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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

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 Telehealth for Residential Services (3/19/20)
- Supplemental Guidance - Use of Telehealth for OMH-Funded Programs (3/19/20)
- Supplemental Guidance - Use of Telehealth 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, this regulatory waiver is being offered to ensure mental health services are maintained for our most vulnerable clients, regardless of the extent of the crisis.

This guidance includes the expanded definitions of telemental health and telemental health practitioner. 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 telehealth 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, 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.

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 7.

OMH-Funded Programs: See list of programs included in Section 8.

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, not to exceed the disaster emergency. 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.

They will certify to the following:

- Practitioner(s) will 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/notification-enforcement-discretion-telehealth/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 immediately once submitted. No further confirmation/approval is needed. **Any attestations submitted prior to the issuance of this guidance 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 7 and 8.

SECTION 4: 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 5: Billing Modifiers

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

- Medicaid FSS 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 telehealth. *Please note for the duration of the disaster emergency, these modifier definitions will be expanded to included telephonic-only services. Providers must use these modifiers when billing for services delivered telephonically.* 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 face-to-face 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 6: 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 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 should indicate in their documentation that the service was provided telephonically or via video.
- When services are still being delivered face-to-face, 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 guidance regarding billing codes.

SECTION 7: OMH-Licensed or Funded Residential Programs

This guidance waives the face-to-face requirements for delivery of services in residential programs licensed or funded by OMH for the duration of the declared disaster emergency. In lieu of face-to-face contact, providers may use telephonic or telehealth 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 telehealth 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)
- Residential Treatment Facilities (RTF) (1080)
- 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 face-to-face contact.

These services may be provided telephonically 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 face-to-face, 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 guidance regarding billing codes.

SECTION 8: Service Delivery specific to OMH-Funded Programs
This guidance waives the face-to-face requirements for state-aid funded programs for the duration of the declared disaster emergency. In lieu of face-to-face contact, providers may utilize telephonic or telehealth 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 (telehealth/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 telehealth modality as described above to provide services via telehealth 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 face-to-face, 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

SECTION 9: Comprehensive Psychiatric Emergency Programs (CPEP) and Inpatient Programs

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

1. Hospitals may consider plans in which one psychiatrist is 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 should 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.

In response to the COVID-19 public health crisis 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 telehealth and an on-site clinician can scribe the signature for the off-site psychiatrist.
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.

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: telehealth orders for seclusion and restraint are not permitted at this time.

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

- 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 hospital will still ensure an individual's needs are met.
- Providers should indicate in their documentation that the service was provided telephonically or via video.
- Programs billing Medicaid should follow previously issued guidance regarding billing codes.

SECTION 10: Additional Guidance

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.

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 should be included in the client record.