



## Frequently Asked Questions:

### Post COVID-19 Executive Orders and Behavioral Health Administration Partners

Updated: August 10, 2021

On July 1, 2021, certain executive orders issued during the State of Emergency were terminated. One of the orders was Executive Order 20-04-01-01, which expanded the use of telehealth and audio-only services. This order is replaced by the Preserve Telehealth Act (SB 3).

If you have a behavioral health question related to post COVID-19 telehealth services, please contact [bha.inquiries@maryland.gov](mailto:bha.inquiries@maryland.gov) with additional questions or concerns, or contact your Local Behavioral Health Authority.

#### FAQs:

#### **Does the Preserve Telehealth Act allow all telehealth services to continue until 2023?**

The below telehealth guidances have been updated as of July 16, 2021. The implementation date is now on August 15, 2021, instead of July 1, 2021.

The [Preserve Telehealth Act](#) permits all services clinically appropriate for telehealth, including audio-only care, to continue to be provided by telehealth until 2023. The BHA does not believe group PRP services or any Respite services are clinically appropriate to be delivered via telehealth. Individual and group services from all other provider types are permitted by telehealth. There is also a limitation on the amount of services that can be delivered through telehealth in SUD residential treatment settings, with no more than 50% of all clinical/therapeutic services permitted to be delivered by telehealth. Please review the guidance below for more information.

- [Medicaid Provider Guidance COVID-19 Secretary's Orders Changes -- Revised July 16, 2021](#)
- [BHA Telehealth Post Emergency Guidance -- Revised July 16, 2021](#)

### **What services will continue using telehealth?**

- All therapies, assessments, evaluation and management services conducted by individual practitioners
- All therapies, assessments, evaluation and management services conducted at OMHCs including individual, family and group therapy sessions
- PRP assessments and off-site individual services
- All therapies and assessments conducted in outpatient substance use disorder programs (Level 1, 2.1 and Level 2.5 services)
- Supported Employment
- Targeted Case Management
- Mobile Treatment/Act

### **What service requirements are changing?**

- PRP on-site (POS 52) and all PRP group sessions (POS 52 and 15) may no longer be by telehealth.
- In Residential SUD no greater than 50% of the therapeutic interventions may be by telehealth.
- Service requirements for Level 2.1 SUD returns to pre-State of Emergency. Must provide at minimum 2 hours of service in a day, and 9 hours per week to bill the daily rate.
- Residential SUD returns to service levels contained in COMAR 10.09.06 04.
- Child and Adolescent Respite Services return to pre-State of Emergency.

### **Why is telehealth not permitted for Child and Adolescent Respite services?**

Under COMAR 10.63.03.15, respite care, is defined as follows — "provide short-term, in home or overnight temporary services to support an individual to remain in the individual's home:

- a. Through enhanced support or a temporary alternate living arrangement; or by temporarily freeing the caregiver from the responsibility of caring for the individual".

In-home services, particularly with the goal of freeing the caregiver from the responsibility of caring for the individual, cannot be provided via telehealth.

### **Why is telehealth not permitted for group PRP services?**

PRP community-based comprehensive rehabilitation and recovery services and supports

include, but are not limited to:

- Community living skills;
- Activities of daily living;
- Family and peer support (COMAR 10.63.03.09).

These services cannot be appropriately delivered using telehealth platforms for groups because Psychiatric Rehabilitation groups require direct observation, intervention, and reinforcement of skills, which are difficult to achieve through telehealth. The group telehealth format limits the opportunity for effective skill training and performance demonstration, which are core components of a PRP service. On-site services and in-person group sessions are the only way to track the provision and outcome of group versus individual services, thus it is no longer clinically appropriate to offer these mentioned services using a telehealth format. There is also a concern that individuals are not able to access HIPAA compliant platforms to participate in PRP services when offered using a telehealth format.

**Why are Residential SUD settings limited to no greater than 50% of the therapeutic interventions may be by telehealth?**

If in-person care is limited because of the extensive use of telehealth, the benefits of milieu therapy and the therapeutic community, essential in residential and hospital settings, are diminished. When staff deliver care by telehealth to the individual, the individual must be in the Residential SUD setting. If services can be delivered predominantly through telehealth transfer to a non-residential level of care may be more appropriate.

Each week Residential SUD treatment must provide a minimum of 50% of their therapeutic hours set forth by COMAR 10.09.06.04 in-person face-to-face, and COMAR 10.09.06.06 requires:

- 5 hours/week for Level 3.1
- 20-35 hours/week for 3.3
- 36 hours/week for 3.5
- 36 hours/week for 3.7

If a person must isolate or be quarantined due to COVID-19, a limited exception may be made to accommodate the individual. The record should reflect the clinical need to have the individual do more than 50% telehealth. However, the exception is limited for a particular individual during the period of quarantine and is not for the residence as a whole.

**We have been providing services for someone with a hearing impairment via a Google program that provides closed captioning. It is not HIPAA compliant. Are we still permitted to use this platform with the new guidance since there seems to be some exceptions through the Federal Civil Rights office?**

The HHS Office for Civil Rights issued telehealth guidance early during the federal public health emergency that allowed HIPAA-covered health care providers to use remote communication technologies for telehealth services, including commonly used apps such as FaceTime, Facebook Messenger, Google Hangouts, Zoom, or Skype, even if the application does not fully comply with HIPAA rules. However, providers cannot use any platforms that are public-facing, such as Facebook Live, Twitch, and TikTok. These federal telehealth flexibilities continue as does the [federal public health emergency](#).

For more information on HIPAA flexibility for telehealth services during COVID-19 see the [Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency](#).

**Are solo or group private practitioners not in an OMHC also allowed to continue seeing medicaid clients using telehealth?**

Yes. Additionally, the [Preserve Telehealth Act](#) removes originating and distant site restrictions so neither provider nor telehealth recipients have to be in a clinic.