

Use of Telephone and Two-way Video Technology by OMH-Licensed, Funded or Designated Providers and Clients Affected by the COVID-19 Pandemic**March 30, 2020 (Updated 2/12/21)**

This guidance document consolidates and replaces the previous and supplemental guidance issued by OMH relative to the use of telemental health for people affected by the disaster emergency including:

- Supplemental Guidance - Use of Telemental health for Residential Services (3/19/20)
- Supplemental Guidance - Use of Telemental health for OMH-Funded Programs (3/19/20)
- Supplemental Guidance - Use of Telemental health for People Served by OMH-Licensed or Designated Programs Affected by the Disaster Emergency (3/17/20)
- Use of Telemental Health for People Affected by the Disaster Emergency (3/11/20)

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SECTION 1: Background

As novel coronavirus (COVID-19) continues to spread and localities across the state work to implement physical distancing strategies to mitigate the impact on our healthcare system, mental health providers must adapt and implement strategies that will allow them to continue caring for their clients. As the situation is rapidly evolving, state regulatory waivers remain in place to ensure mental health services are maintained for our most vulnerable clients, through the crisis.

This guidance includes expanded definitions of telemental health and telemental health practitioners. It outlines the eligible programs and/or services able to use telemental health during the duration of the declared disaster emergency, along with direction regarding service delivery specific to each program and/or service type.

SECTION 2: Applicability

For programs covered by this guidance, the OMH telemental health guidance supersedes the NYS Department of Health (DOH) Medicaid Update Special Editions specific to telehealth.

This guidance is applicable to the following:

OMH-Licensed Services: NYS Article 28 Inpatient Psychiatric Units and Emergency Departments conducting Mental Hygiene Law evaluations, Article 31 Hospitals, Comprehensive Psychiatric Emergency Programs (CPEPs), Clinic Treatment Programs, Certified Community Behavioral Health Clinics (CCBHCs), Personalized Recovery Oriented Services (PROS), Assertive Community Treatment (ACT), Continuing Day Treatment (adult), Children's Day Treatment, Treatment Apartment Programs, and Partial Hospitalization Programs.

OMH-Designated Services: Children and Family Treatment and Support Services (CFTSS), Adult Behavioral Health Home and Community Based Services (BH HCBS), Adult BH HCBS Eligibility Assessments, Recovery Coordination services, and 1115 Mobile Crisis Intervention.

OMH-Funded Residential Programs: See list of programs included in Section 9.

OMH-Funded Programs: See list of programs included in Section 10.

Reminder: The OMH guidance applies only to OMH licensed, funded, or approved programs/agencies. For further information follow up with your licensing authority, if applicable, or more generally visit the DOH website at <https://coronavirus.health.ny.gov/home>. Private practitioners should review the NYS Department of Financial Services (DFS) circular letter issued on 3/15/2020 for information on commercial insurance reimbursement for telehealth, and follow any additional guidance from DFS. DFS information can be found here: https://www.dfs.ny.gov/industry_guidance/circular_letters.

SECTION 3: Self-Attestation

Providers who submit an attestation certifying they meet all of the elements below will be authorized to deliver services via telemental health for a time-limited period, during the disaster emergency, pursuant to Executive Order. The goal of the attestation is to offer rapid approval of the use of telemental health to deliver services which will allow for continuity of care, regardless of mandatory or self-imposed quarantines. The attestation can be submitted at the agency/program level; a separate attestation for each practitioner is not needed.

Provider applicants must certify:

- Practitioner(s) possess a current and valid license, permit, limited permit or other credential to the extent required in NYS to deliver the service.
- Transmission linkages will be dedicated, secure, and meet minimum federal and NYS requirements.
- Confidentiality will be maintained as required by NYS Mental Hygiene Law Section 33.13 and 45 CFR Parts 160 and 164 (HIPAA Privacy Rules). (HIPAA confidentiality requirements have been relaxed to permit service delivery via telehealth. Current guidance regarding relaxed HIPAA enforcement standards can be found at <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html>. NYS confidentiality

requirements found in MHL 33.13 remain in effect and apply to all programs and services regulated by OMH, but do not prohibit service delivery via telehealth.)

- Claim modifiers “95” or “GT” will be used on each claim representing a service via telemental health.

The Self-Attestation of Compliance to Offer Telemental Health Services can be found here: <https://omh.ny.gov/omhweb/guidance/self-attestation-telemental-health-disaster-emergency.pdf>.

Providers will submit this attestation to Amy Smith at amy.smith@omh.ny.gov and will keep a copy on file for review. They may begin utilizing telemental health upon confirmation from the Office. **Any attestations submitted since March 7, 2020 are considered current and valid.**

Please note: Attestations are not required for OMH-funded residential programs or other OMH-funded programs as outlined in Sections 9 and 10.

SECTION 4: Streamlined Process to Permanently Add Telemental Health

Providers looking to permanently add telemental health as an optional/additional service may submit one Administrative Action (AA) per agency, by choosing one program in the program type to submit under.

The following must be considered:

- It must be clearly identified which program sites (including any satellites) are to be included for approval. A separate page/document listing out all the sites may be used, and it should be included as an attachment within the AA.
- As outlined in the November 2019 Telemental Health Services Guidance for Local Providers (<https://omh.ny.gov/omhweb/guidance/telemental-guidance.pdf>), providers need to complete Appendix 1 and include a Policy & Procedure (P&P) document as part of the AA submission. If an agency is licensed for more than one program type the P&P should be reflective of utilization of telemental health within the different program types/settings, in accordance with applicable OMH Guidance and/or Regulation. Field Offices may request to see a copy of the informed consent for review. Appendix 2 may be completed as a guide to assist the program in purchasing equipment/choosing a platform. It does not need to be submitted as part of the AA
- Where regulatory changes occur, providers must inform their Field Office of any required changes to their telemental health program to comply with such new regulations. The provider will not be required to submit a new AA, however, the provider may be requested to submit updated policies related to telemental health.
- The program/site/agency must have an on-site staffing policy for the licensed location(s) to ensure all approved and optional services can be delivered.
- Part 596 regulation states that the Field Office may conduct a remote readiness review to either or both the originating and distant sites prior to issuing approval to offer telemental health as an optional service. A remote readiness review of all distant sites is not required. Please consult with your Field Office about how this will work in your region (i.e., home office attestations/tracking forms may be used).
- OMH designated providers requesting to utilize telemental health on a permanent basis, and who do not have the ability to submit an AA, should submit a request via email to their regional Field Office.

Section 5: Definitions

Telemental health for Medicaid-reimbursable services is temporarily expanded to include:

- Telephonic; and/or
- Two-way synchronous video, including technology commonly available on smart phones and other devices.

Telemental health practitioner includes any professional, paraprofessional, or unlicensed behavioral health staff who deliver a qualified service via telemental health. Any limitations and restrictions pertaining to the location of the telemental health practitioner while providing services via telemental health are waived. To the extent a license is required to deliver a service, the practitioner must still be licensed in NYS.

Section 6: Billing Modifiers

During the duration of the declared disaster emergency, services can be delivered through telemental health using any staff allowable under current program regulations or State-issued guidance as medically appropriate.

- Medicaid FFS and Medicaid Managed Care providers must use claim modifiers “95” or “GT” on each claim representing a service delivered via telemental health. Other payors may require different coding for telemental health. *Please note for the duration of the disaster emergency, these modifier definitions will be expanded to include audio-only services. Providers must use these modifiers when billing for audio only delivered services.* For further guidance regarding the appropriate modifier for each CPT code see Telehealth Modifier Use for OMH-licensed/Designated Programs during COVID-19 Emergency at <https://omh.ny.gov/omhweb/guidance/covid-19-telehealth-modifiers.xlsx>
- 95 modifier-
 - Synchronous telemedicine service rendered via real-time interactive audio and video telecommunication system.
 - Note: Modifier 95 may only be appended to the specific services covered by Medicaid and listed in Appendix P of the AMA's CPT Professional Edition 2018 Codebook. The CPT codes listed in Appendix P are for services that are typically performed in-person but may be rendered via a real-time (synchronous) interactive audio-visual telecommunication system.
- GT modifier-
 - Via interactive audio and video telecommunication systems.
 - Note: Modifier GT is only for use with those services provided via synchronous telemedicine for which modifier 95 cannot be used.

SECTION 7: Balancing In-person and Telemental Health Services for OMH-Licensed, Designated and Funded Ambulatory Care.

OMH supports the use of telemental health as a tool for improving access and engagement in person-centered treatment. However, not all individuals prefer telemental health, and there may be clinical considerations indicating that in-person care is appropriate. Providers should provide medically necessary in-person services (e.g., injectable medications, laboratory testing, physical

exams, etc.). Additionally, providers should make clinical determinations whether services will be provided in-person and/or via telemental health. Such determinations should be made in an ongoing, person-centered manner based on assessments of individual and community risk for transmission of COVID-19, and provider ability to deliver services with appropriate infection control precautions, as well as clinical considerations, evaluations of acuity and risk, and recipient preference.

Clinical Considerations/Clinical Judgment

Providers should have clear policies and procedures outlining processes for decision-making regarding the balance of in-person and telemental health services that will best meet the needs of each recipient. Such decisions should be made deliberately and jointly between the clinical team and the recipient, and should take the following areas into account as relevant for each individual:

- Factors related to infection control, including:
 - Whether recipient has recent travel to a location on the DOH Travel Advisory; whether recipient currently has COVID-19-like illness (CLI) symptoms; or whether recipient has had close contact to anyone with confirmed or suspected CLI;
 - The program's physical plant, including the ability to decrease density, maintain physical distancing, etc.;
 - The program's ability to access PPE;
 - Recipient medical comorbidities and risk for worse outcomes if they become ill with COVID-19;
 - Need for travel in public transportation or shared vehicles;
 - Risk factors in people living in same household as recipient.
 - **NOTE:** For further details, please review the most recent OMH COVID-19 Infection Control Manual which can be found on the OMH Guidance page: <https://omh.ny.gov/omhweb/guidance/>

- Factors related to the recipient's appropriateness for telemental health, including:
 - An individual's cognitive or developmental capacity, especially as it relates to ability to engage in remote care, establish rapport and communicate clearly and to navigate technology platforms;
 - Issues related to access (phone ownership, privacy, data plan, minutes, broadband access, etc.);
 - Ability to establish a private space; whether circumstances within the household are conducive to treatment;
 - As part of the consent process for telemental health, providers must ensure the individual understands circumstances where in-person service may be required;
 - For children and adolescents:
 - the individual's capacity to engage in telemental health alone or jointly with parent/caregiver;
 - the capability of accessing parent/caretaker or other identified support for immediate communication during telemental health encounters.

- The parent/caregiver’s capacity to effectively supervise and ensure safety of the child during sessions;
 - Client and family’s ability to take a more active role in the treatment process than may be the case for in-person contacts; in the case of a child, the capability of accessing parent/caretaker or other identified support for immediate communication during telemental health encounters
- Clinical factors and personal preference, including:
 - Requirement for in-person care such as physical exams, long-acting injectables, or laboratory exams;
 - Degree of engagement with program and staff as evidenced by the length of time the recipient has been in the program or whether there has been a recent change in clinician assignment;
 - Static and dynamic risk factors, such as risk for suicide or self-injurious behavior, risk for violence, new housing instability, impact of substance use, re-entry from incarceration, increased frequency of CPEP or hospital admissions, etc.;
 - The nature of the clinical approach or evidence-based practice to be implemented and whether it is consistent with telemental health;
 - Attention to issues regarding continuity of and transitions in care, including consideration of in-person visits to avoid disruptions in care.

Section 8: Service Delivery and Billing/Claiming specific to OMH-Licensed Programs and OMH-Designated Services

This telemental health guidance only addresses service delivery modality, it DOES NOT change the reimbursement amount or the service requirements for Medicaid reimbursement. If there are future changes in Medicaid reimbursement, it will be addressed in separate guidance.

There is no change in the Medicaid reimbursement rates or methodology. In order to claim for services delivered via telemental health, a provider must ensure the following:

- Providers may deliver any service appropriate for individuals to receive via telemental health. Including:
 - Individual, group, and family/collateral services;
 - Clinic Integrated Outpatient Services (IOS); and
 - Clinic Based – Intensive Outpatient Program (CB-IOP) services.
- Providers must continue to deliver services in accordance with current program regulations and/or State-issued guidance to receive Medicaid reimbursement.
 - Providers may deliver any service appropriate for individuals to receive via telemental health. If a recipient has a service need that cannot be met via telemental health, it is the expectation that the agency will still ensure an individual’s needs are met. Examples of this may be administration of long-acting injectable medications, collection of samples for laboratory testing, etc.
 - Providers must indicate in their documentation that the service was provided via audio-only and/or video platforms.

- When services are still being delivered in-person, it is recommended providers follow the Guidance for NYS Behavioral Health Programs found here: <https://omh.ny.gov/omhweb/guidance/covid-19-guidance-bh-providers.pdf>
- Programs billing Medicaid should follow previously issued program-specific guidance regarding billing codes.

Balancing in-person and telemental health services for Children’s Day Treatment and School Based Mental Health Clinics

Programs are continuing to deliver services both in-person and via telemental health to accommodate the varying needs and circumstances of students, families and districts. Most programs are dependent on the status of the school district and school site in which a program is located, thus must adapt to the many variables within each school’s plan for in-person and remote education. Implementing services within a setting where students may rotate attendance or participate through remote distance learning only, requires programs to rethink protocols to include flexible practices for meeting individualized needs and continuing care amidst the frequently changing status. This includes protocols for internal communication within the treatment team as well as the host school to collaborate with teachers, counselors, principals, etc. and in particular, to identify students/families in need who may go unrecognized. In striving for quality, continuity and equity of service delivery for each participant, programs should make every effort to provide levels of service as historically provided to the extent possible, based on the child/family’s needs, capacity and availability for meaningful participation.

Balancing in-person and telemental health services for Assertive Community Treatment (ACT) and Mobile Crisis Services (CPEP and Community-based)

ACT and Mobile Crisis must assess each recipient and make individual determinations about each recipient’s risk and capacity to engage in and benefit from services via telemental health. Providers must determine when telemental health encounters are an acceptable alternative to in-person encounters taking into account relevant factors outlined above. In regions designated New York Forward phase 3 or 4, or in areas that are not designated as red micro-cluster zones, ACT and mobile crisis should aim to resume in-person visits for as many recipients as possible.

Section 9: OMH-Licensed or Funded Residential Programs

This guidance waives the in-person requirements for delivery of services in residential programs licensed or funded by OMH for the duration of the declared disaster emergency, where appropriate. In lieu of in-person contact, providers may use telemental health capabilities. This guidance does NOT waive the requirement for onsite staffing in programs with 24-hour staffing. While there may be circumstances where it is appropriate for these programs to use telemental health to deliver services (if an individual is self-quarantining in their apartment, for example), it does not exempt the program from having onsite staff.

This guidance is applicable to the following OMH residential programs (program codes):

- Adult Community Residences (6070)
- Children’s Community Residences (7050)
- Apartment/Treatment Programs (7070)
- Supported Housing Community Services (6060)
- Supported/Single Room Occupancy (SP-SRO) (5070)
- SRO Community Residence (CR-SRO) (8050)
- Crisis Residences (0910)

This telemental health guidance only addresses service delivery modality, it DOES NOT change the funding amount or the service requirements. For example, OMH Supportive Housing Guidelines require a monthly contact and quarterly in-person contact, which during the disaster emergency may be provided by audio or by video, as described above.

- Providers may deliver any service appropriate for individuals to receive via telemental health. If a recipient has a service need that cannot be met via telemental health, it is the expectation that the agency will still ensure an individual’s needs are met. Examples of this may be medication supervision, assistance accessing food or medications, etc.
- Providers should indicate in their documentation that the service was provided telephonically or via video.
- When services are still being delivered in-person, providers must follow the Guidance for NYS Behavioral Health Programs found here: <https://omh.ny.gov/omhweb/guidance/covid-19-guidance-bh-providers.pdf>
- Programs billing Medicaid should follow previously issued guidance regarding billing codes.

Balancing in-person and telemental health services for Residential Providers

In-person service delivery across housing models is invaluable. Housing providers should consider the factors outlined above to assess how to safely and effectively meet the needs of each individual. Housing providers should strive to deliver the majority of services in-person, employing infection control strategies.

Section 10: Service Delivery specific to OMH-Funded Programs

This guidance waives the in-person requirements for state-aid funded programs for the duration of the declared disaster emergency. In lieu of in-person contact, providers may utilize audio and/or video capabilities as necessary.

This guidance applies to the following OMH programs and designated services:

Employment/Vocational Programs:

- Assisted Competitive Employment (ACE) (1380)
- Transitional Employment Program (TEP)
- Affirmative Business/Industry (ABI) (2340)
- Transformed Business Model (TBM) (6140)
- Ongoing Integrated Supported Employment (OISE) (4340)
- Work Programs
- Supported Education Programs

- Psychosocial Clubs (0770)
- Non-Medicaid Care Coordination (2720)
- Health Home Non-Medicaid Care Management (2620)
- Advocacy/Support Services (Non-Licensed Program) (1760)
- Crisis Intervention (Non-Licensed Program) (2680)
- Drop-in Center (Non-Licensed Program) (1770)
- Recovery Centers (2750)
- Home Based Crisis Intervention (HBCI) (3040)
- Family Peer Support Programs (1650)
- Vocational and Educational Services – Children and Family (1320)
- Geriatric Demo Physical Health-Mental Health Integration (1420)
- Crisis Outreach (1680)
- Homeless Placement Services (1960)
- Community Based MH Family Treatment & Support (1980)
- Coordinated Children’s Services Initiative (2990)

This telemental health guidance only addresses service delivery modality (telemental health/telephonic), it DOES NOT change the funding amount or the service requirements.

- Providers may deliver any service appropriate for individuals to receive via telemental health as defined above. If a recipient has a service need that cannot be met via telemental health, it is the expectation the agency will still ensure an individual’s service-related needs are met to the greatest extent possible. For example, a care manager may contact an individual telephonically to identify any upcoming appointments requiring rescheduling in accordance with current COVID-19 related policy and procedures.
- For OMH-funded site-based programs including Psychosocial clubs, staff may use the telemental health modality as described above to provide services via telemental health for individuals who do not come onsite, or for staff who are not on-site.
- In Employment programs, staff can provide remote support to individuals currently employed.
- Providers should indicate in their documentation that the service was provided telephonically or via video.
- When services are still being delivered in-person, it is recommended providers follow the Guidance for NYS Behavioral Health Programs found here:
<https://omh.ny.gov/omhweb/guidance/covid-19-guidance-bh-providers.pdf>

Balancing in-person and telemental health services for Forensic Transition Programs

Community re-entry is a critical juncture, and many recipients will require in-person assistance to reconnect to services as they readjust to the community environment.

For individuals returning to the community from jail or prison, it is recommended that in-person warm handoffs be facilitated on the day of release to ensure safe transition to housing and access to psychiatric medication, food/clothing, and appropriate technology for telemental health.

Section 11: Comprehensive Psychiatric Emergency Programs (CPEP) and Inpatient Programs

Use of Video and Telephone Technology for Treatment of Patients

Telemental health should be used to support routine treatment planning on hospital inpatient mental health units and CPEPs. For example:

1. Hospitals may consider staffing plans which require one psychiatrist on-site during regular work hours to manage duties that require in-person evaluations while allowing other psychiatrists to complete evaluations, treatment, and daily rounds via video connections (or via telephone when clinically appropriate and if video is not available).
2. Hospital Psychiatric Consult-Liaison teams may also consider using telemental health when clinically appropriate from within the hospital in order to help preserve the hospital's supply of personal protective equipment and reduce risk of infection from unit to unit.

Use of Telemental health for Removal and Retention Pursuant to Article 9 of the Mental Hygiene Law

During the COVID-19 emergency period and until further notice, any evaluation or examination required as part of an involuntary removal from the community, involuntary retention in a hospital or Assisted Outpatient Treatment order pursuant to Article 9 of the Mental Hygiene Law can be conducted via telemental health.

Evaluations or examinations conducted via telemental health must comply with the current guidance issued by the Office of Mental Health posted at:

<https://omh.ny.gov/omhweb/guidance/>

This use of telemental health for Article 9 removals will be considered equivalent to face-to-face evaluations or examinations for purposes of meeting statutory requirements. However, this guidance does not alter applicable clinical or legal standards, and the provisions of Article 9 remain in effect.

The following scenarios can be considered:

1. For Article 9 voluntary admission paperwork, an off-site psychiatrist can explain the legal paperwork to the patient via telemental health and an on-site clinician can scribe the signature for the off-site psychiatrist, and document such conversation and verbal consent in the record.
2. For Article 9 involuntary paperwork, an off-site psychiatrist can print and complete paperwork and then send electronically to an on-site clinician to be placed in the patient's record. Original copies of the patient's legal paperwork should be retained and placed in the patient's medical record as soon as possible.

Seclusion and Restraint

During the declared state of emergency, the requirements in NYCRR 526.4 (Restraint and Seclusion) requiring a physician for the order and the in-person, face-to-face examination of the patient for restraint or seclusion may temporarily be fulfilled by an order and an in-person, face-to-face examination by a licensed nurse practitioner or physician assistant.

NOTE: telemental health orders for seclusion and restraint are not permitted at this time.

Use of Telemental Health for Residential Treatment Facilities

See guidance issued by the Office of Mental Health posted here:

<https://omh.ny.gov/omhweb/guidance/omh-covid-19-consolidated-rtf-guidance.pdf>

Section 12: Additional Guidance

Consent for treatment and client signatures on treatment plans:

Consent for treatment and client's signatures on treatment plans may be managed remotely during the duration of the declared disaster emergency. Documentation of verbal consent and verbal approval must be included in the client record.

Prescribing of Controlled Substances:

CMS has temporarily waived provisions of the Ryan-Haight Act to allow practitioners to prescribe Schedule II - V controlled substances via telemedicine without an in-person medical evaluation provided:

1. The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
2. The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
3. The practitioner is acting in accordance with applicable Federal and State laws.*

For patients who have had an in-person medical evaluation previously, CMS is allowing practitioners to issue a prescription for a schedule II - V controlled substance after communicating with the patient via telemedicine, or any other means (including by telephone) so long as the prescription is issued for a legitimate medical purpose and the practitioner is acting in the usual course of his or her professional practice.

*When prescribing via telemedicine, practitioners shall comply with all existing State laws and regulations pertaining to prescribing, including but not limited to: Education law 6902(3)(a)(ii), 7606, 7708, and 8407; Public Health Law 281, 3331, and 3343-a; and regulations of the New York State Department of Health at 10 NYCRR Part 80 unless waived by Executive Order. As of 3/23/20, none of these provisions have been waived.

For more information consult the federal guidance at <https://www.deadiversion.usdoj.gov/coronavirus.html>.