

COVID-19 Telehealth Updates

June 2020

Use of and access to telehealth has changed dramatically since the outbreak of the COVID-19 pandemic. Federal and state agencies have allowed for significant relaxations regarding permissible modalities of telehealth as well as in reimbursement. This document contains a quick update to some key issues in telehealth, as well as links to resources that are in effect, as a result of COVID-19.

Updated Resources

We have updated the following to give you an overview of telehealth issues as they have been modified by New York State agencies. This information is frequently being modified and you should check with an experienced attorney to confirm the current state of the law. We hope that this will be helpful for general informational purposes.

Q: What is telehealth?

A: Telehealth is, at its core, the ability to provide health care services remotely. However, only certain kinds of telehealth are reimbursable. For instance, the New York State Medicaid program limits telehealth coverage to telemedicine (meaning synchronous, two-way electronic audio visual communications to deliver clinical health care services), store and forward technology (including certain digital images), and remote patient monitoring devices/systems.

*** During COVID-19:** As of the onset of COVID-19 pandemic and related state of emergency, NYS DOH approved audio only (telephone) communications for telehealth reimbursement as well.

Q: How are telehealth services reimbursed? What about insurance for patients?

A: Medicaid and Medicare have specific requirements for the types of services that are reimbursable and the rates for such reimbursement. These can change/fluctuate each year.

Additionally, New York State requires commercial insurers and the Medicaid program to provide reimbursement for services delivered via telehealth if those services would have been covered if delivered in person.

*** During COVID-19:** Special protections are extended to individuals in order to combat the COVID-19 pandemic. Insurers that provide comprehensive health insurance coverage may not impose, and no insureds shall be required to pay, copayments, coinsurance, or annual deductibles for an in-network service otherwise covered under the policy when such service is delivered via telehealth.

Q: How do I find the appropriate software or equipment?

A: Telehealth can be provided through a number of modalities, ranging from audio-video communications, remote monitoring, and store-and-forward. The exact equipment and software will likely depend on the modality, and the nature of the services. For example, in some settings, NYS agencies encourage or require the use of special cameras and specific internet security settings. Many providers enter into agreements with third-party vendors who license the software to the providers. These agreements should address not only the services and use of software during the contract, but also key items including, but not limited to, the location of and ability to access data, and the terms under which security breaches will be addressed to comply with HIPAA and New York's SHIELD Act. Given the unique complexities that can arise at these intersections of health care and technology, it is recommended that providers engage an experienced telehealth attorney to review these contracts.

*** During COVID-19:** NYS DOH added to approved modalities to allow for telephone communications as well. According to the May 1, 2020 Medicaid Update, during the COVID-19 State of Emergency, all telehealth applications will be covered at all originating and distant sites as appropriate to properly care for the patient.

Q: I provide health care services through a private practice. How is the practice of telehealth regulated? Can I provide services through telehealth?

A: Telehealth is regulated in large part by each state. Among other things, this means that professionals should be familiar with the requirements of each state in which they are providing care, which is based upon the location of the patient. Most states require that the professional be licensed to practice in the state in which the patient resides before engaging in telehealth services.

In New York State, many of the professions regulated/overseen by the New York State Education Department (NYSED) are able to engage in telehealth services. NYSED has provided basic guidance to help you understand and plan for providing telehealth services. For those providing services in certain settings that require licensure/approval of state agencies, there may be additional requirements that apply; for example, services provided at/through a site licensed by OMH, OASAS, or OPWDD should consult that agency's guidance for additional details. (see below for links to applicable guidance).

*** During COVID-19:** Many states have relaxed the licensure requirements to allow for health care professionals to provide services in their respective states without the need for a license to practice in that state.

Q: How does telehealth work for behavioral health care providers?

A: Behavioral health care providers – including private practitioners as well as those who provide services through OPWDD, OMH, OASAS– are able to use telehealth to increase access to care by allowing individuals to receive services remotely, often at the patients place of residence. Depending on the specific services being offered, and the agency

regulating those services, there may be specific guidance that applies. For additional information, please click the dropdown box/link below.

- [OMH – Telemental Health](#)

The Office of Mental Health utilizes its own form of telehealth, called telemental health. OMH regulations govern the provision of telemental health services by OMH programs licensed or designated pursuant to Article 31 of the Mental Hygiene Law. Providers wishing to utilize telemental health services by/through OMH programs licensed or designated pursuant to MHL Article 31 **must receive approval** (which requires filing an attestation and other materials to OMH). Services are required to be delivered from a secure site/location which ensures the minimum standards for privacy for recipient-clinician interaction are met; psychiatrists and nurse practitioners in psychiatry may deliver services from a site located within the United States, including from a space in a place of residence approved by the Office of Mental Health and mental health practitioners may deliver services from a site located within the State of New York, including from a space in a place of residence approved by the Office of Mental Health.

For more guidance, see OMH's 2019 guidance, at <https://omh.ny.gov/omhweb/guidance/telemental-guidance.pdf>.

*** During COVID-19:** OMH issued a significant number of guidance in response to COVID-19 ranging from billing to infection control. Among other things, the application/approval process was modified to allow providers to provide telemental health so long as the providers submit a self-attestation certifying that they meet certain basic requirements. For an up-to-date listing of OMH guidance on COVID-19, see <https://omh.ny.gov/omhweb/guidance/>.

Consolidated guidance, published on March 30, 2020, is available at <https://omh.ny.gov/omhweb/guidance/covid-19-consolidated-telemental-health-guidance.pdf>

Modified Self Attestation form <https://omh.ny.gov/omhweb/guidance/self-attestation-telemental-health-disaster-emergency.pdf>

- [OPWDD - Telehealth](#)

The Office for People with Developmental Disabilities allows clinic treatment facilities to serve individuals through providing access to clinical services through telehealth. The use of telehealth was added to OPWDD regulations in 2018 in order to increase access to care by allowing individuals to receive services remotely, rather than in the home or another costlier and/or more restrictive settings. The person receiving services may be at his/her residence while the provider is at an OPWDD site (or a certified satellite site). Currently, independent practitioner services for individuals with developmental disabilities (IPSIDD services) are prohibited from being delivered via telehealth.

*** During COVID-19:** OPWDD updated its guidance on the use of telehealth for all nonresidential facilities and programs certified or operated by OPWDD to allow for the delivery of services via telehealth to individuals with intellectual or developmental disabilities. According to April 10, 2020 guidance, “certain health, habilitation and respite services are permitted for delivery via telehealth, where a provider exercising good clinical judgment determines a telehealth encounter is appropriate for the delivery of services to an individual.” These non-residential habilitation and respite services are also entitled to reimbursement from Medicaid. Additionally, the prohibition regarding IPSIDD services has been lifted. For more information, see: <https://opwdd.ny.gov/system/files/documents/2020/04/4.14.2020-updated-opwdd-telehealth-guidance-from-4.9-with-revisions-shown.pdf>

- **OASAS – Telepractice**

The Office of Addiction Services and Supports uses the term “telepractice” to refer to the use of two-way real-time interactive telecommunication system for the purpose of providing certain addiction services at a distance. In order to provide telepractice, a program must have received an operating certificate “designation” from OASAS, and providers/programs must also receive approval to provide such services. Services may be provided via telepractice by a practitioner from a site distant from the location of the patient, provided both practitioner and patient are located in sites approved by the Office pursuant to a plan submitted by a certified program in application for a telepractice designation. General guidance is available at <https://oasas.ny.gov/system/files/documents/2020/02/telepractice-standards.pdf>.

*** During COVID-19:** OASAS is allowing for the provision of any service by any staff member otherwise authorized to be delivered in the certified/otherwise authorized setting to now be performed via Telepractice, for the duration of the COVID-19 emergency. This includes CASAC-T’s, Peers and provisional QHPs, as well as Certified Recovery Peer Advocates. Requirements regarding patient consent and use of telephone communications have been relaxed. Recent OASAS FAQ guidance is available at https://oasas.ny.gov/system/files/documents/2020/05/telepractice-coronavirus-faqs_0.pdf.

<https://omh.ny.gov/omhweb/guidance/telemental-guidance.pdf>