



Department
of Health

New York State Telehealth Parity Law

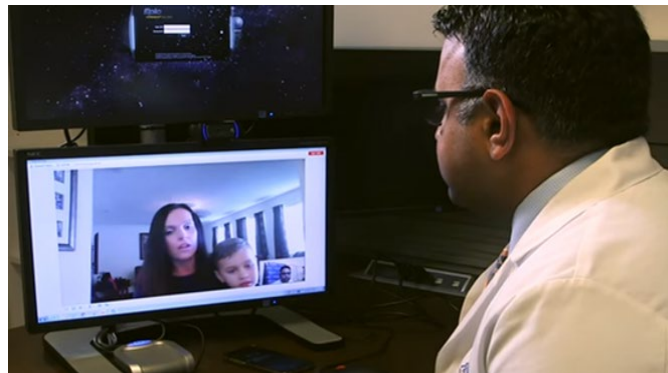
Megan Prokorym

Office of Primary Care and Health Systems Management

Megan.prokorym@health.ny.gov

New York State Telehealth Parity Law

- Requires commercial insurers and Medicaid to provide reimbursement for services delivered via telehealth if those services would have been covered if delivered in person
 - Public Health Law (PHL) Article 29-G, Social Services Law § 367-u, and Insurance Law § 3217-h



NYS Telehealth Definitions

Insurance Law

- The use of electronic information and communication technologies by a health care provider to deliver health care services to an insured individual while such individual is located at a site that is different from the site where the health care provider is located.

Public Health Law

- The use of electronic information and communication technologies to deliver health care to patients at a distance, which shall include the assessment, diagnosis, consultation, treatment, education, care management and/or self-management of a patient (Medicaid member).

NYS Public Health Law Requirements: Medicaid Reimbursement

NYS Medicaid Telehealth Modalities

- Telehealth is limited to:
 - ❖ Telemedicine
 - ❖ Store-and-forward
 - ❖ Remote patient monitoring
- Telehealth excludes audio-only, fax-only, and electronic messaging-only transmissions



NYS Medicaid Telemedicine Definition

- The use of synchronous two-way electronic audio-visual communications to deliver clinical health care services which shall include the assessment, diagnosis, and treatment of a patient, while such patient is at the originating site and a telehealth provider is at a distant site.
- **Distant site** – location of the telehealth provider
- **Originating site** – location of the patient



Store-and-Forward Definition

- The asynchronous, electronic transmission of a patient's health information in the form of patient-specific digital images and/or pre-recorded videos from a provider at an originating site to a telehealth provider at a distant site.



Remote Patient Monitoring Definition

- The use of synchronous or asynchronous electronic information and communication technologies to collect personal health information and medical data from a patient at an originating site that is transmitted to a telehealth provider at a distant site for use in treatment and management of medical conditions that require frequent monitoring.



Changes to Public Health Law

Telehealth Providers Eligible for NYS Medicaid Reimbursement:

- Physicians
- Physician Assistants
- Dentists
- Nurse Practitioners
- Midwives
- Podiatrists
- Optometrists
- Psychologists
- Social Workers
- Speech Language Pathologists
- Audiologists
- Physical Therapists
- Occupational Therapists
- Genetic Counselors

Telehealth Providers Eligible for NYS Medicaid Reimbursement (continued):

- Registered Nurses, when receiving data by means of RPM
- Certified Diabetes Educators
- Certified Asthma Educators
- Credentialed Alcoholism and Substance Abuse Counselors
- Early Intervention Program Providers and Service Coordinators
- Hospitals licensed under Article 28 of PHL including RHCs serving special populations
- Home Care Services Agencies licensed under Article 36 of PHL
- Hospices licensed under Article 40 of PHL
- Clinics licensed or certified under Article 16 of MHL
- Certified and non-certified day and residential programs funded or operated by OPWDD

Highlight indicates addition as part of the 2018-19 enacted budget

Telehealth Practitioners must still:



- Be licensed and currently registered in accordance with NYS Education Law and enrolled in NYS Medicaid.
- Act within their scope of practice.
- Be credentialed and privileged at both the originating and distant sites when telehealth sites are provided by an Article 28 facility.

Originating Sites Eligible for NYS Medicaid Reimbursement

- Facilities licensed under Article 28: Hospitals, Nursing Homes and Diagnostic and Treatment Centers
- Facilities licensed under Article 40: Hospice Programs
- Facilities defined in subdivision six of section 1.03 of MHL: Clinics certified under Articles 16, 31 and 32
- **Certified and non-certified day and residential programs funded or operated by OPWDD**
- Private physician or dentist offices
- Adult care facilities licensed under SSL Title 2 of Article 7
- Public, private and charter elementary and secondary schools, school age child care programs, and child day care centers
- **Patient's place of residence in NYS, or other temporary location in or out of state for all three telehealth modalities**

Highlight indicates addition as part of the 2018-19 enacted budget

Interagency Telehealth Guidance

Guidance

- Inter-agency guidance document in development
 - DOH, OMH, OASAS, OPWDD
- Full NYS license/certification and current registration are required for telehealth practitioners.
- All laws, rules, regulations, standards and competencies apply:
 - SED professional scope of practice
 - Privacy and confidentiality
 - Patient consent and record-keeping

	State Education Department	Depart. of Health	Office of Mental Health	Office of Alcohol and Substance Abuse Services	Office for People With Developmental Disabilities
Recognized Telehealth Modalities	Static transmission of data or interactive teleconferencing telepractice applications	<ul style="list-style-type: none"> • Telemedicine • Store-and-forward technology • Remote Patient Monitoring 	Telepsychiatry	Telepractice	<ul style="list-style-type: none"> • Telemedicine • Store-and-forward technology • Remote Patient Monitoring
Guidance	<ul style="list-style-type: none"> • The broad definition of telehealth under Insurance Law allows for reimbursement of all applications/modalities. Practitioners and patients/consumers should be mindful of specific contracting agreements for services. • Three applications of telehealth are reimbursable through the Medicaid program; OPWDD also recognizes these applications: telemedicine, store-and-forward technology and remote patient monitoring. • OMH and OASAS have regulations for telepsychiatry and telepractice, respectively, which align with the Medicaid definition of telemedicine. 				

	State Education Department	Depart. of Health	Office of Mental Health	Office of Alcohol and Substance Abuse Services	Office for People With Developmental Disabilities
Regulations	Title VIII licensure requirements for practitioners	None	14 NYCRR Parts 596 establish standards and parameters for use of telepsychiatry in Article 31 clinics.	14 NYCRR Part 830 establish standards and parameters for use of telepractice in OASAS-certified sites.	14 NYCRR Part 679 will allow for services and clinic visits to be delivered in person/face-to-face or via telehealth.
Guidance	<ul style="list-style-type: none"> Practitioners providing services via telehealth must conform to SED regulations in accordance to their scope of practice, etc. Although there are no DOH regulations specific to telehealth, all health care services delivered via telehealth must conform to same governing statutes and regulations for the setting in which the service would have been provided in person. OMH, OASAS and OPWDD have regulations that allow for services to be delivered via telehealth. 				

NYS Agency Approval to Deliver Services via Telehealth

No specific approval is needed from DOH or OPWDD

- OPWDD regulations prohibit IPSIDD services to be provided through telehealth.

OMH and OASAS require agency approval of telepsychiatry and telepractice, respectively.

- OMH requires approval by the field office through submission of a written plan and attestation.
- OASAS requires approval for a certified program to become designated to provide telepractice services.
 - Telepractice services are limited.
 - Designation requires submission of a written plan and attestation.

Reimbursement for Telehealth: Summary & Guidance

If a service is covered for reimbursement if delivered in person, it should also be covered if delivered via telehealth per Insurance Law and Public Health Law.

- **Insurance Law** contains a broad definition of telehealth.
 - Division of Financial Services includes reference to telehealth in its model contracts available at:
https://www.dfs.ny.gov/insurance/health/model_lang_indx.htm
- **Public Health Law** defines telehealth and three specific modalities eligible for Medicaid reimbursement.
 - Medicaid updates establish reimbursement policy and billing rules and requirements and are available at:
https://www.health.ny.gov/health_care/medicaid/program/update/main.htm

Reimbursement for Telehealth: Summary & Guidance

OPWDD regulations allow for telehealth services to be reimbursed by Medicaid if the service meets PHL requirements or by a health maintenance organization.

- IPSIDD with enhanced reimbursement rates are excluded from being provided via telehealth.

OMH and OASAS regulations authorize 🧠-approved providers to submit a Medicaid claim for telepsychiatry and telepractice ***through the originating site*** if the following requirements are met:

- The patient is at the originating site and practitioner is at the distant site;
- The patient must be located at an approved program or location;
- Documentation of the request, the rationale for the request, the encounter or consultation, the results and the communication of the results must be made in the patient's clinical or case record; and
- The practitioner must be licensed in NYS, practicing within their scope of practice at a distant site and be a participant in good standing in NYS Medicaid and is affiliated with the originating/spoke site facility.

Part 596 Expansion – North Country Telehealth Conference

- Change term from telepsychiatry to telemental health.
- Expand eligible practitioner types to include licensed psychologists, licensed social workers and licensed mental health counselors.
- Include ACT and PROS as eligible settings. Specific conditions are outlined within the regulation. Review of the AA should include program staff for these two settings.
- Expand hub/distant site to include home offices and private practices:
 - Psychiatrist and NPP may be located anywhere within the US.
 - Other practitioners may be located anywhere within NYS.
- Expand spoke/originating site to be anywhere the client is located within NYS, or other temporary location within/outside NYS. Examples of temporary locations may include: college, extended visit out of state, etc.
- Various mobile technologies will now be allowed. Examples include: video cell phones, tablets, etc.
- Pan, tilt, zoom (PTZ) will not be a requirement within the regulation. It will remain within guidance as a strong recommendation.



**Office of Alcoholism and
Substance Abuse Services**

Telepractice

Delivery of Services in OASAS Programs

November 8, 2018

14 NYCRR Part 830: Designated Services

- Effective January 24, 2018.
- The regulation (section 830.5) is accompanied by a guidance document (Standards) posted on the Office website along with the regulation. This was recently revised (August 20, 2018).

Basic provisions of Part 830

- Provider designation
- Service limitations
- Written plan & attestation required
- Authorized practitioners and contracts
- Confidentiality (federal law)
- Patient-informed consents



Provider Designations appended to an operating certificate

- Certified Providers may apply to Bureau of Certification for designation by:
 - Submitting a “Plan and Attestation” (included in the Standards document) covering:
 - Possible site(s) for location(s) of both patient and practitioners
 - Includes additional locations;
 - Contracts or agreements with practitioners, if appropriate
 - Proposed services to be delivered via telepractice
 - Assurances of confidentiality and patient rights



Telepractice limitations

- Does not include: audio or video telephone conversation, electronic mail message, or facsimile transmission between a program and a patient or a consultation between two practitioners, although these communications may support telepractice.

- Telepractice may be used to deliver:
 - Admission assessments, direct transfers;
 - Psycho-social evaluations and mental health consultations;
 - Medication-assisted treatment prescribing and monitoring (federal restrictions may apply)
 - Other services: as approved by the Office.



Authorized Practitioners for OASAS

- Medical professionals with DEA approval to prescribe and administer buprenorphine (DATA 2000 waiver):
 - Physicians
 - Physician assistants
 - Nurse practitioners
- Clinical staff (CASACs recently added to Public Health Law Article 29-G) credentialed or approved by the Office and acting within their scope of practice.
- Does not include peer advocates and student interns.

Site approvals

- The “Distant site” or “hub site” means the site at which the practitioner delivering the service is located at the time the service is provided.
 - Practitioners may be located anywhere in the U.S., but must be licensed to practice in NY and be Medicaid enrolled in NY.
- “Originating site” or “spoke site” means the site at which the patient is located at the time the service is being provided.
 - Patients may be located in any site approved by the Office as proposed in the “Plan and Attestation” for designation.

Patient Rights

- Patients (or prospective patients) must consent to receiving services via telepractice
- Patients must be evaluated for suitability prior to a telepractice session
- Patients *may* be accompanied by a staff member
- Additional federal rules apply to buprenorphine



Medication-Assisted Treatment

- Practitioner must follow standards of professional practice regarding establishing an appropriate clinical relationship with the patient.
- Practitioner, if a prescribing professional, may issue a prescription if it is determined to be medically-appropriate.
- Practitioner must verify that the patient has been determined to be appropriate for services delivered via telepractice



Medication Assisted Treatment: Controlled Substances

Ryan-Haight Online Pharmacy Consumer Protection
Act of 2008 (21 USC 829)

- The initial visit for buprenorphine must be conducted as follows:
 - Practitioner must conduct an in-person evaluation; **OR**
 - Conduct a telepractice evaluation with another DEA-registered practitioner (MD, PA, NP) physically present with the patient; **OR**
 - Conduct a telepractice evaluation with the patient located in a facility registered with the DEA as a hospital/clinic.
- Buprenorphine induction must be in-clinic.

Reimbursement

- Services are considered “face-to-face”
- Certified provider is always the billing entity (practitioners are reimbursed for services by provider via a contract or MOU)
- Long-term counseling is not an approved OASAS service without a waiver; emergency services are acceptable
- Billing codes are the same as any other service
 - DOH expected to issue Medicaid billing guidance



Office of Alcoholism and Substance Abuse Services

For additional information contact:

Legal@oasas.ny.gov

Sara Osborne: Sara.Osborne@oasas.ny.gov

Carmelita Cruz: Carmelita.Cruz@oasas.ny.gov

(518) 485-2312

November 8, 2018