

An Overview of Telehealth Regulations and Trends

Region 6 Addiction Technology
Transfer Center (ATTC)

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South Southwest (HHS Region 8)

ATTC

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The shifting landscape of regulations related to telehealth can make it difficult for practitioners to keep up with this important area. This document gives a brief overview of national and regional telehealth trends for behavioral health services, with a focus on Health and Human Services (HHS) Region 6 which includes Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Current laws and administrative codes for behavioral health treatment that use telehealth to deliver services were examined to prepare this document.

WHAT ARE THE MOST COMMON SERVICES DELIVERED USING TELEHEALTH?

Prior to the COVID-19 Public Health Emergency (PHE), “other medical diagnoses” were the most common conditions for which private insurance claims were filed using telehealth delivery. By the end of 2020, mental health conditions became the most common diagnostic categories using telehealth delivery. For instance, in February 2022, the CPT code for 60-minute mental health sessions was the most frequent procedure code. Private claims data from April 2022 showed:

- 26% of all telehealth claims were for one-hour psychotherapy sessions
- 32% of telehealth claims were filed for social worker-delivered services
- 64% of diagnoses were for mental health conditions

Although the use of telehealth to deliver healthcare services has decreased since 2021, its use to deliver behavioral health, and particularly mental health services, has remained strong.

WHAT ARE THE MAJOR TELEHEALTH TRENDS?

A report from the Center for Connected Health Policy in Fall 2022 identified several trends regarding telehealth.

- Some states use the term “telehealth,” others use “telemedicine,” and some use both.
- All fifty states and Washington DC provide reimbursement for live audio-visual sessions in Medicaid fee for service.

Restrictive states were places where it was more difficult to provide services via telehealth or audio-only.

In addition, this report found that reimbursement for audio only services by states had grown, with over 34 states allowing telephone sessions. This uptake in reimbursement of audio services allows patients to more easily access services if they have poor internet connections and/or do not have a smart phone or tablet computer. In Region 6, four states reimburse for audio only services (Arkansas, Louisiana, New Mexico, and Texas). However, in May 2022, Texas stopped reimbursing Substance Use Disorders (SUDs) providers for audio only services, bringing the number of Region 6 states allowing reimbursement for audio-only down to three.

Augenstein and Marks representing, Manatt, an organization providing legal and consultation services, rated states in terms of the ease of providing telehealth services given their existing laws and Medicaid policies. In Region 6:

- New Mexico was listed in the Progressive Category
- Louisiana and Oklahoma were listed in the Moderate Category
- Arkansas and Texas were listed the Restrictive Category



WHAT IS ALLOWED AND WHERE?

The tables below provide information on telehealth trends/regulations for Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, as of December 2022. The information is based on: the Center for Connected Health Policy reports, Fall 2022 Report/Summary and Telehealth Policy Landscape Looking Towards 2023; and the Telemental Health Laws report by Epstein Becker-Green Law, along with reviews of state laws, regulations, and administrative codes. Consumers of this document are encouraged to check with their states for updated information.

WHICH STATES ALLOW BEHAVIORAL HEALTH SERVICES TO BE DELIVERED IN AUDIO-VISUAL AND AUDIO-ONLY FORMATS?

Telehealth Behavioral Health	AR	LA	NM	OK	TX
Allows Audio-Visual Telehealth Services					
Allows Audio-Only Telehealth Services		^{1,2}			^{2,3}

¹ Audio only delivery is allowed only in situations where an audio/video system is not available or feasible.

² If audio-only systems are used, the rationale for employing an audio-only system must be documented in the clinical record.











³ Effective June 30, 2022, the Texas Health and Human Services Commission (HHSC) ended the temporary flexibility that has been allowed for substance use disorders services.

WHICH STATES DO NOT ALLOW BEHAVIORAL HEALTH SERVICES TO BE CONDUCTED ASYNCHRONOUSLY?

Asynchronous Communication	AR	LA	NM	OK	TX
Texting, emails, and faxes are <u>not</u> approved forms of telemedicine/telehealth services					



WHICH STATES DO NOT ALLOW TELEHEALTH SERVICES TO BE DELIVERED BY INSTANT MESSAGING, AUTOMATED MESSAGES OR APPS?

Regulations on Instant Messaging, Automated Messages, or Apps	AR	LA	NM	OK	TX
Instant Messaging are <u>not</u> approved forms of telehealth services	 ¹	 ¹			 ¹
Automated messages or automated mobile apps are <u>not</u> approved forms of telehealth	 ¹	 ¹	 ¹		 ¹

¹ No specific comments on instant messaging or automated messages; or automated mobile apps.

WHAT SPECIAL TRAINING IS REQUIRED FOR BEHAVIORAL HEALTH PRACTITIONERS TO DELIVER TELEHEALTH?

AR	LA	NM	OK	TX
Must demonstrate training in telepsychology (Psychologists)	3 hours initially and 3 hours by each renewal period (MFT; LPC; & Psychologist)		Training in use of equipment and competency in use	2 hours of telehealth training by each renewal period (MFT)

WHAT KIND OF REGULATIONS DO STATES AND PRACTITIONERS HAVE FOR TELE-SUPERVISION?

Tele-supervision for Behavioral Health	AR	LA	NM	OK	TX
Tele-supervision granted during PHE but still in effect				LPCs, MFTs, Psychologists	
Allows telephonic supervision but not supervision by email or text		LPCs, MFTs		Social Workers	
Tele-supervision can only be provided 50% of the time and permission to do tele-supervision must be approved by the Board		Psychologists			
Tele-supervision must be approved by the Board		Social Workers			
Tele-supervision can't exceed Level 1 supervision hour requirements	LPCs, MFTs				



Tele-supervision for Behavioral Health (cont.)	AR	LA	NM	OK	TX
Refer to NASW, ASWB, & CSWE for supervision and guidelines	Social Workers				
Allows for tele-supervision but does not favor it					Social Workers
Tele-supervision has the same standards as in-person supervision					LPCs, MFTs

WHICH STATES HAVE ENACTED LEGISLATION FOR STATE COMPACTS AND WHAT KINDS OF COMPACTS?

Legislation for State Compacts	AR	LA	NM	OK	TX
Passed PSYPACT (Psychologists)	✓	✗	✗	✓	✓
Passed Counseling PACT (Licensed Professional Counselors)	✗	✓	✗	✗	✗

WHICH STATES HAVE PASSED TELEHEALTH PARITY LAWS?

Parity for Services Provided Via Telehealth	AR	LA	NM	OK	TX
Providers reimbursed at the same rate/amount for telehealth visits as in-person visits	✓	! ¹	✓	✓	! ²

¹ Louisiana has Payment Parity only- Does not require that telehealth visits are covered similar to in-person visits

² Texas has Service Parity only- Service Parity does not guarantee the same rate of payment



WHICH STATES REGULATE THE KIND OF PROVIDERS WHO CAN BE REIMBURSED FOR BEHAVIORAL HEALTH VIA TELEHEALTH?

Providers who Can be Reimbursed for Behavioral Health Services via TH	AR	LA	NM	OK	TX
Psychologists	✓	✓	✗	✓	✓
Psychological Associates	✗	✗	✗	✗	✗
Psychologist Examiners	✓	✗	✗	✗	✗
Licensed Professional Counselor	✓	✓	✗	✓	✓
Associate Counselor (Intern)	✓	✗	✗	✗	✗
Associate Marriage and Family Therapist (Intern)	✓	✗	✗	✗	✗
Marriage and Family Therapist	✓	✓	✗	✓	✓
Licensed Clinical Social Worker	✓	✓	✗	✓	✓
Master Social Worker	✓	✗	✗	✗	✗

WHAT KINDS OF SERVICES CAN BE PROVIDED VIA TELEHEALTH OR AUDIO ONLY?

Type of Behavioral Health Service Provided via Telehealth and/or Audio Only	AR	LA	NM	OK	TX
Medication Assisted Treatment	✓	✓	✓	✓	✓
Peer Support Services	✗	✗	✗	✗	✓
Screening and Brief Intervention	✗	✗	✗	✗	✓
Emergency Mental Health/SUD Screening	✗	✗	✗	✓	✗



WHICH STATE PROFESSIONAL ASSOCIATIONS HAVE GUIDELINES FOR TELEHEALTH?

Professional State Associations that have Guidelines for Telehealth	AR	LA	NM	OK	TX
Psychologists	✓	✓	✗	! ¹	! ¹
Social Work	✓	! ²	✗	! ²	! ²
Marriage and Family Therapists	✓	✓	✗	! ³	! ³
Licensed Professional Counselors	✓	✓	✗	! ³	! ³
Licensed Alcohol and Drug Counselors	✗	✗	✗	✗	✗

¹ Doesn't have specific guidelines but recommends Psychologists follow APA Guidelines for Telepsychology and PSYPACT

² Some guidelines but refers Social Workers to ASWB- Technology Standards in Social Work practice

³ Some guidelines but refers LPC and MFTs to National Guidelines

WHICH STATES REQUIRE A PROFESSIONAL TO BE LICENSED TO DELIVER BEHAVIORAL HEALTH SERVICES VIA TELEHEALTH?

Requires Licensure to Conduct Telehealth	AR	LA	NM	OK	TX
Psychologists	✓	✓	✗	! ¹	✓
Social Work	✓	✓	✗	! ¹	✓
Marriage and Family Therapists	✓	✓	✗	! ¹	✓
Licensed Professional Counselors	✓	✓	✗	! ¹	✓

¹ Requires practitioner to be licensed and in good standing with Sooner Care



WHICH STATES REQUIRE AN IN-PERSON SESSION BEFORE DELIVERING SERVICES VIA TELEHEALTH?

Requires Client to be Seen In-Person Before Telehealth Service Delivery	AR	LA	NM	OK	TX
Psychologists	No - Can see patient if access to health record	Prefer first session in-person	No Guidance	No Guidance	
Social Workers	No - 1st session can be conducted virtually but must establish professional relationship	No Guidance	No Guidance	No Guidance	No Guidance
Marriage and Family Therapists			No Guidance	No Guidance	
Licensed Professional Counselors			No Guidance	No Guidance	



EXAMPLES OF UNIQUE REGULATIONS REGARDING TELEHEALTH BY STATE



Arkansas – Establishing a Relationship

A social worker and client relationship must be established in before the delivery of services via telemedicine. A simple review of a psychosocial history is not sufficient, nor are emails or text messages a sufficient basis for establishing a relationship.



Louisiana – Ensuring Data Security

An appropriate telehealth site has proper security measures and safeguards to ensure the confidentiality, integrity, and security of electronic health information. A licensee should not use social media platforms to deliver teletherapy or reference clients specifically or generally.



New Mexico – Telehealth Represents Competent Care

Telemedicine services have shared values: competent care with regard to culture and language needs; work sites distributed across the state; and coordination of telemedicine and technical functions at either end of network connection.



Oklahoma – Ensure Safeguards Regarding Confidentiality, Integrity & Security

Telehealth shall not include consultations provided by telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, nonsecure video conference, or facsimile transmission.



Texas – Involving Peer Specialists

Peer specialist services may be provided by synchronous telephone (audio-only) technology when the peer specialist has an existing clinical relationship with a person, and if clinically appropriate and safe. Approval to deliver audio-only services must be documented in the person's recovery plan. Whenever possible, HHSC encourages face-to-face (in person) interactions or synchronous audiovisual technology. Providers must document in the person's medical record the reason(s) for why services were delivered by audio-only technology.



WHAT'S THE FUTURE OF TELEHEALTH SERVICES?

Recently, a significant number of states have passed legislation allowing the reimbursement of behavioral health services via audio-visual and/or audio only. However, some states telehealth regulations remain tied to the federal PHE. Experts, Yarbrough and Kwong (2022) predict that the PHE will be extended until April 11, 2023 with Medicare telehealth flexibilities ending 151 days after the PHE expires. For behavioral health services offered during the 151 days after the PHE has ended, there will be no requirement that people are seen in-person for outpatient sessions. After that, designated in-person visits for outpatient patients will be put in place- every 6 months for new patients and every 12 months for established patients. Finally, it appears that behavioral health services delivered via audio-only will remain covered through December, 2023.

A new report by Legislative Analysis and Public Policy Association gives an overview of research regarding the uptake of services delivered via telehealth (audio and visual) and audio only. The report gives recommendations for ensuring the future of telehealth for Substance Use Disorders (SUDs):

- Federal support for recognition and reciprocity of state licenses
- Permanently enact and expand PHE telehealth regulatory changes
- Increase funding for mobile app and assistive telehealth services
- Consider the privacy and ethical implications of telehealth use

The report ends with a quote about the role of telehealth in increasing access to intervention, treatment, and recovery support services for people who use drugs and alcohol.

'Individuals living with SUD are part of a particularly vulnerable group of people who would likely benefit from increased accessibility to health care providers through telehealth. If some of these issues can be addressed and overcome, the future of health care in America can include telehealth services based on evidence-based, informed practices that are designed to be accessible to everyone.'



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