



March 20, 2020

Revised Interim Guidance Regarding the Delivery of Services through the Use of Telehealth Modalities by Facilities and Programs Certified or Operated by OPWDD During COVID-19 Emergency

The following guidance is applicable to all nonresidential facilities and programs certified or operated by the NYS Office for People With Developmental Disabilities (“OPWDD”) and is based on the New York State Public Health Law provisions governing the use of Telehealth for the delivery of health services in New York.

A. Interim Provision of Health Services via Telehealth

In response to increasing concerns related to COVID-19 and pursuant to Executive Order No. 202.1 issued March 13, 2020 and Executive Order No. 202.5 issued March 18, 2020, all nonresidential facilities and programs certified or operated by OPWDD are permitted and encouraged to deliver services via telehealth remotely to individuals with I/DD, whenever possible. Health and habilitation services are permitted for delivery via telehealth, where a provider exercising good clinical judgment determines a telehealth encounter is appropriate for the delivery of services to an individual. OPWDD providers should also consult any State-issued COVID-19 guidance for specific services, which may address telehealth. Service providers can access a list of this guidance here: <https://opwdd.ny.gov/coronavirus-guidance>

B. Appropriateness of Services

During the COVID-19 emergency, certain health and habilitation services may be delivered via telehealth. However, where a service or support requires the physical presence of a staff member for the health and safety of the individual, it is not appropriate to be delivered via telehealth. Specifically, but not exclusively, residential habilitation, respite and live-in caregiver services shall not be delivered via telehealth.

C. Infection Control

Providers are responsible for establishing policies for infection control for the equipment used in a telehealth encounter. Providers shall follow all manufacturer’s recommendations for cleaning products used in this capacity and best practices for infection control in health care generally.

D. HIPAA Compliance

Pursuant to guidance issued by the Office of Civil Rights (“OCR”) at the Department of Health and Human Services (“HHS”) on March 17, 2020, for the duration of the emergency response to COVID-19, providers who do not have access to telehealth equipment that meets HIPAA security standards may utilize everyday non-public facing technology in their good faith efforts to provide services to individuals remotely. Examples of everyday non-public facing technology include but are not limited to video chat applications such as Apple FaceTime, Facebook Messenger video chat, and Skype. Public facing applications such as Facebook Live and Tik Tok are still prohibited for use to deliver services. Providers using these types of everyday non-public facing technologies to deliver services remotely shall use professional judgment as to the appropriateness of doing so. OCR is encouraging providers

who choose to use these technologies to deliver services to notify individuals and/or their legal representatives that these types of applications potentially introduce privacy risks. Further, providers should enable all available encryption and privacy modes when using such applications.

Providers using telehealth shall carry out practices to ensure compliance with all other HIPAA provisions, including HIPAA privacy and security regulations and HITECH breach notification procedures. Access to individual(s)' information shall follow standard HIPAA privacy and security provisions, except as described above, and ensure compliance with MHL 33.13.

Guidance from the Office of Civil Rights, U.S. Department of Health and Human Services on HIPAA requirements during the response to COVID-19 can be located at:

<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

E. Billing and Reimbursement

Health and habilitation services delivered by means of telehealth shall be entitled to reimbursement from Medicaid under section 367-u of Social Services Law (PHL §2999-dd). The following applies to providers using Telehealth:

- a. Providers shall be either:
 - i. licensed or certified in NYS¹, currently registered in accordance with NYS Education Law or other applicable law², and enrolled in NYS Medicaid,
 - ii. licensed as a physician in NYS and in current good standing in NYS, or
 - iii. licensed as a physician, registered nurse, licensed practical nurse, nurse practitioner, or physician assistant in any state in the United States and in current good standing in that state.
- b. Telehealth services shall be delivered by providers acting within their scope of practice, exercising good clinical judgement and practice in the appropriate use of Telehealth with respect to the service;
- c. Reimbursement will be made in accordance with existing Medicaid policy related to supervision and billing rules and requirements.

For the duration of the emergency response to COVID-19, providers may be reimbursed for services delivered via telehealth using technology that is not HIPAA compliant, as described above, as well as services delivered remotely through other modalities, such as telephonic encounters.

An Article 16 clinic provider should bill for the encounter using the appropriate billing rules for the services rendered, using the Telehealth modifier as the location code. The modifier code should be included for all modalities of telehealth the provider uses.

For the duration of the emergency response to COVID-19, providers delivering services as Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD) may deliver such services via telehealth and bill at the IPSIDD rate.

For more comprehensive information about the use of and billing for telehealth encounters, please visit:

¹A provider for telehealth purposes may be either an individual practitioner (e.g. physician, physician assistant, psychologist, etc.) or an entity (e.g. hospital, Article 16 clinic, OPWDD-certified nonresidential program, etc.) Where the provider is an entity, the entity must be licensed or certified. Services provided by unlicensed and uncertified staff members working for the entity provider should be billed by the provider. Such providers include HCBS waiver providers.

² Where such requirements exist for the provider type.

https://www.health.ny.gov/health_care/medicaid/program/update/2019/2019-02_speced.htm#generalhttps://www.health.ny.gov/health_care/medicaid/program/update/2020/
<https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>

Providers of HCBS waiver services should bill for the service as they normally do.

F. Service Documentation and Records Retention

All service documentation that is part of the clinical record shall be maintained in accordance with NYS MHL Section 33.13 and all existing documentation requirements. In addition, providers shall document the reason for the encounter, name of the provider and credential, location of the provider, location of the individual receiving service, date of the visit, visit start and end time and the duration of the visit; whether a staff person or a member of the individual's circle of support attended the session and identify such person(s) by name and title; note whether the session was successful or whether the session was interrupted due to the technology or equipment failure; and any plans for follow-up, after care, or prescribed treatment.

This guidance is subject to change as OPWDD works with other state agencies to provide consistent guidance on the use of telehealth across service delivery systems. Your attention to this important message is very much appreciated to ensure the safety of you, your staff and the people you support. For further information on the use of telehealth, please contact John Barbuto, Assistant Deputy Commissioner, Statewide Services at (518) 474-5673.