



What Healthcare Providers Need to know about Telehealth Laws and COVID-19 HIPAA Guidelines; Treatment Implications

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Objectives

- A brief overview of telehealth laws from federal and state levels
- The necessity of identifying and explaining COVID-19 HIPAA emergency compliance laws for healthcare organizations
- To identify types of technology that can be used during the COVID-19 Pandemic
- To be familiar with state Medicaid and Medicare telehealth laws and fees for services according to HIPAA guidelines during the COVID-19 Pandemic
- Participants will identify potential ethical and treatment dilemmas that can impact client care and solutions to remedy problems
- The necessity of HIPAA compliant technology and documentation that is needed to implement an effective HIPAA telehealth program
- *Emory University Panel Discussion -The Impact of COVID 19 on the Provision of Behavioral Health Services

Georgia Composite Board Definition of Telemental Health

“Telemental Health – means the mode of delivering services via technology-assisted media, such as but not limited to, a telephone, video, internet, a smartphone, tablet, PC desktop system or other electronic means using appropriate encryption technology for electronic health information.

Encryption (Must be at least 128 bites to meet HIPAA standards) is the most effective way to achieve data security. To read an **encrypted** file, you must have access to a secret key or password that enables you to decrypt it. Unencrypted data is called plain text ; **encrypted** data is referred to as cipher text.

“Telemental Health facilitates client self-management and support for clients and includes synchronous interactions and asynchronous store and forward transfers.”



Definition of Telehealth

According to the *U.S. Department of Health and Human Services, Health and Resources and Services Administration (HRSA), (2010-2016)* “Telehealth is *the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health, and health administration.*”

Telehealth” is now more commonly used as it describes the wide range of diagnosis and management, education, and other related fields of health care. These include, but are not at all limited to the following:

Dentistry

Counseling

Physical and occupational therapy

Home health



Chronic disease monitoring and management

Disaster management

Consumer and professional education



Health Insurance Portability and Accountability ACT (HIPAA)

The Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) establishes, for the first time, a set of national standards for the protection of certain health information.

The U.S. Department of Health and Human Services (“HHS”) issued the Privacy Rule to implement the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The Privacy Rule standards address the use and disclosure of individuals’ health information—called “protected health information” by organizations subject to the Privacy Rule — called “covered entities,” as well as standards for individuals' privacy rights to understand and control how their health information is used.

Within HHS, the Office for Civil Rights (“OCR”) has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

Source: <http://www.hhs.gov/sites/default/files/privacysummary.pdf>

HIPAA Rules

Among other things, the HIPAA rules require:

Access control

Audit controls

Person or entity authentication

Transmission security

Business Associate access controls

Risk analysis

Workstation security

Device and media controls

Source: <https://www.hipaajournal.com/hipaa-compliance-checklist/>

The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, was signed into law on February 17, 2009, to promote the adoption and meaningful use of health information technology.

State statutes related to reporting responsibilities for suicidality, homicidality, and child and elder abuse must be followed according to state laws.

Statutes and guidelines related to clinical work with minors and multiple versus primary clients e.g. federal laws related to substance abuse and etc.



THE HITECH ACT (2010)

Because this legislation anticipated a massive expansion in the exchange of electronic protected health information (ePHI), the [HITECH Act](#) also widens the scope of privacy and security protections available under HIPAA; it increases the potential legal liability for non-compliance; and it provides for more enforcement.



Source: <http://www.hipaasurvivalguide.com/hitech-act-summary.php>

Types of Telemental Health Technology

Telephone

Video

Internet

Smartphone

Tablet

PC desktop system

Other electronic devices

These technology devices must include appropriate encryption technology for electronic health information purposes.

Source: Safford handout, 2015

Key Telehealth Definitions

1. Asynchronous store and forward - means the transmission of a client's information from an originating site to a licensee at a distant site without the presence of the client.
2. Synchronous interaction - means a real-time interaction between a client and a licensee located at a distant site.
3. Distant site - means a site or location from which services are delivered by a licensee/ Supervisor via a technology-assisted media.
4. Licensee - means a person licensed in the state of Georgia as a Professional Counselor, Social Worker or Marriage and Family Therapist, including Associate licensees. We are talking about associate and fully licensed staff.
5. Originating site - means a site where a client is located at the time TeleMental Health services are provided via technology-assisted media or where the asynchronous store and forward services originates.

Source: <http://rules.sos.ga.gov/GAC/135-11-.01>, March 2020

COVID-19 HIPAA Changes

The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, to do the following;

Protect the privacy and security of protected health information, namely the HIPAA Privacy, Security and Breach Notification Rules (the HIPAA Rules).

Source: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

COVID-19 WORLD STATES

- **Common telehealth policy changes through Executive/Agency orders**
 - **Allowing home to be an eligible originating site**
 - **Allowing telephone to be used to provide services**
 - **Requiring health plans, managed care and private to cover telehealth services and offer parity**

COVID-19 HIPAA Changes

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public facing remote communication product that is available to communicate with patients.

OCR is exercising its enforcement discretion to not impose penalties for noncompliance with the HIPAA Rules in connection with the good faith provision of telehealth using such non-public facing audio or video communication products during the COVID-19 nationwide public health emergency.

This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.

Source: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

COVID -19 Cont.

Under this Notice, covered health care providers may use popular applications to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency.

- Video chats,
- Apple FaceTime,
- Facebook Messenger video chat,
- Google Hangouts video,
- Zoom, or
- Skype

Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.

COVID 19 Unacceptable Video Applications

Under this Notice, however the following applications are not acceptable;

- Facebook Live,
- Twitch (a live video game website)
- TikTok (a short, bite-sized video app) and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers.

Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products

Source: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

Vendors that represent that they provide HIPAA-compliant video communication products and that they will enter into a HIPAA BAA

Skype for Business / Microsoft Teams

Updox

VSee

Zoom / Zoom for Healthcare

Doxy.me

Google G Suite Hangouts Meet

Cisco Webex Meetings / Webex Teams

Amazon Chime

GoToMeeting

OCR has not reviewed these Vendors for HIPAA BAA compliance nor does it endorse them.

Business Associate Agreement Guidelines

The Business Associate Contracts implementation specifications state that a business associate contract must provide the business associate with:

“(A) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity;

(B) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;

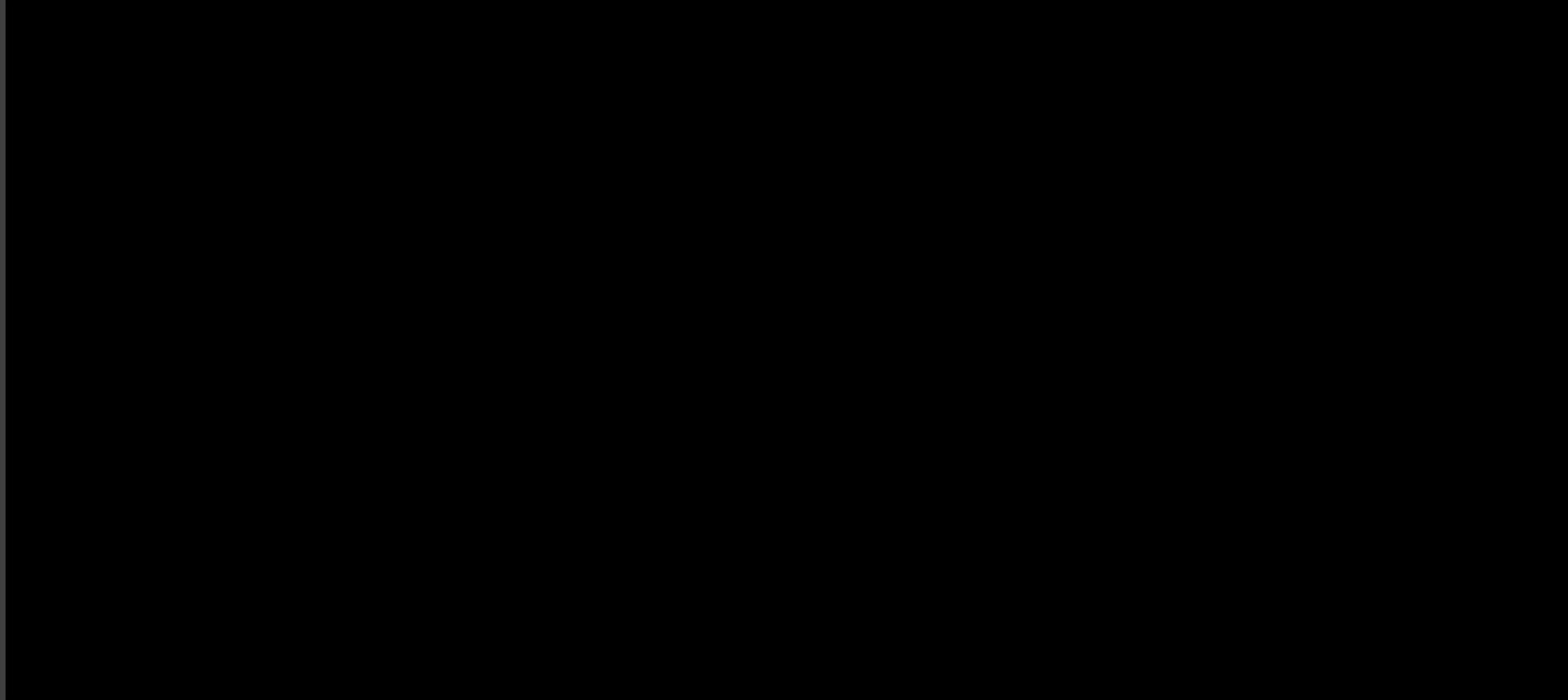
(C) Report to the covered entity any security incident of which it becomes aware;

(D) Authorize termination of the contract by the covered entity, if the covered entity determines that the business associate has violated a material term of the contract.”

Video- “COVID 19 and HIPAA”

Video- “COVID-19 and HIPAA”

<https://www.youtube.com/watch?v=Mhn7RBQAytw>



Medicaid Reimbursement Rates

Reimbursement

“Telemedicine includes consultation, diagnostic and treatment services. In the reimbursement fee structure, there is usually no distinction made between services provided on site and those provided through telemedicine and often no separate coding required for billing of remote services. The Medicaid billing code for telemental health is a GT code as identified in the 2020 Department of Behavioral Health and Developmental Disabilities (DBHDD) Provider Manual.

The payment amount for the professional service provided via a telecommunications system by the physician or Practitioner at the distant site is equal to the current physician fee schedule amount for the service.

- For payment to occur the service must be within the practitioner’s scope of practice under Georgia state laws.

Medicaid Reimbursement Rates

- Providers will be reimbursed under their applicable category of service fee schedule.”
 - COVID- 2019 HIPAA rules allows Medicaid providers to use telephone to also provide services during this emergency pandemic.
 - See updated Department of Behavioral Health and Developmental Disabilities (DBHDD) and Department of Community Health extension of telephone coverage during the COVID 19 Emergency Pandemic.
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- **Source:** <https://dbhdd.georgia.gov/>

DBHDD and DCH Updated Medicaid COVID 19 Guidelines

(Department of Behavioral Health and Developmental Disabilities (DBHDD) and Department of Community Health (DCH))

Behavioral Health

Telemedicine and Telephonic Guidance

The **March 19, 2020 DBHDD Telemedicine and Telephonic Guidance** indicates that DBHDD, in partnership with DCH, is allowing the service provision allowances in that guidance through April 30, 2020.

DBHDD is officially extending the allowances in this Guidance (and any other that references with an April 30, 2020 end date) through the end of the public health emergency period, whenever it is declared.

Source: <https://dbhdd.georgia.gov/>

Third Party Insurance

There is no consistent pattern regarding which private payers are progressive about telemental health reimbursement, but depending on the state, the “Blues” have been leaders in this area. Currently, there is no clearinghouse for practitioners to access this information.

Update Third Party Insurance Carriers;

The big **insurance** carriers are BCBS, Aetna, Cigna, United Healthcare and they **cover telemedicine**.

Source: Ga Department of Community Health, GA Medicaid

Medicare Reimbursement

According to Medicare reimbursement rules, only certain designated practitioners are eligible for reimbursement for a limited number of clinical services delivered to beneficiaries, and only in rural areas. No final decisions as been made regarding reimbursement for telephone treatment pending a decision based on COVID 19 HHS and CMS.

To date, these procedures are reimbursable for telemental health:

- Individual psychotherapy
- Individual psychiatric interview
- Individual and group health and behavior assessment and intervention
- Neurobehavioral status examination
- Pharmacologic management
- Smoking cessation

Providers of Medicare Telehealth Services- physicians, psychiatrists, psychologists, nurse practitioners (Master level nurses), and Licensed Clinical Social Workers

Medicare Updates for Social Workers –COVID 19

Medicare Codes for Telephonic E/M check-ins: this topic has caused much confusion. LCSWs had previously not been covered for E/M codes as they are a combination of mental health and medical evaluation.

During this time of national emergency, LCSWs are one of the groups that is allowed to file claims for telephonic E/M (evaluation and management) purposes for up to 10 minutes at a time, and up to 21 minutes over a seven day period. (Groshong, April 2020)

For more information, go to <https://www.medicare.gov/coverage/e-visits>

See web-link for current Medicare covered telehealth services - <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>

COVID -19 Updated Medicaid and Medicare Laws

See overview of telephone treatment based on COVID 19 Medicaid and Medicare Laws

VIDEO: Providing Services via Telephone During COVID-19 (See power point presentation on updates

[https://www.cchpca.org/resources/search?type\[186\]=186](https://www.cchpca.org/resources/search?type[186]=186)

Complexities of Treatment

Theory Integration – therapists need to understand how to adapt counseling/therapy theory and effective in-person techniques to telemental health.

Online Therapy is not the same as Face-to-face counseling!

Generally, telehealth practices are subject to exactly the same federal and state regulations, codes of ethics, and professional guidelines that define the fiduciary relationship in face-to-face and office-based therapy. It falls within the same standard of care.

Acknowledgment of Limitations

Counselors inform clients about the inherent limits of confidentiality when using technology. Counselors urge clients to be aware of authorized and/or unauthorized access to information disclosed using this medium in the counseling process.

Source: <http://www.zurinstitute.com/ethicsoftelehealth.html>

Complexities and Treatment Cont.

Professional Boundaries in Distance Counseling

Counselors understand the necessity of maintaining a professional relationship with their clients. Counselors discuss and establish professional boundaries with clients regarding the appropriate use and/or application of technology and the limitations of its use within the counseling relationship (e.g., lack of confidentiality, times when not appropriate to use).

Communication Differences in Electronic Media

Counselors consider the differences between face-to-face and electronic communication (nonverbal and verbal cues) and how these may effect the counseling process. Counselors educate clients on how to prevent and address potential misunderstandings arising from the lack of visual cues and voice intonations when communicating electronically.

Source: <http://www.zurinstitute.com/ethicsoftelehealth.html>

Telemental Health Ethical Dilemmas

| Ethical issue And references | Number of articles | Conclusion |
|---|-------------------------------|---|
| Technology (9-16) | 8 | Advanced technology increased the significance of ethical issues. |
| Confidentiality and security (17-23) | 7 | Attention to ethical issues in tele- medicine increased the significance of data security and confidentiality. |
| Doctor-patient relationship (24-29) | 6 | Use of telemedicine disrupted doctor-patient relationship which is an ethical issue. |
| Informed consent (30-36) | 7 | It is essential to provide the patient with sufficient information by sub- mitting a form of informed consent. |

Researched Articles Reviewed Findings

According to the articles found, generally speaking, ethical issues in telemedicine can be investigated from several aspects:

- technology,
- telephone,
- internet, server list (a computer program that allows for tele medicine service provision for a group of people through the net):
- email,
- doctor-patient relationship,

- data confidentiality and security,
- informed consent,
- patient's and family's satisfaction with telemedicine services.
- Source: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5723167/>
- Med Arch. 2017 Oct; 71(5): 351–355.
- doi: 10.5455/medarh.2017.71.351-355

HIPAA Compliant Technology

- Technology must meet encryption standards that has a minimum of 128 bites according to HIPAA laws.
- Must have business associates agreements.
- It is necessary to have individuals receiving treatment signed informed consents to provide telehealth services utilizing technology as a way of providing treatment.
- Also it is necessary to have signed informed consents from staff who are recipients of tele-supervision according to the Georgia Composite Board.
- It is necessary to adhere to all Composite Board, National Association of Social Workers, Licensed Professional Counseling Association, Licensed Marriage and Family Therapists Association, and other substance use disorders certifications codes of ethics.

- Adherence to Privacy and Confidentiality Federal Laws-42 CER part 2; 34 C.F.R. Part 99; regulations und Privacy and Confidentiality Federal Laws-42 CER part 2; 34 C.F.R. Part 99; regulations under HIPAA and HITECH laws.
- While the Department of Health and Human Services has given telehealth providers to waiver these rules because of the COVID 19 Emergency Pandemic, it is necessary for us as providers of services to work toward compliance of these stated HIPAA laws. We must keep our clients informed about these emergency plans and the potential violation of their private information.



Emory Panel Discussion Webinar Information

Great panel of professionals from hospitals, Grady Health care, settings Providers Information

Dr. Dorian Landis, Ph.D., ARPP (Grady Hospital)- Talked about his work with ACT clients and the benefits of having his clients and family available for treatment and frustration of clients lack of knowledge about technology. He states that thus far, their organization is experiencing mixed outcomes as a result of the use of technology. He states that he misses the closeness of working with his colleague.

Long Term Effects of COVID-19

An increase in suicide

An increase in domestic violence

Danger of social isolation of clients/families

Economical conditions (e.g. lack of employment, financial problems, housing and etc. issues)

Concerns about the availability of fire arms (US purchased the most guns in March 2020)

A lack of community involvement (e.g. church, sports, and etc.)

Excessive worry and anxiety by clients/family members

Dr. Justin Palanci, MD and Emory Hospital –Comments:

He has fears around an increase in patients anxiety level and fear of the unknown

He now has more empathy for the clients he serves.

Advantages of COVID 19:

We will be able to utilize technology to reach more clients

Will reach more underserved individuals

Accessibility to service will be better

Majority of clients have access to phones, but no lab tops

No show rates are lower

Healthcare professionals are becoming more creative and demonstrating flexibility with clients and systems

More family time

Better support and appreciation of co-workers

What has been the positive and negative experiences of working with your clients during COVID 19 thus far?

Questions and Answers???

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