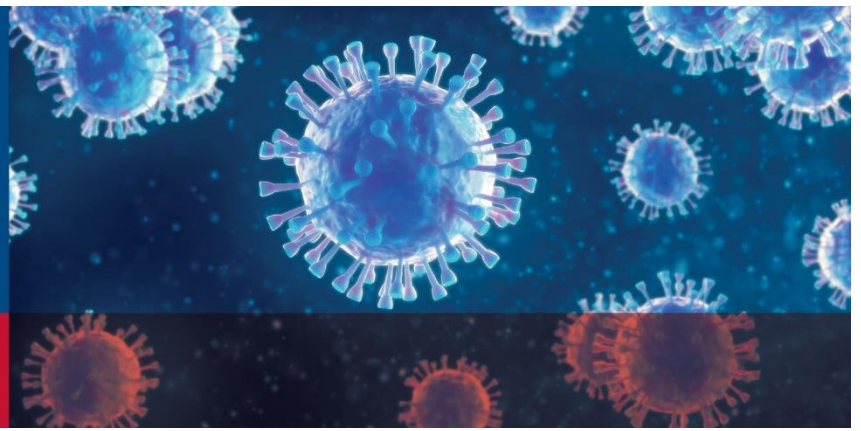




American Professional Agency



RISK MANAGEMENT



Updated FAQs about Coronavirus (COVID-19) and Telehealth

As healthcare providers continue to move toward providing telehealth services to their patients and clients during the COVID-19 crisis, federal, state and local governments continue to provide State of Emergency protocols and waivers. We are dedicated to continuing to provide information to assist in providing care from a remote location.

Our Helpline continues to respond to the concerns expressed by our policyholders, and we wanted to provide answers to the most frequently asked questions received since our last Alert. This document contains best practices as of April 9, 2020. The resources cited are fluid and the links will update frequently.

1. *If I treat a patient in another state, do I need to conduct an in-person exam prior to prescribing controlled substances?*

Although the Ryan Haight Act requires a provider to conduct an initial, in-person exam for a patient before electronically prescribing a controlled substance, as of March 17, 2020, the DEA has suspended this requirement for the duration of the COVID-19 public health emergency.

Under Federal law, if you are practicing telepsychiatry in multiple states, only one DEA registration will be required to dispense controlled substances in multiple states. However, practitioners in these states must be registered in their home state and must have permission under state law in each state where they practice to dispense controlled substances, despite the new allowance under federal law. Before prescribing to out-of-state patients via telehealth, review the state laws of each state in which you intend to prescribe controlled substances.

Refer to the Drug Enforcement Agency Diversion Control Division COVID-19 Information Page at <https://www.deadiversion.usdoj.gov/coronavirus.html>

2. *What documentation should I keep regarding telephone or video sessions of patients? Should I document each contact with the patient in the medical record?*

Every clinically relevant call with the patient should be documented in that individual's medical record. Documentation should include the content of each call, any instructions provided and patient understanding of the instructions, patient requests, concerns or other issues and all follow up conversations. If you speak with a family member (as authorized by the patient), include the name of the person, relationship to patient and content of that discussion.

There are documentation requirements as well when conducting video sessions with patients. The individual's medical record must include patient identification information, location of the patient and the provider, contact information, presence of any other person and their relationship to the patient, patient history, assessment findings, treatment plan, informed consent and information regarding fees and billing. The date, duration and type of service should also be documented in the medical record.

https://www.integration.samhsa.gov/operations-administration/practice-guidelines-for-video-based-online-mental-health-services_ata_5_29_13.pdf

3. Are payment services such as Venmo, Zelle and PayPal HIPAA compliant?

Unfortunately, banking applications such as Venmo, Zelle, PayPal, etc., do have privacy and security risks. Although these options tend to be free or extremely low-cost, they are known to collect data and resell it through ads which is not in compliance with HIPAA. None of these services offer a business associate agreement where they agree to safeguard privacy and security under HIPAA.

As you know, health care providers have obligations under HIPAA and state law that consumer-directed tools do not. As an alternative, credit card services from other vendors, such as those specifically designed for healthcare professionals, can offer HIPAA compliance as well as compliance with other relevant state and federal laws. There are many HIPAA compliant telehealth platforms that offer payment modules within them as well. Try to limit the information provided as part of the payment transaction to only the minimal requirements.

4. Do you have any recommendations for conducting group therapy sessions via telehealth?

Prior to initiating group therapy, both telehealth and group therapy informed consent must be obtained from each participant. During this COVID-19 public health crisis, the required use of a HIPAA compliant platform has been waived. Non-HIPAA compliant platforms such as FaceTime or Skype can be used. However, use of forward-facing platforms such as Facebook Live, Facebook Messenger video chat, TikTok and Twitch are still not permissible. Screen each potential group member to identify any risk factors that might preclude their participation. Set clear expectations upfront. This includes the commitment by the individual to maintain confidentiality – whatever is discussed in the group will stay within the group. Group members should be asked to turn off their phones and/or store them outside the room during the session and agree to not record or stream the sessions. Invite participants into the group using the designated application invitation feature and close the room when all participants have arrived. Reinforce the need for ground rules including privacy, confidentiality, mutual trust and respect.

5. Are there resources and guidance available from the American Psychiatric Association or the American Psychological Association?

Yes. The American Psychiatric Association (https://www.psychiatry.org/psychiatrists/covid-19-coronavirus?utm_source=Internal-Link&utm_medium=FOS-Hero&utm_campaign=CV19) and the American Psychological Association (<https://www.apa.org/practice/programs/dmhi/research-information/pandemics>) have set up a list of resources and frequently asked questions related to the COVID-19 pandemic on their respective websites.