



Last Issued: April 10, 2020

Updated: July 2, 2021 (Revised Material Underlined)

Revised Interim Guidance Regarding the Delivery of Services Through the Use of Telehealth Modalities by Facilities and Programs Certified or Operated by OPWDD During the COVID-19 Federal Public Health 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.

These provisions are in place for the duration of the Federal public health emergency for non OPWDD Home and Community Based Services (HCBS) and for six months following the end of the Public Health Emergency (PHE) for services governed by the HCBS Waiver.

A. Interim Provision of Services via Telehealth

In response to COVID-19 and pursuant to [Emergency Regulations and Medicaid Guidance](#), issued by the New York State Department of Health (DOH) on June 25, 2021, all nonresidential facilities and programs certified or operated by OPWDD are permitted to deliver services via telehealth remotely to individuals with I/DD, whenever necessary. Telehealth is the use of electronic information and communication technologies to deliver services to an individual who is at a different location than the OPWDD Provider. The use of simultaneous, two-way audio-visual communications to deliver certain health, habilitation, and respite services constitutes telehealth.

During the COVID-19 PHE, telephonic (audio-only) modalities may be used in limited circumstances relative to the use of telehealth. Certain health, habilitation and respite 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. At this time, Lifeplans do not need to be amended to reflect the delivery of services via telehealth.

B. Appropriateness of Services

During the COVID-19 PHE, certain health, habilitation and respite 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.

Telehealth services may only be utilized when the delivery of services can be effectuated via verbal prompting/cueing. Specifically, but not exclusively, residential habilitation, and live-in caregiver services shall not be delivered via telehealth. Additionally, when delivering respite services via telehealth, a provider must use two-way audio-visual technology; telephonic transmission is not permissible.

C. 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 PHE 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>

D. Billing and Reimbursement

Health 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, or
 - ii. licensed as a physician in NYS and in current good standing in NYS.
- 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 PHE response to COVID-19, non-residential habilitation and respite services delivered by means of telehealth shall also be entitled to reimbursement from Medicaid. For providers that provide habilitative or respite services via telehealth, the agency or entity must be certified or operated by OPWDD. Direct Support Professionals and other staff members who are not licensed or certified but who are authorized to deliver a service by the agency they work for may deliver habilitative and respite services via telehealth as a staff member of the OPWDD-certified or operated provider. The provider will bill Medicaid for those services delivered by staff members who are not licensed or certified themselves. Providers of HCBS waiver services should bill for the services as they normally would. For the duration of the PHE 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.

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.

An Article 16 clinic provider should bill for the encounter using the appropriate billing rules for the services rendered, using the telehealth code for place of service, also known as a location code and then use the appropriate telehealth modifier.

For the duration of the PHE 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:

[https://www.health.ny.gov/health_care/medicaid/program/update/2019/2019-](https://www.health.ny.gov/health_care/medicaid/program/update/2019/2019-02_speced.htm#general)

[02_speced.htm#generalhttps://www.health.ny.gov/health_care/medicaid/program/update/2020/](https://www.health.ny.gov/health_care/medicaid/program/update/2020/)

<https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>

E. 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.