



A new Part 557 titled COVID-19 Vaccination Program, is added to read as follows:

557.1 Background and intent.

(a) COVID-19 is an unpredictable disease that can cause serious illnesses and death. In response to this increased public health threat, New York must take active steps to prevent and control transmission of COVID-19. The seriousness of the continuing threat and the failure to achieve acceptable vaccination rates through voluntary programs necessitate further action.

557.2 Legal Base.

(a) Section 7.07 of the Mental Hygiene Law charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.

(b) Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under the Commissioner's jurisdiction.

(c) Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of Article 31 of the Mental Hygiene Law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

557.3 Applicability.

(a) This Part applies to Hospitals as defined in Part 556.4(d) of this Title.

557.4 Definitions pertaining to this Part.

(a) *Commissioner* shall mean the Commissioner of Mental Health.

(b) *COVID-19 vaccine or vaccine* shall mean a vaccine currently licensed for immunization and distribution in the United States by the Food and Drug Administration (FDA) for active immunization for the prevention of COVID-19 or authorized for such use by the FDA pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND).

(c) *Fully Vaccinated* shall mean fully vaccinated for COVID-19 \geq 2 weeks after receiving either (1) the second dose in a 2-dose series (e.g., Pfizer-BioNTech or Moderna), or (2) a single-dose vaccine (e.g.,

Johnson & Johnson [J&J]/Janssen), authorized for emergency use or approved by the U.S. Food and Drug Administration, and holds an emergency use listing by the World Health Organization.

(d) *Hospital* shall mean a hospital named in Mental Hygiene Law section 7.17(b), excluding the Nathan S. Kline Institute for Psychiatric Research. Hospitals shall also mean a program operated pursuant to Parts 580, 582, or 590 of this Title.

(e) *Office* shall mean the Office of Mental Health.

(f) *Staff* shall mean all persons employed or affiliated with a Hospital, whether paid or unpaid, including but not limited to employees, members of the medical, nursing, and other treatment staff, contract staff, students, and volunteers.

557.5 Testing and Vaccination Requirements for Hospitals.

(a) All Staff who work in Hospitals will be required to be vaccinated with at least one vaccine dose against COVID-19 by November 1, 2021 and shall be Fully Vaccinated by December 10, 2021.

(b) Commencing on October 12, 2021, all Staff who work in Hospitals who are not Fully Vaccinated shall be tested for COVID-19 pursuant to the provisions herein for those who are granted a reasonable accommodation.

(c) A reasonable accommodation may be made for Staff who have a documented pre-existing health condition that prevents them from complying with the vaccine requirements herein. When a reasonable accommodation is approved for a Staff member, they must comply with the following testing provisions.

(d) Staff who have been granted such a reasonable accommodation are required to undergo diagnostic screening testing. Staff may choose either antigen or molecular tests to satisfy this requirement but must be tested at least once weekly. Any test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements of the U.S. Centers for Medicare and Medicaid Services.

(e) Any Staff who work in Hospitals who do not comply with the provisions of this Part shall not be permitted to report to work.

(f) Staff for whom a positive test result is received must comply with New York State Department of Health and Office regulations and guidance applicable to those who receive a positive test result.

(g) By November 1, 2021, Hospitals shall verify the vaccination status of all Staff. Each Hospital shall require Staff to produce documentation to show vaccine administration. Acceptable documentation of vaccination status shall consist of one of the following:

(1) a COVID 19 vaccination record card issued by the Centers for Disease Control and Prevention or equivalent, including the name of the person vaccinated, date of birth, type of vaccine provided and date(s) of administration.

(2) documentation of COVID-19 vaccination from a health care provider; or

(3) a digital record such as the New York State Excelsior Pass that includes a QR code that when scanned displays the name of the person vaccinated, date of birth, type of vaccine provided, and date(s) of administration.

(h) All Staff who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.

(i) Hospitals shall maintain records of their compliance with the requirements of this Part.

14 NYCRR Parts 596

Express Terms

1. Part 596 of Title 14 NYCRR is amended to read as follows:

Part 596

TELE[MENTAL]HEALTH SERVICES

(Statutory Authority: Mental Hygiene Law §§7.09, 31.02, 31.04, Public Health Law §2999-dd)

Sec.

- 596.1 Background and intent
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- 596.5 Approval to Utilize Tele[mental H]health Services
- 596.6 Requirements for Tele[mental H]health Services
- 596.7 Reimbursement of Tele[mental H]health Services
- 596.8 Contracts for the Provision of Tele[mental H]health Services

§596.1 Background and intent.

(a) *Tele[mental]health* is defined as the use of [~~two-way real-time interactive audio and video equipment]~~ telehealth technologies by telehealth practitioners to provide [~~and support]~~ mental health

services at a distance. Such services do not include an ~~an [telephone conversation,]~~ electronic mail message, text message, or facsimile transmission between a provider and a recipient, or a consultation between two professionals or clinical staff although these activities may support the delivery of services via telehealth. Additionally, such services do not include services provided where the originating and distant sites are the same location.

(b) Telehealth services may be provided only where clinically appropriate and with informed consent by the recipient. Where the recipient is a minor consent shall also be provided by the parent/guardian or other person who has legal authority to consent to health care on behalf of the minor. The recipient may withdraw consent at any time. A provider may not deny services to an individual who has a preference to receive services in-person.

~~[(c) Telemental health services 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 telemental health services include improved access to care, provision of care locally in a more timely fashion, and improved continuity of care, treatment compliance, and coordination of care.]~~

(~~c~~[d]) The Office of Mental Health (the Office) supports the use of tele~~mental~~health services ~~[as an appropriate component of the mental health delivery system to the extent that]~~ where it is in the best interests of the person served, in accordance with Office guidance, 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, recipient safety, and interoperability.

(d) Audio-only or audio-video communication is an acceptable option only when determined appropriate by the provider of service, in accordance with guidelines established by the Office, and with informed consent from the recipient. Where the recipient is a minor, consent shall also be provided by the parent/guardian or other person who has legal authority to consent to health care on behalf of the minor.

(e) Audio-only or audio-video communication is covered by Medicaid and the Child Health Insurance Plan to the extent consistent with regulations promulgated by the New York State Commissioner of Health pursuant to Section 2999-cc of the Public Health Law.

§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.

(c) Section 2999-dd of the Public Health Law provides that health care services delivered by means of telehealth are entitled to Medicaid reimbursement under Social Services Law Section 367-u.

(d) Section 829 of Title 21 of the United States Code governs the law concerning internet prescribing of controlled substances.

§596.3 Applicability.

(a) The provisions of this Part shall apply to any [~~designated or licensed~~] licensed, designated, or authorized provider of services pursuant to Article 31 of the Mental Hygiene Law who has been authorized by the Q[office] under this Part to include the use of Tele~~mental H~~health Services as a means of rendering services licensed, designated, or authorized by the Q[office] [~~provided, however, that Telemental Health Services may only 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 if used in accordance with section 596.5(c) of this Part~~].

(b) The provisions of this Part shall not be construed to alter the scope of practice of any licensee or authorize the delivery of services in a setting, or in a manner, not otherwise authorized by law.

§ 596.4 Definitions.

For purposes of this Part:

(a) Collateral means a person who is a member of the recipient's family or household, or other individual who interacts with the recipient and is directly affected by or has the capability of affecting their condition and is identified in the treatment plan as having a role in treatment and/or is necessary for participation in the evaluation and assessment of the recipient.

~~[(a) *Creative arts therapist* means a person currently licensed as a creative arts therapist by the New York State Education Department or who possesses a creative arts therapist permit or limited permit from the New York State Education Department.]~~

(b) *Distant or "hub" site* means the distant secure location, as defined in Section 596.6(a)(1)(vi[i]) of this Part, at which the practitioner rendering the service using Tele~~mental H~~health Services is located.

(c) *Encounter* means a recipient or collateral contact in which services are provided using tele~~mental~~health services, and whereby the care of the recipient is the direct responsibility of both the Article 31 licensed ~~[or]~~ designated, or authorized provider of services in which the recipient is admitted at the time of the encounter and the distant tele~~mental~~health practitioner.

(d) *Encryption* means a system of encoding electronic 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.

~~[(e) *Mental health counselor* means a person currently licensed as a mental health counselor by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.]~~

~~[(f)](e) *Originating or “spoke” site* means a site where the recipient is physically located at the time mental health services are delivered to them by means of tele[mental H]health services, which may include the recipient’s place of residence, other identified location, or other temporary location out-of-state. [~~within the State of New York, or another temporary location within or outside the State of New York~~].~~

~~[(g) *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 or limited permit from the New York State Education Department.]~~

~~[(h) *Physician* means a physician currently licensed to practice medicine in New York State pursuant to the New York State Education Law.]~~

~~[(i)](f) *Provider of services* means a provider of mental health services licensed pursuant to Article 31 of the Mental Hygiene Law or designated or authorized by the Office to provide mental health services.~~

~~[(j) *Psychoanalyst* means a person currently licensed as a psychoanalyst by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.]~~

~~[(k) *Psychologist* means an individual who is currently licensed as a psychologist by the New York State Education Department or possesses a permit or limited 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.]~~

~~[(l) *Qualified mental health professional* means an individual possessing a license, permit, or limited 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 practitioners in psychiatry, as defined in subdivisions (g) and (h) of this section, as well as the following:]~~

- ~~—[(1) *Creative arts therapist*: A creative arts therapist, as defined in subdivision (a) of this section.]~~
- ~~—[(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 or limited permit from the New York State Education Department.]~~
- ~~—[(3) *Licensed psychiatrist*: A person who is currently licensed as a physician by the New York State Education Department and who is certified by, or eligible to be certified by, the American Board of Psychiatry and Neurology.]~~

~~—[(4) *Licensed psychoanalyst*: A psychoanalyst, as defined in subdivision (j) of this section.]~~

~~—[(5) *Licensed psychologist*: A psychologist, as defined in subdivision (k) of this section.]~~

~~—[(6) *Marriage and family therapist*: A marriage and family therapist, as defined in subdivision (m) of this section.]~~

~~—[(7) *Mental health counselor*: A mental health counselor, as defined in subdivision (e) of this section.]~~

~~—[(8) *Nurse practitioner*: A nurse practitioner in psychiatry, as defined in subdivision (g) of this section, or a person currently certified as a nurse practitioner by the New York State Education Department or who possesses a permit or limited 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 or limited 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 or limited permit from the New York State Education Department.]~~

~~—[(11) *Social worker*: A social worker, as defined in subdivision (n) of this section.]~~

~~[(m) *Marriage and family therapist* means a person currently licensed as a marriage and family therapist by the New York State Education Department or who possesses a permit or limited permit from the New York State Education Department.]~~

~~[(a)]~~(g) *Recipient* means a person who is receiving tele~~[mental]~~health services.

~~[(e)]~~ *Social worker* means 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 or limited 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.]

~~[(p)]~~(h) *Tele~~[mental-H]~~health Technologies* means ~~[interactive technology that is used]~~ a dedicated secure interactive audio and/or video linkage system approved by the Office to transmit data between ~~[the]~~ an originating/spoke site and distant/hub site[s] for purposes of providing telehealth services.

~~[(e)]~~(i) *Tele~~[mental-H]~~health Practitioner* means: ~~[a physician, nurse practitioner in psychiatry, psychologist, mental health counselor, social worker, marriage and family therapist, creative arts therapist, or psychoanalyst as each such term is defined in subdivision (a), (e), (g), (h), (j), (k), (m) or (o) of this section, who is providing tele~~[mental]~~health services from a distant or hub site in accordance with the provisions of this Part.]~~

- (i) a prescribing professional eligible to prescribe medications pursuant to federal regulations; or
- (ii) staff authorized by OMH to provide in-person services are authorized to provide behavioral health services via telehealth consistent with their scope of practice where applicable, and in accordance with guidelines established by the Office.

~~{(r)}~~(i) Tele[mental-H]health Services means the use of ~~[two-way real-time interactive audio and video]~~ telehealth technologies by telehealth practitioners to provide and support ~~[clinical psychiatric care]~~ mental health services at a distance. Such services do not include an ~~[telephone conversation,]~~ electronic mail message, text message, or facsimile transmission between a provider and a recipient, services provided where the originating and distant sites are the same location, or a consultation between two physicians or nurse practitioners, or other staff, although these activities may support tele[mental-]health services.

§ 596.5 Approval to Utilize Tele[mental-H]health Services.

(a) Tele[mental-]health services may be authorized by the Office for licensed, ~~[or]~~ designated or otherwise approved services provided by tele[mental-]health practitioners, as defined in section 596.4 of this Part, from a site distant from the location of a recipient, where the recipient is physically located at a provider site licensed by the Office, ~~or the recipient's place of residence or other temporary location within or outside the state of New York.~~ or the recipient's place of residence, other identified location, or other temporary location out-of-state. Services may be delivered via telehealth unless otherwise specified by guidelines established by the Office.

(b) A provider of services must obtain prior written approval of the Office before utilizing tele[mental] health services. Once approved, such provider shall be accountable for ensuring compliance with all ethical and scope of practice requirements for the provision of such services by the tele[mental] health practitioner.

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

(1) Sufficient written demonstration that tele~~mental~~health services will be used for assessment and treatment services licensed, designated, or authorized by the Office consistent with the provisions of this Part, guidelines established by the Office and that the services are being requested not to fulfill regulatory staffing requirements but because they are necessary to improve access and the quality of care of individuals receiving services or because they are necessary to address workforce shortages;

(2) Submission of [~~a written plan~~] policies and procedures and an attestation found in the guidelines established by the Office to provide telehealth services that satisfies the provisions of this Part and includes:

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

(ii) procedures for assessing recipients to determine whether a recipient may be properly treated via tele~~mental~~health services;

(iii) informed consent of persons who receive tele~~mental~~health services and procedures for the withdrawal of such consent;

(iv) procedures for handling emergencies with persons who receive tele~~mental~~health services; and

(v) contingency procedures to use when the delivery of tele~~mental~~health service is interrupted, or when the transmission of the two-way interactions is deemed inadequate for the purposes of service provision.

~~[(3) For Personalized Recovery Oriented Services (“PROS”) programs, approval shall be contingent upon the following additional requirements:]~~

~~[(i) Telemental Health Services may only be delivered in a PROS setting by psychiatrists and nurse practitioners in psychiatry as defined in this Part.]~~

~~[(ii) Telemental Health Services may only be used for purposes of delivering PROS clinical treatment services for a limited period of time in which the PROS provider demonstrates a shortage of psychiatrists and nurse practitioners in psychiatry, such time not to exceed one year.]~~

~~[(iii) Upon demonstration of a continued shortage beyond one year, such time may be extended for a period not to exceed one additional year.]~~

~~[(iv) The recipient must be physically located onsite of the PROS program in which the recipient is admitted.]~~

~~-(4) For Assertive Community Treatment (“ACT”) teams, approval shall be contingent upon the following additional requirements:]~~

~~[(i) Telemental Health Services may only be delivered within an ACT team by psychiatrists and nurse practitioners in psychiatry as defined in this Part, where the team has demonstrated a shortage of psychiatrists and nurse practitioners in psychiatry.]~~

~~[(ii) When an ACT visit is conducted in the community, ACT staff must be present during the delivery of Telemental Health Services.]~~

~~[(iii) Telemental Health Services may only be delivered for a limited period of time, not to exceed one year.]~~

~~[(iv) Upon demonstration of a continued shortage beyond one year, such time may be extended for a period not to exceed one additional year.]~~

(d) Requests for approval to offer tele[mental-]health services shall be submitted by licensed, [or] designated, or authorized providers to the E[f]ield Q[o]ffice serving the area in which the program is located. Such E[f]ield Q[o]ffice may conduct a remote readiness review to either or both the originating, where non-residential, and distant sites prior to issuing approval.

(e) The Q[o]ffice shall provide its approval to utilize tele[mental-]health 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 Q[o]ffice.

(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 tele[mental-]health 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. The Commissioner may direct the provider to immediately suspend the provision of tele[mental-]health services pending review of a decision to revoke if there is reason to believe the safety or privacy of any recipient has been compromised as a result of tele[mental-]health service provision.

(1) The provider of services must request such review in writing within 15 business days of the date it receives notice of revocation of approval to utilize tele[mental-]health 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 business 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 Tele~~mental H~~health Services.

(a) General requirements.

(1) The distant/hub site tele~~mental~~health practitioner must:

(i) possess a current, valid license, permit, or limited permit to practice in New York State, or is designated or approved by the Office to provide services;

(ii) directly render the tele~~mental~~health 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) adhere to the same laws, rules, and regulations and exercise the same standards of care and competencies required for ~~in-house~~ in-person delivered services;

(v) utilize evidence-based telehealth [~~or telemental health~~] practice guidelines and standards of practice, to the degree they are available, to ensure recipient safety, quality of care, and positive outcomes; and

(vi) deliver services from a secure site/location which ensures the minimum standards for

privacy for recipient-~~clinician~~ telehealth practitioner interaction are met, ~~as follows:~~

~~(a) Psychiatrists and nurse practitioners in psychiatry~~ Telehealth practitioners may deliver services from a site located within the United States or its territories, which may include the practitioner's place of residence, office, or other identified space ~~[including from a space in a place of residence]~~ approved by the Office of Mental Health and in accordance with guidelines established by the Office.~~;~~ and

~~(b) Mental health practitioners may deliver services from a site located within the state of New York, including from a space in a place of residence approved by the Office of Mental Health.]~~

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

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

(4) Tele~~mental~~health services must be rendered using tele~~mental~~health technologies. A provider of services approved to offer tele~~mental~~health services shall adopt and implement technology in a manner that supports the standard of care to deliver the services, the features of which include at least:

(i) The technology and equipment utilized in the provision of tele~~mental~~health services must be of sufficient quality, size, resolution and clarity where applicable such that the provider of services can safely and effectively provide the tele~~mental~~health services;

(ii) The technology and equipment utilized in the provision of tele~~mental~~health services or the use of audio or video telephone communication must be compliant with the Health Insurance Portability and Accountability Act (HIPAA).

(5) Tele~~mental~~health practitioners must verify the identity of the recipient before commencing each tele~~mental~~health encounter.

(6) A notation must be made in the clinical record that indicates that the service was provided via tele~~mental~~health and indicating whether audio only services were provided which specifies the time the service was started and the time it ended.

(7) Tele~~mental~~health services provided to recipients under age 18 may include staff members ~~[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 recipient. Such determinations shall be clinically based, consistent with ~~[clinical]~~ Guidelines issued by the Office.

(8) For the purposes of ~~[this Part]~~ billing, tele~~mental~~health 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. Providers should refer to the program specific guidelines established by the Office to determine authorized use of telehealth services.

(9) Culturally competent interpreter services shall be provided in the recipient's preferred language when the recipient and ~~[distant/hub]~~ telehealth practitioners do not speak the same language.

(10) The tele~~mental~~health practitioner providing tele~~mental~~health services at a distant/hub site shall be considered an active part of the recipient'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 tele~~mental~~health practitioner shall prepare appropriate progress notes and securely

forward them or directly enter them into the originating/spoke provider health record as a condition of reimbursement.

(11) Tele~~mental~~health services shall not be used:

(i) for purposes of seeking a court order for treatment [~~ordering medication~~] over objection; or

(ii) restraint or seclusion, as defined in section 526.4 of this Title~~[-, or]~~.

~~[(iii) 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 Telemental Health Services on a consultative basis.]~~

(12) Telehealth services may be used to satisfy specific statutory examination, evaluation, or assessment requirement necessary for the involuntary removal from the community, or involuntary retention in a hospital pursuant to section 9.27 of the Mental Hygiene Law, if such services are utilized in compliance with the following:

(i) The telehealth practitioner must be a physician and licensed to practice in New York.

(ii) Telehealth services can only be utilized to fulfill one of the three physician-required activities in a removal or retention action, i.e., either one of the two certifying physicians at the emergency hospital site, or the confirming physician at the receiving hospital site, can perform their required examination, evaluation, or assessment through telehealth technology.

(iii) The individual must be asked to consent to the use of telehealth technology for the purposes of the examination, which can be embedded within the hospital's general consent for

treatment. If the individual refuses or is not able to give consent to treatment, the effort to obtain consent must be documented in the clinical record, and the examination may proceed.

(iv) All three physicians must sign the form at whatever location they are at the time of the examination, regardless of whether they are at the originating/spoke site or the distant/hub site. If the telehealth practitioner is one of the examining physicians, a copy of his or her signed Form OMH 471 must be received in the emergency hospital site before the individual is transported to the receiving hospital. The telehealth physician may sign their form electronically as permitted by the Electronic Signature and Records Act (ESRA). The transmission of the form may be electronically received, as long as in both instances the transmission is securely made over an encrypted line or network.

(v) When telehealth services are used as part of a 9.27 retention action, forms amended by the Office of Mental Health to account for the use of such services shall be utilized.

(vii) Telehealth consultation. Nothing herein shall preclude the additional use of telehealth services in retention actions on a consultative basis, rather than as a means of partially fulfilling a statutory requirement for any Mental Hygiene Law Article 9 evaluation. 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 telehealth consultation.

(13) Telehealth services may be used to satisfy specific statutory examination, evaluation, or assessment requirement necessary for the immediate observation, care and treatment in a

hospital, pursuant to section 9.39 of the Mental Hygiene Law, if such services are utilized in compliance with the following:

(i) The telehealth practitioner must be a physician and licensed to practice in New York.

(ii) Telehealth services can only be utilized to fulfill one of the two physician-required activities in a removal or retention action, i.e., either the certifying physician or confirming staff psychiatrist at the emergency hospital site, can perform their required examination, evaluation, or assessment through telehealth technology.

(iii) The individual must be asked to consent to the use of telehealth technology for the purposes of the examination, which can be embedded within the hospital's general consent for treatment. If the individual refuses or is not able to give consent to treatment, the effort to obtain consent must be documented in the clinical record, and the examination may proceed.

(iv) All physicians must sign the form at whatever location they are at the time of the examination, regardless of whether they are at the originating/spoke site or the distant/hub site. If the telehealth practitioner is the examining physician, a copy of their signed Form OMH 474 must be received in the emergency hospital site before the individual is transported. The telehealth physician may sign their form electronically as permitted by the Electronic Signature and Records Act (ESRA). The transmission of the form may be electronically received, as long as in both instances, the transmission is securely made over an encrypted line or network.

(v) When telehealth services are used as part of a 9.39 retention action, forms amended by the Office of Mental Health to account for the use of such services shall be utilized.

(vii) Telehealth consultation. Nothing herein shall preclude the additional use of telehealth services in retention actions on a consultative basis, rather than as a means of partially

fulfilling a statutory requirement for any Mental Hygiene Law Article 9 evaluation. 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 telehealth consultation.

(b) Protocols and Procedures. A provider of services approved to utilize Tele~~mental H~~health Services must have written protocols and procedures that address the following:

(1) ~~[Initial assessment:]~~ Each recipient for whom the provision of tele~~mental~~health services may be offered must ~~[receive an initial assessment in person]~~ be evaluated to determine whether the tele~~mental~~health modality is appropriate, given the recipient's treatment needs.

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

(i) The recipient must be provided with basic information about tele~~mental~~ health services, including both benefits and risks, and shall provide his or her informed consent to participate in services utilizing this technology. For recipients under age 18 for whom

informed consent cannot be obtained pursuant to Mental Hygiene Law Section 33.21, such information shall be shared with and informed consent obtained from the recipient's parent or guardian.

(ii) Recipients, or a minor recipient's parent or guardian, shall be informed how to verify a tele[mental]health practitioner's professional license.

(iii) The recipient has the right to refuse to participate in tele[mental]health services, in which case [evaluations] services must be conducted in-person by appropriate clinicians.

(iv) Tele[mental]health sessions shall not be recorded without the recipient's consent, which shall be documented in the clinical record.

(3) Confidentiality: Protocols and procedures must be maintained as required by Mental Hygiene Law Section 33.13 and HIPAA at 45 CFR Parts 160 and 164 and shall apply to both the originating/spoke site and the distant/hub site. Such protocols shall ensure that:

(i) All current confidentiality requirements and protections that apply to written clinical/medical records shall apply to services delivered by tele[mental]health technologies, 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 recipient at the originating/spoke site, where non-residential, and the practitioner at the distant/hub site must meet the minimum standards for privacy expected for recipient-clinician interaction at a single Office of Mental Health licensed expected for recipient-clinician interaction at a single Office of Mental Health licensed location.

(4) ~~[Security of Electronic Transmission:]~~ All tele~~[mental]~~health services must be ~~[performed on dedicated secure transmission linkages]~~ conducted via telehealth technologies 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.

(5) Psychiatric emergencies: ~~[Protocols must 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 telemental health without qualified mental health professionals present at the originating/spoke site, unless there are no adequate alternatives and immediate intervention is deemed essential for recipient safety.]~~ All tele~~[mental]~~health service sites must have a written procedure detailing the availability of in-person assessments ~~[by a physician or nurse practitioner]~~ in an emergency situation.

(6) Prescribing medications via tele~~[mental]~~health: Procedures for prescribing medications through tele~~[mental]~~health must be identified and must be in accordance with applicable New York State and federal ~~[regulations]~~ law, including but not limited to the federal Ryan Haight Act (21 U.S.C. section 823 (f), New York State Education Law sections 6902(3)(a)(ii), 7606, 7708, and 8407; and regulations of the New York State Department of Health at 10 NYCRR Part 80.

~~[(7) 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 telemental health services. 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 telemental health consultation.]~~

~~[(8)](7)~~ Recipient rights: Recipient rights policies must ensure that each individual receiving tele~~[mental]~~health services:

(i) is informed and made aware of the role and license information of the tele~~[mental]~~ health practitioner at the distant/hub site, as well as ~~[qualified mental health professional]~~ staff at the originating/spoke site, where non-residential, who are 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 tele~~[mental]~~health 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 tele~~[mental]~~health transmission; and

(v) if the recipient is a minor, the recipient and his or her parent or guardian shall be given the opportunity to provide input regarding who will be in the room with the recipient when tele~~[mental]~~health services are provided.

~~[(9)](8)~~ Quality of Care: All tele~~[mental]~~health service 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 recipient care standards. A review of tele~~[mental]~~health services shall be included in the provider's quality management process.

~~[(40)]~~(9) Contingency Plan: All tele~~[mental-]~~health service 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.

~~[(44)]~~(10) Ownership and Maintenance of Records:

(i) The program in which the recipient ~~[patient]~~ is admitted shall be responsible for obtaining and maintaining a complete clinical record as if the recipient were seen ~~[face-to-face]~~ in-person at such site.

(ii) The telehealth practitioner must have immediate access to the recipient health record.

~~[(ii)]~~ (iii) The distant/hub site shall maintain copies of all documentation completed by the distant/hub tele~~[mental-]~~health practitioner unless the tele~~[mental-]~~health practitioner records the information directly within the originating/spoke site's electronic medical record system.

(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 Tele~~[mental-]~~Hhealth Services. The Office shall post such guidelines on its public website.

§596.7 Reimbursement for Tele~~[mental-]~~Hhealth Services.

(a) The licensed, ~~[or]~~ designated, or authorized provider of service where the recipient is admitted is authorized to bill Medicaid for tele~~[mental-]~~health services.

(b) Under the Medicaid program, tele~~[mental-]~~health services are covered when medically necessary and under the following circumstances:

- (1) the person receiving services is located at the originating/spoke site;
- (2) the tele[mental-]health practitioner is located at the distant/hub site and is employed by or contracted with a program licensed or designated by the Office;
- ~~[(2)]~~(3) the person or collateral receiving services is present during the encounter;
- ~~[(3)]~~(4) the request for tele[mental-]health services and the rationale for the request are documented in the individual's clinical record;
- ~~[(4)]~~(5) the clinical record includes documentation that the encounter occurred; and
- ~~[(5)]~~(6) the tele[mental-]health practitioner at the distant/hub site is:

- (i) authorized in New York State;
- (ii) practicing within his/her scope of specialty practice; and
- ~~[(iii) affiliated with the originating/spoke site facility; and]~~
- ~~[(iv)]~~ (iii) 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 telemental health service, the service is not eligible for Medicaid reimbursement.]~~ Audio-only or audio-video communication is covered by Medicaid and the Child Health Insurance Plan to the extent consistent with regulations promulgated by the New York State Commissioner of Health pursuant to Section 2999-cc of the Public Health Law.

(d) The following interactions do not constitute reimbursable tele[mental-]health services;

~~[(1) telephone conversations;~~

~~(2)] (1) e-mail messages; [or]~~

~~[(3)] (2) text messages[-]; or~~

(3) facsimile transmission.

~~[(e) The originating/spoke site may bill for administrative expenses only when a tele[mental]health service connection is being provided and a qualified mental health professional is not present at the originating/spoke site with the recipient at the time of the encounter.]~~

~~[(f)] (e) Reimbursement for services provided via tele[mental]health must be in accordance with the rates and fees established by the Office and approved by the Director of the Budget. Such rates or fees shall be the same for identical procedures provided by practitioners in-person, in the same location as the recipient unless otherwise established by the Office.~~

~~[(g)] (f) If a tele[mental]health 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 Tele[mental H]health Services.

(a) Nothing in this Part shall be deemed to prohibit a provider of services from providing licensed, ~~[and]~~ designated, and authorized services, consistent with applicable regulations of the Office, as a distant/hub site via tele[mental]health 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 tele~~mental~~health services 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 tele~~mental~~health services that violate the provisions of paragraph (11) of subdivision (a) of section 596.6 of this Part.