



NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Division of Mental Health, Developmental
Disabilities and Substance Abuse Services

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

Kody H. Kinsley • Deputy Secretary for Behavioral Health & IDD

March 26, 2020

**MEMORANDUM ON TELEHEALTH SERVICES UNDER THREE-WAY PSYCHIATRIC
INPATIENT CONTRACTS DURING COVID-19 PANDEMIC**

Via Email

TO: Three-Way Contract Community Hospitals and LME/MCOs

FROM: Matt Herr, Acting Assistant Director for System Performance, DMHDDSAS

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MPH

Retroactive to March 10, 2020, and continuing through the period of Governor Cooper's declaration of a state of emergency due to the COVID-19 public health emergency, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services will exercise its discretion to temporarily cease enforcement of the telehealth prohibition included in Attachment A of the current Three-Way Contracts for Local Community Psychiatric Inpatient Hospital Beds ("Contracts"). Hospitals participating in the Three-Way Contracts may utilize telemedicine, telepsychiatry, telehealth, or other mode of real-time 2-way audio/video communication for the purpose of delivering, supervising, or directing three-way contract inpatient psychiatric care in connection with the good faith delivery of services during the COVID-19 public health emergency, subject to the following requirements:

1. Each patient must have a clinically appropriate, in-person physical exam by a qualified physician or physician-extender as part of his or her admission. This physical exam does not have to be completed by the attending psychiatrist – it could be performed by any medically licensed individual (e.g. NP, PA, DO, MD) and documented in the patient record.
2. The decision to provide care for a patient via telehealth must be individualized, appropriate for the patient's health needs/goals and consistent with relevant standards of care. The method(s) and reason(s) for using telehealth must be documented appropriately in the patient medical record.
3. Patient consent to receive services via telehealth should be obtained whenever possible and also documented in the medical record according to facility procedures for documenting consent.
4. The facility must follow relevant CMS and accreditation body requirements regarding availability of on-site medical staff for inpatient psychiatric care.
5. The facility is prohibited from discrimination based on funding or diagnosis and must ensure that care provided by on-site medical staff to patients admitted for inpatient psychiatric care is commensurate with the care provided to patients admitted for non-psychiatric needs.

Moreover, retroactive to March 10, 2020, and continuing through the period of Governor Cooper's declaration of a state of emergency due to the COVID-19 public health emergency, the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services will exercise its discretion to temporarily cease enforcement of the prior authorization requirements

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in the Contracts to the extent that LME/MCOs also may utilize the same prior authorization criteria that they use for Medicaid beneficiaries being admitted for inpatient psychiatric care.

This temporary enforcement discretion is being exercised for the purpose of increasing flexibility to help facilitate continued access to clinically appropriate and necessary three-way contract inpatient psychiatric care in our state's behavioral health and I/DD services system in response to the unprecedented COVID-19 public health emergency.

Finally and importantly, throughout the COVID-19 public health emergency, please be aware of and continue to consult: the current related guidance from (a) [the US DHHS Office for Civil Rights regarding discretionary enforcement of HIPAA privacy and security rules in connection with the good faith delivery of telehealth services](#), and (b) [SAMHSA regarding the applicability of 42 CFR Part 2 limitations on use and disclosure of patient-identifying information](#). Providers are encouraged to implement appropriate safeguards, consistent with current guidance from OCR and SAMHSA, to continue to protect the confidentiality and security of patient information throughout the COVID-19 pandemic.