

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

Title 18: 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 telehealth services when provided as standalone services. Remote consultations between practitioners for the purposes of teaching or skill building are not considered telehealth and 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 a hospital licensed under Article 28 of Public Health law (inpatient, emergency department, or clinic), an Article 28 free-standing diagnostic and treatment center (DTC), a Federally Qualified Health Center (FQHC) or a practitioner’s office where patient care is provided. The “originating site” may also be a skilled nursing facility. Telemedicine transactions between any of the following agencies are permissible in accordance with the regulations of the respective agency: Article 31, Office of Mental Health (OMH); Article 32, Office of Alcoholism and Substance Abuse Services (OASAS); Article 16, Office of People with Developmental Disabilities (OPWDD); and Article 28 facilities, as described above. 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 consulting physician at a “distant site.”

- (i) Store and forward technology may be utilized in the specialty areas of dermatology, ophthalmology, and other disciplines, as determined by the Commissioner.
- (ii) Patients receiving consultations via store and forward technology shall be notified of the right to receive interactive communication with the “distant

site” physician specialist. If requested, interactive communication with the “distant site” physician specialist may occur either at the time of the consultation or within 30 days of the patient’s notification of the results of the consultation.

- (iii) A written report outlining the findings of the consultation must be sent by the consulting practitioner back to the requesting/originating practitioner.
- (iv) Diagnostic radiology services, as defined in Title 18, Section 533.6, may be performed via teleradiology.

(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, and technology-dependent care such as continuous oxygen, ventilator care, total parenteral nutrition or enteral feeding.

- (i) 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 an established, documented, and ongoing relationship.
- (ii) 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.
- (iii) Remote patient monitoring is not a substitute for delivery of care. Patients must be periodically seen in person by their practitioner for follow-up care.
- (iv) Remote patient monitoring must be medically necessary and should be discontinued when the patient’s condition is determined to be stable/controlled.
- (v) Payment will not be made for remote patient monitoring at the same time the patient is receiving home health services through a Certified Home Health Agency (CHHA).

(b) Teleradiology. Teleradiology services will be covered by the Department pursuant to Section 533.6 of the regulations.

(c) 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.

(d) Definition of Telehealth Providers.

- (i)** 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.
- (ii)** 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.
- (iii)** Providers of telehealth services also include hospitals licensed under Article twenty-eight of Public Health Law (PHL); home care services agencies licensed under Article thirty six of PHL; hospices licensed under Article forty of PHL and any other providers as determined by the Commissioner pursuant to the regulation.

(e) 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.
- (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.

(f) Patient Consent.

- (i)** The practitioner shall provide the patient with basic information about the services that he/she will be receiving via telehealth and the patient shall provide his/her consent to participate in services utilizing this technology.
 - (ii)** 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.
 - (iii)** The requirements of this subsection (g) do not apply to diagnostic teleradiology services.
- (g) 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.