


- MEMORANDUM -

DATE: May 31, 2023
TO: Alameda County Behavioral Health (ACBH) Contracted Specialty Mental Health Services (SMHS) and Drug Medi-Cal Organized Delivery System (DMC-ODS) Service Organizations, and Fee for Service Providers
FROM: Torfeh Rejali, Quality Assurance (QA) Administrator 
SUBJECT: **Telehealth Consent and Other Requirements**

The purpose of this memo is to notify providers of Department of Health Care Services (DHCS) requirements pertaining to beneficiary consent to participate in services via telehealth, and release of an optional ACBH Telehealth Consent form. This memo also notifies providers of additional requirements regarding the preservation of beneficiary choice, the establishment of new patient relationships, other program-specific requirements, and claiming and reimbursement.

Background

Per BHIN [21-047](#), DHCS required that verbal or written consent for telehealth (synchronous audio and video) or telephone (audio only) services must be documented in the patient record.

Telehealth Consent and Documentation

Per BHIN [23-018](#), DHCS provided additional guidance, requiring that providers:

- Obtain verbal or written consent for the use of telehealth (*both synchronous audio-only and synchronous video interactions*) as an acceptable mode of delivering services *prior to the initial delivery of covered services via telehealth*;
- Explain specific information to beneficiaries regarding the use of telehealth; and
- Document in the beneficiary's medical record their verbal or written consent to receive covered services via telehealth *prior to the initial delivery of the services*.

ACBH has created a [Telehealth Consent Form](#) to serve as the vehicle by which providers¹ can easily comply with these requirements. Providers can choose to utilize a general consent agreement; however, the agreement must contain all of the above components. The WORD and PDF versions of the ACBH Telehealth Consent Form are posted in Section 7 of the [QA Manual](#) on the ACBH Provider website.

For consent obtained verbally, the language within the Verbal Consent Communication on the ACBH Telehealth Consent Form must be used when explaining to beneficiaries and the same language documented in a progress note within the beneficiary's medical record prior to initiation of telehealth services.

¹ Providers should also review guidance from the appropriate licensing boards for specific telehealth documentation requirements.



Documentation of beneficiary consent must be made available to ACBH and/or DHCS upon request.

Preservation of Beneficiary Choice

Per BHIN [23-018](#), DHCS also required that:

- Effective no sooner than January 1, 2024, all providers furnishing applicable covered services via synchronous audio-only interaction must also offer those same services via synchronous video interaction to preserve beneficiary choice; and
- Effective no sooner than January 1, 2024, to preserve a beneficiary’s right to access covered services in person, a provider furnishing services through telehealth must do one of the following:
 - Offer those same services via in-person, face-to-face contact; or
 - Arrange for a referral to, and a facilitation of, in-person care that does not require a beneficiary to independently contact a different provider to arrange for that care.

Establishment of New Patient Relationships

Per BHIN [23-018](#), as a general rule, State law prohibits the use of asynchronous store and forward, synchronous audio-only interaction, or remote patient monitoring when providers establish new patient relationships with Medi-Cal beneficiaries². DHCS defines the establishment of new patient relationships as follows³:

- For SMHS, the establishment of care for a new patient refers to the mental health assessment done by a licensed clinician.
- For DMC-ODS, the establishment of care for a new patient refers to the American Society of Addiction Medicine (ASAM) Criteria assessment.

Providers may establish a relationship with new patients via synchronous audio-only interaction in the following instances⁴:

- When the visit is related to sensitive services as defined in subsection (n) of Section 56.06 of the Civil Code⁵. This includes all covered SMHS, DMC, and DMC-ODS services.

² CA Welfare and Institutions Code (W&I) § 14132.725(c)(5) states that “A health care provider shall not establish a new patient relationship with a Medi-Cal beneficiary via . . . telephonic (audio-only) synchronous interaction” and applies to SMHS and DMC-ODS counties. CA W&I § 14132.731(b) applies the same standard to the DMC program. Both code sections permit DHCS to establish “specific exceptions” to these rules.

³ CA Department of Health Care Services, [post-COVID-19 Public Health Emergency Final Telehealth Policy Proposal](#), December 2022.

⁴ This policy applies to all Medi-Cal delivery systems and will be included in Medi-Cal provider manuals.

⁵ “Sensitive services” means all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, and includes services described in Sections 6924, 6925, 6926, 6927, 6928, 6929, and 6930 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient at or above the minimum age specified for consenting to the service specified in the section.





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- When the patient requests that the provider utilizes synchronous audio-only interactions or attests they do not have access to video.
- When the visit is designated by DHCS to meet another exception developed in consultation with stakeholders.

Additional Guidance and Requirements

BHIN [23-018](#) also provides the following:

- Additional program-specific requirements regarding how services delivered via telehealth may be provided and reimbursed.
- Requirements regarding 5150 evaluations and 5151 assessments.
- The use of Mental Health Services Act (MHSA) funding to pay for services provided via telehealth.
- Claiming and reimbursement for services delivered via telehealth.

Action Required

Please share this important information within your teams to ensure your organization is in compliance with DHCS requirements.

Resources

ACBH's QA team continues to offer opportunities for quality improvement, including QA Technical Assistance, regular Brown Bag meetings and training opportunities throughout the year. Providers are encouraged to take advantage of these resources to ensure compliance with Medi-Cal and County quality requirements.

Links to Brown Bag meetings and other events can be found on the [QA Training](#) page of the ACBH Provider website.

For questions, please contact QATA@acgov.org.



Alameda County Behavioral Health Care Services

A Department of Alameda County
Health Care Service Agency