



Office of  
Mental Health

KATHY HOCHUL  
Governor

ANN MARIE T. SULLIVAN, M.D.  
Commissioner

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Executive Deputy Commissioner

December 13, 2021

Brian Reilly  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, NY 12236-0001

Dear Mr. Reilly:

In accordance with Executive Law § 170, the following are the Office of Mental Health's (OMH) responses to the Office of the State Comptroller's (OSC's) final audit report entitled, "*Oversight of Telemental Health Services*" (2020-S-16). OMH generally agrees with the recommendations and a response to each is included below:

**OSC Recommendation 1:** Work with providers to increase their ability to offer TMH as a service to clients when it is deemed an appropriate method of treatment.

**OMH 180-Day Response:** OMH has been, and will continue, working with providers to increase their ability to provide services via telemental health when it is deemed to be an appropriate method of treatment. As OSC outlines in their report, telemental health drastically expanded the provision of services after March 2020 in response to the COVID-19 pandemic. Although most providers are using telemental health under the guidance issued by OMH as a result of the disaster emergency, providers are continuing to submit administrative actions so that they can continue to utilize telemental health at the conclusion of the declared emergency period. As of Friday, November 5, 2021, 269 distinct providers<sup>1</sup> and 1,773 program sites were formally approved to provide services via telemental health after the disaster emergency.<sup>2</sup>

Lastly, providers not yet permanently approved have been reminded by OMH<sup>3</sup> that without permanent approval they will no longer be able to provide services via telemental health when the Commissioner's Regulatory Waiver expires<sup>4</sup>. The regional field offices were identified as a contact for technical assistance.

**OSC Recommendation 2:** Increase TMH data collection to ensure comprehensive representation of TMH services and review and adjust accordingly to improve TMH services.

<sup>1</sup> This includes 17 of the 20 State-operated facilities with the remaining three in various stages of the approval process.

<sup>2</sup> OMH approved an additional 70 providers and 561 program sites since the response to the draft report.

<sup>3</sup> E-mails were sent to the Western New York and Long Island regions on July 20, 2021, the New York City region on July 21, 2021, the Central New York region on August 4, 2021, and the Hudson River region on August 11, 2021.

<sup>4</sup> Upon the expiration of the Executive Order on June 24, 2021, OMH issued a Commissioner's Regulatory Waiver which continued most of the same flexibilities included within the Executive Order. The waiver currently expires on December 22, 2021.

**OMH 180-Day Response:** Since its increase in use due to the COVID-19 pandemic, the Bureau of Strategic Financial Direction completes a routine analysis of Medicaid claims that include the telemental health modifier. This analysis is compared to pre-COVID numbers and is shared with central office and field office staff to track and evaluate trends and patterns of service utilization to better understand the impact of COVID on recipients and programs. OMH is also using these data to look at the overall cost of services during the disaster emergency. Once the Commissioner's Regulatory Waiver expires, OMH will complete this analysis on an as-needed basis while also ensuring that provider usage is reviewed during recertification visits.

**OSC Recommendation 3:** Develop defined processes and procedures related to overseeing TMH beyond the initial approval process.

**OMH 180-Day Response:** OMH began developing defined processes and procedures in the fall of 2019 but ultimately was delayed due to the ongoing COVID-19 pandemic. OMH's Western NY Field Office previously created a Telemental Health Record Review Checklist which was piloted prior to the start of this review. As noted in the response to the draft audit report, OMH previously planned to further review this document and implement the checklist statewide within 3-6 months following the expiration of the Executive Orders which had allowed many flexibilities during the public health emergency. However, upon the expiration of the Executive Order on June 24, 2021, OMH issued a Commissioner's Regulatory Waiver to continue most of the same flexibilities.

As a result of the COVID-19 pandemic, OMH has made permanent many of the changes that were put into place during the public health emergency. Telemental health regulations<sup>5</sup> were amended accordingly, and emergency regulations were made effective on November 15, 2021.<sup>6</sup> Additionally, the related guidance and telemental health Standards of Care are being updated. However, once the final adoption<sup>7</sup> of the regulations occurs and associated guidance is issued, OMH will distribute a Telemental Health Record Review Checklist to be used statewide.

In the interim, several items specific to telemental health are now being verified during licensing visits. This includes whether informed consent was obtained, whether the individual was assessed for the appropriateness of receiving services via telemental health, and the use of the telemental health modifier.

Please let us know if you have any questions or require additional information concerning the above.

Sincerely,



Ann Marie T. Sullivan, M.D.  
Commissioner

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<sup>5</sup> 14 NYCRR Part 596

<sup>6</sup> The amended regulations are open for public comment for 60 days. At the end of that time, all comments will be reviewed and additional changes will be made prior to their final adoption if necessary.

<sup>7</sup> Updated regulations are expected to be permanently adopted in the first half of 2022.

- cc. Honorable Kathy Hochul, Governor of the State of New York
- Honorable Thomas P. DiNapoli, State Comptroller
- Honorable Andrea Stewart-Cousins, Senate Majority Leader and President Pro Tempore
- Honorable Robert G. Ort, Senate Minority Leader
- Honorable Carl E. Heastie, Assembly Speaker
- Honorable Crystal D. Peoples-Stokes, Assembly Majority Leader
- Honorable William A. Barclay, Assembly Minority Leader
- Honorable Liz Krueger, Chairperson, Senate Finance Committee
- Honorable Thomas F. O'Mara, Ranking Minority Member, Senate Finance Committee
- Honorable Helene E. Weinstein, Chairman, Assembly Ways and Means Committee
- Honorable Edward P. Ra, Ranking Minority Member, Assembly Ways and Means Committee
- Robert F. Mujica Jr., Division of the Budget