



## Office of Mental Health

14 NYCRR Part 599  
Express terms

A new Section 599.17 is added to Title 14 NYCRR to read as follows:

### **§599.17 Telepsychiatry services.**

(a) *Definition of Telepsychiatry.* For purposes of this Section, “telepsychiatry” means the use of two-way real-time interactive audio and video to provide and support clinical psychiatric care at a distance. Such services do not include a telephone conversation, electronic mail message, or facsimile transmission between a clinic and a recipient or a consultation between two professional or clinical staff (as such terms are defined in this Part), although these activities may support telepsychiatry services.

(b) *Approval to Offer Telepsychiatry Services.*

- (1) Telepsychiatry services may be authorized by the Office for assessment and treatment services provided by physicians who are board certified or board eligible in psychiatry, or nurse practitioners qualified in psychiatry, from a site distant from the location of a recipient, where both the recipient and such physician or nurse practitioner are physically located at clinic sites licensed by the Office.
- (2) Requests for approval to offer telepsychiatry services shall be submitted to the Field Office serving the area in which either licensed clinic is located. Such Field Office may make an on-site visit prior to issuing approval.
- (3) Approval of the Office will be based on submission and review of a written plan to provide telepsychiatry services that addresses the following standards and procedures:

- (i) All telepsychiatry services must be performed on dedicated secure transmission linkages 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.
- (ii) Confidentiality must be maintained as required by Mental Hygiene Law Section 33.13 and 45 C.F.R. Parts 160 and 164 (HIPAA Privacy Rules).
  - (a) All existing confidentiality requirements that apply to written medical records shall apply to services delivered by telecommunications, including the actual transmission of the service, any recordings made during the time of transmission, and any other electronic records.
  - (b) The spaces occupied by the recipient and the distant physician or nurse practitioner both must meet the minimum standards for privacy expected for recipient-clinician interaction at a single licensed clinic location.
- (iii) Culturally competent translation services shall be provided when the recipient and distant physician or nurse practitioner do not speak the same language.
- (iv) Telepsychiatry services provided to recipients under age 18 may include clinical staff, as such term is defined in this Part, in the room with the recipient. Such determinations shall be clinically based, consistent with clinical guidelines issued by the Office.
- (v) All telepsychiatry sites must have a written procedure detailing the availability of face-to-face assessments by a physician or nurse practitioner in an emergency situation.

- (vi) Procedures for prescribing medications shall be identified.
  - (vii) The recipient shall be enrolled at only one of the two sites.
    - (a) If the recipient is enrolled at the site away from the physician or nurse practitioner, such physician or nurse practitioner shall prepare appropriate progress notes and securely forward them to the clinic as a condition of reimbursement.
    - (b) If the telepsychiatry services for a particular recipient are a regular part of the recipient's treatment plan, the physician or nurse practitioner must coordinate with the responsible professional at the clinic of enrollment, and prepare and update the treatment plan in accordance with applicable provisions of this Part to permit the clinic to be reimbursed for continuing services.
  - (viii) The recipient shall be provided with basic information about telepsychiatry and shall provide his or her consent to participate in services utilizing this technology. The recipient has the right to refuse to participate in telepsychiatry services and must be made aware of the alternatives including any delays in service, need to travel, risks associated with not having the services provided by telepsychiatry, or right to select another provider.
  - (ix) There must be a written procedure detailing the contingency plan when there is a failure of the transmission or other technical difficulties that render the service undeliverable.
  - (x) A review of telepsychiatry services shall be included in the provider's quality management process.
- (4) Clinics approved to offer telepsychiatry services shall be provided with written authorization to do so by the Field Office. Upon such approval, telepsychiatry services will be identified as an optional service on a clinic provider's operating certificate.

(c) *Reimbursement standards.*

- (1) Telepsychiatry services must be provided by a physician or nurse practitioner who possesses a current, valid license to practice in New York State.
- (2) For the purposes of this Section, telepsychiatry services shall be considered face-to-face contacts.
- (3) To be eligible for Medicaid reimbursement, telepsychiatry services must meet all requirements of this Part applicable to assessment and treatment services, and must exercise the same standard of care as in-house delivered services.
- (4) Telepsychiatry services will be reimbursed at the same rates for identical procedures provided by on-site physicians or nurse practitioners.

(d) *Guidance.* The Office shall post implementation guidance on its public website to assist in the provision of telepsychiatry services. Such guidance shall include:

- (1) Clinical guidelines; and
- (2) Technology guidelines, including:
  - (i) The minimum technology thresholds (i.e., equipment, bandwidth, videoconferencing software, network specifications, carrier selection, hub/bridge, and security specifications), which shall be updated as new technology is approved; and
  - (ii) The form or format regarding the technology and communications to be used.

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