

## OMHSAS Announcement: Bulletin Suspension Information

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The purpose of this Bulletin is to address concerns expressed specific to the impact of ending OMHSAS' bulletin suspensions on December 31, 2022.

There appears to be a significant amount of concern about Providers' ability to have telehealth platforms in place by January 1, 2023. Just to clarify, at no point has OMHSAS stated that Providers must have HIPAA-compliant platforms in place by January 2023. It is important to note that the Pennsylvania General Assembly has defined telebehavioral health to specifically include platforms. Act 76 of 2022 defined: "Telebehavioral health technology (1) as any of the following:

- ➔ Real-time interactive audio and video communication using technology that conforms to industry-wide standards and is in compliance with Federal and State privacy and security laws.
- ➔ Real-time interactive audio-only telecommunication, provided that the use of audio-only telecommunication technology is consistent with Federal and State laws, guidance and requirements.

(2) The term does not include technology solely using voicemail, electronic mail messages, facsimile transmissions or instant messaging, or a combination thereof."

OMHSAS Memorandum dated February 18, 2021, which temporarily suspended portions of Bulletins and other guidance documents, stated that, "verbal consent must be documented at the time of service, and providers are strongly encouraged to obtain electronic signatures when possible." This language allowed verbal consent without a second witness during the public health emergency. At that time, OMHSAS also stressed the need for Providers to acquire platforms capable of securing electronic signatures.

Given OMHSAS' previous recommendation, Providers have had nearly two years to secure a platform capable of securing electronic signatures for consent and service verification. DHS is intending to provide a funding opportunity for Providers per the approved HCBS spending plan. OMHSAS continues to look for additional ways to support compliance with the expectations of the Pennsylvania Act 69 of 1999 (Electronic Transactions Act).

It remains imperative for all entities delivering MA-funded behavioral health services to have policies in place to capture consent in a way that creates an auditable trail. There are multiple ways that Providers of telebehavioral health can meet this requirement, including messages typed into the chat box of an audiovisual platform, email, text messaging, USPS mail, and two-person verification of a verbal consent secured over the phone. Given the options available to Providers, and the fact that OMHSAS has stressed

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the importance of developing appropriate systems to capture electronic signatures since February 2021, OMHSAS asks that Providers meet federal and state expectations.

OMHSAS has extended the Bulletin suspension specific to consent to treat, service verifications, and treatment plans until March 31, 2023. Effective on April 1, 2023, Providers are expected to capture consent to treat, service verifications and approval of treatment plans in a manner that creates an auditable file and in accordance with the timelines outlined in regulation.

Question and concerns may be emailed to [RA-PWTBHS@pa.gov](mailto:RA-PWTBHS@pa.gov).

Thank you,

OMHSAS Executive Committee &  
OMHSAS Bureau of Policy, Planning and Program Development (BPPPD)