COVID-19 Telehealth Rapid Response Team
Legal, Compliance, Credentialing, and Privileging Guidance for Telepractice (Article 32)

As of 4.2.2020

Contents

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 telepractice 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 guidance for telepractice (based on guidance from the New York State Office of Alcoholism and Substance Abuse ("OASAS")). Information specific to telehealth (based on guidance from New York State Department of health ("DOH") or telemental health (based on guidance from the New York State Office of Mental Health ("OMH")) and is included in a separate document. Jump to DOH Article 28 Telehealth Guidance (link forthcoming) or OMH Article 31 Telemental Health Guidance (link forthcoming)

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

FAQs

1. WHAT IS TELEPRACTICE?

- Telepractice is the use of a two-way real-time interactive telecommunication system for the purpose of providing certain addiction services at a distance.
- During the COVID-19 emergency, this definition has been expanded to include telephonic encounters (except for Medication-Assisted Treatment as indicated below).
- E-mails or text messages, and facsimile transmissions between a practitioner and a patient or between two practitioners is not telepractice.

2. WHAT SERVICES MAY BE PROVIDED BY TELEPRACTICE?

- Admission assessments, direct transfers;
- Psycho-social evaluations and mental health consultations;
- Medication Assisted Treatment prescribing and monitoring;
    - See below section on Medication Assisted Treatment for restrictions on telephonic encounters.
- Counseling (individual and group);
- Peer services provided by CRPAs;
- Assessment, counselling and other non-medical services by unlicensed staff, CASAC-T's and individuals who possess a limited permit; and
- Other services as approved by OASAS.

3. IF A PROVIDER HAS NOT BEEN PREVIOUSLY APPROVED BY OASAS TO PROVIDE SERVICES BY TELEPRACTICE, WHAT MUST THE PROVIDER DO?

- A program must submit the "Attestation" form before the program's providers can be approved to engage in telepractice.

- The Attestation form may be found at the link below:
    - https://oasas.ny.gov/system/files/documents/2020/03/attestation-covid-19.pdf

4. WHO CAN BE A TELEPRACTICE PROVIDER/PRACTITIONER?

- OASAS has expanded the types of practitioners or providers who may engage in telepractice from someone with a current license or a current, valid unlimited or limited permit to also include:
    - CRPAs delivering peer services; and
    - Unlicensed staff, CASAC-T's and individuals who possess a limited permit delivering assessment, counselling and other non-medical services.

5. CAN A PROVIDER CONDUCT TELEPRACTICE SOMEWHERE OTHER THAN THEIR NORMAL WORK LOCATION?

- ***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.

6. IS AN INITIAL IN-PERSON ASSESSMENT NECESSARY?

- OASAS has waived the requirement that patients and prospective patients must have at least one in-person evaluation session with clinical staff prior to participation in a telepractice session to determine if telepractice is appropriate.

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

8. 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").

9. 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.[1] However, to protect the privacy of our patients, NYC Health + Hospitals' preference is to use approved, HIPAA-compliant tools as the default option when conducting telepractice encounters. We will post a list of software that has been vetted and approved by our IT security and Compliance teams (coming soon!).

[1] 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

- 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.

10. HOW DOES A PATIENT CONSENT TO RECEIVE TELEPRACTICE SERVICES?

- A patient must give informed consent to receive treatment via telepractice**.**
- Informed consent can be reflected by**:**
    - PRIMARY: 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 for telepractice, the provider must make the patient aware of the following patient rights:
    - The right to refuse telepractice services and to be apprised of the alternatives to telepractice services, including any delays in service, need to travel, or risks associated with not having the services provided by telepractice, and risks associated with receiving telepractice in an off-site location.
    - The right to basic information about telepractice, including both benefits and risks in participating in services utilizing the technology.
    - The right not to have telepractice sessions be recorded without the patient's consent.
- To document consent in the clinical note, please use the dotphrase ".OBHTele" available in Epic. The dotphrase will have language similar to the below:
    - *Prior to commencing the TeleBH session: I confirmed the patient's name, date of birth and medical record number. I identified myself to the patient and the patient confirmed they were in a quiet, private space free of distractions. Benefits and risks of telephonic or video-conferencing, including but not limited to patient confidentiality, which differ from in-person sessions, were discussed. The client was informed of and acknowledged that confidentiality applies for telebehavioral health services and nobody will record the session. Practitioner and patient agreed to use *** as the telephonic or video-conferencing platform (either a webcam or smartphone if the latter) used today; the patient was encouraged to use a secure internet connection as best as possible. During the session, I will be located*** and the patent reports their location as ****
- 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.

11. ARE THERE ANY CONDITIONS REGARDING THE SPACES OCCUPIED BY THE PATIENT AND PRACTITIONER DURING TELEPRACTICE?

- The spaces occupied by the patient and the practitioner must both meet minimum privacy standards consistent with patient-practitioner interaction and confidentiality at a single OASAS certified location.

12. WHERE CAN I FIND THE MOST UP TO DATE INFORMATION FROM OASAS?

- The guidance from OASAS is evolving, please refer to the following link for the most recent information: https://omh.ny.gov/omhweb/guidance/

APPENDIX

NYC HEALTH+ HOSPITALS

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: patsosc@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

_____ _____
Catherine Patsos Date

- Enterprise IT, Corporate Information Security Officer

_____ _____
Soma Bhaduri Date