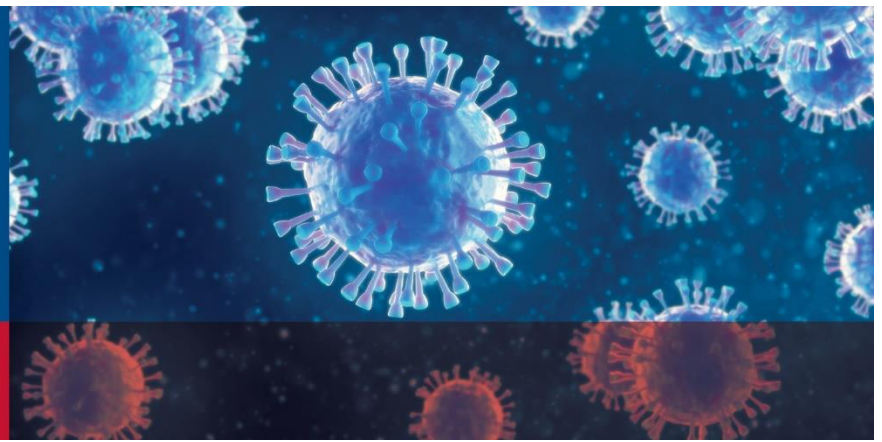




American Professional Agency



RISK MANAGEMENT



This document contains best practices as of March 24, 2020

## Frequently Asked Questions about Coronavirus (COVID-19) and Telehealth

Telehealth policies are being developed and revised at a rapid rate as the Federal government and individual States implement State of Emergency protocols and waivers. We have compiled links to websites that are maintaining up-to-date information of these changes. Please also see our previous *Alerts* for helpful links to information.

### ***Communicating via Mass E-mails***

In the rush for providers to quickly communicate to patients/clients, it is easy to make a mistake and inadvertently breach HIPAA. ***Take a breath and pause before you hit send!*** When sending mass emails to patients about Coronavirus (or any other topic), make sure that you place all the email addresses in the blind copy (BCC) column.

### ***If I need to report a potential HIPAA violation or other potential claim, who do I contact?***

You should report potential claims to the American Professional Agency, Inc. by fax or email. Fax: (631) 598-7249. Email: [jhoffman@americanprofessional.com](mailto:jhoffman@americanprofessional.com) or [bbrady@americanprofessional.com](mailto:bbrady@americanprofessional.com). Please include policy holder name, policy number, date of occurrence, brief sentence explaining the situation, policy holder contact information, patient/client initials and patient/client treatment date range.

### ***Do you have a list of vendors that provide telehealth services?***

Although we do not endorse any product, we are sharing a document released by the Massachusetts Medical Society which provides a list of available vendors. You can access this information via: <http://www.massmed.org/Patient-Care/COVID-19/Telehealth-Vendor-Options/>.

### ***Can I provide telehealth services to a patient who is out of state?***

You must be licensed in the state where the patient is located, and services are being rendered, ***unless*** the State has implemented a Licensing Waiver or an Emergency Declaration stating otherwise. State boards are continuing to implement emergency changes to licensure requirements, so it is important to check your professional board website frequently.

- Check the Federation of State Medical Boards website. *States Waiving Licensure Requirements/ Renewals in Response to COVID-19* for updates: <https://www.fsmb.org/advocacy/covid-19/>
- How to obtain licenses in multiple states prior to engaging in telepsychiatry:
  - Interstate Medical License Compact website <https://imlcc.org>
  - The Federation of State Medical Boards website <https://fsmb.org>
  - Psychology Interjurisdictional Compact PSYPACT <https://www.asppb.net/page/PSYPACT>

In response to the Covid-19 National Emergency, the U.S. Department of Health and Human Services finalized licensure waivers retroactive to March 1<sup>st</sup>, permitting physicians participating in Federal health care programs to receive payment for telemedicine services in states where they do not hold a license during the coronavirus (COVID-19) emergency, provided that they have equivalent licensing in another state and are not affirmatively barred from practice in the state included in the emergency area. It is important to recognize that the federal medical licensure waivers are limited in scope to conditions of participation and payment for federal health care programs such as Medicare, Medicaid and the Children's Health Insurance Program (CHIP). These waivers alone do not waive the requirement for physicians and other healthcare providers to maintain licensure in states where they are practicing a licensed profession, including via telehealth.

It is also important to understand that each state governs whether a provider is authorized to provide professional services in that state without holding an active license from that state's medical board. The national emergency declaration enables CMS to grant state and territorial Medicaid agencies a wider range of flexibilities and as a result State medical boards are starting to implement emergency changes to licensing requirements.

#### ***What states have Emergency Declarations and Licensing Waivers?***

The Federation of State Medical Boards has a document that is updated daily with a list of State Emergency Declarations and details on licensing waivers that can be found at this link:

<https://www.fsmb.org/advocacy/covid-19/>

#### ***Where Can I Find My State Telehealth Laws?***

You can find your state's telehealth laws on your State Board of Medicine or Profession website. The Federation of State Medical Boards website has quick links and contact information for each state.

<https://www.fsmb.org/contact-a-state-medical-board>

#### ***Is Telehealth covered by various public and private Payers?***

The Center for Connected Health Policy (CCHP) has a document *Telehealth Coverage Policies in the Time of Covid-19* that includes a summary of what is covered by various public and private payers. This document is time stamped as new policies become available/are enacted. You can access this information via link:

<https://www.cchpca.org/resources/covid-19-telehealth-coverage-policies>

#### ***I bought/renewed coverage and at the time was not doing telehealth/telepsychiatry. Now I am doing telehealth/telepsychiatry due to COVID 19. Do I have coverage?***

Telehealth is included in the American Professional Agency Inc. (APA) coverage for telehealth services provided within the United States, as allowable within the insured's professional license or registration to practice medicine. Please refer to your policy. There is no need to contact the APA to add telehealth coverage.

#### ***How can I mitigate risk when using the FaceTime platform as allowed during the Covid-19 outbreak?***

During this state of emergency and uncertainty, rules and regulations are changing by the minute. Ideally, the platform selected should be HIPAA compliant. We understand that FaceTime and Skype have been deemed acceptable for use during this COVID-19 outbreak.

While we do not offer recommendations on specific platforms, the system should offer secure communication to protect the integrity of electronic protected health information (ePHI). A business associate agreement (BAA) is needed from service providers in order to conduct telehealth sessions and consultations. A patient/client authorization to use telehealth should be obtained with documentation in the medical record of the discussion with the patient related to the platform selected and potential

benefits and risks to privacy and security, especially if not HIPAA-compliant. Note: FaceTime and Skype do not provide a BAA. You can access the HHS notification on the use of FaceTime and Skype via: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

***What information am I permitted to release to the CDC or other health department? Am I required to release information if one of my patients or myself tests positive for COVID-19?***

Your or your patient's medical physician will report to the state or local health department if you or your patient test positive for COVID-19.

If asked to release information about a COVID-19 positive patient/client: the Privacy Rule permits covered entities to disclose needed protected health information without individual authorization to a public health authority, such as the CDC or a state or local health department, that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability. For most disclosures, a covered entity must make reasonable efforts to limit the information disclosed to that which is the "minimum necessary" to accomplish the purpose. It is reasonable, for example, to include the name and phone number of the patient; however, the clinical record or patient/client diagnosis should not be released.

**Resources**

Office for Civil Rights, U.S. Department of Health and Human Services.COVID-19 and HIPAA. <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html>

March 2020 Office for Civil Rights, U.S. Department of Health and Human Services BULLETIN: HIPAA Privacy and Novel Coronavirus. <https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf>

February 2020 Office for Civil Rights, U.S. Department of Health and Human Services BULLETIN: HIPAA Privacy and Novel Coronavirus. <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

This material is provided as a resource for informational purposes only. It is not intended as, nor does it constitute, legal, technical or other professional advice or recommendations. While reasonable attempts have been made to ensure that this information is accurate and current as of its publication date, we make no claims, guarantees, representations or warranties, either express or implied, as to the accuracy, completeness or adequacy of any information contained herein. Consult your professional advisors or legal counsel for guidance on issues specific to you. Additionally, this material does not address all potential risks and may contain time-sensitive information. No responsibility is assumed to update this material and there is no guarantee or representation that this information will fulfill your specific needs or obligations. This material may not be reproduced or distributed without the express, written permission of Allied World Assurance Company Holdings, Ltd, a Fairfax company ("Allied World"). Actual coverage may vary and is subject to policy language as issued. Risk management services are provided by or arranged through AWAC Services Company, a member company of Allied World. © 2020 Allied World Assurance Company Holdings, Ltd. All rights reserved.