

Part 830 is amended as follows effective December 18, 2019:

4 NYCRR PART 830: Designated Services

(Statutory authority: Mental Hygiene Law §§19.07(e), 19.09(b), 19.21(d), 32.01, 32.02, 32.05(b), 32.07(a) and 32.09(b); Education Law, Article 160; Public Health Law §3351(5); 21 USC 829.)

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§ 830.1 Applicability

The provisions of this Part are applicable to all OASAS certified programs seeking to offer or provide certain services or therapies including, but not limited to, acupuncture and telepractice, or other such services or therapies as may be defined in this Part. Such services may require application for an operating certificate “designation” indicating approval by the Office to provide such services.

§ 830.2 Legal base

- (a) Section 1.03(6) of the Mental Hygiene Law defines “facility” as any place in which services for the mentally disabled are provided.
- (b) Section 19.07(e) of the Mental Hygiene Law authorizes the commissioner to adopt standards including necessary rules and regulations pertaining to chemical dependence services.
- (c) Section 19.09(b) of the Mental Hygiene Law authorizes the commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.
- (d) Section 19.21(d) of the MHL requires the Office to establish reasonable performance standards for providers of services certified by the Office.
- (e) Section 32.01 of the Mental Hygiene Law authorizes the commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

- (f) Section 32.05(b) of the MHL provides that a controlled substance designated by the commissioner of the New York State Department of Health (DOH) as appropriate for such use may be used by a physician to treat a chemically dependent individual pursuant to section 32.09(b) of the MHL.
- (g) Section 32.07(a) of the MHL authorizes the commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the MHL.
- (h) Section 32.09(b) of the MHL provides that the commissioner may, once a controlled substance is approved by the commissioner of DOH as appropriate for such use, authorize the use of such controlled substance in treating a chemically dependent individual.
- (i) Article 160 of the Education Law provides for the licensure or certification of acupuncturists and limited practice of unlicensed persons in treatment of substance use disorder.
- (j) Article 29-G of the Public Health Law relates to reimbursement for health care services delivered via “telehealth.”
- (k) Section 3351 of the Public Health Law authorizes the prescribing or dispensing of controlled substances for the purposes of substance use disorder treatment.
- (l) Section 829 of Title 21 of the United States Code governs the law concerning internet prescribing of controlled substances.

830.3 Definitions

As used in this Part, the following terms shall have the following meanings:

- (a) “Acupuncture therapist” means licensed, certified, or unlicensed clinical staff who have documented successful completion of acupuncture training for the treatment of substance use disorder in an educational program acceptable to the Education Department pursuant to Article 160 of the Education Law.
- (b) “Addiction disorder” means substance use disorder, as defined in Part 800 of this Title or gambling disorder as defined in the most recent edition of the Diagnostic and Statistical Manual (DSM).
- (c) “Addiction services” means services delivered by a certified or authorized provider or program for the prevention, treatment and recovery from an addiction disorder.
- (d) “Telepractice” means the use of two-way real-time interactive telecommunication system for the purpose of providing certain addiction services at a distance.

- (e) “Designated program” means a certified program which has submitted a proposed plan for the use of telepractice to deliver addiction services and has received an operating certificate designation indicating Office approval.
- (f) For purposes of Telepractice, the following terms shall have the following meanings:
- (1) “Distant site” or “hub site” means the site at which the practitioner delivering the service is located at the time the service is provided via the interactive telecommunications system.
 - (2) “Originating site” or “spoke site” means the site at which the patient is located at the time the service is being provided via the interactive telecommunications system, which may include the patient’s place of residence.
 - (3) “Practitioner” means:
 - (i) a prescribing professional eligible to prescribe buprenorphine pursuant to federal regulations;
 - (ii) other clinical staff credentialed or approved by the Office, except peer advocates and student interns, who are providing addiction services consistent with their scope of practice and as authorized pursuant to this Part.
 - (4) “Telecommunication system” means a dedicated secure interactive audio and video linkage system to transmit data between an originating/hub site and distant/spoke site for purposes of providing telepractice services.

830.4 Acupuncture therapy

- (a) *Initial services.* Acupuncture may be effective in some patients to reduce cravings and relieve anxiety, thereby assisting patients in achieving and sustaining recovery from substance use disorder.
- (1) Acupuncture shall not be the exclusive method of treatment for any patient. In an outpatient program, when acupuncture is provided it must be part of an office visit including at least one other service.
 - (2) Acupuncture therapy, administered pursuant to this section, may be an initial service provided on demand to stabilize and engage a patient during the period of treatment/recovery plan development or a service included in and administered pursuant to a patient’s treatment/recovery plan.
- (b) *Physician approval; monitoring.* (1) A program’s medical director shall, in consultation with the acupuncturist, develop a protocol to determine if a patient requires a medical evaluation prior to

acupuncture therapy. No patient requiring a medical evaluation in accordance with such protocol shall receive acupuncture therapy unless a physician has reviewed the patient's medical condition and provided written authorization for acupuncture therapy.

(2) Any patient receiving acupuncture therapy shall be monitored by a clinical staff member during the conduct of an acupuncture therapy session to ensure counseling and clinical intervention as necessary.

(3) All acupuncture therapy sessions must be documented in a case record and signed by both the therapist and the monitoring clinical staff member.

(c) *Treatment plan.* (1) Acupuncture therapy is limited to the treatment of addictive disorders as indicated in the treatment/recovery plan.

(2) The individual treatment plan must contain a schedule of acupuncture sessions tailored to the patient's initial and evolving needs including, frequency, duration and clinical justification.

(3) Acupuncture therapy must be provided concurrent with a brief counseling session or is immediately preceded or followed by a counseling session.

(d) *Staffing.* Acupuncture therapy in OASAS certified facilities shall only be performed by the following persons:

(1) a licensed or certified Acupuncturist who has had at least one year of employment experience in the treatment of addictive disorders or completed a training program in the treatment of addictive disorders during the first six (6) months of employment; or

(2) an acupuncture detoxification therapist who is not licensed or certified but who is a clinical staff member who has successfully completed a course of acupuncture training acceptable to the state Education Department under Article 160 of the Education Law and who practices acupuncture under the supervision of:

- (i) a licensed or certified Acupuncturist pursuant to paragraph (1) of this subdivision; and
- (ii) the clinical supervisor or medical director of the program.

(e) *Policies.* Programs providing acupuncture therapy must develop and implement policies and procedures in consultation with the program Medical Director including, but not limited to, the following:

- (1) training of all acupuncture therapists regarding infection control, body fluids;

- (2) recommended vaccinations;
- (3) regular on-site clinical supervision of licensed and unlicensed acupuncture therapists;
- (4) written patient informed consent;
- (5) space requirements;
- (6) use of and disposal of needles or other acupuncture implements consistent with NYS public health law and environmental conservation law.

§ 830.5 Telepractice

(a) *Limitations.* (1) Telepractice services, as defined in this Part, may be authorized by the Office for the delivery of certain addiction services provided by practitioners employed by, or pursuant to a contract or Memorandum of Understanding (MOU) with a program certified by the Office.

(2) The Office supports the use of telepractice as an appropriate component of the delivery of certain addiction services to the extent that it is in the best interests of the person receiving services; 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; and does not replace the preferred option of an in-person exchange between patient and practitioner.

(3) Services may be provided via telepractice by a practitioner from a site distant from the location of the patient, provided both practitioner and patient are located in sites approved by the Office pursuant to a plan submitted by a certified program in application for a telepractice designation.

(4) Telepractice does not include an audio or video telephone conversation, electronic mail message, or facsimile transmission between a program and a patient or a consultation between two practitioners, although these activities may support telepractice services.

(5) An Office certified program must obtain prior written authorization from the Office pursuant to this section before implementing telepractice services; services shall be limited to those authorized and approved by the Office and may include the following:

- (i) Admission assessments, direct transfers;
- (ii) psycho-social evaluations and mental health consultations;
- (iii) medication assisted treatment prescribing and monitoring;

(iv) counseling (individual and group);

(v) other services as approved by the Office.

(b) *Designation.* (1) Requests for designation to provide telepractice services shall be in the form of a written proposed plan and attestation, found in *Telepractice Standards for OASAS Designated Providers* posted on the agency website, and submitted by a certified provider to the Office Bureau of Certification and the Field Office serving the area in which the applicant site is located. Such Field Office may make an on-site visit to either or both linked sites prior to final approval and designation which will be issued by the Bureau of Certification.

(2) Office approval and operating certificate designation will be based on review of the written proposed plan and attestation addressing the following criteria, including but not limited to:

(i) telepractice services must be conducted via telecommunication systems employing acceptable authentication and identification procedures by both the sender and the receiver; applicant must document a relationship with a credible technology service provider;

(ii) meet federal and state confidentiality requirements including, but not limited to, 42 C.F. R. Part 2, and 45 C.F.R. Parts 160 and 164 (HIPAA Security Rules);

(iii) confidentiality requirements applicable to written medical records shall apply to telepractice services including the actual transmission of the service, any recordings made during the transmission, and any other electronic records;

(iv) 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;

(v) culturally competent translation services must be provided when the patient and practitioner do not speak the same language;

(vi) a written procedure detailing the availability of face-to-face assessments by medical staff in an emergency situation;

(vii) written procedures for a contingency plan in the event of a transmission failure or other technical difficulties which may render the service undeliverable;

(viii) when applicable, a written and executed contract or MOU between an applicant provider and an individual practitioner or a corporate entity encompassing multiple practitioners regarding the

above criteria and including billing, payment, record sharing, background checks, and any other relevant details necessary for implementation;

(ix) a practitioner must be licensed or credentialed to practice in New York state and be in good standing with the appropriate licensing or credentialing authority, and be physically located in the USA when providing services via telepractice.

(x) proposals to provide buprenorphine prescribing and monitoring via telepractice must comply with applicable state and federal laws and regulations; guidance may be found in *Telepractice Standards for OASAS Designated Providers* posted on the agency website.

(3) Subsequent changes to an approved plan must be submitted in writing and approved by the Office prior to implementation.

(c) *Implementation.* (1) The patient shall be admitted to, or seeking admission to only one of the two connected sites.

(i) If the patient is admitted to or seeking admission to a program, the practitioner shall prepare appropriate admission or progress notes and, if appropriate, securely forward them to the designated program as a condition of reimbursement;

(ii) If telepractice services are a regular part of an admitted patient's treatment/recovery plan, the practitioner must coordinate with the responsible professional at the patient's designated program to prepare and update the treatment/recovery plan to permit the patient's program to be reimbursed for continuing services;

(iii) The patient must be provided basic information about telepractice including alternatives, possible delays in service, possible need to travel to an approved originating site to receive services, risks associated with not having the services provided; the patient must acknowledge in writing having received such information;

(iv) The patient may refuse to receive services via telepractice.

(v) 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; additional evaluations may be required for medication assisted treatment using controlled substances.

(2) Telepractice services must be included in a provider's quality review process.

(3) The distant site practitioner must directly render the telepractice service;

(4) If the distant site is a hospital, the practitioner must be credentialed and privileged by such hospital, consistent with applicable accreditation standards.

(5) Telepractice sessions shall not be recorded without the patient's written consent.

(6) Unless otherwise required, persons receiving services via telepractice may be accompanied by a staff member during the session or may be alone. If the initial evaluation or a subsequent treatment plan recommends that the patient be accompanied during telepractice sessions, the person must be accompanied for the session to be reimbursed by Medicaid or Medicaid managed care.

(7) Failure to maintain minimum standards for designation, implementation and reimbursement may result in disciplinary action against a provider's operating certificate. In the event the Office determines that approval to utilize telepractice must be revoked, the Office will notify the provider in writing. The provider may request an administrative review of such decision pursuant to this paragraph.

(i) The provider must request such review in writing within fifteen (15) days of receipt of the notice of revocation of designation to utilize telepractice. The request shall state the reasons the provider considers the revocation of designation incorrect and shall include any supporting documentation;

(ii) the commissioner shall notify the provider, in writing, of the results of the administrative review within twenty (20) days of receipt of the request for review. Failure to notify the provider within 20 days shall be deemed confirmation of revocation of a designation to utilize telepractice.

(iii) The commissioner's determination after administrative review shall be final and not subject to further administrative review.

(d) *Medicaid Reimbursement.* (1) For purposes of billing for Medicaid reimbursement, both the practitioner and/or facility employing the practitioner, and the designated program must be Medicaid enrolled and in good standing. For Medicaid reimbursement the practitioner, as defined in this Part, must be defined as a "telehealth provider" in subdivision two (2) of Public Health Law section 2999-cc.

(2) For purposes of this subdivision, telepractice services shall be considered face-to-face contacts.

(3) To be eligible for Medicaid reimbursement, telepractice services must meet all requirements applicable to assessment and treatment services of Part 841 and the Part pursuant to which the designated program operating certificate is issued and must exercise the same standard of care as services delivered on-site or in-community.

(4) Telepractice services will be reimbursed at the same rates for identical procedures provided by practitioners on-site or in-community; an additional administrative fee for transmission may be billed pursuant to applicable rules or directives issued by the NYS Department of Health.

(5) The designated program is the primary billing entity; reimbursement for practitioners at a distant/hub site must be pursuant to a contract or MOU. Delivery of services via telepractice are covered when medically necessary and under the following circumstances:

(i) the patient is located at an originating/spoke site and the practitioner is located at a distant/hub site; or

(ii) the patient is located at another designated program, an additional location of a designated program or at an in-community location approved by the Office; and the practitioner is located in another designated program;

(iii) the patient is present during the telepractice session;

(iv) the request for a telepractice session and the rationale for the request are documented in the patient's case record;

(v) the case record includes documentation that the telepractice session occurred and the results and findings were communicated to the designated provider.

(6) If the person receiving services is not present during the telepractice service, the service is not eligible for third party reimbursement and any incurred costs may remain the responsibility of the designated provider.

(7) Telepractice services may only be delivered via technological means approved by the federal Center for Medicaid and Medicare Services (CMS), provided such means are compliant with federal confidentiality requirements.

(8) If all or part of a telepractice service is undeliverable due to a failure of transmission or other technical difficulty, reimbursement shall not be provided.

(e) *Contracts or Memorandum of Understanding (MOU) for the Provision of Telepractice services.*

(1) Prior approval of the Office is not required before entering into such contracts or MOU; however, notice of such contracts or agreements must be provided by the OASAS certified provider to the Office Bureau of Certification within thirty (30) days after execution of such contract or MOU or as part of the proposed plan and attestation required for designation.

(2) The designated OASAS program is the default billing entity. Reimbursement of practitioners for telepractice services shall be pursuant to such contract or MOU; services are not separately billable by the practitioner unless agreed to in writing in advance of any service delivery.

(3) Designated programs or approved practitioners shall not engage in any services via telepractice not authorized by the Office.

(4) Practitioners under contract or MOU with a certified and designated program must comply with the provisions of Part 805 of this Title related to criminal history information reviews or provide documentation that such security checks have been conducted and satisfied.

(5) Designated programs shall notify the Office Bureau of Certification of any change in practitioners pursuant to a contract or MOU and compliance with provisions of Part 805 of this Title.

(f) *Standards.* The Office shall post standards on its public website to assist in compliance with the provisions of this Part and in achieving treatment goals through the provision of telepractice. Such standards shall include, but not be limited to:

(1) Technology guidelines, including:

(i) The minimum technology thresholds (i.e., equipment, bandwidth, videoconferencing software, network specifications, carrier selection, hub/bridge, and security specifications), which shall be updated as new technology is approved; and

(ii) The form or format regarding the technology and communications to be used;

(2) Clinical standards for the prescribing of medication assisted treatment (MAT), including controlled substances, via telepractice.

(g) *Policies and procedures.* A program designated to deliver services via telepractice must have written policies and procedures consistent with the plan and attestation submitted by the program for designation approval, and the applicable requirements of this Part.

(h) *Medication Assisted Treatment.* Induction and prescribing of addiction medications must be done in accordance any and all applicable federal rules and regulations; guidance may be found in the *Telepractice Standards for OASAS Designated Providers* posted on the agency website.

§830.6

Severability

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part which can be given effect without the invalid provision or applications, and to this end the provisions of the Part are declared to be severable.