

# DHS Responses to Public Comments Regarding DHS Telemedicine COVID-19 Response Manual

## Jaqueline Pendleton on behalf of Summit Community Care

**Comment:** 241.00 First Connections Developmental Therapy Telemedicine: allows telehealth for developmental therapy (T1027, T1027UB)

“We do not recall this from previous memos. Is this a new requirement and does it extend through only the emergency?”

**Response:** Memorandum DMS-40 was dated 5/7/2020. The proposed rule in the DHS Telemedicine COVID-19 Response Manual extends it through 12/31/2021.

**Comment:** 260.102 Telemedicine Originating Site Requirements for APRNs: “Virtual Patient Check Ins” allows use of a virtual check-in (G2012) to be used to assess whether an established patient needs an office visit.

“We do not recall this from previous memos. Is this a new requirement/suggestion for this COVID period? We have concerns this might set a precedent.”

**Response:** Memorandum DMS-05 was dated 3/31/2020. The proposed rule in the DHS Telemedicine COVID-19 Response Manual extends it through 12/31/2021.

## Joel Landreneau, Esq.

### Crochet & Landreneau, PLLC, Attorneys at Law

**Comment:** I appreciate this opportunity to comment on the rule promulgation currently out for public comment regarding the use of telemedicine in the Medicaid program.

#### Individual Psychotherapy

This manual explicitly states that Marital/Family Psychotherapy can be delivered via telemedicine, and specifically, via telephones. This was one of the changes made by the rule suspensions adopted in the original response to COVID-19.

What is not explicit is that the use of telephone-only will continue to be authorized for Individual Psychotherapy. This was also a rule suspension issued by the Department pursuant to the Governor’s Executive Order 20-06, which has not been renewed. On a prior occasion, I asked the Department if telephone-only will still be permitted for Individual Psychotherapy, and

I was directed to the Department’s FAQ page which states that it is, but which was dated May, 2020, and was issued under the authority of the now-expired 20-06.

My question is: will telephone-only still be acceptable for Individual Psychotherapy, and if so, under what authority? These draft rules do not address it. I would like to suggest reliance on the following language contained in Act 829 that has recently been enacted, and with an emergency clause, is in force already:

28  
29 SECTION 4. Arkansas Code § 23-79-1601(7), concerning the definition of  
30 "telemedicine", is amended to read as follows:  
31 (7)(A) "Telemedicine" means the use of electronic information  
32 and communication technology to deliver healthcare services, including  
33 without limitation the assessment, diagnosis, consultation, treatment,  
34 education, care management, and self-management of a patient.  
35 (B) "Telemedicine" includes store-and-forward technology

3

04-12-2021 13:25:42 JMB124

As Engrossed: H1/25/21 H2/8/21 H2/10/21 S3/9/21 S3/17/21 S4/6/21  
S4/12/21

HB1063

1 and remote patient monitoring.  
2 (C) For the purposes of this subchapter, "telemedicine"  
3 does not include the use of:  
4 (i)(a) Audio-only communication, including without  
5 limitation interactive audio unless the audio-only communication is real-  
6 time, interactive, and substantially meets the requirements for a healthcare  
7 service that would otherwise be covered by the health benefit plan.  
8 (b) As with other medical services covered by  
9 a health benefit plan, documentation of the engagement between patient and  
10 provider via audio-only communication shall be placed in the medical record  
11 addressing the problem, content of conversation, medical decision-making, and  
12 plan of care after the contact.

The way this reads, it seems as though health insurers are given some discretion to determine if “audio-only communication . . . substantially meets the requirements for a healthcare service” (Individual Psychotherapy) that would otherwise be covered by the benefit plan. For the sake of clarity, it would be helpful if DHS state clearly how they intend to treat audio-only telemedicine delivery, and to make this determination and state so in these proposed rules. I would repeat

this request for the other services mentioned as well: Mental Health Diagnosis, Substance Abuse Assessment, and Crisis Intervention.

**Response:** Audio only will continue to be allowed. Per your comment, Act 829 pertaining to audio-only communication is already in effect. DMS is taking steps to revise and promulgate its manuals as timely as the process will permit.

**Comment:** Originating Site definition

Section 260.103 continues the suspension that allows the originating site to be the client's own home. This suspends Section 105.190 in the original manual, which is a provision of general application throughout the Medicaid program. Therefore, it would appear that this rule suspension would apply to behavioral health as well. However, all of the discussion that follows under this title applies only to physicians, nurse practitioners, and physician's assistants. It should be made clear whether this suspension is generally applicable to all provider types, or only to physicians and their assistants.

This, too, is the subject of recent legislation. Act 767 of 2021 applies the definition "originating site" to "healthcare services," which is broader than just physician services. Likewise, this law defines "originating site" as including the home of the patient. However, Act 767 does not have an emergency clause, so it is not in effect yet. It is important for behavioral health care providers to know that this rule suspension applies to their services as well.

At the time these proposed rules were published, these two bills from 2021 had not yet become law. I would suggest adding them to the list of authorizing legislation under which this manual is promulgated.

Thank you for your consideration.

**Response:** Section 260.103 addresses suspension of the originating site requirement to allow all providers who can provide telemedicine services to a beneficiary in his or her home through the date of service December 31, 2021. DMS is currently initiating revisions to telemedicine rule to promulgate in accordance with Act 767 of 2021 in as timely a manner as the process will permit.

**Comment:** I would like to request that you add Supplemental Support to the list of services that can be delivered via audio-only telemedicine. This was allowed during the emergency declaration, and that service is allowed via telemedicine under Act 624 of 2021, but there is no specificity that telephone-only is allowed. This is a short service to check on well-being, and delivery via telephone is valuable.

**Response:** Section 248.000 of the DDS COVID-19 Response Manual addresses Supplemental Supports.