

# COVID-19 Telehealth Rapid Response Team Legal, Compliance, Credentialing, and Privileging Guidance for Telehealth (Article 28)

As of 4.2.2020

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## PURPOSE

In response to COVID-19, payers and regulatory bodies have been rapidly issuing changes to their guidance on telehealth. This document provides answers to frequently asked questions about telehealth during the New York State COVID-19 Disaster Emergency based on federal guidance (including guidance on Medicare billing and HIPAA) and New York State guidance. The last revision date will be listed above.

This document outlines telehealth guidance from the New York State Department of Health. Information specific to telemental health (based on guidance from the New York State Office of Mental Health (“OMH”)) and telepractice (based on guidance from the New York State Office of Alcoholism and Substance Abuse (“OASAS”)) can be found in separate documents. Jump to OMH Telemental Health Guidance ([link forthcoming](#)) or OASAS Telepractice Guidance ([link forthcoming](#))

If you have questions, please email [NYC.telehealth@nychhc.org](mailto:NYC.telehealth@nychhc.org). You can also get the most up to date information on our intranet page: <http://hhcinsider.nychhc.org/corpooffices/OPH/Pages/Telehealth-Resources.aspx>

## FAQs

### 1. WHAT IS TELEHEALTH? ARE TELEPHONE CALLS INCLUDED?

Telehealth is the use of electronic information and communication technologies to deliver health care to patients at a distance. Telehealth generally includes only synchronous audio/visual communication, remote patient monitoring, or store-and-forward technology. Medicaid-covered services provided via telehealth include assessment, diagnosis, consultation, treatment, education, care management and/or self-management of a Medicaid member.<sup>1</sup>

Telephone calls have historically not been considered telehealth and not reimbursed as such. However, beginning on March 1, 2020, and for the duration of the New York State Disaster Emergency, New York State Medicaid will reimburse **telephonic assessment, monitoring, and evaluation and management services** provided to members in cases where face-to-face visits may not be recommended and it is appropriate for the member to be evaluated and managed by telephone.<sup>2</sup> DOH outlined a variety of billing pathways for telephonic encounters conducted by a variety of Medicaid providers during the New York State Disaster Emergency by both Fee for Service and Managed Care.

Please see <http://hhcinsider.nychhc.org/corpooffices/OPH/Pages/Telehealth-Resources.aspx> with the most up to date billing guidance

### 2. WHERE DO THE PROVIDER AND PATIENT HAVE TO BE TO ENGAGE IN TELEHEALTH? CAN THE PROVIDER BE AT HOME? CAN THE PATIENT BE AT HOME?

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<sup>1</sup> New York State Department of Health, Medicaid Update, Special Edition February 2019; 35 (2): 1

<sup>2</sup> New York State Department of Health, Medicaid Update, Special Edition March 2020; 36 (5): 1

**The terms “originating site” and “distant site” are used to describe the location of the patient and provider during a telehealth encounter.**

- **Originating Site:** Defined as where the patient is located at the time telehealth or telephonic services are delivered. Originating sites can be anywhere the patient is located, including a clinic site or the patient’s home.
- **Distant Site:** Defined as where the telehealth provider is located at the time telehealth or telephonic services are delivered. Distant sites can be located anywhere within the 50 United States or US territories. All sites are eligible to be distant sites during a state of emergency including the provider’s home.

***Providers must comply with Human Resources policies and obtain clinical leadership and affiliate approval before working from locations other than their regular clinic or other worksite.***

In some cases, and with appropriate approvals, providers may work from home, especially in an effort to protect their safety or the safety of their patients.

Human Resources issued a memo on March 26, 2020 outlining the Provider Tele-Commuting Policy.

### 3. DOES A PROVIDER NEED TO OBTAIN WRITTEN CONSENT FROM A PATIENT TO ENGAGE IN TELEHEALTH?

A patient must give informed consent to receive treatment via telehealth, e.g. treatment delivered via video. Informed consent is not needed for telephone calls.

Informed consent can be reflected by:

- PRIMARY METHOD: Obtaining written consent of the patient and including this in the electronic health record; or
- ALTERNATIVE: If written consent is not feasible, obtaining verbal consent and documenting verbal consent in the clinical note.

To obtain informed consent, the provider must<sup>3</sup>:

- Confirm the member’s identity
- Provide the member with basic information about the services that he/she will be receiving via telehealth
- Introduce all parties who will be present at each end of the telehealth transmission, including non-clinicians
- Inform the patient that the telehealth encounter shall not be recorded without the patient’s consent

To document verbal consent in the note, please use the designated telehealth template or include the Epic dot phrase “.vidconsent.” The dotphrase will include language similar to the below:

- *I am providing this encounter via telehealth to reduce patient exposure to infection, including COVID-19. Prior to initiating this visit, I confirmed the patient’s identity and described the*

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<sup>3</sup> New York State Department of Health, Medicaid Update, Special Edition March 2020; 36 (5): 6. Update issued 3/23/2020

*services that the patient will be receiving via telehealth. The patient provided [written/verbal] consent for this encounter. I conducted this encounter via [synchronous audio and video technology/remote patient monitoring/store and forward] with @PatientName@ and [...] also participated.*

- Culturally competent interpreter services must be provided in the patient’s preferred language when the patient and telepractice practitioners do not speak the same language.

#### 4. DO PROVIDERS NEED SPECIAL CREDENTIALING TO PROVIDE TELEHEALTH?

- Those CURRENTLY credentialed and privileged by the facility, who will provide services to patients via telehealth, do not require any additional credentialing or privileging.<sup>4</sup> The medical staff determines which services would be appropriate to be delivered via telehealth. There is no requirement that ‘telehealth’ be delineated as a separate privilege.
- Those who are NOT currently credentialed and privileged by the facility, may provide telehealth services after being credentialed through the standard credentialing process for telehealth providers described in the facility’s bylaws or through disaster privileging.
- To engage in a telehealth encounter with a patient at a facility, the provider must be credentialed at both the “originating site” and the “distant site.” NYC Health + Hospitals providers have been cross-credentialed at all sites via Disaster Emergency privileges.

#### 5. DO PROVIDERS NEED SPECIAL HARDWARE TO ENGAGE IN A TELEHEALTH ENCOUNTER OR CAN THEY JUST USE THEIR PERSONAL DEVICES?

- “Hardware” means the physical devices used when conducting telehealth encounters such as cameras, computers, or phones.
- Hardware procured and distributed by NYC Health + Hospitals is always preferred because these hardware devices have been vetted by EITS security teams and Compliance. Hardware should be equipped with VPN, Imprivata, tokens and other Compliance and EITS-approved tools.
- Personal smartphones are only permissible if an Exception Request to use a personal device is granted, the provider agrees to the “Bring Your Own Device” (BYOD) policy, and Mobile Iron is installed on the provider’s personal smartphone. The Exception Request form can be found in the [Appendix](#) or the [COVID19 Telehealth Rapid Response Team intranet page](#)
- Personal computers are permissible as long as the user connects via secure access pathways (VPN, Imprivata, tokens, or other approved complaint tools) to access any Protected Health Information (“PHI”).

#### 6. WHAT SOFTWARE CAN PROVIDERS USE FOR TELEHEALTH ENCOUNTERS? CAN PROVIDERS USE SKYPE AND FACETIME?

- The federal Department of Health and Human Services has temporarily waived sanctions and penalties for noncompliance with certain HIPAA security requirements.<sup>5</sup> However, to protect the privacy of our patients, NYC Health + Hospitals’ preference is to use approved, HIPAA-

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<sup>4</sup> The Joint Commission, Emergency Management – Privileging Requirements When Providing Services via Telehealth Links During a Disaster. Last updated March 16, 2020. Accessed: <https://www.jointcommission.org/standards/standard-fags/hospital-and-hospital-clinics/emergency-management-em/000002276/>

<sup>5</sup> Health and Human Services, Notification of Enforcement Discretion <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

compliant tools as the default option when conducting telehealth encounters. We will post a list of software that has been vetted and approved by our IT security and compliance teams (coming soon!).

- If a HIPAA-compliant tool does not meet a provider's need for certain encounters during the COVID-19 emergency period, an individual provider may file an Exception Request using the Exception Request Form ([Appendix](#)) and submitting it to [ServiceNow](#). Providers using software requiring an Exception Request should advise patients of any risks to the security of the technology.

## 7. ARE THERE SPECIAL RULES FOR CONTROLLED SUBSTANCES?

- Yes. The Drug Enforcement Agency (DEA) has issued guidance waiving the requirement of a face to face IN PERSON medical evaluation with a patient and DEA registered/DATA waived practitioners prior to prescribing controlled substances, and now permits the prescription to be issued where the practitioner and patient have a telepractice session that is conducted using an audio-visual, real-time, two-way interactive communication system. Telephonic only communication is not sufficient. **\*\*Please see below for an additional waiver regarding Buprenorphine.**
- As of March 16, 2020, DEA-registered practitioners may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:
  - The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of practitioner's professional practice;
  - The telepractice communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
  - The practitioner is acting in accordance with applicable Federal and State laws.
- If the prescribing practitioner has previously conducted an in-person medical evaluation of the patient, the practitioner may issue a prescription for a controlled substance after having communicated with the patient via telemedicine, or any other means, regardless of whether a public health emergency has been declared by the Secretary of Health and Human Services, so long as the prescription is issued for a legitimate medical purpose and the practitioner is acting in the usual course of practitioner's professional practice.
- For more information, see: <https://www.deadiversion.usdoj.gov/coronavirus.htm>.
- **BUPRENORPHINE - ADDITIONAL WAIVER**
  - On March 31, 2020, the DEA issued guidance providing that DEA registered/DATA waived providers may prescribe buprenorphine to new and existing patients with Opioid Use Disorder on the basis of a telephone evaluation without requiring the provider to first conduct an examination of the patient in person or via telemedicine using an audio-visual, real-time, two-way interactive communication system. This additional waiver pertaining to Buprenorphine **only** is in effect from March 31, 2020 until the public health emergency declared by the Secretary ends, unless DEA specifies an earlier date. See: [https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-022\)\(DEA068\)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20\(Final\)%20+Esign.pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf)

8. WHERE CAN I FIND THE MOST UP TO DATE INFORMATION FROM NYS DOH?

- The guidance is changing rapidly. Please consult these two sections of the NYS Department of Health's website:
  - COVID-19 Guidance for Medicaid providers:  
[https://health.ny.gov/health\\_care/medicaid/covid19/index.htm](https://health.ny.gov/health_care/medicaid/covid19/index.htm)
  - Medicaid Updates webpage:  
[https://www.health.ny.gov/health\\_care/medicaid/program/update/2020/index.htm](https://www.health.ny.gov/health_care/medicaid/program/update/2020/index.htm)

## APPENDIX



### **Procedure: *Office of Corporate Compliance Telehealth Connection Exception Request***

#### 1. Purpose

The purpose of this Procedure is to document and communicate the steps required when requesting approval of an *Exception Request* by the Office of Corporate Compliance (OCC) for the use of telehealth or telemedicine communication applications or modes of communication other than NYC Health + Hospitals authorized applications or modes of communication.

#### 2. Scope

The scope of this Procedure covers an *Exception Requests* related to the use of communication applications or modes of communication for providing telehealth or telemedicine during the COVID-19 emergency period.

#### 3. Procedure

- A. Submit *ISRM Exception Request* in [ServiceNow](#).
- B. Upon receipt of incident number send an email to the OCC at: [patsosec@nychhc.org](mailto:patsosec@nychhc.org)
- C. Email must contain the following:
  1. Subject: 'EXPEDITE-Policy Exception Request Incident #: XXXXXX'
  2. Cc: Enterprise Service Desk; ISRM-ENGOPS; ISRM-RM; sheetal.sood@nychhc.org.
  3. Body of Email:
    - i. Brief description of business need for expedited request.
    - ii. Recipient email address.
    - iii. Sender email address.
- D. OCC will respond to email within 24 hours.
- E. OCC will approve request in Service Now within five (5) business days.

#### 4. Implementation & Management:

This procedure shall be implemented and managed by the OCC and Enterprise IT-ISRM Service Line.

#### 5. Approval:

- Corporate Privacy and Security Officer

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Catherine Patsos

\_\_\_\_\_  
Date

- Enterprise IT, Corporate Information Security Officer

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Soma Bhaduri

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Date