



14 NYCRR Parts 596

Express Terms

1. Part 596 of Title 14 NYCRR is amended to read as follows:

Part 596

TELEMENTAL HEALTH SERVICES

(Statutory Authority: Mental Hygiene Law §§7.09, 31.02, 31.04, Public Health Law §2999-dd)

Sec.

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§596.1 Background and intent.

(a) *Telemental health* is defined as the use of two-way real-time interactive audio and video equipment to provide and support mental health services at a distance. Such services do not include

a telephone conversation, electronic mail message or facsimile transmission between a provider and a recipient, or a consultation between two professionals or clinical staff.

(b) Telemental Health Services can be beneficial to a mental health care delivery system, particularly when on-site services are not available or would be delayed because of distance, location, time of day, or availability of resources. The benefits of Telemental Health Services include improved access to care, provision of care locally in a more timely fashion, and improved continuity of care, treatment compliance, and coordination of care.

(c) The Office of Mental Health (the Office) supports the use of Telemental Health Services as an appropriate component of the mental health delivery system to the extent that it is in the best interests of the person served 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.

#### §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.

#### §596.3 Applicability.

(a) The provisions of this Part shall apply to any designated or licensed 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 Telemental Health Services as a means of rendering services licensed or authorized by the Office provided, however, that Telemental Health Services may only be utilized in Personalized Recovery Oriented Services (PROS) programs subject to Part 512 of this Title or Assertive Community Treatment (ACT) programs approved pursuant to Part 551 of this Title if used in accordance with section 596.5(c) of this Part.

(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.

#### § 596.4 Definitions.

For purposes of this Part:

(a) *Creative arts therapist* means a person currently licensed as a creative arts therapist by the New York State Education Department or who possesses a creative arts therapist permit or limited permit from the New York State Education Department.

(b) *Distant or “hub” site* means the distant secure location, as defined in Section 596.6(a)(1)(vii) of this Part, at which the practitioner rendering the service using Telemental Health Services is located.

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

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

(e) *Mental health counselor* means a person currently licensed as a mental health counselor by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.

(f) *Originating or “spoke” site* means a site where the recipient is physically located at the time mental health services are delivered to her/him by means of Telemental Health Services, within the State of New York, or another temporary location within or outside the State of New York.

(g) *Nurse practitioner in psychiatry* means a person currently certified as a nurse practitioner with an approved specialty area of psychiatry (NPP) by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.

(h) *Physician* means a physician currently licensed to practice medicine in New York State pursuant to the New York State Education Law.

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

(j) *Psychoanalyst* means a person currently licensed as a psychoanalyst by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.

(k) *Psychologist* means an individual who is currently licensed as a psychologist by the New York State Education Department or possesses a permit or limited permit from the New York State Education Department and who possesses a doctoral degree in psychology, or an individual who has obtained at least a master's degree in psychology who works in a federal, state, county or municipally operated clinic.

(l) *Qualified mental health professional* means an individual possessing a license, permit, or limited permit from the New York State Education Department who is qualified by credentials, training, and experience to provide direct services related to the treatment of mental illness and shall include physicians and nurse practitioners in psychiatry, as defined in subdivisions (g) and (h) of this section, as well as the following:

(1) *Creative arts therapist*: A creative arts therapist, as defined in subdivision (a) of this section.

(2) *Licensed practical nurse*: A person currently licensed as a licensed practical nurse by the New York State Education Department or who possesses a licensed practical nurse permit or limited permit from the New York State Education Department.

(3) *Licensed psychiatrist*: A person who is currently licensed as a physician by the New York State Education Department and who is certified by, or eligible to be certified by, the American Board of Psychiatry and Neurology.

(4) *Licensed psychoanalyst*: A psychoanalyst, as defined in subdivision (j) of this section.

(5) *Licensed psychologist*: A psychologist, as defined in subdivision (k) of this section.

(6) *Marriage and family therapist*: A marriage and family therapist, as defined in subdivision (m) of this section.

(7) *Mental health counselor*: A mental health counselor, as defined in subdivision (e) of this section.

(8) *Nurse practitioner*: A nurse practitioner in psychiatry, as defined in subdivision (g) of this section, or a person currently certified as a nurse practitioner by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.

(9) *Physician assistant*: A person currently registered as a physician assistant by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.

(10) *Registered professional nurse*: A person currently licensed as a registered professional nurse by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.

(11) *Social worker*: A social worker, as defined in subdivision (n) of this section.

(m) *Marriage and family therapist* means a person currently licensed as a marriage and family therapist by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.

(n) *Recipient* means a person who is receiving Telemental Health Services.

(o) *Social worker* means a person who is either currently licensed as a licensed master social worker or as a licensed clinical social worker (LCSW) by the New York State Education Department, or who possesses a permit or limited permit from the New York State Education Department to practice and use the title of either licensed master social worker or licensed clinical social worker.

(p) *Telemental Health Technologies* means interactive technology that is used to transmit data between the originating/spoke and distant/hub sites.

(q) *Telemental Health Practitioner* means a physician, nurse practitioner in psychiatry, psychologist, mental health counselor, social worker, marriage and family therapist, creative arts therapist, or psychoanalyst as each such term is defined in subdivision (a), (e), (g), (h), (j), (k), (m) or (o) of this section, who is providing Telemental Health Services from a distant or hub site in accordance with the provisions of this Part.

(r) *Telemental Health Services* 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 provider and a recipient or a consultation between two physicians or nurse practitioners, or other staff, although these activities may support Telemental Health Services.

§ 596.5 Approval to Utilize Telemental Health Services.

(a) Telemental Health Services may be authorized by the Office for licensed or designated services provided by Telemental Health 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 or other temporary location within or outside the state of New York.

(b) A provider of services must obtain prior written approval of the Office before utilizing Telemental Health 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 Telemental Health Practitioner.

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

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

(2) Submission of a written plan to provide Telemental Health Services that satisfies the provisions of this Part and includes:

(i) confidentiality protections for persons who receive Telemental Health 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 Telemental Health Services;

(iii) informed consent of persons who receive Telemental Health Services;

(iv) procedures for handling emergencies with persons who receive Telemental Health Services; and

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

(3) For Personalized Recovery Oriented Services (“PROS”) programs, approval shall be contingent upon the following additional requirements:

(i) Telemental Health Services may only be delivered in a PROS setting by psychiatrists and nurse practitioners in psychiatry as defined in this Part.

(ii) Telemental Health Services may only be used for purposes of delivering PROS clinical treatment services for a limited period of time in which the PROS provider demonstrates a shortage of psychiatrists and nurse practitioners in psychiatry, such time not to exceed one year.

(iii) Upon demonstration of a continued shortage beyond one year, such time may be extended for a period not to exceed one additional year.

(iv) The recipient must be physically located onsite of the PROS program in which the recipient is admitted.

(4) For Assertive Community Treatment (“ACT”) teams, approval shall be contingent upon the following additional requirements:

(i) Telemental Health Services may only be delivered within an ACT team by psychiatrists and nurse practitioners in psychiatry as defined in this Part, where the team has demonstrated a shortage of psychiatrists and nurse practitioners in psychiatry.

(ii) When an ACT visit is conducted in the community, ACT staff must be present during the delivery of Telemental Health Services.

(iii) Telemental Health Services may only be delivered for a limited period of time, not to exceed one year.

(iv) Upon demonstration of a continued shortage beyond one year, such time may be extended for a period not to exceed one additional year.

(d) Requests for approval to offer Telemental Health Services shall be submitted by licensed or designated 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 and distant sites prior to issuing approval.

(e) The Office shall provide its approval to utilize Telemental Health 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 Telemental Health 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 Telemental Health 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 Telemental Health Service provision.

(1) The provider of services must request such review in writing within 15 days of the date it receives notice of revocation of approval to utilize Telemental Health 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 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.

#### §596.6 Requirements for Telemental Health Services.

##### (a) General requirements.

(1) The distant/hub site Telemental Health Practitioner must:

(i) possess a current, valid license, permit, or limited permit to practice in New York State;

(ii) directly render the Telemental Health 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-house delivered services;

(v) utilize evidence-based telehealth or Telemental Health 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-clinician interaction are met as follows:

(a) 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

(b) 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.

(2) The distant/hub provider and originating/spoke site provider of service must not be terminated, suspended, or barred from the Medicaid or Medicare program.

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

(4) Telemental Health Services must be rendered using Telemental Health Technologies. A provider of services approved to offer Telemental Health 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 Telemental Health Services must be of sufficient quality, size, resolution and clarity such that the provider of services can safely and effectively provide the Telemental Health Services;

(ii) The technology and equipment utilized in the provision of Telemental Health Services must be compliant with the Health Insurance Portability and Accountability Act (HIPAA).

(5) Telemental Health Practitioners must verify the identity of the recipient before commencing each telemental health encounter.

(6) A notation must be made in the clinical record that indicates that the service was provided via telemental health and which specifies the time the service was started and the time it ended.

(7) Telemental Health Services provided to recipients under age 18 may include staff that are qualified mental health professionals, as such term is defined in this Part, or other appropriate staff of the originating/spoke site in the room with the recipient. Such determinations shall be clinically based, consistent with clinical guidelines issued by the Office.

(8) For the purposes of this Part, Telemental Health 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.

(9) Culturally competent interpreter services shall be provided in the recipient's preferred language when the recipient and distant/hub Telemental Health Practitioners do not speak the same language.

(10) The Telemental Health Practitioner providing Telemental Health 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

Telemental Health Practitioner shall prepare appropriate progress notes and securely forward them to the originating/spoke provider as a condition of reimbursement.

(11) Telemental Health Services shall not be used:

(i) for purposes of ordering medication over objection; or

(ii) restraint or seclusion, as defined in section 526.4 of this Title, or

(iii) to satisfy any specific statutory examination, evaluation or assessment requirement necessary for the involuntary removal from the community, or involuntary retention in a hospital pursuant to any of the provisions of Article 9 of the Mental Hygiene Law. Physicians conducting such examinations, evaluations or assessments may only utilize Telemental Health Services on a consultative basis.

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

(1) Initial assessment: Each recipient for whom the provision of Telemental Health Services may be offered must receive an initial assessment in person to determine whether the telemental health 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 Telemental Health Services, including the right to refuse these services and to be apprised of the alternatives to Telemental Health Services, including any delays in service, need to travel, or risks associated with not having the services provided by telemental health, and risks associated with receiving Telemental Health 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 Telemental Health Services may be developed and used.

(i) The recipient must be provided with basic information about Telemental Health 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 Telemental Health Practitioner's professional license.

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

(iv) Telemental health sessions shall not be recorded without the recipient's consent.

(3) Confidentiality: Protocols and procedures must be maintained as required by Mental Hygiene Law Section 33.13 and 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 Telemental Health 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 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 location.

(4) Security of Electronic Transmission: All Telemental Health 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.

(5) Psychiatric emergencies: Protocols must address psychiatric emergencies, which may override the right to confidentiality to require the presence of others if, for instance, an individual receiving services is suicidal, homicidal, dissociated, or acutely psychotic during the evaluation or treatment service. In general this individual should not be managed via telemental health without qualified mental health professionals present at the originating/spoke site, unless there are no adequate alternatives and immediate intervention is deemed essential for recipient safety. All Telemental Health Service sites must have a written procedure detailing the availability of in-person assessments by a physician or nurse practitioner in an emergency situation.

(6) Prescribing medications via telemental health: Procedures for prescribing medications through telemental health must be identified and must be in accordance with applicable New York State and federal regulations, 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) Procedures for first evaluations for involuntary commitments: Under New York State law, physicians must conduct first evaluations for involuntary commitments of individuals. If these evaluators want additional consultation before rendering their decision, they may obtain consultation from psychiatrists via Telemental Health Services. 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 telemental health consultation.

(8) Recipient rights: Recipient rights policies must ensure that each individual receiving Telemental Health Services:

(i) is informed and made aware of the role and license information of the Telemental Health Practitioner at the distant/hub site, as well as qualified mental health professional staff at the originating/spoke site 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 Telemental Health 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 telemental health 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 Telemental Health Services are provided.

(9) Quality of Care: All Telemental Health 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 Telemental Health Services shall be included in the provider's quality management process.

(10) Contingency Plan: All Telemental Health 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.

(11) 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 face-to-face at such site.

(ii) The distant/hub site shall maintain copies of all documentation completed by the distant/hub

Telemental Health Practitioner unless the Telemental Health 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 Telemental Health Services. The Office shall post such guidelines on its public website.

#### §596.7 Reimbursement for Telemental Health Services.

(a) The licensed or designated provider where the recipient is admitted is authorized to bill Medicaid for Telemental Health Services.

(b) Under the Medicaid program, Telemental Health Services are covered when medically necessary and under the following circumstances:

(1) the person receiving services is located at the originating/spoke site and the Telemental Health Practitioner is located at the distant/hub site;

(2) the person receiving services is present during the encounter;

(3) the request for Telemental Health Services and the rationale for the request are documented in the individual's clinical record;

(4) the clinical record includes documentation that the encounter occurred; and

(5) the Telemental Health Practitioner at the distant/hub site is:

(i) authorized in New York State;

(ii) practicing within his/her scope of specialty practice;

(iii) affiliated with the originating/spoke site facility; and

(iv) if the originating/spoke site is a hospital, credentialed and privileged at the originating/spoke site facility.

(c) If the person receiving services is not present during the provision of the Telemental Health Service, the service is not eligible for Medicaid reimbursement.

(d) The following interactions do not constitute reimbursable Telemental Health Services;

(1) telephone conversations;

(2) e-mail messages; or

(3) text messages.

(e) The originating/spoke site may bill for administrative expenses only when a Telemental Health Service connection is being provided and a qualified mental health professional is not present at the originating/spoke site with the recipient at the time of the encounter.

(f) Reimbursement for services provided via telemental health must be in accordance with the rates and fees established by the Office and approved by the Director of the Budget.

(g) If a Telemental Health Service is undeliverable due to a failure of transmission or other technical difficulty, reimbursement shall not be provided.

§ 596.8 Contracts for the Provision of Telemental Health Services.

(a) Nothing in this Part shall be deemed to prohibit a provider of services from providing licensed and designated services, consistent with applicable regulations of the Office, as a distant/hub site via telemental health 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 Telemental Health 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 Telemental Health Services that violate the provisions of paragraph (11) of subdivision (a) of section 596.6 of this Part.