

A new Section, 505.38, is added to Title 18 NYCRR to read as follows:

**Title18: 505.38 Telehealth services.**

**(a) Definition of Telehealth.** For the purposes of this Section, “telehealth” is defined as the use of electronic information and communication technologies to deliver health care services to patients at a distance. The **distant site** is where the telehealth provider is located while delivering health care services by means of telehealth. The **originating site** is where the patient is located at the time health care services are delivered to him/her by means of telehealth. Telehealth includes services provided via telemedicine, store and forward technology and remote patient monitoring. Telephone conversations, electronic/e-mail messages, and facsimile transmissions between a practitioner and a recipient or between two practitioners are not considered reimbursable telehealth services when provided as standalone services. Remote consultations between practitioners for the purposes of teaching or skill building are not reimbursable.

**(1) Telemedicine** allows a telehealth provider at a “distant site” to use synchronous, two-way electronic audio visual communications to deliver clinical health care services to a patient at an “originating site.” Both the distant site and the originating site must be either an Article 28 hospital and/or clinic or a practitioner’s office where patient care is provided. Practitioners involved in providing services by means of telemedicine in an Article 28 facility must be credentialed and privileged in accordance with Section 2805-u of Public Health Law. Services provided via telemedicine will be covered to the same extent that the services would be covered if they were provided in-person.

**(2) Store and forward technology** is the asynchronous, secure electronic transmission of a patient’s health information in the form of patient-specific digital images and/or pre-recorded videos from a telehealth provider at an originating site to a telehealth provider at a distant site. Store and forward technology may be utilized in the specialty areas of radiology, dermatology and ophthalmology.

**(3) Remote patient monitoring** uses synchronous or asynchronous electronic information and communication technologies to collect personal health information and medical data from a patient at an “originating site”; this information is then transmitted to a provider at a “distant site” for use in treatment and management of unstable/uncontrolled medical conditions that require frequent monitoring. Such conditions shall include, but are not limited to, congestive heart failure, diabetes, chronic obstructive pulmonary disease, wound care, polypharmacy, mental or behavioral problems, and technology-dependent care such as continuous oxygen, ventilator care, total parenteral nutrition or enteral feeding. Remote patient monitoring must be ordered and

provided by a physician, a nurse practitioner or a midwife, who has examined the patient and with whom the patient has a substantial and ongoing relationship. Patient specific health information and/or medical data may be received at a distant site by means of remote patient monitoring by a registered nurse, licensed pursuant to Education Law.

**(b) Definition of Health Care Services.** Health care services that may be provided via telehealth include assessment, diagnosis, consultation, treatment, patient education, care management and/or self-management of a patient.

**(c) Definition of Telehealth Providers.** Qualified telehealth providers include the following practitioner types licensed pursuant to New York State Education Law: physicians; physician assistants; dentists; nurse practitioners; podiatrists; optometrists; psychologists; social workers; speech language pathologists; audiologists; midwives; physical therapists; and occupational therapists. Services may also be provided via telehealth by: New York State licensed, registered or certified health care professionals, who are certified as diabetes educators by the National Certification Board for Diabetes Educators; New York State licensed, registered or certified health care professionals, who are certified as asthma educators by the National Asthma Educator Certification Board; genetic counselors certified by the American Board of Genetic Counseling or the American Board of Medical Genetics; and advanced practice nurses in genetics, who are credentialed by the Genetic Nursing Credentialing Commission. Telehealth providers also include Article twenty-eight hospitals; home care services agencies as defined in Article thirty six; hospices as defined in Article forty and any other providers as determined by the Commissioner pursuant to the regulation.

- i. Qualified telehealth providers must be enrolled in NY State Medicaid.
- ii. Services provided must be in accordance with Social Services statute and regulations and Public Health statute and regulations.

**(d) Confidentiality.**

- i. All services delivered via telehealth must be performed on dedicated secure transmission linkages that meet the minimum federal and state requirements, including but not limited to 45 CFR, Parts 160 and 164 (HIPAA Security Rules).
- ii. The spaces/areas occupied by the patient and the distant practitioner, both, must meet the minimum standards for privacy expected for a patient-practitioner interaction. This includes both the Article 28 clinic location and/or the practitioner's office, the site where patient visits take place.

- iii. All existing confidentiality requirements that apply to written medical records shall apply to services delivered by telehealth, including the actual transmission of service, any recordings made during the time of transmission, and any other electronic records.
- iv. Culturally competent translation services must be provided when the patient and distant practitioner do not speak the same language.

**(e) Patient Consent.** The patient shall be provided with basic information about the services that he/she will be receiving via telehealth and shall provide his/her consent to participate in services utilizing this technology. The patient has the right to refuse to participate in services delivered via telehealth and must be made aware of alternatives and potential drawbacks. These include the right to select another provider, the possibility of a delay in service, the potential risks associated with not having the service provided via telehealth and the probability of travel.

**(f) Failure of Transmission.** There must be a written procedure detailing a contingency plan in the case of a failure of transmission or other technical difficulty that renders the service, provided via telehealth, undeliverable.

**(g) Telehealth Reimbursement.**

- i. Only one payment will be made for services provided via telemedicine when both the distant site and the originating site are part of the same provider network or billing entity. In such cases, the originating site is to bill Medicaid for the telemedicine visit. The originating site will be responsible for reimbursing the in-network distant site facility and/or practitioner.
- ii. Federally Qualified Health Centers (FQHCs) that bill the federal prospective payment system (PPS) rate: When the FQHC is the originating site, the FQHC will be responsible for paying the consulting practitioner who is located at the distant site.
- iii. Both the originating and distant site may bill for services provided via telemedicine when both sites are not part of the same provider network or billing entity and when a qualified practitioner is present with the patient at the originating site.
- iv. The originating site may only bill for administrative expenses when a telemedicine connection is being provided and a qualified practitioner is not present with the patient at the time of the telemedicine encounter.

- v.** Except as otherwise provided in this subdivision, reimbursement services provided via telehealth must be in accordance with the rates and fees established by the Department of Health and approved by the Director of the Budget.
- vi.** If all or part of the telehealth service is undeliverable due to a failure of transmission or other technical difficulty, reimbursement will not be provided.

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