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What is the definition of “telemedicine” or “telehealth”?

“‘Telemedicine’ means the use of synchronous, two-way electronic audio visual communications to deliver clinical health care services, which shall include the assessment, diagnosis, and treatment of a patient, while such patient is at the originating site and a telehealth provider is at a distant site.”

[N.Y. PUB. HEALTH LAW § 2999-cc\(5\).](#)

New York regulations related to the credentialing and privileging by Article 28 hospitals of health care practitioners providing telemedicine services state, “‘Telemedicine’ means the delivery of clinical health care services by means of real time two-way electronic audio-visual communications which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient’s health care while such patient is at the originating site and the health care provider is at a distant site.”

[N.Y. PUB. HEALTH LAW § 2805-u\(1\)\(d\).](#)

In a March 2015 New York State Department of Health *Medicaid Update*, the term “telemedicine” was defined as “involv[ing] the use of interactive audio and video telecommunications technology to support ‘real time’ interactive patient care and consultations between healthcare practitioners and patients at a distance. It is viewed as a cost-effective alternative to the more traditional face-to-face way of providing medical care between providers and patients. The medical specialist providing the consultation or service is located at a distant site or ‘hub.’ The referring healthcare practitioner and patient are located at the originating site or ‘spoke.’”

[New York State Department of Health, DOH Medicaid Update v.31 n.3 \(Mar. 2015\).](#)

Note: This definition is the same or substantially similar to the definition that the Department of Health included in previous Medicaid Updates discussing coverage of telemedicine services in New York. See Medicaid Update v.27 n.13 (Sept. 2011), Medicaid Update v.26 n.9 (July 2010), and Medicaid Update v.21 n.9 (Sept. 2006).

New York Insurance Law defines “telehealth” as “the use of electronic information and communication technologies by a health care provider to deliver health care services to an insured individual while such individual is located at a site that is different from the site where the health care provider is located.”

[N.Y. INS. LAW §§ 3217-h\(b\) and 4306-g\(b\).](#)



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What is the definition of “telemental,” “telebehavioral,” and “telepsychiatry”?

Effective February 11, 2015, the New York State Office of Mental Health (“OMH”) established the basic standards and parameters for the provision of “telepsychiatry services” in OMH-licensed clinic programs. Adopted as a new provision within 14 N.Y. COMP. CODES R. & REGS. Part 599, regarding “Clinic Treatment Services,” the new regulation allowed telepsychiatry to be utilized for assessment and treatment services provided by physicians or psychiatric nurse practitioners, from a site distant from the location of a recipient, where both the patient and the physician or nurse practitioner were physically located at clinic sites licensed by OMH. More recently, and effective August 31, 2016, OMH repealed 14 N.Y. COMP. CODES R. & REGS. § 599.17 and adopted a new [Part 596](#) to Title 14 (Department of Mental Hygiene), ch. XIII (Office of Mental Health), to expand the use of telepsychiatry beyond the clinical setting to include OMH-licensed programs, with some exceptions. Under the 2016 regulations, and when authorized by OMH, telepsychiatry services may be utilized for assessment and treatment services provided by physicians or psychiatric nurse practitioners from a site distant from the location of a recipient, when the recipient is physically located at an OMH-licensed program site.

“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.”

[14 N.Y. COMP. CODES R. § 596.1\(a\).](#)

“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.”

[14 N.Y. COMP. CODES R. § 596.4\(k\).](#)

PSYCHIATRISTS

What are the restrictions on the scope of practice for psychiatrists practicing via telemedicine/telehealth?

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The OMH rule regulating telepsychiatry places restrictions on the scope of practice for psychiatrists providing telepsychiatry services.

“Telepsychiatry services may be authorized by the Office for assessment and treatment services provided by physicians . . . 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 . . . is physically located at a distant/hub site that participates in the New York State Medicaid program.”

[14 N.Y. COMP. CODES R. § 596.5\(a\).](#)

“A provider of services must obtain prior written approval of the Office before utilizing telepsychiatry services.”

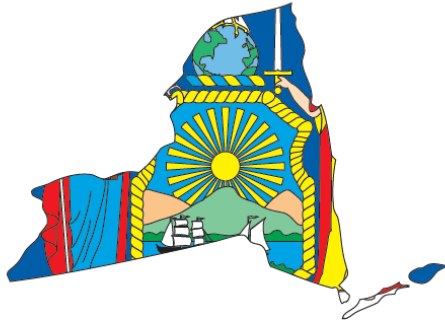
[14 N.Y. COMP. CODES R. § 596.5\(b\).](#)

“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.”

[14 N.Y. COMP. CODES R. § 596.5\(c\).](#)

“The distant/ hub site practitioner must:



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- (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.”

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(1\).](#)

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

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(2\).](#)

“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.”

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(3\).](#)

“Telepsychiatry services must be rendered using an interactive telecommunication system.”

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(4\).](#)

“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.”

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(5\).](#)

“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.”



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[14 N.Y. COMP. CODES R. § 596.6\(a\)\(6\).](#)

“[T]elepsychiatry 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.”

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(7\).](#)

“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.”

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(8\).](#)

“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.”

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(9\).](#)

“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.



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(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."

[14 N.Y. COMP. CODES R. § 596.6\(b\)\(1\).](#)

New York Medicaid reimbursement laws also place restrictions on the scope of practice for psychiatrists practicing via telemedicine/telehealth. According to New York Medicaid laws, an "Originating Site" for telehealth services is "a site at which a patient is located at the time health care services are delivered to him or her by means of telehealth. Originating sites shall be limited to facilities licensed under Articles twenty-eight [Hospitals] and forty [Hospice] of this chapter, facilities as defined in subdivision six of section 1.03 of the mental hygiene law [which includes any place where services for the mentally disabled are provided, such as psychiatric centers], private physician's or dentist's offices located within the state of New York and, when a patient is receiving health care services by means of remote patient monitoring, the patient's place of residence located within the state of New York or other temporary location located within or outside the state of New York."

[N.Y. PUB. HEALTH LAW § 2999-cc\(3\).](#)

Are there any licensing requirements specific to telemedicine/telehealth (e.g., requirements to be licensed in the state where the patient is located)?

The telepsychiatry rule states that "the distant/ hub site practitioner must: (i) possess a current, valid license to practice in New York State"

[N.Y. COMP. CODES R. § 596.6\(a\)\(1\)\(i\).](#)

Under N.Y. PUB. HEALTH LAW § 2999-cc, "telehealth provider means a physician licensed pursuant to [article one hundred thirty-one of the education law](#)"—the article that applies to the profession of medicine and physician licensure.

[N.Y. PUB. HEALTH LAW § 2999-cc\(2\)\(a\).](#)

Similarly, New York regulations related to the credentialing and privileging by Article 28 hospitals of health care practitioners providing telemedicine services state, "Health care practitioner shall mean a person licensed pursuant to" the physician licensing provisions of the New York Education Law.



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[N.Y. PUB. HEALTH LAW § 2805-u\(1\)\(b\).](#)

The New York Education Law also contains a border state exception to physician licensure: “Any physician who is licensed in a bordering state and who resides near a border of this state, provided such practice is limited in this state to the vicinity of such border and provided such physician does not maintain an office or place to meet patients or receive calls within this state” may practice medicine within the state without a New York license.

[N.Y. EDUC. LAW § 6526\(2\).](#)

The “Statements on Telemedicine” guidance referenced in Epstein Becker Green’s original (2016) 50-State Survey of Telemental/Telebehavioral Health has been removed from the New York State Department of Health’s website.

What are the criteria for establishing a practitioner-patient relationship via telemedicine/telehealth?

The “Statements on Telemedicine” guidance referenced in Epstein Becker Green’s original (2016) 50-State Survey of Telemental/Telebehavioral Health has been removed from the New York State Department of Health’s website.

Does a psychiatrist have prescribing authority? If so, under what conditions/limits may a psychiatrist prescribe via telemedicine/telehealth?

“Procedures for prescribing medications through telepsychiatry must be identified and must be in accordance with applicable New York State and federal regulations.”

[N.Y. COMP. CODES R. §596.6\(b\)\(5\).](#)

PSYCHOLOGISTS

What are the acceptable modalities (e.g., telephone, video) for the practice of psychology via telemedicine/telehealth that meet the standard of care for the state?

“Telepractice includes the use of telecommunications and web-based applications to provide assessment, diagnosis, intervention, consultation, supervision, education and information across distance. It may include providing non-face-to-face psychological, mental health, marriage and family, creative arts, psychoanalytic, psychotherapy and



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social work services via technology such as telephone, e-mail, chat and videoconferencing. Telecommunications and Electronic Medical Records (EMRs) may include computer files, documents, e-mails, interactive media sessions, CD's, audio-tapes, video-tapes, fax images, phone messages and text messages."

[New York State Education Department, Office of the Professions, Practice Alert: Telepractice \(last updated Dec. 17, 2013\)](#) (applies broadly to mental health practitioners).

What are the acceptable modalities (e.g., telephone, video) for the practice of social work via telemedicine/telehealth that meet the standard of care for the state?

"Telepractice includes the use of telecommunications and web-based applications to provide assessment, diagnosis, intervention, consultation, supervision, education and information across distance. It may include providing non-face-to-face psychological, mental health, marriage and family, creative arts, psychoanalytic, psychotherapy and social work services via technology such as telephone, e-mail, chat and videoconferencing. Telecommunications and Electronic Medical Records (EMRs) may include computer files, documents, e-mails, interactive media sessions, CD's, audio-tapes, video-tapes, fax images, phone messages and text messages."

[New York State Education Department, Office of the Professions, Practice Alert: Telepractice \(last updated Dec. 17, 2013\)](#) (applies broadly to mental health practitioners).

COUNSELORS

What are the acceptable modalities (e.g., telephone, video) for the practice of counseling via telemedicine/telehealth that meet the standard of care for the state?

"Telepractice includes the use of telecommunications and web-based applications to provide assessment, diagnosis, intervention, consultation, supervision, education and information across distance. It may include providing non-face-to-face psychological, mental health, marriage and family, creative arts, psychoanalytic, psychotherapy and social work services via technology such as telephone, e-mail, chat and videoconferencing. Telecommunications and Electronic Medical Records (EMRs) may include computer files, documents, e-mails, interactive media sessions, CD's, audio-tapes, video-tapes, fax images, phone messages and text messages."



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[New York State Education Department, Office of the Professions, Practice Alert: Telepractice \(last updated Dec. 17, 2013\)](#) (applies broadly to mental health practitioners).

MARRIAGE/FAMILY THERAPISTS

What are the acceptable modalities (e.g., telephone, video) for the practice of marriage/family therapy via telemedicine/telehealth that meet the standard of care for the state?

“Telepractice includes the use of telecommunications and web-based applications to provide assessment, diagnosis, intervention, consultation, supervision, education and information across distance. It may include providing non-face-to-face psychological, mental health, marriage and family, creative arts, psychoanalytic, psychotherapy and social work services via technology such as telephone, e-mail, chat and videoconferencing. Telecommunications and Electronic Medical Records (EMRs) may include computer files, documents, e-mails, interactive media sessions, CD’s, audio-tapes, video-tapes, fax images, phone messages and text messages.”

[New York State Education Department, Office of the Professions, Practice Alert: Telepractice \(last updated Dec. 17, 2013\)](#) (applies broadly to mental health practitioners).

PRIVACY/CONFIDENTIALITY

Are there privacy/confidentiality requirements specifically related to telemental/telebehavioral/telepsychiatric health services?

The OMH rule regulating telepsychiatry includes a confidentiality provision.

“(2) 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



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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.”

[14 N.Y. COMP. CODES R. § 596.6\(b\)\(2\).](#)

The OMH rule also includes a provision pertaining to 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.”

[14 N.Y. COMP. CODES R. § 596.6\(b\)\(3\).](#)

MINORS

What are the requirements/restrictions regarding the provision of telemental/telebehavioral/telepsychiatric health services to minors?

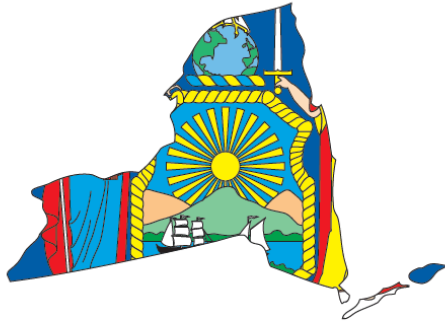
The OMH rule pertaining to telepsychiatry states, “telepsychiatry services provided to patients under age 18 may include staff that are qualified mental health professionals, as such term is defined in this Part, or other appropriate staff of the originating/spoke site in the room with the patient. Such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

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(6\).](#)

FOLLOW-UP CARE

What are the requirements regarding follow-up care for telemental/telebehavioral/telepsychiatric health services?

The OMH rule requires telepsychiatry providers to have patient rights policies in place. A patient rights policy “must ensure that each individual receiving telepsychiatry services is



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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.”

[14 N.Y. COMP. CODES R. § 596.6\(a\)\(7\)\(i\).](#)

COVERAGE & REIMBURSEMENT

Does the state have a parity statute in place mandating coverage by private insurers for telemedicine/telehealth services (including telemental/telebehavioral/telepsychiatric health services) on par with those provided in face-to-face/in-person encounters?

A corporation shall not exclude from coverage a service that is otherwise covered under a contract that provides comprehensive coverage for hospital, medical or surgical care because the service is delivered via telehealth, as that term is defined in subsection (b) of this section; provided, however, that a corporation may exclude from coverage a service by a health care provider where the provider is not otherwise covered under the contract. A corporation may subject the coverage of a service delivered via telehealth to co-payments, coinsurance or deductibles provided that they are at least as favorable to the insured as those established for the same service when not delivered via telehealth. A corporation may subject the coverage of a service delivered via telehealth to reasonable utilization management and quality assurance requirements that are consistent with those established for the same service when not delivered via telehealth.

[N.Y. INS. LAW § 4306-g\(a\).](#)

Does Medicaid provide coverage for telemental/telebehavioral/telepsychiatric health services? If so, what are the coverage criteria?

“The originating/spoke site where the patient is admitted is authorized to bill Medicaid for telepsychiatry services.”

[14 N.Y. COMP. CODES R. § 596.7\(a\).](#)

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



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- (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.

[14 N.Y. COMP. CODES R. § 596.7\(b\).](#)

"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."

[14 N.Y. COMP. CODES R. § 596.7\(c\).](#)

"The following interactions do not constitute reimbursable telepsychiatry services;

- (1) telephone conversations;



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- (2) video cell phone interactions;
- (3) e-mail messages.”

[14 N.Y. COMP. CODES R. § 596.7\(d\).](#)

“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.”

[14 N.Y. COMP. CODES R. § 596.7\(e\).](#)

“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.”

[14 N.Y. COMP. CODES R. § 596.7\(f\).](#)

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

[14 N.Y. COMP. CODES R. § 596.7\(g\).](#)