


POLICY AND PROCEDURE

POLICY TITLE: Telemedicine Requirements for DSAMH Licensure and Certification	POLICY #: DSAMH040
PREPARED BY: DSAMH PCWFD	DATE ISSUED: 8/5/22
RELATED POLICIES: DSAMH028 Prescribing of Opioids for Medication-Assisted Treatment via Telemedicine: 24 Del. Admin. C § 1700-9.2	REFERENCE: 24 Del C. Chapter 60. Provisions Applicable to Telemedicine 19.0 Telemedicine: § 6001- 6005. 16 Del C. 6001 Substance Abuse Facility Licensing Standards. 18 Del. C § 3370. The Adult Behavioral Health Services DHSS Certification and Reimbursement Manual House Bill No 160
DATES REVIEWED:	DATES REVISED:
APPROVED BY:  <small>1B71C05196B24CA...</small> 8/16/2022 10:53 AM PDT	NOTES: <input type="checkbox"/> DSAMH Internal Policy <input checked="" type="checkbox"/> DSAMH Operated Program <input checked="" type="checkbox"/> DSAMH State Providers <input type="checkbox"/> Delaware Psychiatric Center <input checked="" type="checkbox"/> Targeted Use Policy (Defined in scope)

- I. **PURPOSE:** Division of Substance Abuse and Mental Health (DSAMH) Licensed and Certified Facilities recognizes the emergence of telemedicine as a viable option to augment the facility-based workforce and improve patient care. This policy aims to provide DSAMH Licensed or Certified Facilities an overview of expectations regarding the practice of telemedicine for both traditional programs that have an in-state presence (Brick and Mortar Facilities) and emerging telemedicine-driven facilities (Virtual Oriented Facilities).
- II. **POLICY STATEMENT:** DSAMH requires any DSAMH licensed or certified facility practicing telemedicine to act within requirements of applicable Delaware state law, the law of the originating state if applicable, and federal laws governing telemedicine. The facility shall meet or exceed the same standard of care as required for in-person services. Any facility with 50% or more telemedicine services will be identified as a Virtual Oriented Facility (VOF). DSAMH requires all licensed or certified facilities authorized by DSAMH to have a physical Delaware location with minimum service capacity required for in-person services and minimum staffing level on-site specific to level of care provided. DSAMH does not license or certify 100% Virtual Oriented Facilities.
- III. **DEFINITIONS:**
"Brick and Mortar Facilities" means facilities that are licensed and/or certified by DSAMH that have a Delaware address and meet all requirements of 16 Del C. 6001 Substance Abuse Facility Licensing Standards and/or The Adult Behavioral Health Services DHSS Certification and Reimbursement Manual. Facilities must comply with the 50% rule as defined below.

"Certification" means DSAMH-issued Medicaid certifications for programs that have met the minimum requirements in "The Adult Behavioral Health Services DHSS Certification and Reimbursement Manual." This certification verifies provider has met DSAMH approval to enroll in the Delaware Medical Assistance Portal (DMAP). Final approval for access to all taxonomies and billing codes is through the DMAP portal and the vendor selected by DMMA to enroll providers. Issuance of a license or certification by DSAMH does not guarantee payor sources or contracts with DSAMH or any other entity.

"DMMA" means the Division of Medicaid and Medical Assistance

"DSAMH" means the Division of Substance Abuse and Mental Health

"Facility" means the physical area, grounds, buildings, fixtures, or portions thereof, owned, leased, operated, or used by an entity or program.

"Fifty-Percent Rule" means a rule that the primary service modality type, in-person versus telemedicine, shall be designated a Virtual Office Facility (VOF) requiring prior approval from DSAMH and DMMA if VOF services are Fifty Percent (50%) or greater. Provider must have a mechanism to monitor and track the ratio of in-person services versus telemedicine, such as encounter data, billing information, or other mechanisms.

"License" means approval granted by the Division that authorizes a program to provide treatment of Behavioral Health disorders. Different types include full licensure, provisional licensure, and temporary licensure.

"Licensure" means the act of conferring a license to a program to provide services. Issuance of a license or certification by DSAMH does not guarantee payor sources or contracts with DSAMH or any other entity.

"Telehealth" means the use of information and communications technologies consisting of telephones, remote patient monitoring devices or other electronic means which support clinical health care, provider consultation, patient, and professional health-related education, public health, health administration, and other services as described in regulations. Health care providers should incorporate methods into their practice to reach underserved patients and ensure equal access to necessary telehealth care.

"Telemedicine" means a form, or subset, of telehealth, which includes the delivery of clinical health-care services by means of real-time 2-way audio (including audio-only conversations, if the patient is not able to access the appropriate broadband service or other technology necessary to establish an audio and visual connection), visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitates the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's health care. Asynchronous, or store-and-forward, applications do not meet the DMAP definition of telemedicine per "The Adult Behavioral Health Services DHSS Certification and Reimbursement Manual."

“VOF” or “Virtual-Oriented Facility” means a program licensed or certified by DSAMH that has a Delaware address and meets all requirements of 16 Del C. 6001 Substance Abuse Facility Licensing Standards and/or The Adult Behavioral Health Services DHSS Certification and Reimbursement Manual. VOFs provide fifty (50%) percent or more of their services by telemedicine. VOFs have an additional requirement to submit a VOF proposal and subsequent presentation to the Division of Substance Abuse and Mental Health before applying for a Facility License or Facility Certification (See Section VI.C).

IV. **SCOPE:** All DSAMH Licensed, Certified, or Contracted Facilities utilizing telemedicine.

V. **EXCEPTIONS:** It is the provider’s responsibility to provide services safely. The provider cannot utilize telemedicine services if DSAMH deems it is unsafe to do so. Programs must ensure their practitioners comply with all regulatory bodies and best practices to ensure patient safety. Specific DSAMH Certifications and DSAMH Licenses may require direct, in-person contacts. Examples of program types may include Assertive Community Treatment Teams, Mental Health Group Homes, or Residential Treatment programs. Service-specific requirements for certain levels of care may include initial assessments, recovery plans, medical assessments, toxicology activities, or medication administration.

VI. **PROCEDURES**

A. All Facilities utilizing telemedicine must have procedures and policies that are demonstrate the following:

1. Policies and procedures to meet the requirements of the ADA when performing telemedicine. The policies shall include resource lists for staff to meet the needs of people with disabilities, such as visual impairment, hearing impairment, etc. The program shall not discriminate against people with disabilities and provide equal access to health care services, whether through in-person services or telemedicine.
2. Policy defining in-person requirements for specific levels of care. All clients must have an in-person admission process consistent with regulations for that level of care or as designated by contract.
3. Policy defining minimum staffing on-site during scheduled business hours that is sufficient to meet service needs of program and any licensure and/or certification requirements for on-site staffing.
4. Meet the standard of care via telemedicine the same as if the service was in person,
5. Policy for determining client suitability for telemedicine to include assessing barriers to accessing telemedicine services including those listed in VI.A.11.a.
6. Detailed informed consent specific to telemedicine, including, but not limited to:
 - a. Telemedicine-specific informed consent on file with the client's signature except for when allowed by law to use verbal consent or other methods of client consent,
 - b. Client agreement to verify that no one else is present in client’s visual and hearing space,
 - c. Client agreement to verify the psychological safety of client at the time of each service,
 - d. Client agreement to verify client's location at the time of each service, to establish jurisdiction and location for emergency services,
 - e. Client agreement to verify identity, with at least two (2) client identifiers, at the time of each service such as name and date of birth, and
 - f. Client verbal agreement to telemedicine at time of each service.
7. Risk mitigation policies and practices in place for:

- a. Client emergencies while receiving telemedicine services,
 - b. Diversion prevention plan directly addressing telemedicine, and
 - c. Defined practice for informed medication consent (medication change, dosage change, risk, benefits, alternative treatments, and after-appointment supports as needed).
8. Updated HIPAA policies that include safeguards for telemedicine practices.
 9. Policies and procedures that ensure accurate billing and distinguishing between telemedicine and in-person services.
 10. Policies and procedures that ensure documentation differentiates between in-person services and telemedicine.
 11. A policy to review and address unintended or unforeseen treatment delivery concerns that may arise from the use of telemedicine, including but not limited to the following:
 - a. Connection issues (no video, audio, or other technical challenges),
 - b. Disconnection during session,
 - c. Privacy problem (human driven),
 - d. Breach of privacy (technical),
 - e. Client emergency or decompensation,
 - f. Provider emergency during a call,
 - g. Illegal or unethical activities discovered via telemedicine call, or
 - h. Provider's ability to fulfill the duty to warn and protect.
 12. This field of telemedicine is emerging, and providers must review and update policies annually, at a minimum, and more frequently if required by changing laws.
- B. Brick and Mortar Facilities: All DSAMH Licensed and Certified Facilities practicing telemedicine are required to have policies and procedures ensuring the following minimum expectations are met regarding telemedicine:
1. Remain in compliance with all applicable state and federal laws and regulations:
 - a. Facilities licensed by DSAMH must meet all 6001 Substance Abuse Facility Licensing Standards requirements. Facilities must have on-site staffing in the brick and mortar facility to meet all service-related and administrative standards. Fifty percent or more services must be delivered on site and in person.
 - b. Facilities requiring DSAMH certification must meet "The Adult Behavioral Health Services DHSS Certification and Reimbursement Manual" Telemedicine requirements (section 1.8) as the minimum requirements for providing telemedicine services for certified providers.
 - c. All staff employed by Licensed or Certified facilities must adhere to the Division of Professional Regulation requirements, Title 24 Chapter 1700: Division of Professional Regulation Board of Medical Licensure and Discipline requirements. Staff providing services must have required Delaware licensure or certification applicable to the service being provided and operate within the scope of that license, including any telemedicine guidance issued by their regulatory authority for their discipline.
 2. Facilities must have policies and procedures to verify required licenses and credentials. The Division of Professional Regulation may provide exceptions in specific categories, have interstate compact state agreements, or have reciprocity processes available. The provider must meet the following DSAMH requirements:
 - a. Providers must detail how any person practicing in the facility with an out-of-state license meets DSAMH's required experience and licensure requirements.
 - b. Staff with out-of-state licenses must demonstrate that their license and experience are commensurate and acceptable to DSAMH by requesting approval of their qualifications,

including their out-of-state license accrediting body, resume, and job description for a specific position in Delaware.

- c. Providers must keep a copy of written approval from DSAMH acceptance of approval of out-of-state licensure and experience meets DSAMH specific requirements for level of care and position requested.
 3. Facilities shall have policies and procedures that meet the minimum requirements of all Federal regulations, including but not limited to the Drug Addiction Treatment ACT 2000, Ryan Haight Act of 2008, and Patients and Communities or SUPPORT for Patients and Communities Act of 2018 (Support Act). Facilities shall have a process to review and update policies and procedures as required by Federal law changes.
 4. Facilities certified by SAMHSA shall have policies and procedures that meet the minimum requirements for certification and shall have a process to review and update policies and procedures as required by SAMHSA certification changes.
 5. Facilities licensed by the Drug Enforcement Agency shall have policies and procedures that meet the minimum requirements for licensure and shall have a process to review and update policies and procedures as required by DEA changes.
 6. Facilities employing Licensed Prescribers regulated by Title 24 Chapter 1700: Division of Professional Regulation Board of Medical Licensure and Discipline 16 shall have policies and procedures ensuring Prescribers remain licensed and practice within their scope of practice and required regulations.
 - a. Exception: 24 DE Admin. Section 19.2: "No opioid prescribing is permitted via telemedicine with the exception of addiction treatment programs offering medication-assisted treatment that have received a Division of Substance Abuse and Mental Health (DSAMH) waiver to use telemedicine through DSAMH's licensure or renewal process as outlined in **16 DE Admin. Code 6001** Substance Abuse Facility Licensing Standards Sec. 4.15." The 1700 Board of Medical Licensure authorizes DSAMH to waive this requirement. DSAMH waives this requirement with the issuance of DSAMH Policy 028.
- C. Virtual-Oriented Facilities:
1. New providers planning to open and operate a VOF must submit a written plan for VOF operations that meets all requirements of Section VI.B, except those identified and approved by DSAMH (see VI.C.1.e), and the following information:
 - a. Anticipated county location(s),
 - b. Licenses requested,
 - c. Certifications requested,
 - d. Anticipated breakdown of service type between in-person (Brick and Mortar) and telemedicine (VOF Primary Services 50% and above),
 - e. Identifies any areas of Section VI.B that cannot be met and facility's alternative plan for DSAMH to consider approving licensure or certification,
 - f. Staffing plan including Delaware-specific licensed and certified staff that will hold Delaware credentials suitable to services being provided,
 - g. How administrative and supervisory oversight will be provided if not on-site at facility location,
 - h. Positive anticipated benefits of the VOF model to Delaware clients,
 - i. Negative anticipated limits or risk incurred of VOF proposal for Delaware clients,
 - j. Any regulatory or ethical challenges with State licensing requirements for facilities and staff compliance with Division of Professional Regulation requirements,

- k. Delaware business license and agency insurance plans,
 - l. Agency financial stability,
 - m. Example of telemedicine informed consent form,
 - n. Security practices (technology used, HIPAA compliance, 42 CFR Part 2 compliance, SAMHSA compliance),
 - o. Utilization of Business Associate Agreements,
 - p. Partnerships or Memorandum of Understanding with Delaware Brick and Mortar facilities for client's needs that exceed or are not otherwise suitable for a VOF facility and primarily telemedicine services,
 - q. Provider history and success of VOF program model in Delaware or other states.
 - r. Plan to provide an in-person admission within thirty (30) days, an in-person visit every 180 days, and an in-person visit for recovery plan development. Certain levels of care will require more frequent in-person contacts. These must be detailed in agency policy.
 - s. Plan for securing appropriate in-person treatment to clients who prefer in-person services or who are not suitable for telemedicine services. The plan shall be detailed and provide the client with timely access to in-person services with the provider or by formal affiliation with another Delaware Brick and Mortar site.
 - t. Policy defining minimum on-site staffing during scheduled business hours that is sufficient to meet the service needs of the program and any regulatory requirements for on-site staffing.
 - u. New providers that have submitted a proposal for a VOF will be provided one (1) hour to present their proposal to DSAMH. DSAMH will notify the provider within ten (10) business days if the proposal is accepted. At that time, the provider may apply for facility licensure and certification for the services identified in the request.
2. Existing providers currently providing services in-person fifty (50%) percent or higher but are anticipating transitioning to a majority telemedicine VOF model must submit a proposal to DSAMH as outlined in VI.C. This must be submitted at least sixty (60) days before the anticipated cross-over to VOF services. The existing provider will be provided one (1) hour to present their proposal to DSAMH and DMMA. DSAMH will notify the provider within ten (10) business days if the proposal has been accepted. DSAMH will also discuss at that time if licensure or certifications need to be amended or if new applications are required. Supporting documentation may be requested in addition to the proposal provided for the services identified in the request.

VII. **POLICY LIFESPAN:** Please note that while this document reflects DSAMH's interpretation of the relevant provisions of telemedicine to the extent where it goes beyond merely reiterating the text of the law, regulations, or published requirements, it does not have the force of law and is not legally binding if other state or federal laws require a higher standard. This policy is not a regulation that has the force of law, as such, it may be rescinded or modified at DSAMH's discretion.

VIII. **RESOURCES:**

- A. Telebehavioral Health Best Practices C 2021 Jay Ostrowski, Behavioral Health Innovation