) The technology and equipment utilized in the provision of telehealth services or the use of audio or video telephone communication must be compliant with the Health Insurance Portability and Accountability Act (HIPAA).

(5) Telehealth practitioners must verify the identity of the recipient before commencing each telehealth encounter.

(6) A notation must be made in the clinical record that indicates that the service was provided via telehealth and indicating whether audio only services were provided which specifies the time the service was started and the time it ended.

(7) Telehealth services provided to recipients under age 18 may include staff members of the originating/spoke site in the room with the recipient. Such determinations shall be clinically based, consistent with Guidelines issued by the Office.

(8) For the purposes of billing, telehealth services shall be considered face-to-face contacts when the service is delivered in accordance with the provisions of the plan approved by the Office pursuant to section 596.5 of this Part. Providers should refer to the program specific guidelines established by the Office to determine authorized use of telehealth services.

(9) Culturally competent interpreter services shall be provided in the recipient's preferred language when the recipient and telehealth practitioners do not speak the same language.

(10) The telehealth practitioner providing telehealth services at a distant/hub site shall be considered an active part of the recipient's treatment team and shall be available for discussion of the case or for interviewing family members and others, as the case may require. Such telehealth practitioner shall prepare appropriate progress notes and securely forward them or directly enter them into the originating/spoke provider health record as a condition of reimbursement.

(11) Telehealth services shall not be used:

- (i) for purposes of seeking a court order for treatment over objection; or
- (ii) restraint or seclusion, as defined in section 526.4 of this Title.

(12) Telehealth services provided via audio-visual technologies only, may 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 pursuant to section 9.27 of the Mental Hygiene Law, if such services are utilized in compliance with the following:

- (i) The telehealth practitioner must be a physician and licensed to practice in New York.
- (ii) Telehealth services can only be utilized to fulfill one of the three physician-required activities in a removal or retention action, i.e., either one of the two certifying physicians at the emergency hospital site, or the confirming physician at the receiving hospital site, can perform their required examination, evaluation, or assessment through telehealth technology.
- (iii) The individual must be 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 give consent to treatment, the effort to obtain consent must be documented in the clinical record, and the examination may proceed.
- (iv) All three physicians must sign the form at whatever location they are at the time of the examination, regardless of whether they are at the originating/spoke site or the distant/hub site. If the telehealth practitioner is one of the examining physicians, a copy of his or her signed Form OMH 471 must be received in the emergency hospital site before the individual is transported to the receiving hospital. The telehealth physician may sign their form electronically as permitted by the Electronic Signature and Records Act (ESRA). The transmission of the form may be electronically received, as long as in both instances the transmission is securely made over an encrypted line or network.
- (v) When telehealth services are used as part of a 9.27 retention action, forms amended by the Office of Mental Health to account for the use of such services shall be utilized.
- (vi) Telehealth consultation. Nothing herein shall preclude the additional use of telehealth services in retention actions on a consultative basis, rather than as a means of partially fulfilling a statutory requirement for any Mental Hygiene Law Article 9 evaluation. The responsibility for signing the commitment papers remains with the physician who actually conducted the evaluation of the individual at the facility, not the psychiatrist who provided the telehealth consultation.

(13) Telehealth services provided via audio-visual technologies only, may be used to satisfy specific statutory examination, evaluation, or assessment requirement necessary for the immediate observation, care and treatment in a hospital, pursuant to section 9.39 of the Mental Hygiene Law, if such services are utilized in compliance with the following:

(i) The telehealth practitioner must be a physician and licensed to practice in New York.

(ii) Telehealth services can only be utilized to fulfill one of the two physician-required activities in a removal or retention action, i.e., either the certifying physician or confirming staff psychiatrist at the emergency hospital site, can perform their required examination, evaluation, or assessment through telehealth technology.

(iii) The individual must be 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 give consent to treatment, the effort to obtain consent must be documented in the clinical record, and the examination may proceed.

(iv) All physicians must sign the form at whatever location they are at the time of the examination, regardless of whether they are at the originating/spoke site or the distant/hub site. If the telehealth practitioner is the examining physician, a copy of their signed Form OMH 474 must be received in the emergency hospital site before the individual is transported. The telehealth physician may sign their form electronically as permitted by the Electronic Signature and Records Act (ESRA). The transmission of the form may be electronically received, as long as in both instances, the transmission is securely made over an encrypted line or network.

(v) When telehealth services are used as part of a 9.39 retention action, forms amended by the Office of Mental Health to account for the use of such services shall be utilized.

(vi) Telehealth consultation. Nothing herein shall preclude the additional use of telehealth services in retention actions on a consultative basis, rather than as a means of partially fulfilling a statutory requirement for any Mental Hygiene Law Article 9 evaluation. The responsibility for signing the commitment papers remains with the physician who actually conducted the evaluation of the individual at the facility, not the psychiatrist who provided the telehealth consultation.

(b) Protocols and Procedures. A provider of services approved to utilize Telehealth Services must have written protocols and procedures that address the following:

(1) Each recipient for whom the provision of telehealth services may be offered must be evaluated to determine whether the telehealth modality is appropriate, given the recipient's treatment needs.

(2) Informed Consent: Protocols must afford persons receiving services the opportunity to provide informed consent to participate in any services utilizing telehealth services, including the right to refuse these services and to be apprised of the alternatives to telehealth services, including any delays in service, need to travel, or risks associated with not having the services provided by telehealth, and risks associated with receiving telehealth services in an off-site location. Such informed consent may be incorporated into the informed consent process for in-person care, or a separate informed consent process for telehealth services may be developed and used.

(i) The recipient must be provided with basic information about telehealth services, including both benefits and risks, and shall provide his or her informed consent to participate in services utilizing this technology. For recipients under age 18 for whom informed consent cannot be obtained pursuant to Mental Hygiene Law Section 33.21, such information shall be shared with and informed consent obtained from the recipient's parent or guardian.

(ii) Recipients, or a minor recipient's parent or guardian, shall be informed how to verify a telehealth practitioner's professional license.

(iii) The recipient has the right to refuse to participate in telehealth services, in which case services must be conducted in-person by appropriate clinicians.

(iv) Telehealth sessions shall not be recorded without the recipient's consent, which shall be documented in the clinical record.

(3) Confidentiality: Protocols and procedures must be maintained as required by Mental Hygiene Law Section 33.13 and HIPAA at 45 CFR Parts 160 and 164 and shall apply to both the originating/spoke site and the distant/hub site. Such protocols shall ensure that:

(i) All current confidentiality requirements and protections that apply to written clinical/medical records shall apply to services delivered by telehealth technologies, including the actual transmission of the service, any recordings made during the time of transmission, and any other electronic records.

(ii) The spaces occupied by the recipient at the originating/spoke site, where non-residential, and the practitioner at the distant/hub site must meet the minimum standards for privacy expected for recipient-clinician interaction at a single Office of Mental Health licensed expected for recipient-clinician interaction at a single Office of Mental Health licensed location.

(4) All telehealth services must be conducted via telehealth technologies that meet minimum federal and state requirements, including but not limited to 45 C.F.R. Parts 160 and 164 (HIPAA Security Rules), and which are consistent with guidelines of the Office. Transmissions must employ acceptable authentication and identification procedures by both the sender and the receiver.

(5) Psychiatric emergencies: All telehealth service sites must have a written procedure detailing the availability of in-person assessments in an emergency situation.

(6) Prescribing medications via telehealth: Procedures for prescribing medications through telehealth must be identified and must be in accordance with applicable New York State and federal law, including but not limited to the federal Ryan Haight Act (21 U.S.C. section 823 (f), New York State Education Law sections 6902(3)(a)(ii), 7606, 7708, and 8407; and regulations of the New York State Department of Health at 10 NYCRR Part 80.

(7) Recipient rights: Recipient rights policies must ensure that each individual receiving telehealth services:

(i) is informed and made aware of the role and license information of the telehealth practitioner at the distant/hub site, as well as staff at the originating/spoke site, where non-residential, who are responsible for follow-up or on going care;

(ii) is informed and made aware of the location of the distant/hub site and all questions regarding the equipment, the technology, etc., are addressed;

(iii) has the right to have appropriately trained staff immediately available to him/her while receiving the telehealth service to attend to emergencies or other needs;

(iv) has the right to be informed of all parties who will be present at each end of the telehealth transmission; and

(v) if the recipient is a minor, the recipient and his or her parent or guardian shall be given the opportunity to provide input regarding who will be in the room with the recipient when telehealth services are provided.

(8) Quality of Care: All telehealth service sites shall have established written quality of care protocols to ensure that the services meet the requirements of New York State and federal laws and established recipient care standards. A review of telehealth services shall be included in the provider's quality management process.

(9) Contingency Plan: All telehealth service sites must have a written procedure detailing the contingency plan when there is a failure of the transmission or other technical difficulties that render the service undeliverable.

(10) Ownership and Maintenance of Records:

(i) The program in which the recipient is admitted shall be responsible for obtaining and maintaining a complete clinical record as if the recipient were seen in-person at such site.

(ii) The telehealth practitioner must have immediate access to the recipient health record.

(iii) The distant/hub site shall maintain copies of all documentation completed by the distant/hub telehealth practitioner unless the telehealth practitioner records the information directly within the originating/spoke

site's electronic medical record system.

(c) Guidelines of the Office.

The Office shall develop guidelines to assist providers in complying with the provisions of this Part and in achieving treatment goals through the use of Telehealth Services. The Office shall post such guidelines on its public website.

14 NYCRR 596.7

Section 596.7. Reimbursement for Telehealth Services

(a) The licensed, designated, or authorized provider of service where the recipient is admitted is authorized to bill Medicaid for telehealth services.

(b) Under the Medicaid program, telehealth services are covered when medically necessary and under the following circumstances:

- (1) the person receiving services is located at the originating/spoke site;
- (2) the telehealth practitioner is located at the distant/hub site and is employed by or contracted with a program licensed or designated by the Office;
- (3) the person or collateral receiving services is present during the encounter;
- (4) the request for telehealth services and the rationale for the request are documented in the individual's clinical record;
- (5) the clinical record includes documentation that the encounter occurred; and
- (6) the telehealth practitioner at the distant/hub site is:
 - (i) authorized in New York State;
 - (ii) practicing within his/her scope of specialty practice; and
 - (iii) if the originating/spoke site is a hospital, credentialed and privileged at the originating/spoke site facility.

(c) Audio-only or audio-video communication is covered by Medicaid and the Child Health Insurance Plan to the extent consistent with regulations promulgated by the New York State Commissioner of Health pursuant to Section 2999-cc of the Public Health Law.

(d) The following interactions do not constitute reimbursable telehealth services;

- (1) e-mail messages;
- (2) text messages; or
- (3) facsimile transmission.

(e) Reimbursement for services provided via telehealth must be in accordance with the rates and fees established by the Office and approved by the Director of the Budget. Such rates or fees shall be the same for identical procedures provided by practitioners in-person, in the same location as the recipient unless otherwise established by the Office.

(f) If a telehealth service is undeliverable due to a failure of transmission or other technical difficulty, reimbursement shall not be provided.

14 NYCRR 596.8

Section 596.8. Contracts for the Provision of Telehealth Services

(a) Nothing in this Part shall be deemed to prohibit a provider of services from providing licensed, designated, and authorized services, consistent with applicable regulations of the Office, as a distant/hub site via telehealth pursuant to contract with an originating/spoke site provider that is not licensed or operated by the Office, but which is enrolled in the New York State Medicaid program.

(b) Although prior approval of the Office is not required before entering into such contracts, notice of such contracts or agreements shall be provided by the distant/hub provider of services within 30 days after execution of such contract to the Field Office serving the area where such provider of services is located.

(c) Reimbursement for telehealth services shall be pursuant to such contracts and are not separately billable by the distant/hub site.

(d) Providers of service shall not engage in distant/hub telehealth services that violate the provisions of paragraph

(11) of subdivision (a) of section 596.6 of this Part.