

NYS Telehealth Parity Law

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New York State Telehealth Parity Law

- Requires <u>commercial insurers</u> and <u>Medicaid</u> 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 § 367u, and Insurance Law § 3217-h and 4306-g





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.

NYS Dept. of Financial Services: Emergency Regulation Regarding Health Insurance Coverage for Telehealth Services

- March 16, 2020 regulation effective for the duration of the state of emergency: https://www.dfs.ny.gov/system/files/documents/2020/03/re62 58 amend text.pdf
 - Prohibits insurers from imposing cost-sharing on telehealth during the state of emergency
 - Includes audio-only/telephonic and video modalities as appropriate
 - Information for Insurers and Providers:
 https://www.dfs.ny.gov/industry-guidance/coronavirus/telehealth-ins-prov-info



NYS Public Health Law Requirements: Medicaid Reimbursement



Telehealth Providers Eligible for NYS Medicaid Reimbursement:

- Physicians
- Physician Assistants
- Dentists
- Nurse Practitioners
- Registered Nurses, when receiving data by means of RPM

- Podiatrists
- Optometrists
- Psychologists
- Social Workers
- Speech Language Pathologists
- Audiologists



Telehealth Providers Eligible for NYS Medicaid Reimbursement (continued):

- Midwives
- Physical Therapists
- Occupational Therapists
- Certified Diabetes Educators
- Certified Asthma Educators
- Genetic Counselors

- Hospitals licensed under Article 28 of PHL including RHCFs serving special populations
- Home Care Services Agencies licensed under Article 36 of PHL
- Hospices licensed under Article
 40 of PHL



Telehealth Providers Eligible for NYS Medicaid Reimbursement (continued):

- Credentialed Alcoholism and Substance Abuse Counselors
- Authorized Early Intervention Program Providers and Service Coordinators
- Clinics licensed or certified under Article 16 of MHL and certified and non-certified day and residential programs funded or operated by OPWDD

- Care Managers employed or under contract to:
 - Health Home Programs
 - Patient Centered Medical Homes
 - OPWDD Care Coordination
 Organizations
 - Hospices
 - Voluntary Foster Care Agencies certified by OCFS

Telehealth Practitioners must:



- 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.



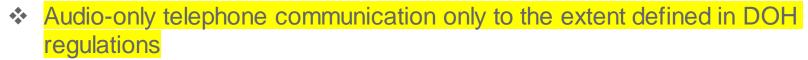
Originating Sites Eligible for NYS Medicaid Reimbursement

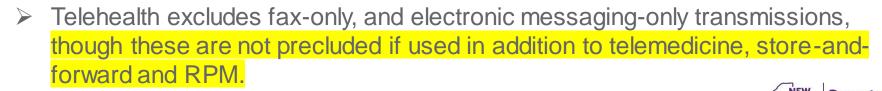
- Facilities licensed under Article 28: Hospitals, Nursing Homes and Diagnostic and Treatment Centers
- Facilities licensed under Article 40: Hospice Programs
- Facilities defined in subdivision six of section 1.03 of MHL: Clinics certified under Articles 16, 31 and 32
- Certified and non-certified day and residential programs funded or operated by OPWDD
- Private physician or dentist offices located within NYS
- 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 within NYS
- Patient's place of residence in NYS or other temporary location in or out of NYS



NYS Medicaid Telehealth Modalities

- Telehealth is limited to:
 - ❖ Telemedicine
 - Store-and-forward technology
 - Remote patient monitoring (RPM)







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 prerecorded 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.





Audio-Only Telephone Communications

- PHL Section 2999-ee authorizes DOH Commissioner to specify in regulation additional telehealth modalities, including audio-only or videoonly telephone communications.
- PHL Section 2999-dd states that reimbursement for additional modalities, provider categories and originating sites specified in accordance with PHL 2999-ee and audio-only telephone communications defined in regulations are contingent upon federal financial participation.





Summary of Medicaid Telehealth Guidance During the COVID-19 State of Emergency

- Provides broad expansion for the ability of <u>all</u> Medicaid providers in <u>all</u> situations to use a wide variety of communication methods, to the extent appropriate for the member.
- Effective for dates of service starting 3/1/20 for the duration of the state of emergency or issuance of subsequent guidance by NYSDOH.
- Medicaid will reimburse telephonic assessment, monitoring, and evaluation management services under specialized rules through six payment pathways (link to Medicaid Update in next slide).



Medicaid Telehealth Guidance During the COVID-19 State of Emergency

May 2020 Special Edition Medicaid Update:

https://www.health.ny.gov/health_care/medicaid/program/update/2020/no05_2020-03_covid-19_telehealth.htm

FAQs on Medicaid Telehealth Guidance:

https://www.health.ny.gov/health_care/medicaid/covid19/faqs.htm

Webinar, 5/5/2020:

https://www.youtube.com/watch?v=qhvFYdgi0qo&feature=youtu.be



Medicaid Telehealth Guidance During the COVID-19 State of Emergency

- **Originating sites** can be anywhere the member is located *including the member's home*.
 - There are no limits on originating sites during the State of Emergency.
- Distant sites can be any site within the 50 United States or United States' territories, including Federally Qualified Health Centers and providers' homes, for all patients including patients dually eligible for Medicaid and Medicare.
 - All Medicaid provider types are eligible to provide telehealth but services should be appropriate for telehealth and should be within the provider's scope of practice.



Interagency Telehealth Guidance



Guidance

- Inter-agency guidance 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



Differences Between State Licensed Providers

	Article 28	Article 31	Article 32
Recognized Modalities	 Telemedicine Store-and-forward technology Remote Patient Monitoring 	1. Telemental Health (live, audio-visual conference)	 Telepractice (live, audio-visual conference)
Regulations	No	Yes	Yes

PHL Section 2999-ee authorizes the Commissioner of DOH to specify additional modalities, including audio-only or video-only telephone communications



Differences Between State Licensed Providers

	Article 28	Article 31	Article 32
Approval Needed	No	Yes	Yes
Distant Site Providers	For Medicaid Reimbursement: Listed in PHL Article 29-G	Psychiatrists, Psychiatric NPs, psychologists, social works, MH counselors, marriage and family therapists, creative arts therapists and psychoanalysts	DATA 2000 waived medical practitioners and OASAS-credentialed clinical staff
Patient Location	Includes home and other temporary location	Includes home and other temporary location	OASAS approved location

NYSDOH Contact Information

- General questions: telehealth@health.ny.gov
- Medicaid Fee-for-Service (FFS) telehealth/telephonic coverage and policy questions may be directed to the Office of Health Insurance Programs (OHIP) Division of Program Development and Management at (518) 473-2160 or Telehealth.Policy@health.ny.gov.
- Medicaid FFS coverage and policy questions may be directed to the Office of Health Insurance Programs (OHIP) Division of Program Development and Management at (518) 473-2160 or FFSMedicaidPolicy@health.ny.gov.
- Questions regarding MMC reimbursement and/or documentation requirements should be directed to the enrollee's MMC plan.
- Questions regarding FFS claiming should be directed to the eMedNY Call Center at (800) 343-9000.



Overview of Telehealth and Telemedicine

Ron Bass and Kendra Muckle



Overview: Telehealth Terminology

- "Telehealth" is a broad term that is used to refer to a variety of arrangements in which a healthcare provider interacts with a patient remotely.
- "Telehealth" is defined in NYS Medicaid as the use of electronic information and communication technologies to deliver health care to patients at a distance.

Telemedicine (synchronous)	Store-and-Forward (asynchronous)	Remote Patient Monitoring (RPM)
 Real-Time Audiovisual Telehealth ("synchronous"): consultation, examination, diagnosis, and treatment. Originating Site: Where the patient is located Distant Site: Where the consulting provider is located 	Electronic transmission of a member's health information in the form of patient-specific pre-recorded videos and/or digital images from a provider at an originating site to a telehealth provider at a distant site (e.g., tele-dermatology, tele-ophthalmology).	Collection and transmission of patient data to a remote provider who tracks the patient. Examples include: • Medical devices • Wearable technology • mHealth
Patient is assessed in real-time for a new medical condition (e.g., tendinitis) or monitored for an ongoing medical condition (e.g., hypertension)	A primary care provider takes a digital photo of a skin lesion and forwards it to a dermatologist for assessment.	A patient with Type II diabetes uses a wearable device to allow their primary care physician to monitor blood glucose levels.

Note: Prior to the COVID-19 Public Health Emergency, telephone-only communication alone was not generally considered telehealth.



The Promise of Telehealth

- Telehealth has consistently demonstrated to be both a clinically effective and cost efficient means of delivering health care services and improving population health.*
- Evidence on the efficacy of telehealth has shown particular promise in several important areas, including but not limited to —
 - Patients with health care access issues, including those who live in rural communities with limited specialty provider capacity;
 - Care management and provider connectivity for patients with chronic conditions, such as diabetes management and hypertension; and
 - Patients with behavioral health diagnoses, including substance use disorder treatment needs and psychotherapy needs.

*References: Clemens Scott Kruse et al., Telehealth and Patient Satisfaction: A Systemic Review and Narrative Analysis, 7 *BMJ Open* 8 (Aug. 2017); Erin Shegeawa et al., The Current State of Telehealth Evidence: A Rapid Review, 27 *Health Affairs* 12 (2018).



Historical Medicaid Telehealth Utilization

Despite the promise of telehealth in improving care and reducing cost, utilization has been relatively low in Medicaid.

Percentage of Medicaid Claims and Encounters Reported as Telehealth State Fiscal Year 2018-19				
Telehealth vs. Non-telehealth claims	Count of Medicaid Claims / Encounters			
Telehealth claim & encounter count (fee-for-service & managed care*)	20,489			
Total non-telehealth claim & encounter count	56,134,793			
% of claims & encounters reported as telehealth	0.036%			

^{*}Plan encounter data likely underreports total utilization as many forms of telehealth—to the extent not billable on an encounter-level basis—are not captured as part of encounter data feeds

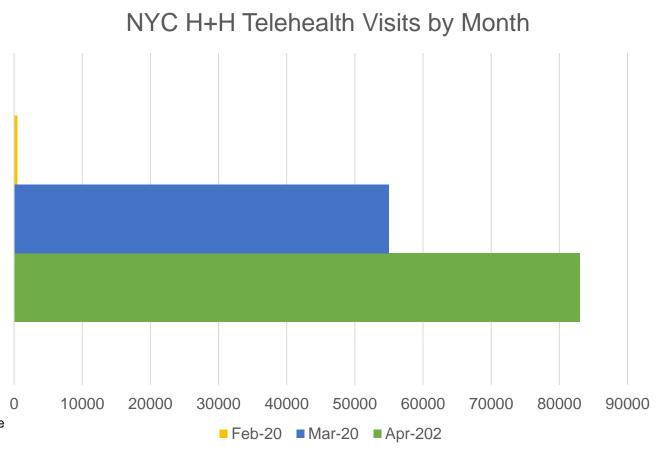




Telehealth Utilization – COVID-19

- During the COVID-19 pandemic, telehealth utilization has skyrocketed.
- As an example, NYC Health + Hospitals has reported the following:
 - Fewer than 500 billable telehealth visits monthly;
 - Increased to nearly 55,400 billable telehealth visits in March 2020; and
 - Increased to nearly 83,000 billable telehealth visits in April 2020.*

^{*}Reference: Jen Lau et al., Staying Connected in the COVID-19 Pandemic: Telehealth At The Largest Safety-Net System In The United States, 39 *Health Affairs* 8 June 2020.







YORK

Reimbursement in NY State Medicaid

- **Federal Rules:** Permit reimbursement for telemedicine (synchronous), but more limited opportunity for states to reimburse all forms of telehealth
- New York has been on the forefront of telehealth coverage in its Medicaid program and has been far more progressive with coverage than Medicare
 - 2006-2015: Major Medicaid coverage expansions to specialty consultations, hospital outpatient departments, and classes of allowable providers; targeted expansion to tele-dentistry; and further expansion of allowable provider types.
 - 2016: Enacted Public Health Law Article 29-G and amended Social Services Law § 367-u to expand Medicaid telehealth coverage, but subject to federal reimbursement limitations.
 - 2018-2019: Expansion of tele-practice coverage for substance use disorder services; reimbursement beyond physicians and other fee schedule providers (optometrists, certified diabetes and asthma educators); and permitted the home to serve as an originating site.
- Fee-For-Service: Reimbursement generally follows face-to-face encounters.
- **Medicaid Managed Care:** Requires parity for coverage of telehealth, but permits negotiation of rates between plans and providers. NEW YORK Department of

COVID-19 Public Health Emergency Flexibilities – Telehealth

Ron Bass and Kendra Muckle



Expanded COVID-19 Flexibilities

- In response to the COVID-19 pandemic, Governor Cuomo has issued several Executive Orders to suspend or modify laws necessary to aid in coping with this emergency.
 www.governor.ny.gov/executiveorders
- Current Emergency extended to October 2020
- Emergency Medicaid Telehealth Guidance issued by DOH effective for dates of service on or after March 1, 2020 included the following telehealth flexibilities:
 - Expanded telehealth to include telephonic coverage and associated reimbursement;
 - Further expanded eligible practitioners to all qualified providers currently serving Medicaid patients and out of state providers;
 - Further expanded eligible distant and originating site to include patients' and practitioners' homes:
 - Extended federal privacy waivers to New York encounters; and
 - Allowed for use of additional technology (e.g., Skype, FaceTime).
- These flexibilities impact both how telehealth may be furnished and what services may be reimbursed.

September 2020

Telephonic Overview During the Emergency

- Telephonic services are reimbursable where face-to-face visits may not be recommended and it is appropriate for the member to receive the services by telephone.
- Audio-visual services are always preferred.
- Telephonic services should be used only when audio-visual services are not possible.



Telehealth Overview

- Emergency Telehealth Guidance allows providers to bill Medicaid for services that can be appropriately delivered remotely during the COVID-19 State of Emergency.
 - establishes payment pathways for all Medicaid providers, including those contracted with managed care plans, to bill for telephonic encounters.
 - relaxes rules on distant and originating sites, and the types of clinicians, facilities, and services eligible for billing under telehealth rules.
 - allows for use of any non-public facing technology (e.g., Skype, FaceTime) with appropriate patient authorization. This includes expanded technologies that may not fully comply with HIPAA requirements.



Medicaid Managed Care Plans (MMCP)

- MMCPs must follow FFS telehealth billing policy included in the March 2020
 Medicaid Update Special Edition regarding Telehealth/Telephonic Services during
 the COVID-19 State of Emergency, and subsequent updates, but may follow
 separate reimbursement as highlighted on the next slide.
- MMCPs must cover telehealth/telephonic delivery of all Benefit
 Package services that are appropriate to deliver through telehealth/telephonic
 means to properly care for the member.
- MMCPs may not limit member access to telehealth/telephonic services to solely the MMCP's telehealth vendors, and must cover appropriate telehealth/telephonic services provided by other network providers.



Medicaid Managed Care Reimbursement

- MMCPs may have separate detailed billing guidance from Medicaid FFS.
- MMCPs must establish payment pathways for telephonic encounters, which may mirror the six payment pathways outlined in the Medicaid Update.
- MMCPs may use, but are not required to use the telephonic encounter codes or payment pathways used by Medicaid FFS.
- In the absence of negotiated rates for telehealth/telephonic services, the MMCP must reimburse network providers at the same rate that would be reimbursed for face-to-face encounters.



Telephonic Reimbursement Overview

Ron Bass and Kendra Muckle



Telephonic Payment Pathways

The Payment Pathway chart in Appendix A has two basic sections.

- <u>Lanes 1-2</u> are for use by fee schedule billers (primarily practitioners in office-based settings).
 - Practitioners that usually bill the fee schedule directly should bill for telephonic services using lane 1 and 2 based on practitioner types noted.
- <u>Lanes 3-6</u> are for all other billers that primarily bill rates for clinic and other services.



Six Telephonic Payment Pathways

- Payment for telephonic encounters for health care and health care support services will be supported in six different payment pathways utilizing the usual provider billing structure:
 - Lane 1 Practitioner's Office Evaluation and Management Services.
 - Lane 2 Practitioner's Office Assessment and Patient Management.
 - Lane 3 Non-FQHC Offsite Evaluation and Management Services.
 - Lane 4 FQHC Offsite Licensed Practitioner Services (Revised).
 - Lane 5 All Clinic Assessment and Patient Management.
 - Lane 6 Other Services (not eligible to bill one of the above categories, or otherwise directed in guidance to bill this lane).



Remote Patient Monitoring(RPM)

 Monthly time requirement for RPM has been reduced to a minimum of 10 minutes during the emergency.

Store and Forward

Increase from 75% to 100% reimbursement during the emergency.



Article 28/FQHCs

- Clinic practitioner may be in any location, including their home.
- Patient can be in any location, including their home.



How will things evolve once the pandemic ends?

The Governor partnered with Schmidt Futures and a diverse group of 16 individuals to explore answers to this question.



Look Ahead and Reimagine...

The Reimagine New York Commission will focus on:

- Connectivity
- Access to Telehealth
- Workforce Development

In addition to recommendations from the Commission, DOH will focus on:

- Interagency Coordination
- MRT II Proposals
- Feedback, Surveys



Appendix A – Telephonic Charts



Billing Lane	Telephonic Service	Applicable Providers	Fee or Rate	Historical Setting	Rate Code or Procedure	POS Code	Modifier	Notes
Lane 1	Evaluation and Management Services	Physicians, NPs, PAs, Midwives, Dentists, RNs	Fee	Practitioner's Office	Physicians, NPs, PAs, Midwives: "99441", "99442", and "99443" RNs on staff with a practitioner's office: "99211" Dentists: "D9991"	POS should reflect the location where the service would have been provided face-to-face	Append GQ modifier for "99211" only. Modifier GQ is for tracking purposes.	New or established patients. Only use "99211" for telephonic services delivered by an RN on staff with a practitioner and the practitioner bills Medicaid. Append the GQ modifier
Lane 2	Assessment and Patient Management	All other practitioners billing fee schedule (e.g., Psychologist)	Fee	Practitioner's Office	Any existing Procedure Codes for services appropriate to be delivered by telephone.	POS should reflect the location where the service would have been provided face-to-face	Append modifier GQ for tracking purposes.	Billable by Medicaid enrolled providers. New or established patients.
Lane 3	Offsite E&M Services (non- FQHC)	Physicians, NPs, PAs, Midwives	Rate	Clinic or Other (e.g., amb surg, day program)	Rate Code "7961" for non-SBHC Rate Code "7962" for SBHC Report appropriate procedure code for service provided, e.g., "99201" – "99215".	POS N/A Service location zip code + 4 should reflect the location that describes where the service would have historically been provided faceto-face	Not required	New or established patients. All-inclusive payments. No professional claim is billed.



Billing Lane	Telephonic Service	Applicable Providers	Fee or Rate	Historical Setting	Rate Code or Procedure	POS Code	Modifier	Notes
Lane 4	FQHC Offsite Licensed Practitioner Services	Physicians, NPs, PAs, Midwives, and Other Licensed Practitioners who have historically billed under these rate codes such as Social Workers and Psychologists.	Rate	Clinic	Rate Code "4012" for non-SBHC Rate Code "4015" for SBHC Report procedure code for service provided, e.g., "99201" – "99215".	POS N/A Service location zip code + 4 should reflect the location that describes where the service would have historically been provided face- to-face	Not required.	New or established patients. Wrap payments are available for these rate codes.
Lane 5	Assessment and Patient Management	Other practitioners (e.g., Social Workers, Dieticians, Dentists , home care aides, RNs, therapists, and other home care workers)	Rate	Clinic or other Includes FQHCs Non-Licensed Practitioners, Day Programs, ADHC programs, and Home Care Providers ADHC should bill if not meeting definition for Lane 6 comprehensive payment	Non-SBHC: Rate Code "7963" (for telephone 5 – 10 minutes) Rate Code "7964" (for telephonic 11 – 20 minutes) Rate Code "7965" (for telephonic 21 – 30 minutes) SBHC: Rate code "7966" (for telephone 5 – 10 minutes) Rate code "7967" (for telephonic 11 – 20 minutes) Rate code "7968" (for telephonic 21 – 30 minutes)	POS N/A. Service location zip code + 4 should reflect the location that describes where the service would have historically been provided face-to-face	Procedure code and modifier not required. However, correct procedure codes should be utilized in the claim, where applicable.	Billable by a wide range of providers including Day Programs and Home Care (e.g., aide supervision, aid orientation, medication adherence, patient check-ins). However, see LHCSA/CHHA assessments and RN visits which get billed under existing rates in Lane 6). New or established patients. Report NPI of supervising physician as Attending.
Lane 6	Other Services (not eligible to bill one of the above categories)	All provider types (e.g., Home Care, ADHC programs, health home, HCBS, Peers, School Supportive , Hospice)	Rate	All other as appropriate	All appropriate rate codes as long as appropriate to delivery by telephone	POS N/A. Service location zip code + 4 should reflect the location that describes where the service would have historically been provided face-to-face	Procedure Code and Modifier not required. However, correct procedure codes and the "GQ" modifier should be utilized in the claim, where applicable.	Covers all Medicaid services not covered above. Includes LHCSA and CHHA assessments, evaluations and RN visits. ADHC bills in Lane 6 if they meet minimum guidance standards.

Appendix B – Guidance/Resources



State Agency Partner Guidance

- Please note that Other State Agencies have issued guidance on this topic, which can be found at the following links:
 - NYS Office of Mental Health (OMH): https://omh.ny.gov/omhweb/guidance
 - NYS Office of Addiction Services and Supports (OASAS):
 https://oasas.ny.gov/system/files/documents/2020/06/telepractice-coronavirus-faqs_0.pdf
 - NYS Office for Children and Family Services (OCFS): https://ocfs.ny.gov/main/news/COVID-19/
 - The Office for People With Developmental Disabilities (OPWDD): https://opwdd.ny.gov/coronavirus-guidance/covid-19-guidance-documents
 - Services delivered by agencies under the regulatory auspice of these agencies should follow their applicable guidance.



Useful Links – CMS Guidance

- March 17, 2020 CMS Issues Medicare Telemedicine Face Sheet: https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet
- April 30, 2020 CMS Further Expands Telehealth in Medicare:
 https://www.cms.gov/newsroom/press-releases/trump-administration-issues-second-round-sweeping-changes-support-us-healthcare-system-during-covid
- CMS Provider- Specific Fact Sheets:
 https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers

May 8, 2020 – CMS Telehealth Video:

https://www.youtube.com/watch?v=Bsp5tIFnYHk&feature=youtu.be

CMS Toolkit:

https://www.cms.gov/outreach-education/partner-resources/coronavirus-covid-19-partner-toolkit



Department of Health Guidance

COVID-19 Guidance for Medicaid Providers
 https://health.ny.gov/health_care/medicaid/covid19/index.htm

COVID-19 Telehealth Guidance for Medicaid Providers https://health.ny.gov/health_care/medicaid/program/update/2020/no05_2020-03_covid-19_telehealth.htm

COVID-19 Guidance for All Providers
 https://coronavirus.health.ny.gov/information-providers



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