

14 NYCRR Parts 596 and 599
Express Terms

1. Section 599.17 of Title 14 NYCRR is repealed.
2. A new Part 596 is added to Title 14 NYCRR to read as follows:

Part 596

TELEPSYCHIATRY SERVICES

(Statutory Authority: Mental Hygiene Law §§7.09, 31.02, 31.04)

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§596.1 Background and intent.

(a) *Telepsychiatry* is defined as the use of two-way real-time interactive audio and video equipment to provide and support mental health services at a distance. Such services do not include a telephone conversation, electronic mail message or facsimile transmission between a provider and a recipient, or a consultation between two professional or clinical staff.

(b) Telepsychiatry can be beneficial to a mental health care delivery system, particularly when on-site services are not available or would be delayed because of distance, location, time of day, or availability of resources. The benefits of telepsychiatry can include improved access to care, provision of care locally in a more timely fashion, improved continuity of care, improved treatment compliance, and coordination of care.

(c) The Office of Mental Health supports the use of telepsychiatry as an appropriate component of the mental health delivery system to the extent that it is in the best interests of the person

served and is performed in compliance with applicable federal and state laws and regulations and the provisions of this Part in order to address legitimate concerns about privacy, security, patient safety, and interoperability.

§596.2 Legal base.

(a) Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(b) Sections 31.02 and 31.04 of the Mental Hygiene Law authorize the Commissioner of Mental Health to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate.

§596.3 Applicability.

The provisions of this Part shall apply to any provider licensed pursuant to Article 31 of the Mental Hygiene Law who has been authorized by the Office under this Part to include the use of telepsychiatry as a means of rendering licensed services, provided, however, that telepsychiatry shall not be utilized in Personalized Recovery Oriented Services (PROS) programs subject to Part 512 of this Title or Assertive Community Treatment (ACT) programs approved pursuant to Part 551 of this Title.

§ 596.4 Definitions.

For purposes of this Part:

(a) *Distant or "hub" site* means the distant location at which the practitioner rendering the telepsychiatry service is located.

(b) *Encounter* means a telepsychiatry event involving patient contact, whereby the care of the patient is the direct responsibility of both the originating (spoke site) provider and the distant (hub site) provider.

(c) *Encryption* means a system of encoding data on a Web page or email where the information can only be retrieved and decoded by the person or computer system authorized to access it.

(d) *Originating or "spoke" site* means the site where the patient is physically located at the time mental health services are delivered to her/him by means of telepsychiatry.

(e) *Nurse practitioner in psychiatry* means a person currently certified as a nurse practitioner with an approved specialty area of psychiatry (NPP) by the New York State Education Department or who possesses a permit from the New York State Education Department.

(f) *Physician* means a physician currently licensed to practice medicine in New York State who (i) is a diplomat of the American Board of Psychiatry and Neurology or is eligible to be certified

by that Board, or (ii) is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible to be certified by that Board.

(g) *Practitioner* means a physician or nurse practitioner in psychiatry who is providing telepsychiatry services from a distant or hub site in accordance with the provisions of this Part.

(h) *Provider of services* means a provider of mental health services licensed pursuant to Article 31 of the Mental Hygiene Law.

(i) *Qualified mental health professional* means a practitioner possessing a license or a permit from the New York State Education Department who is qualified by credentials, training, and experience to provide direct services related to the treatment of mental illness and shall include physicians and nurse practitioner in psychiatry, as defined in subdivisions (e) and (f) of this Section, as well as the following:

(1) *Creative arts therapist*: a person currently licensed as a creative arts therapist by the New York State Education Department or who possesses a creative arts therapist permit from the New York State Education Department.

(2) *Licensed practical nurse*: a person currently licensed as a licensed practical nurse by the New York State Education Department or who possesses a licensed practical nurse permit from the New York State Education Department.

(3) *Licensed psychoanalyst*: a person currently licensed as a psychoanalyst by the New York State Education Department or who possesses a permit from the New York State Education Department.

(4) *Licensed psychologist*: a person currently licensed as a psychologist by the New York State Education Department, or who possesses a permit from the New York State Education Department and who possesses a doctoral degree in psychology, or an individual who has obtained at least a master's degree in psychology who works in a federal, state, county or municipally operated clinic.

(5) *Marriage and family therapist*: a person currently licensed as a marriage and family therapist by the New York State Education Department or who possesses a permit from the New York State Education Department.

(6) *Mental health counselor*: a person currently licensed as a mental health counselor by the New York State Education Department or who possesses a permit from the New York State Education Department.

(7) *Nurse practitioner*: a person currently certified as a nurse practitioner by the New York State Education Department or who possesses a permit from the New York State Education Department.

(8) *Physician*: a person currently licensed as a psychiatrist by the New York State Education Department or who possesses a permit from the New York State Education Department.

(9) *Physician assistant*: a person currently registered as a physician assistant by the New York State Education Department or who possesses a permit from the New York State Education Department.

(10) *Registered professional nurse*: a person currently licensed as a registered professional nurse by the New York State Education Department or who possesses a permit from the New York State Education Department.

(11) *Social worker*: a person who is either currently licensed as a licensed master social worker or as a licensed clinical social worker (LCSW) by the New York State Education Department, or who possesses a permit from the New York State Education Department to practice and use the title of either licensed master social worker or licensed clinical social worker.

(j) *Telecommunication system* means an interactive telecommunication system that is used to transmit data between the originating/ spoke and distant/hub sites.

(k) *Telepsychiatry* means the use of two-way real-time interactive audio and video to provide and support clinical psychiatric care at a distance. Such services do not include a telephone conversation, electronic mail message, or facsimile transmission between a provider and a patient or a consultation between two physicians or nurse practitioners, or other staff, although these activities may support telepsychiatry services.

§ 596.5 Approval to Utilize Telepsychiatry Services.

(a) Telepsychiatry services may be authorized by the Office for assessment and treatment services provided by physicians or nurse practitioners, as defined in Section 596.4 of this Part, from a site distant from the location of a patient, where the patient is physically located at an originating/spoke site licensed by the Office, and the physician or nurse practitioner is physically located at a distant/hub site that participates in the New York State Medicaid program.

(b) A provider of services must obtain prior written approval of the Office before utilizing telepsychiatry services.

(c) Approval shall be based on receipt by the Office of the following:

(1) Sufficient written demonstration that telepsychiatry will be used for assessment and treatment services consistent with the provisions of this Part, and that the services are being requested because they are necessary to improve the quality of care of individuals receiving services;

(2) Submission of a written plan to provide telepsychiatry services that satisfies the provisions of this Part and includes:

(i) confidentiality protections for persons who receive telepsychiatry services, including measures to ensure the security of the electronic transmission;

(ii) informed consent of persons who receive telepsychiatric services;

(iii) procedures for handling emergencies with persons who receive telepsychiatric services; and

(iv) contingency procedures to use when the delivery of telepsychiatric service is interrupted, or when the transmission of the two-way interactions is deemed inadequate for the purpose of service provision.

(d) Requests for approval to offer telepsychiatry services shall be submitted to the Field Office serving the area in which the originating/spoke site is located. The request for approval shall be submitted by the originating site. Such Field Office may make an on-site visit to either or both sites prior to issuing approval.

(e) The Office shall provide its approval to utilize telepsychiatry services in writing. The provider of services must retain a copy of the approval document and shall make it available for inspection upon request of the Office.

(f) Failure to adhere to the requirements set forth in this Part may be grounds for revocation of such approval. In the event that the Office determines that approval to utilize telepsychiatry services must be revoked, it will notify the provider of services of its decision in writing. The provider of services may request an informal administrative review of such decision.

(1) The provider of services must request such review in writing within 15 days of the date it receives notice of revocation of approval to utilize telepsychiatry services to the Commissioner or designee. The request shall state specific reasons why such provider considers the revocation of approval incorrect and shall be accompanied by any supporting evidence or arguments.

(2) The Commissioner or designee shall notify the provider of services, in writing, of the results of the informal administrative review within 20 days of receipt of the request for review. Failure of the Commissioner or designee to respond within that time shall be considered confirmation of the revocation of deemed status.

(3) The Commissioner's determination after informal administrative review shall be final and not subject to further administrative review.

§596.6 Requirements for Telepsychiatry Services.

(a) General requirements.

(1) The distant/ hub site practitioner must:

(i) possess a current, valid license to practice in New York State;

(ii) directly render the telepsychiatry service;

(iii) abide by the laws and regulations of the State of New York including the New York State Mental Hygiene Law and any other law, regulation, or policy that governs the assessment or treatment service being provided;

(iv) exercise the same standard of care as in-house delivered services; and

(v) deliver services from a site that is enrolled in the New York State Medicaid program.

(2) The distant/hub provider and originating/spoke site provider of service must not be terminated, suspended, or barred from the Medicaid or Medicare program.

(3) If the originating/spoke site is a hospital, the practitioner at the distant/hub site must be credentialed and privileged by such hospital, consistent with applicable accreditation standards.

(4) Telepsychiatry services must be rendered using an interactive telecommunication system.

(5) A notation must be made in the clinical record that indicates that the service was provided via telepsychiatry and which specifies the time the service was started and the time it ended.

(6) Telepsychiatry services provided to patients under age 18 may include staff that are qualified mental health professionals, as such term is defined in this Part, or other appropriate staff of the originating/spoke site in the room with the patient. Such determinations shall be clinically based, consistent with clinical guidelines issued by the Office.

(7) For the purposes of this Part, telepsychiatry services shall be considered face-to-face contacts when the service is delivered in accordance with the provisions of the plan approved by the Office pursuant to Section 596.5 of this Part.

(8) Culturally competent interpreter services shall be provided in the patient's preferred language when the patient and distant/hub practitioners do not speak the same language.

(9) The practitioner providing telepsychiatry services at a distant/hub site shall be considered an active part of the patient's treatment team and shall be available for discussion of the case or for interviewing family members and others, as the case may require. Such practitioner shall prepare appropriate progress notes and securely forward them to the originating/spoke provider as a condition of reimbursement.

(10) Telepsychiatry services shall not be used:

(i) for purposes of ordering medication over objection or restraint or seclusion, as defined in section 526.4 of this Title; or

(ii) to satisfy any specific statutory examination, evaluation or assessment requirement necessary for the involuntary removal from the community, or involuntary retention in a hospital pursuant to any of the provisions of Article 9 of the Mental Hygiene Law. Physicians conducting such examinations, evaluations or assessments may only utilize telepsychiatry on a consultative basis.

(b) Protocols and Procedures. A provider of services approved to utilize telepsychiatry services must have written protocols and procedures that address the following:

(1) Informed Consent: Protocols must exist affording persons receiving services the opportunity to provide informed consent to participate in any services utilizing telepsychiatry, including the right to refuse these services and to be apprised of the alternatives to telepsychiatry services, including any delays in service, need to travel, or risks associated with not having the services provided by telepsychiatry. Such informed consent may be incorporated into the informed consent process for in-person care, or a separate informed consent process for telepsychiatry services may be developed and used.

(i) The patient must be provided with basic information about telepsychiatry and shall provide his or her informed consent to participate in services utilizing this technology.

(ii) For patients under age 18, such information shall be shared with and informed consent obtained from the patient's parent or guardian.

(iii) The patient has the right to refuse to participate in telepsychiatry services, in which case evaluations must be conducted in-person by appropriate clinicians.

(iv) Telepsychiatry sessions shall not be recorded without the patient's consent.

(2) Confidentiality: Protocols and procedures should be maintained as required by Mental Hygiene Law Section 33.13 and the Health Insurance Portability and Accountability Act (HIPAA) at 45 CFR Parts 160 and 164. Such protocols shall ensure that all current confidentiality requirements and protections that apply to written clinical records shall apply to services delivered by telecommunications, including the actual transmission of the service, any recordings made during the time of transmission, and any other electronic records.

(i) All confidentiality requirements that apply to written medical records shall apply to services delivered by telecommunications, including the actual transmission of the service, any recordings made during the time of transmission, and any other electronic records.

(ii) The spaces occupied by the patient at the originating/spoke site and the practitioner at the distant/hub site must meet the minimum standards for privacy expected for patient-clinician interaction at a single Office of Mental Health licensed location.

(3) Security of Electronic Transmission: All telepsychiatry services must be performed on dedicated secure transmission linkages that meet minimum federal and state requirements, including but not limited to 45 C.F.R. Parts 160 and 164 (HIPAA Security Rules), and which are consistent with guidelines of the Office. Transmissions must employ acceptable authentication and identification procedures by both the sender and the receiver.

(4) Psychiatric emergencies: Protocols should exist to address psychiatric emergencies, which may override the right to confidentiality to require the presence of others if, for instance, an individual receiving services is suicidal, homicidal, dissociated, or acutely psychotic during the evaluation or treatment service. In general this individual should not be managed via telepsychiatry without qualified mental health professionals present at the originating/spoke site, unless there are no adequate alternatives and immediate intervention is deemed essential for patient safety. All telepsychiatry sites must have a written procedure detailing the availability of in-person assessments by a physician or nurse practitioner in an emergency situation.

(5) Prescribing medications via telepsychiatry: Procedures for prescribing medications through telepsychiatry must be identified and must be in accordance with applicable New York State and federal regulations.

(6) Procedures for first evaluations for involuntary commitments: Under New York State law, physicians must conduct first evaluations for involuntary commitments of individuals. If these evaluators want additional consultation before rendering their decision, they may obtain consultation from psychiatrists via telepsychiatry. The responsibility for signing the commitment papers remains with the physician who actually conducted the evaluation of the individual at the facility, not the psychiatrist who provided the telepsychiatric consultation.

(7) Patient rights: Patient rights policies must ensure that each individual receiving telepsychiatry services:

(i) is informed and made aware of the role of the practitioner at the distant/hub site, as well as qualified professional staff at the originating/spoke site who are going to be responsible for follow-up or on-going care;

(ii) is informed and made aware of the location of the distant/hub site and all questions regarding the equipment, the technology, etc., are addressed;

(iii) has the right to have appropriately trained staff immediately available to him/her while receiving the telepsychiatry service to attend to emergencies or other needs;

(iv) has the right to be informed of all parties who will be present at each end of the telepsychiatry transmission; and

(v) if the patient is a minor, the patient and his or her parent or guardian shall be given the opportunity to provide input regarding who will be in the room with the patient when telepsychiatry services are provided.

(8) Quality of Care: All telepsychiatry sites shall have established written quality of care protocols to ensure that the services meet the requirements of New York state and federal laws and established patient care standards. A review of telepsychiatry services shall be included in the provider's quality management process

(9) Contingency Plan: All telepsychiatry sites must have a written procedure detailing the contingency plan when there is a failure of the transmission or other technical difficulties that render the service undeliverable.

(c) Guidelines of the Office. The Office shall develop guidelines to assist providers in complying with the provisions of this Part and in achieving treatment goals through the use of telepsychiatry. The Office shall post such guidelines on its public website.

§596.7 Reimbursement for Telepsychiatry Services.

(a) The originating/spoke site where the patient is admitted is authorized to bill Medicaid for telepsychiatry services.

(b) Under the Medicaid program, telepsychiatry services are covered when medically necessary and under the following circumstances:

(1) the person receiving services is located at the originating/spoke site and the practitioner is located at the distant/hub site;

(2) the originating/spoke site is the provider of services where the person receiving services is located;

(3) the distant/hub site is the site where the practitioner is located;

(4) the person receiving services is present during the telepsychiatry encounter or consultation;

(5) the physician/nurse practitioner is not conducting the telepsychiatry encounter consultation at the originating/spoke site;

(6) the request for telepsychiatry services and the rationale for the request are documented in the individual's clinical record;

(7) the clinical record includes documentation that the telepsychiatry encounter or consultation occurred and that the results and findings were communicated to the requesting provider of services;

(8) the practitioner at the distant/hub site is:

- (i) licensed in New York State;
- (ii) practicing within his/her scope of specialty practice;
- (iii) providing services from a site that participates in New York Medicaid;
- (iv) affiliated with the originating/spoke site facility; and
- (v) if the originating/spoke site is a hospital, credentialed and privileged at the originating/spoke site facility.

(c) If the person receiving services is not present during the provision of the telepsychiatry service, the service is not eligible for Medicaid reimbursement and remains the responsibility of the originating/spoke facility.

(d) The following interactions do not constitute reimbursable telepsychiatry services;

- (1) telephone conversations;
- (2) video cell phone interactions;
- (3) e-mail messages.

(e) The originating/spoke site may bill for administrative expenses only when a telepsychiatric connection is being provided and a physician or nurse practitioner is not present at the originating/spoke site with the patient at the time of the encounter.

(f) Reimbursement for services provided via telepsychiatry must be in accordance with the rates and fees established by the Office and approved by the Director of the Budget.

(g) If a telepsychiatry service is undeliverable due to a failure of transmission or other technical difficulty, reimbursement shall not be provided.

§ 596.8 Contracts for the Provision of Telepsychiatry Services.

(a) Nothing in this Part shall be deemed to prohibit a provider of services from providing assessment and treatment services, consistent with applicable regulations of the Office, as a distant/hub site via telepsychiatry pursuant to contract with an originating/spoke site provider that is not licensed or operated by the Office, but which is enrolled in the New York State Medicaid program.

(b) Although prior approval of the Office is not required before entering into such contracts, notice of such contracts or agreements shall be provided by the distant/hub provider of services within 30 days after execution of such contract to the Field Office serving the area where such provider of services is located.

(c) Reimbursement for telepsychiatry service shall be pursuant to such contracts and are not separately billable by the distant/hub site.

(d) Providers of service shall not engage in distant/hub telepsychiatric services that violate the provisions of paragraph (10) of subdivision (a) of Section 596.6 of this Part.

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