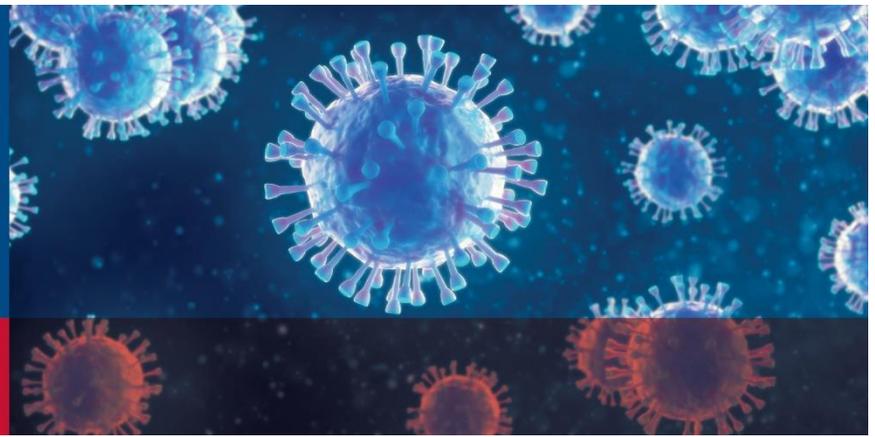




American Professional Agency



RISK MANAGEMENT



This document contains best practices as of September 2020

Telehealth: When Your Patient Is Located Out of State

Treatment of patients/clients during COVID-19 has varied between providing care via telehealth, in person, and sometimes a combination of both. As healthcare providers continue to provide telehealth during the COVID-19 pandemic, they have struggled with keeping up with the federal and state laws and the State of Emergency protocols and waivers.

At the same time, many patients/clients have moved out of state either temporarily or permanently to be closer to family, to attend college, or for business reasons. Providers have expressed concerns that psychiatric care may not be readily available in the new state where the patient/client will be physically located, at a time when patients/clients are reporting increased anxiety and are facing mental health crises.

Before providing telehealth services to a patient/client who is physically located in another state, it is important to understand and follow all federal and state laws and regulations, especially related to licensing, telehealth, prescribing and privacy.

Can I provide care via telehealth for a college student or patient/client who has moved out of state temporarily?

Yes, if you are licensed in the state where the patient is physically located. Many states have modified their licensure requirements during the COVID-19 pandemic. State laws are changing at a rapid pace and some of the temporary waivers allowed during COVID-19 are being rescinded. Providers need to continually monitor state laws and regulations when providing care to patients/clients in multiple states.

Consult the following websites for details on how to obtain a professional license in one or more other states **prior** to engaging in telehealth practice in that state.

- Federation of State Medical Boards. <https://www.fsmb.org/advocacy/covid-19/>
 - States Temporarily Waiving Licensure Requirements. A list of states declaring emergency declarations and details on licensing waivers.
 - Federation of State Medical Boards. States Waiving Telehealth Licensure Requirements. Includes a list of states waiving in-state licensure requirements.
- Interstate Medical Licensure Compact. <https://www.imlcc.org/>
- PSYPACT <https://psypact.org>

My patient/client who is a college student is moving back to college for two months in a state where I am not licensed. The college mental health services are closed, and the patient/client has high anxiety. What can I do?

You must be licensed in the state where the patient/client is located and where the services are being rendered. Plan ahead when treating students who may be moving away to college as it may take time to find a provider in the college area who is accepting patients/clients or for you to become licensed in the new state. Psychiatrists who treat college students should follow the American Psychiatric Association guidelines.¹ Psychiatrists and psychologists need to comply with the Higher Education Mental Health Alliance (HEMHA) guidelines.²

Can I prescribe new medications using telehealth?

Yes. The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 was created to regulate online internet prescriptions and is enforced by the Drug Enforcement Agency (DEA). This law imposes rules regarding the prescription of controlled substances through telehealth (live interactive videoconferencing). Further, the law requires any practitioner issuing a prescription for a controlled substance to conduct an in-person medical evaluation; however, there are several exceptions, including a “Public health emergency declared by the Secretary of Health and Human Services.” Secretary of Health and Human Services Azar declared such a public health emergency with regard to COVID-19 on January 31, 2020.

As of March 16, 2020, and continuing for as long as the Secretary’s designation of a public health emergency remains in effect, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom **they have not conducted an in-person medical evaluation**, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable Federal and State laws.³

The Act further states “If the prescribing practitioner **has previously conducted an in-person medical evaluation** of the patient, the practitioner may issue a prescription for a controlled substance after having communicated with the patient via telemedicine, or any other means, regardless of whether a public health emergency has been declared by the Secretary of Health and Human Services, so long as the prescription is issued for a legitimate medical purpose and the practitioner is acting in the usual course of his/her professional practice. In addition, for the prescription to be valid, the practitioner must comply with applicable Federal and State laws.”⁴

I am just starting out with telehealth. Where do I begin?

In addition to the previously mentioned resources, there are many helpful websites to help you get started with your telehealth journey:

- Check your state board website for licensing requirements and state telehealth requirements.
- American Psychiatry Association. Telepsychiatry Policies and Toolkit.
<https://www.psychiatry.org/psychiatrists/practice/telepsychiatry>
- American Psychological Association. Guidelines for the Practice of Telepsychology.
<https://www.apa.org/practice/guidelines/telepsychology>
- American Telemedicine Association. Quick-Start Guide to Telehealth During a Crisis.
<https://www.ama-assn.org/practice-management/digital/ama-telehealth-quick-guide>
- American Medical Association. Telehealth quick guide and Telehealth Implementation Playbook.
<https://www.ama-assn.org/practice-management/digital/ama-telehealth-quick-guide>

- American Society for Health Care Risk Management. Telemedicine Risk Management Considerations. ASHRM White Paper. 2018.
<https://www.ashrm.org/sites/default/files/ashrm/TELEMEDICINE-WHITE-PAPER.pdf>
- The Center for Connected Health Policy. Current state laws and policies. <https://www.cchpca.org/>

Conclusion

The utilization of telehealth is not without risk. It is important for mental health providers to understand and stay updated on the federal and state laws and regulations related to the practice of telehealth and to understand professional agency guidelines and best practice. Should you have questions or concerns, contact your risk management professional or legal professional.

End Notes

- ¹ APA Committee on Telepsychiatry & APA College Mental Health Caucus: College Mental Health, Telepsychiatry: Best Practices, Policy Considerations & COVID-19. Final Approval: August 2020.
<https://www.psychiatry.org/psychiatrists/practice/telepsychiatry> (Last accessed 9/24/20).
- ² HEMHA Guide: College Counseling from a Distance. Deciding Whether and When to Engage in Telemental Health Services. http://hemha.org/wp-content/uploads/2018/04/HEMHA-Distance-Counseling_FINAL.pdf (Last accessed 9/24/20).
- ³ DEA, COVID-19 Information Page, Telemedicine. Questions and Answers.
<https://www.deadiversion.usdoj.gov/coronavirus.html> (Last accessed 9/21/20)
- ⁴ IBID

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