

MEMORANDUM

TO: (1) All providers enrolled in the Medical Assistance (MA) Program who render behavioral health services in the fee-for-service (FFS) or managed care delivery system and;
(2) Primary Contractors and Behavioral Health Managed Care Organizations (BH-MCOs) in the HealthChoices (HC) Program

FROM: Kristen Houser
Deputy Secretary 
Office of Mental Health and Substance Abuse Services (OMHSAS)

RE: Behavioral Health Telehealth Frequently Asked Questions

DATE: August 16, 2022

TELEHEALTH FREQUENTLY ASKED QUESTIONS (FAQs):

1. Question: What is the enforceability of the revised telehealth bulletin given the recent suspension of regulations?

OMHSAS Response: The suspension of regulations covered by Act 30 of 2022 will remain in effect until OMHSAS ends those suspensions, or per the Act, October 31, 2022. OMHSAS will provide 30-day notice before terminating any regulatory suspensions that are currently in place. Suspended regulations can be found at this site:

<https://www.dhs.pa.gov/coronavirus/Pages/Suspended-Regulations-Reinstatement.aspx>

2. Question: Does the revised telehealth bulletin, OMHSAS-22-02, prohibit verbal consent?

OMHSAS Response: During the public health emergency, OMHSAS allowed general verbal consent that was documented by the provider to accommodate rapid transition to telehealth for most providers. We are no longer permitting this general method of verbal consent to treat as an acceptable practice. OMHSAS-22-02 adheres to the expectations of Act 69 of 1999 in which an electronic sound is considered a type of electronic signature.

COMMENTS AND QUESTIONS REGARDING THIS MEMORANDUM SHOULD BE DIRECTED TO:

Office of Mental Health and Substance Abuse Services, Bureau of Policy, Planning & Program Development, P.O. Box 2675, Harrisburg, PA 17105. E-mail: RA-PWTBHS@pa.gov

In Act 69 of 1999 Electronic Transactions Act, *an electronic signature is defined as an electronic **sound, symbol or process** attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.*

A **sound** could be someone providing their consent verbally, if that consent specifically is recorded electronically or witnessed by a second employee of the provider, and the providers have systems in place that allows an audit trail to validate signer's identity.

3. Question: Can I use a cell phone to record an individual verbally making a consent statement as an acceptable way to document consent?

OMHSAS Response: If you have a HIPAA compliant telehealth platform on a secure cell phone that captures consent, then you are permitted to utilize a cell phone for this purpose.

If you do not have a HIPAA compliant platform, you should not be using your cell phone to capture a sound that indicates consent. Consent must be captured in a way that is associated with the provision of services to a specific client and is stored in a secure manner compliant with all confidentiality requirements for health data.

4. Question: Are there a certain number of attempts to secure an individual's consent to meet the bulletin's expectation for consent?

OMHSAS Response: The expectation is that there is documented/recorded consent. Given electronic signature includes **sound** or a **process**, telehealth platforms can gain and record consent.

5. Question: What is an example of allowable electronic process for electronic signature?

OMHSAS Response: When using a telehealth platform, there may be an option for a client to check a box to express consent. Checking a box is an example of a process.

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6. Question: How often must a provider secure consent?

OMHSAS Response: The revised bulletin only requires consent when initiating a new service, not for each session provided of a continued treatment service.

7. Question: Can you provide examples of ways a provider can capture consent if they currently do not have access to a telehealth platform.

OMHSAS Response: The state plan requirement is to create a permanent record of consent. The easiest way to capture telehealth compliant consent is use a consent feature embedded in a telehealth electronic platform.

Some examples of ways that consent could be captured include having a second employee hear a client's verbal consent then sign and date a witness of consent statement that is stored in the client record. Another option is sending the client a text/email as a virtual check-in that requires the client to reply with consent for treatment prior to initiation of services.

Consent can also be captured by mailing the client paperwork prior to the initiation of services, and have the client return a signed consent statement.

It is the responsibility of the provider to ensure HIPAA compliance when capturing consent for treatment.

8. Question: Does the revised bulletin impact psychiatric time requirements?

OMHSAS Response: Providers can currently operate under the suspension of regulations specific to the amount of psychiatric time provided via telehealth. Currently, more than 50% of psychiatric time can be done via telehealth if it is clinically appropriate to do so.

There is no suspension of regulations related to the percentage of psychiatric time that can be provided by advanced practice professionals. This means that advanced practice professionals can provide up to 50% of the total hours of psych time.

While the suspension is in place, all of advanced practice professionals and all of the psychiatrist time can be done via telehealth if clinically appropriate.

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