

THOMAS P. DiNAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 6, 2022

Ann Marie T. Sullivan, M.D.
Commissioner
Office of Mental Health
44 Holland Avenue
Albany, NY 12229

Re: Oversight of Telemental Health
Services
Report 2022-F-22

Dear Dr. Sullivan:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Office of Mental Health to implement the recommendations contained in our audit report, *Oversight of Telemental Health Services* (Report [2020-S-16](#)).

Background, Scope, and Objective

The mission of the Office of Mental Health (OMH) is to promote the mental health of all New Yorkers. OMH is responsible for developing regulations and providing guidance to assist OMH-licensed and -designated providers under Article 31 of the Mental Hygiene Law with the delivery of mental health services, including the use of telemental health (TMH). TMH is a voluntary treatment method that makes use of two-way, real-time interactive audio and video equipment to provide and support mental health services and psychiatric care from a remote location.

In 2015, OMH established a formal set of TMH standards allowing only physicians or psychiatric nurse practitioners to use TMH for assessment and treatment services. Regulations were expanded in 2016 to allow TMH delivery from additional settings, and again in 2019 to allow additional OMH-licensed care providers – beyond physicians and psychiatric nurse practitioners – to provide TMH services.

On March 30, 2020, OMH issued a regulatory waiver related to the COVID-19 disaster emergency that included expanded definitions of TMH and TMH practitioners. It also issued a blanket attestation for providers to complete who wished to offer TMH during the emergency, and outlined the programs and services that were allowed to offer TMH for the duration of the disaster emergency. In July 2020, OMH streamlined its approval process by allowing providers to submit one application for operational changes, the purpose of which was to ensure that providers' ability to continue offering TMH extended beyond the disaster emergency.

The objective of our initial audit, which was issued June 17, 2021 and covered the period January 1, 2016 through February 11, 2021, was to determine whether OMH was adequately

monitoring the delivery and performance of TMH services and ensuring that related TMH activities were conducted in accordance with applicable laws and regulations. During that audit, we found that although OMH had expanded TMH regulations, there were opportunities for it to improve access and oversight in the State. For example, as of December 23, 2020, just 141 of the 448 OMH-licensed, -designated, and/or -funded mental health providers eligible to offer TMH were approved to do so beyond the declared COVID-19 disaster emergency, leaving 307 potentially unable to do so. We also found that OMH's practice of analyzing TMH usage data from only State-operated psychiatric centers, and not private providers, limited its ability to identify both problems and opportunities for improvement on a statewide basis. Finally, we found that OMH's oversight of providers' use of TMH was focused on the initial approval and lacked defined procedures or processes to subsequently monitor provider usage.

The objective of our follow-up was to assess the extent of implementation, as of November 15, 2022, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

OMH has made significant progress in addressing the problems we identified in the initial audit report and has implemented all three recommendations from the report.

Follow-Up Observations

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.

Status – Implemented

Agency Action – Subsequent to our initial audit, OMH sent emails in July and August 2021 to providers across the State, reminding them that, without permanent approval, they will no longer be able to provide services via TMH after the Commissioner's Regulatory Waiver expires on February 1, 2023. (Initially issued in June 2021 and renewed several times thereafter, the Waiver temporarily expanded the opportunity to offer TMH services.) To help increase providers' ability to offer TMH, effective September 13, 2022, OMH made permanent many of the changes that were put into place during the COVID-19 disaster emergency by formally amending and adopting changes to its regulations. These changes include allowing practitioners to be physically outside of New York State while providing services and allowing remote services for someone who has not received an in-person evaluation. In addition, OMH has significantly increased the number of providers it has approved to provide TMH services after the Waiver expires. In our initial audit, we noted that, as of December 23, 2020, OMH had approved 141 providers to offer TMH permanently. OMH reported that, as of September 14, 2022, there were 340 approved providers, with 25 additional applications pending approval.

Recommendation 2

Increase TMH data collection to ensure comprehensive representation of TMH services and review and adjust accordingly to improve TMH services.

Status – Implemented

Agency Action – OMH continues to perform a regular analysis of Medicaid claims that include TMH. (This is now done on an “as-needed” basis – approximately bimonthly – whereas during our audit it was done biweekly.) However, OMH officials stated that non-Medicaid claims data is not readily available and that the infrastructure for this type of data collection does not exist; therefore, they do not collect TMH usage data or statistics from private (i.e., non-Medicaid) providers. Although access to non-Medicaid data would allow a larger pool of information for analysis to identify areas for improvement, officials pointed out that since Medicaid is the payer for 70% of behavioral health service recipients, the existing analysis provides a strong representation of the mental health system.

OMH officials added that they are part of an interagency work group, including five other State agencies, that is looking at TMH use and health care utilization within the full Medicaid data set. According to the officials, this work group is also using survey data that has been collected from providers and State residents, regardless of insurance status, to help assess TMH penetration and health care outcomes, understand public perception and accessibility issues, and help make statewide policy decisions regarding TMH.

Given the current limitations on the feasibility of OMH obtaining TMH data from private providers and the potential value of TMH-related information that may result from the interagency work group, we consider this recommendation to be implemented.

Recommendation 3

Develop defined processes and procedures related to overseeing TMH beyond the initial approval process.

Status – Implemented

Agency Action – As stated earlier, OMH adopted changes to its regulations in September 2022 that made many of the changes put into place during the COVID-19 disaster emergency permanent. According to OMH officials, the related guidance and Standards of Care associated with these regulations are in the process of being updated and are expected to be released by December 2022. Officials said they plan to use them as a statewide oversight tool. They also said that, in the interim, they are reviewing several items specific to TMH during post-approval licensing visits, such as determining whether there is a record of clients’ informed consent, assessing the appropriateness of clients receiving TMH services, and determining whether required documentation has been maintained.

Major contributors to this report were Karen Bogucki, CGFM; Andrew Philpott; and Sedrik Nellis.

We thank the management and staff of OMH for the courtesies and cooperation extended to our auditors during this follow-up.

Very truly yours,

Sharon Salembier
Audit Manager

cc: Tarra Pratico, External Audit Liaison