



Pennsylvania
Department of Human Services

**HB 2560 of 2024:
Staffing Flexibility for Psychiatric Outpatient Clinics through
Telehealth Technology**

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Good morning, Chairman Warren, Chairman Heffley, committee members, and staff. I am Jennifer Smith, and I serve as Deputy Secretary for the Department of Human Services' (DHS) Office of Mental Health and Substance Abuse Services (OMHSAS). I appreciate the opportunity to provide testimony on behalf of the Department regarding House Bill 2560, which proposes to amend the Outpatient Psychiatric Oversight Act to permit increased flexibility in the use of telehealth in licensed Psychiatric Outpatient Clinics. The Department appreciates the collaborative efforts of the committee and stakeholders to bring forward this legislation.

Telehealth technology is a valuable tool that, for many individuals, has expanded access to behavioral health treatment. The Department is committed to ensuring that individual choice and clinical appropriateness determine the modality of behavioral health service delivery, be it in-person or through telehealth technology. It is, therefore, critical that access to both options remain available. The Department believes that HB 2560 strikes this balance by allowing telehealth flexibility while also preserving ongoing access to in-person services for individuals who want or need to be seen in person.

I would now like to walk you through the impacts HB 2560 would have on the behavioral health system.

Section 3(b) "Supervision of services", separates out the clinical supervision provided by a combination of psychiatrists, advance practice professionals (APP), and mental health professionals working as clinical supervisors from psychiatric treatment time. Previously both supervision and treatment time were included under the term "psychiatric time", which led to confusion and unnecessary requirements being placed on the supervision time. HB 2560 will remove requirements for clinical supervision time to be done in-person, adding flexibility for Outpatient Psychiatric Clinics to conduct all clinical supervision through telehealth technology if preferred, a change that will be available to all licensed clinics if enacted.

Section 3(g) “Direction” further separates out the functions of clinical supervision, which can be completed by a psychiatrist, APP, or MHP Clinical Supervisor, from the direction of an outpatient psychiatric clinic. Only a psychiatrist is able to serve as the director of an outpatient psychiatric clinic. While this distinction already exists within DHS regulations, given the expanded role of APPs within the clinic, this language will clarify that every outpatient psychiatric clinic must remain under the direction of a psychiatrist. The director is required to be available to clinic staff for consultation, all of the consultation time may be completed by either telehealth technology or in-person at the discretion of the clinic.

The concern has been raised that HB 2560 would eliminate psychiatrists from clinical treatment in outpatient psychiatric clinics. Psychiatrists serving as clinic directors have, and will continue to have, authority to establish “appropriate standards for treatment and prescribing practices” per Department regulations in 5200.23(a) and reiterated in subsection (g)(2)(i) of HB 2560. Psychiatrists serving as clinic directors can under this authority determine an appropriate treatment standard for their clinic which ensures a balance of care between various practitioners and ensure the continued delivery of services by psychiatrists.

Section 3(a) “Provision of services”, requires that 50% of the total psychiatric treatment time be delivered with the practitioner physically present in the clinic. This provision assists in balancing access to both in-person and telehealth delivered services. Current DHS regulations at 55 Pa. Code section 5200.22 (a)(3) specifically require that the psychiatrist deliver 50% of psychiatric time at the clinic. Providers have struggled with this requirement given the shortage of available psychiatrists and hesitance of psychiatrists to return to in-person services following the COVID-19 pandemic. Since the passage of Act 76 of 2022, which returned waiver authority to the Department related to psychiatric time, OMHSAS has issued approximately 50 waivers allowing an APP rather than the psychiatrist to cover the in-person required time. The language in HB 2560 will remove the need for Department

issued waivers by allowing either the psychiatrist or the APP to cover the in-person psychiatric treatment time.

Section 3(c) “Waiver Request” and (d) “Notice” expands on existing waiver authority by permitting an Outpatient Psychiatric Clinic to waive the 50% of in-person psychiatric treatment time under certain circumstances, up to allowing 100% of the psychiatric treatment time to be done through telehealth technology. This will create the option for a fully virtual telehealth-only licensed Psychiatric Outpatient Clinics. In order to ensure access to in-person services when requested or required by individuals receiving services at virtual clinics, providers seeking these waivers must document that they have entered into written agreements with local in-person clinics that will accept referrals for individuals who require in-person care.

While any clinic may apply for this expanded waiver, the federal Medicaid payment regulation describing clinic services in [42 CFR § 440.90](#) requires services to be provided in the clinic. CMS has interpreted this to mean that either the practitioner or the individual receiving services must be physically present in the clinic. This rule, sometimes referred to as “the four walls rule” limits Medicaid payment for services that are provided through telehealth technology when practitioners are teleworking. The Center for Medicare and Medicaid Services (CMS) has recently issued a [notice of proposed rulemaking](#) that would allow states to waive the four walls rule for behavioral health clinics. The Department supports this proposed federal change and if promulgated as a federal final rule, the Department would revisit this limitation.

In the interim, the Department is seeking to expand mobile mental health treatment (MMHT) services to help address Medicaid enrolled providers’ concerns about difficulty complying with the four walls rule post-COVID. Because MMHT is a rehabilitation service in the Pennsylvania Medicaid State Plan (not a clinic service), it is not subject to the federal four walls rule. However, at present, DHS

regulations in 55 Pa. Code Chapters 1153 and 5200 limit the use of MMHT to individuals with a disability that precludes them from receiving services at an outpatient clinic. Section 3 of HB 2560 permanently abrogates each of those limiting regulatory provisions, allowing the Department to expand MMHT for a broader population, including those individuals who prefer and are clinically appropriate for telehealth service delivery. Should HB 2560 be enacted into law during this session, the Department would plan to expand MMHT in Spring 2025.

Finally, Section 3(f) "Guidance" grants the Department authority to issue a Statement of Policy regarding telehealth technology. Currently OMHSAS has issued guidance on the use of telehealth through a bulletin [OMHSAS-22-02 Revised Guidelines for the Delivery of Behavioral Health Services Through Telehealth](#). The new statement of policy, however, would expand on this bulletin by incorporating requirements from state statute, OMHSAS regulations, and federal Medicaid regulations by service type, giving providers a more centralized location to seek guidance on the use of telehealth technology specific to the particular service they are delivering.

Thank you for the opportunity to provide testimony this morning – We look forward to working with the committee on this legislation to provide needed clarity and flexibility to our mental health providers in the field and are available to answer any questions you may have of the Department.