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March 8, 2019

Kelly Grace
Senior Attorney
NYS Office of Mental Health
44 Holland Avenue
Albany, NY 12229

Submitted electronically: kelly.grace@omh.ny.gov

RE: Telemental Health Services (OMH-04-19-00002-P)

Dear Ms. Grace:

The Healthcare Association of New York State, on behalf of our member nonprofit and public hospitals, nursing homes, home health agencies and other healthcare providers, appreciates the opportunity to comment on the Office of Mental Health's proposed revisions to the Part 596, Expansion of Telemental Health (Telepsychiatry) Services to Additional OMH Licensed Settings and Program rule.

Patient access to high-quality care is critically important. Large segments of New York's population live in rural and urban medically under-served areas and have difficulty accessing mental health services. Healthcare practitioners across New York have been turning to telehealth to care for patients who have limited access to services, whether due to geographic factors, practitioner shortages or patients' own physical limitations.

However, the rapid pace of healthcare innovation and reform has outpaced the existing regulatory structure. HANYYS appreciates the extent to which OMH has incorporated many of our suggestions and comments over the years into the proposed expansion from telepsychiatry to telemental health.

HANYYS is generally supportive of the proposed telemental health services regulations; however, given the current mental health workforce shortages, we are disappointed that the agency will not permit the use of telemental health services to help fulfill regulatory staffing requirements.

Applicability

HANYYS supports the expansion to allow telemental health services to be used by Personalized Recovery Oriented Services and Assertive Community Treatment programs. However, we note with concern the inconsistencies with the application of the proposed rule to these two programs versus other OMH services generally.

The revised Part 596 regulations explicitly permit clinical treatment services to be delivered in a PROS setting via telemental health, but only for a limited period, unless there is an adequate demonstration of a continued provider or service shortage. The revised Part 596 regulations also permit ACT teams to deliver services through telemental health when there is a demonstrated shortage of such providers, but again, only for a limited period.

HANYS recommends that OMH remove the time limitation for the delivery of clinical treatment services via telemental health for these programs. In addition, HANYS strongly recommends that OMH extend the ACT provision regarding a demonstrated shortage of providers to all telemental health services, and not just limit it to ACT programs. Further, we seek clarification from the agency as to what qualifies as a demonstrated provider shortage.

Definitions

HANYS strongly supports OMH's expansion of practitioners from just physicians or psychiatric nurse practitioners to also include licensed mental health counselors, psychologists, and/or social workers (including clinical social workers and master social workers).

HANYS supports the expansion of the originating/spoke site to include the patient's place of residence or other temporary location within or outside New York, in addition to OMH-licensed sites. HANYS also supports the expansion of the distant/hub site to allow psychiatrists and nurse practitioners in psychiatry to be located anywhere in the U.S., while other practitioners may be located anywhere within New York state.

However, it is difficult to follow the application of these terms throughout the proposed rule. As an example, under Part 596.7 on reimbursement, the language seems to indicate that reimbursement occurs only when the originating/spoke site is located at a provider site. HANYS urges OMH to clarify that reimbursement is for **any** originating/spoke site, and not limited to a provider location. Furthermore, it is unclear what process OMH will use to approve a place of residence as a distant/hub site for telemental health practitioners.

HANYS urges OMH to minimize any burdens associated with the process to ensure greater access to services under telemental health. We also recommend that OMH seek input from the provider community on the process for approving a residence as a distant/hub site.

Approval to utilize telemental health services

HANYS recognizes the need for providers to obtain written approval from OMH before utilizing telemental health services. However, we strongly urge OMH and its field offices to expedite the process and not unnecessarily delay approval of these services. We are concerned that the previous approval process for telepsychiatry services has been slow and lengthy, resulting in delays in providing care. In particular, our members have encountered unnecessary delays in approval as a direct result of the agency not updating its forms on the OMH website.

In the event that there is difficulty scheduling an onsite review, OMH should not delay approval of these critical telemental health services, especially since the regulations do not mandate such a review. Furthermore, we reiterate our comment that OMH allow the use of telemental health services to help fulfill some regulatory staffing requirements when it is necessary to improve access and the quality of care provided.

Reimbursement for telemental health services

HANYS urges OMH to allow both the distant/hub site and the originating/spoke site to be able to bill Medicaid, as is the case with Medicare. Medicare pays an originating site fee to the originating/spoke site and provides separate payment to the distant/hub site practitioner furnishing the service. In addition, HANYS recommends that OMH permit the originating/spoke site to still bill for administrative expenses, even if a qualified healthcare professional is in the room at the originating/spoke site when a telemental health service connection is being provided.

HANYS requests that OMH provide detailed guidance to Medicaid managed care plans, as the regulations only address providers and do not provide information on how these services will be handled or reimbursed by plans. Complicated billing codes or modifiers based on whether the originating/spoke site is at a provider's location or a patient's residence may impede adoption of telemental health services.

HANYS appreciates the opportunity to provide feedback on the proposed regulations. If you have questions regarding our comments, please contact me at (518) 431-7624 or at mehennes@hanys.org, or Victoria Aufiero, director, behavioral health, at (518) 431-7889 or at vaufiero@hanys.org.

Sincerely,

A handwritten signature in cursive script that reads "Mary Ellen Hennessey". The signature is written in black ink and is positioned below the word "Sincerely,".

Mary Ellen Hennessey
Vice President, Health System Redesign and Regulatory Affairs