

Provider Notice

To: All Providers
From: PerformCare
Date: November 02, 2022
Subject: AD 22-109 End of Temporary Suspension of DHS Regulations 10/31/2022

On March 30, 2022, Governor Wolf signed Act 14 into law, which extended various DHS regulatory suspensions until June 30, 2022. Pursuant to Act 30 of 2022, the suspension of regulations was extended until 10/31/2022.

Effective 11/1/2022 those regulations are no longer suspended, and providers are expected to fully comply with all applicable regulations governing their programs and services. A list of DHS previously suspended regulations is available at [DHS Suspended Regulations list \[dhs.pa.gov\]](https://dhs.pa.gov).

Also, on 10/28/2022 Act 98 of 2022 was signed into law, which allows Outpatient Psychiatric Clinics governed by 55 Pa. Code § 1153.14 (psychiatric outpatient clinics, partial hospitalization outpatient facilities and mobile mental health treatment services) and Outpatient Drug and Alcohol Clinics governed by 55 Pa. Code § 1223.14 to provide audio only telehealth without a waiver of regulations. Act 98 also allows providers delivering Psychiatric Rehabilitation Services to provide supervision through a video or audio platform.

Please see attached document from OMHSAS that outlines various updates to regulatory and Bulletin requirements and includes FAQs about telehealth. Please note that OMHSAS has indicated on page 10 of the attached that providers should not bill for services for which they do not have verification of service provision. OMHSAS has also indicated that enforcement of the verbal consent documentation per OMHSAS 22-02 Telehealth Bulletin is delayed until 12/31/2022. OMHSAS has also indicated that the suspension of the Bulletins listed below will end 12/31/2022.

Bulletin OMHSAS-19-05

Bulletin OMHSAS-10-03

Bulletin OMH-93-09

Bulletin OMH-93-10

Un-promulgated Chapter 5240

Bulletin OMHSAS-08-03

Bulletin MAB 01-01-05

Bulletin OMHSAS-17-01

Bulletin MAB 01-94-01

Bulletin MAB 1157-95-01

Un-promulgated Chapter 5260

If you have any questions about this notice, please contact your Account Executive.

cc: Lisa Hanzel, PerformCare
Scott Suhring, Capital Area Behavioral Health Collaborative
Missy Reisinger, Tuscarora Managed Care Alliance
PerformCare Account Executives

All participants are muted in listen-only mode.

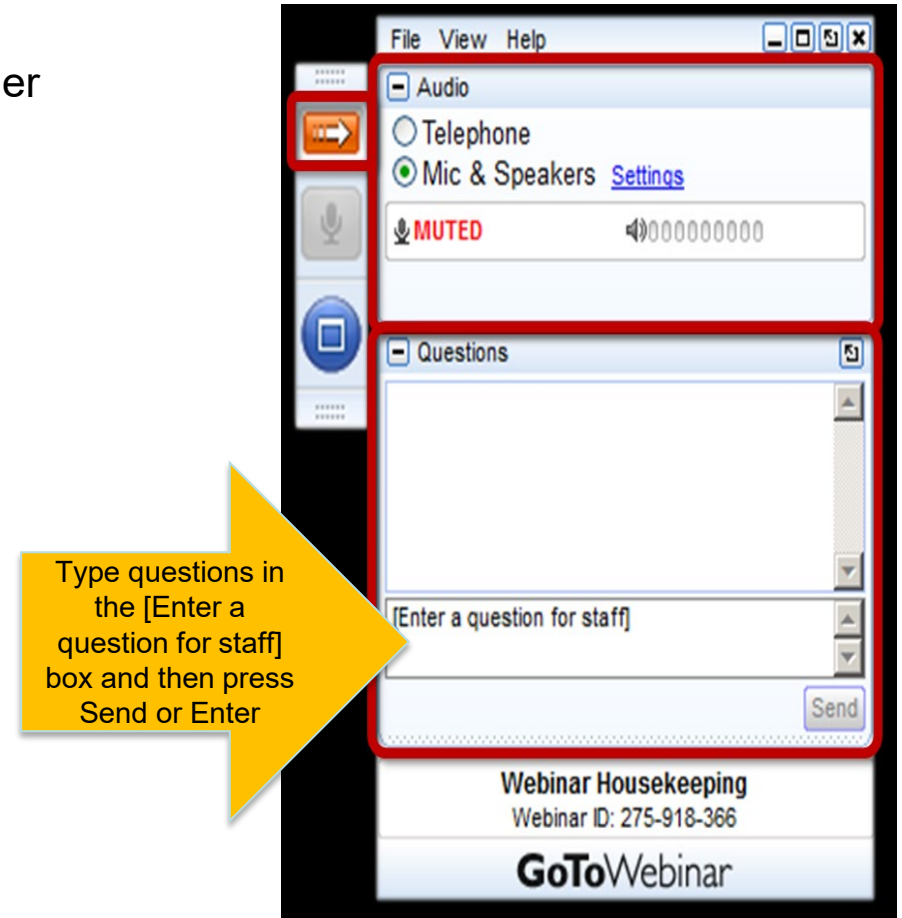
Please submit questions through the chat function.

To submit suggestions for agenda topics for the next OMHSAS Stakeholder Webinar, e-mail them to RA-OMHSASCorrespond@pa.gov

***Please note that we are monitoring this resource account for suggestions, however, we will not be responding to e-mail received in this account.*

Agenda – 10/18/22:

1. Welcome and Introduction – Kristen Houser
2. Telehealth Updates & Discussion – Jenna Mehnert-Baker
3. Rescheduled November Stakeholder Webinar – Josh Haubert
4. Q&A



OMHSAS Telehealth Questions & Answers

October 18, 2022

When will the suspension of regulations end?

Unless extended by the Pennsylvania Legislature, the suspension of regulations covered by Act 30 of 2022 will end on October 31, 2022.

The ending of the Federal PHE does not impact suspension of regulations in Pennsylvania. Suspension of regulations is the domain of the PA Legislature.

Full compliance with all regulations including those that were previously suspended must be in place when the suspension of regulations ends unless a waiver has been obtained from OMHSAS.

Behavioral Health Telehealth Questions

When will the suspension of OMHSAS bulletins listed on the DHS website end?

OMHSAS will end the suspension of bulletins effective **12/31/22**.

Bulletin OMHSAS-19-05

Bulletin OMHSAS-10-03

Bulletin OMH-93-09

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Un-promulgated Chapter 5240

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Behavioral Health Telehealth Questions

When providing telehealth services is it an expectation of DHHS to use a HIPAA compliant platform?

U.S. DHHS will not seek punitive action against a provider who is not utilizing a HIPAA compliant platform until the end of the public health emergency. When the PHE ends, punitive action may be taken against entities not adhering to appropriate privacy protections.

[HIPAA flexibility for telehealth technology | Telehealth.HHS.gov.](#)

The federal PHE was just formally extended again and the new timeline for the new extension is:

- If this is the last renewal, then the PHE would end on **January 11, 2023.**
- If this is the last renewal, then the 60-day advance notice of the end of the PHE would be issued on **November 12, 2022.**

Behavioral Health Telehealth Questions

Will verbal consent be allowed as documentation for services that require consent and verification?

Treatment plans are required to have an individual's or parent's signature attached to the record. Signatures may be obtained using a telehealth platform or by acquiring signatures via U.S. mail or email as *soon as possible and no later than 90 days after the service.*

Telehealth platforms that utilize a check the box for the recipient of services to agree as a method of capturing consent for treatment plans are permitted provided there is also the option to not accept the treatment plan provided.

Behavioral Health Telehealth Questions

When providing telehealth services is it an expectation of DHHS to use a HIPAA compliant platform?

The list below from the U.S. DHHS includes some vendors that represent that they provide HIPAA-compliant video communication products and that they will enter into a HIPAA Business Associate Agreement.

- Skype for Business / Microsoft Teams
- Updox
- VSee
- Zoom for Healthcare
- Doxy.me
- Google G Suite Hangouts Meet
- Cisco Webex Meetings / Webex Teams
- Amazon Chime
- GoToMeeting
- Spruce Health Care Messenger

Behavioral Health Telehealth Questions

How is consent to treat obtained from an individual when the behavioral service is provided by audio-only?

Audio-only consent to treat must be obtained either by having another employee of the entity hear (meaning two employees hearing consent) and documenting that consent or by utilizing a mechanism such as a telehealth platform or U.S. mail or email to secure consent.

Services cannot be provided audio-only if there is not the ability to document that consent as outlined above.

Behavioral Health Telehealth Questions

How is verification for a service encounter obtained from an individual when the behavioral service is provided by audio-only?

NOTE: This answer includes the delivery of peer support services.

Audio-only verification for service encounters must be obtained either by having another employee of the entity hear (meaning two people) and documenting that consent or by utilizing a mechanism such as a telehealth platform or U.S. mail or email to secure consent.

Services cannot be provided audio-only if there is not the ability to document the verification of service as outlined above.

Behavioral Health Telehealth Questions

What happens if we do not secure service verification from the client?

Providers should not bill for services for which they do not have verification of service provision.

Behavioral Health Telehealth Questions

What is meant by “Providers using electronic signatures must have systems in place to ensure that there is an audit trail that validates the signer’s identity.” in the telehealth bulletin?

An audit trail means documentation that is stored within the recipient’s file (paper or electronic) that confirms consent to treat, receipt of service and/or service plan approval was obtained.

Behavioral Health Telehealth Questions

Is it acceptable to obtain a signature on an encounter form through email or U.S. mail after the service has been provided?

Yes, it is possible to utilize email or U.S. mail to obtain signature on an encounter form after the delivery of service.

Behavioral Health Telehealth Questions

When will providers need to come into compliance with the telehealth bulletin?

Providers are expected to be compliant with the telehealth bulletin. However, DHHS will not be enforcing HIPAA until the end of the public health emergency.

Behavioral Health Telehealth Questions

Can a provider send in an Exception Request to OMHSAS to allow licensed practitioners and/or provider agencies beyond the 60 minute/45 mile restriction to deliver services through telehealth in their service area when supporting additional access to services, or in circumstances when the licensed practitioner and/or provider agency is needed to meet the cultural, racial/ethnic, sexual/affective or linguistic needs of individual(s) served or when a licensed practitioner serves less than 5 individuals outside of the 60 minute/45-mile restriction?

Yes, it is possible to send this request, but the provider's request must go to the primary contractor that services the recipient not OMHSAS for approval.

To identify to your primary contractor visit here:
<https://www.dhs.pa.gov/providers/Providers/Pages/Managed-Care-Information.aspx>

Behavioral Health Telehealth Questions

Can an employee check the box for consent or service verification if a unique identifier has been previously provided to the recipient and the recipient shares that identifier authorizing the employee to indicate recipient approval?

This is not appropriate as there is no way to verify that the recipient provided the identifier.

Behavioral Health Telehealth Questions

Can you clarify for us the timeline expectation for the roll out of verbal consent with an audit trail - is it effective immediately or when the regulation suspension is over?

Providers will not be held accountable to meeting these requirements until **12/31/22**, that said, providers should be meeting or working to meet these expectations currently.

Behavioral Health Telehealth Questions

Could consent also be captured by a patient typing YES or their name into a telehealth platform?

Telehealth platforms should have embedded ability to capture consent in a manner that is auditable. Platforms that allow for video-conferencing where someone can type into the chat function are not the same as HIPAA-compliant, telehealth platforms. Such platforms have embedded the ability to secure and store consent.

Behavioral Health Telehealth Questions

If a client is receiving multiple services through telehealth from the same provider, are separate consent forms needed for each service?

A separate consent form is needed for each service modality at the initiation of services.

The ability to utilize telehealth as a service delivery method is intended to ensure access to care and does not eliminate the need for necessary documentation for the billing of services.

Additionally, telehealth may not be appropriate for all the modalities of service that a recipient may receive from the same provider.

Behavioral Health Telehealth Questions

OMHSAS had expressed a willingness to seek legislative action to permanently suspend specific regulations. What is the status on those suspensions?

The Governor's Office continues to advocate for the permanent suspension of the following regulations.

- Outpatient Psychiatric Services ([55 Pa. Code §1153.14](#)) prohibits telephone delivery of services
- Outpatient Drug and Alcohol Clinic Services ([55 Pa. Code §1223.14 \(2\)](#)) prohibits telephone delivery of services
- Mental Health Intensive Case Management ([55 Pa. Code §5221.33](#)) requires signatures

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