

Fact Sheet: HIPAA Privacy and Telehealth Guidance for Clinical Social Workers During the COVID-19 Emergency

May 3, 2020

Section I: HIPAA Privacy Laws

1. HIPAA Privacy Laws are not waived during the COVID-19 emergency except as noted in #2 below. The U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) issued guidance in February 2020 on HIPAA Privacy and Novel Coronavirus (COVID-19). State patient privacy laws supersede this federal guidance. Inquiries have been made to the Pennsylvania and New Jersey departments of health to check into any such state privacy laws. Any updates will be provided in a future update of this document.

You are encouraged to read the full 4-page document here:

<https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

Some important highlights to consider from this bulletin:

- a. Covered entities (providers) may disclose, without a patient's authorization, protected health information (PHI) as necessary to treat the patient or another patient.
 - b. Covered entities may disclose to the CDC protected health information on an ongoing basis as needed to report all prior and prospective cases of patients exposed or suspected or confirmed to have COVID-19.
 - c. Provided that state law allows, covered entities may disclose PHI to persons at risk of contracting or spreading the disease as necessary to prevent or control the spread of the disease or otherwise carry out public health interventions or investigations.
 - d. Covered entities must make reasonable efforts to limit the information disclosed to that which is the minimum necessary.
 - e. Covered entities must continue to implement reasonable safeguards to protect patient information against intentional or unintentional impermissible uses and disclosures. Further, covered entities (and their business associates) must apply the administrative, physical, and technical safeguards of the HIPAA Security Rule to electronic PHI.
2. Waiver for telehealth remote communications during COVID-19 emergency:
 - a. HIPAA privacy regulations have been relaxed regarding which electronic services may be used when providing telehealth.
 - b. Any non-public facing audio or video platform may be used to provide telehealth services. Examples of non-public facing platforms include: **Apple FaceTime, Facebook Messenger video chat, Google Hangouts, and Skype**. Please note however that most insurances including Medicare, Medicaid and private insurance still require two-way synchronous video/audio communication technology.

- c. 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.
- d. HIPAA penalties will not be enforced against covered health providers for the lack of a business associate agreement (BAA) with video communication vendors or any other noncompliance with the HIPAA rules that relates to the good faith provision of telehealth services during the COVID-19 emergency.
- e. Do not use public facing audio or video platforms. Facebook Live, Twitch and TikTok are examples of public facing platforms. Videos captured by these services are public and thus these services cannot be used.
- f. Covered entities who can use HIPAA-compliant services (e.g., VSee, doxy.me) are of course encouraged to continue doing so because of the privacy protections they afford.

Reference:

- *Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency*
<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

Section II: Telehealth Guidance

1. State board regulations:

- a. Pennsylvania: Pennsylvania does not have a comprehensive telehealth bill. The following is guidance from the state board as of 3/17/2020:

While the Board has not yet made an announcement relating to the current situation, the Board does note that there are currently no regulations prohibiting teletherapy in this Commonwealth. However, the Board does require licensure when providing services in the State of Pennsylvania. If the person is physically located outside of the state at the time the services are being rendered, you would need to contact the state where the individual is located. You can also check with your national association (NASW) as the Board does adopt the code of ethics and practice standards of those organizations and they may address how to properly engage in teletherapy.

- b. New Jersey: New Jersey passed telehealth legislation which took effect on July 21, 2017. New Jersey state law requires telehealth services are to be provided using videoconferencing only. However, the use of telephonic services will be permitted during the COVID-19 emergency.

References:

- i. *Telemedicine and telehealth law P.L.2017, c.117:*
https://www.njleg.state.nj.us/2016/Bills/PL17/117_.HTM
- ii. *Tips for Understanding the NJ Telemedicine/Telehealth Law: Implications for the Practice of Social Work:*

https://cdn.ymaws.com/www.naswnj.org/resource/resmgr/clinical_sw/Telemedicine-Telehealth_Law_.pdf

iii. *Governor Murphy Announces Departmental Actions to Expand Access to Telehealth and Telemental Health Services in Response to COVID-19*

<https://www.nj.gov/governor/news/news/562020/20200322b.shtml>

iv. *PROPOSED state board regulations: Rule proposal 51 N.J.R. 1097(a)*
These regulations have not yet been adopted by the state board.

<https://www.njconsumeraffairs.gov/Proposals/Pages/sw-07012019-proposal.aspx>

c. Other states: Please contact the relevant state board regarding telehealth laws and regulations.

2. Medicare:

- a. Medicare can pay for office, hospital, and other visits furnished via telehealth across the country and including in patient's places of residence starting March 1, 2020.
- b. Under normal circumstances the Medicare coinsurance and deductible would generally apply to these services. However, healthcare providers may reduce or waive cost-sharing for telehealth visits.
- c. Telehealth visits are considered the same as in-person visits and are paid at the same rate as regular, in-person visits.
- d. Providers may choose to use an interactive audio and video telecommunications system that permits real-time communication between the distant site and the patient at home. Please note that the requirement to use both audio and video telecommunications has been waived. Audio-only (i.e., telephone) equipment may also be used. This waiver is retroactive to March 1, 2020.
- e. Under normal circumstances, patients must have a prior established relationship with a practitioner to use telehealth. During the COVID-19 emergency this rule will not be enforced.
- f. Please refer to Section I item #2 above regarding relaxation of regulations which electronic services may be used when providing telehealth. When billing with the health insurance claim form (1500):
 - i. Use the same place of service code (line 24B) as if the service had been provided in-person (e.g., "**11**" for office or "**12**" for home).
 - ii. Use the "**95**" modifier in item 24D. Insert one of these codes in the first modifier field and leave the other three fields blank.

g. References:

Medicare Telemedicine Health Care Provider Fact Sheet

<https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>

Medicare Telehealth Frequently Asked Questions (FAQs) – March 17, 2020

<https://www.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>

MLN Connects – Official CMS News from the Medicare Learning Network, Special Edition – Friday, April 3, 2020

<https://www.cms.gov/files/document/2020-04-03-special-edition.pdf>

COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers – April 29, 2020

<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

List of Telehealth Services – list of service payable when furnished via telehealth

<https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>

3. Medicaid:

- a. **Pennsylvania:** The following temporary regulations are in effect through June 14, 2020 or while a valid emergency disaster declaration remains in effect:
 - i. Telehealth is the preferred delivery method for behavioral health services when a patient is quarantined, self-quarantined, or self-isolated due to exposure or possible risk of exposure to COVID-19.
 - ii. Telephonic video technology including smartphones is permissible. Telephone only services are permissible when video technology is not available.
 - iii. Clinical social workers and other individuals providing necessary behavioral health services may provide telehealth services.
 - iv. When billing with the health insurance claim form (1500) please use the “**GT**” (via interactive audio and video telecommunications systems) modifier in item 24D. Insert one of these codes in the first modifier field and leave the other three fields blank.
 - v. Providers must email the “Attestation Form to Provide Telehealth” (see below) to RA-PWTBHS@pa.gov prior to providing services.
 - vi. **References:**
 - Telehealth Guidelines Related to COVID-19:
<https://www.dhs.pa.gov/providers/Providers/Documents/Coronavirus%202020/OMHSAS%20COVID-19%20Telehealth%20Expansion-%20Final%203.15.20.pdf>
 - Guidelines for the Use of Telehealth Technology in the Delivery of Behavioral Health Services:
+++ SEE PAGES 5-7 FOR ATTESTATION FORM. +++
<https://www.dhs.pa.gov/providers/Providers/Documents/Coronavirus%202020/OMHSAS%20COVID-19%20Telehealth%20Expansion-%20Final%203.15.20.pdf>
- b. **New Jersey:** Medicaid in New Jersey does allow providers licensed in New Jersey (including social workers) to provide telehealth health services to Medicaid recipients.

Reference:
New Jersey Telemedicine and Telehealth Law (search for “Medicaid” within)
https://www.njleg.state.nj.us/2016/Bills/PL17/117_.HTM
- c. **Other states:** As states set their own regulations governing Medicaid, coverage for telehealth health services vary from state to state.

4. Commercial insurance:

- a. Ask patients to contact their insurance plan directly to determine coverage. Private insurers vary widely on how they cover telehealth health services. Videoconferencing is more likely to be covered. Telephonic coverage is less commonly covered.
- b. Ask the following questions of each insurance company you work with prior to starting any telehealth sessions (and get a reference number for your call in case of any misunderstandings or misinformation):
 - i. Do I need to complete any additional forms or attestations in order to provide telehealth?
 - ii. What technology platforms/formats am I allowed to use provide telehealth?
 - iii. Speak to the credentialing department to learn about the plan's telehealth benefits.
 - iv. Note that most insurance companies offer coverage for in-network providers only who must use a specific telehealth platform and accept the fee offered. This fee is generally less than clinical social workers are used to being paid.
 - v. Out-of-network providers may not have the option of being covered for telehealth.
 - vi. Speak to the claims department to learn how to bill. On your health insurance claim form (1500) form you may need to use the following:
 - **"02"** in item 24B (place of service)
 - **"GT"** (via interactive audio and video telecommunications systems) or **"95"** (synchronous telemedicine service rendered via real-time interactive audio and video telecommunications system) in item 24D (modifier). Insert one of these codes in the first modifier field and leave the other three fields blank.

5. Providing telehealth health services across state lines or to other countries (applies to all types of insurance):

- a. **Across state lines:** Typically if you are seeing someone across state lines, you must be licensed in the state where you are physically present and the state where your client is physically present. (Client's home address or address of record is immaterial in this situation.) You are subject to the licensing laws of both states. You must be familiar with both states' regulations before practicing across state lines.
- b. **Waivers:** Many states are now granting waivers to due to COVID-19 which allow practitioners to practice telehealth in other states:
 - i. **Pennsylvania:** Licensed practitioners in other states may provide telehealth services in Pennsylvania without obtaining a license for the duration of the COVID-19 emergency. Out-of-state practitioners must:
 - Be licensed and in good standing in their home state, territory or country.

- Provide the Pennsylvania board from whom they would normally seek licensure with the following information prior to practicing telemedicine with Pennsylvanians:
 - a. their full name, home or work mailing address, telephone number and email address; and
 - b. their license type, license number or other identifying information that is unique to that practitioner's license, and the state or other governmental body that issued the license.

Please email this information to the Pennsylvania state board at ST-SOCIALWORK@PA.GOV.

Reference: *Licensed Health Care Practitioners Can Provide Telemedicine Services to Pennsylvanians During Coronavirus Emergency*

<https://www.media.pa.gov/Pages/State-Details.aspx?newsid=375>

- ii. **New Jersey:** Licensed practitioners in **other** states may provide telehealth services in New Jersey without obtaining a license for the duration of the COVID-19 emergency subject to the following:

- The practitioner is licensed or certified to practice in another state or territory of the United States or in the District of Columbia and is in good standing in that jurisdiction.
- Practitioners must have practiced in the last five years.
- Eligible practitioners will be deemed licensed upon submission of a completed form (see below).
- Licenses granted pursuant to this process will be valid for 180 days, with an additional 180-day extension available upon written request.
- Practitioners who complete this process will be able to provide telehealth services on the same terms as other New Jersey licensees.

Reference: *AG Grewal: NJ Temporarily Waives Rules for Out-of-State Healthcare Providers to Offer Services to NJ Residents During COVID-19 Emergency*

<https://www.nj.gov/oag/newsreleases20/pr20200320a.html>

Please complete the following form, “*Certification in Support of Application for Accelerated Temporary Healthcare Licensure by Reciprocity*” and email to NJTempLicense@dca.njoag.gov. Your application will be reviewed and responded to within 24 hours:

<https://www.njconsumeraffairs.gov/Documents/all-accelerated.pdf>

- iii. **Delaware:** All out-of-state mental health providers (including clinical social workers) with an active license in good standing in any United States jurisdiction are authorized to provide telehealth (as well as in-person) mental health services in Delaware.

Reference: *Joint Order of the Department of Health and Social Services and the Delaware Emergency Management Agency*

<https://dpr.delaware.gov/wp-content/uploads/sites/93/2020/03/DEMA-and-DPH-Order-3.23.20.pdf>

- iv. **Florida:** For purposes of preparing for, responding to, and mitigating any effect of COVID-19, health care professionals not licensed in Florida may provide services to a patient in this state using telehealth until the expiration of Executive Order Number 20-52 (May 8, 2020) unless extended. No registration required during the emergency period.

Reference: *State of Florida Department of Health Executive Orders 20-003 and 20-005:*

<http://flhealthsource.gov/pdf/DOH-EO-20-003.pdf>

<https://s33330.pcdn.co/wp-content/uploads/2020/04/DOH-Emergency-Order-20-005-extending-20-003.pdf>

State of Florida Executive Order Number 20-52

<https://www.flgov.com/wp-content/uploads/2020/03/EO-20-52.pdf>

To provide telehealth services on a permanent basis in Florida:

See <http://flhealthsource.gov/telehealth/> and click on “documents” on how to register as an out-of-state provider.

- v. **New York:** Licensed master social workers, licensed clinical social workers, and substantially similar titled licensed and in current good standing in any state in the United States, or in any province or territory of Canada, may practice in New York state without civil or criminal penalty related to lack of licensure.

Reference: *Executive Order No. 202.18: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency*

<https://www.governor.ny.gov/news/no-20218-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

- vi. **Other states:** Please see the following 50-state references regarding practicing telehealth in other states. Regulations are continually updated, so information can quickly become out-of-date. For the latest information, please check the state regulations which each site references.

- **ASWB and COVID-19:**

<https://www.aswb.org/regulatory-provisions>

If a state is not listed, then there are not provisions specific to COVID-19 at this time.

- **Person Centered Tech – 50-State Emergency Teletherapy Practice Rules Survey for Counselors, MFTs, Psychologists and Clinical Social Workers:**

<https://personcenteredtech.com/2020/04/20/50-state-emergency-teletherapy-practice-rules-survey-for-counselors-mfts-psychologists-and-clinical-social-workers/>

Please be sure to read the section on social workers.

- c. **International:** Proceed with caution. Know and abide by the regulations of the other nation. Know and abide by governing laws of that nation. Know and abide by your state’s regulations and laws regarding international telehealth. Comply with HIPAA even though your client is overseas since your state board’s regulations still apply.

Important recommendations: Understand the local systems, culture, and language. Understand what you will do if your client has a crisis. Have local contacts in the other nation. Check your liability insurance. Are you covered and is it enough? See <https://personcenteredtech.com/2016/06/30/international-online-therapy-know-go-start/> for more on international telehealth.

6. Clinical supervision:

- a. **Pennsylvania:** *Requirement to meet in-person for supervision is suspended.* Hours may be completed through electronic means, preferably on a HIPAA-compliant platform. If that is not available, online methods such as Skype or Facetime are acceptable. Telephone supervision is acceptable if video is not available (per personal communication with state board.)

Reference: *Pennsylvania Suspends Certain Licensure Requirements for State Board of Psychology, and State Board of Social Work, Marriage and Family Therapy, and Professional Counselors*

<https://www.dos.pa.gov/Documents/2020-03-23-Psychology-Social-Work.pdf>

- b. **New Jersey:** Individual supervision may be conducted online. Group supervision may not be conducted online. No more than half of total supervision hours may be accrued online. Platform used to conduct supervision must comply with HIPAA confidentiality requirements. Following is the relevant state board regulation:
13:44G-8.1(b)(1)(v) The supervisor provides at least one hour of face-to-face individual or group clinical supervision per week or one hour of individual clinical supervision through synchronous video conferencing, which complies with the confidentiality requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), for no more than half of the total supervision hours;
- c. **Other states:** Please contact the state board to inquire or review state board regulations online.

7. Continuing education:

- a. **Pennsylvania:** The state board requires licensed social workers (LSWs) and licensed clinical social workers to obtain 30 clock hours of continuing education in each biennium. Effective November 19, 2019, the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors will now permit all 30 clock hours of approved continuing education to be completed on-line.

Reference: *Special Notice to All Licensed Social Workers, Clinical Social Workers, Marriage and Family Therapists and Professional Counselors*

<https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/SocialWorkersMarriageanFamilyTherapistsandProfessionalCounselors/Documents/Special%20Notices/SW%20-%2030%20Clock%20Hours%20On-Line.pdf>

- b. **New Jersey:** The state board requires licensed social workers (LSWs) to obtain a minimum of 30 credits (hours) of continuing education. The state board requires licensed clinical social workers (LCSWs) to obtain a minimum of 40 credits (hours) of

continuing education. Regulations do not restrict how many credits may be earned online.

8. **Ethics and standards in technology:** Please refer to the *NASW, ASWB, CSWE & CSWA Standards for Technology in Social Work Practice* for the social work profession's response in addressing the use of technology in "a humanistic framework to ensure that ethical social work practice can be enhanced by the appropriate use of technology." These standards are grounded in the principles set by the *NASW Code of Ethics* and the *ASWB Model Social Work Practice Act*. It is divided into 4 sections:

Section 1: Provision of Information to the Public

Section 2: Designing and Delivering Services

Section 3: Gathering, Managing, and Storing Information

Section 4: Social Work Education and Supervision

Here is the link to this invaluable resource:

<https://www.socialworkers.org/LinkClick.aspx?fileticket=lcTcdsHUcng%3d&portalid=0>

9. **Technology guidance:**

- a. Telehealth platforms: Please see Section I item 2, "*Waiver for telehealth remote communications during COVID-19 emergency*" regarding relaxation of standards for appropriate technology to use.
- b. Payment processing: Payment processing activities are exempt from the HIPAA rules: "*[The] HIPAA Rules, including the business associate provisions, do not apply to banking and financial institutions with respect to the payment processing activities defined in §1179 of the HIPAA statute.*" (78 Fed. Reg. 5566, 5575 (Jan. 25, 2013)).

In other words, if all your payment processor does is process credit card payments, you do not need to look for a HIPAA-compliant service. However, if your payment processing service performs other non-bank functions such as invoicing, scheduling or confirming appointments, performing accounts receivable functions, *then you do* need a HIPAA-compliant service.

Payment processing service suggestions:

Square is a good standalone option.

Stripe must be embedded into another platform like a website or electronic health record.

Paypal is also an option if you use only the payment processing service. Please advise clients both you and they may receive unsecured email from PayPal.

Zelle is also an excellent option. If your bank or credit union offers Zelle, you can use their online banking site to send and receive money without a mobile device. If your bank or credit union does not offer Zelle, then you must have a smartphone in order to access the Zelle app to send and receive money.

Ivy Pay also works quite well. All you do is send your client a text message, and then your client can input credit card information on a smartphone and the money is direct deposited to your account. It is HIPAA-compliant.

- c. Equipment: If you have a desktop computer, you will need to purchase a webcam. While a webcam does come with an embedded microphone, a headset (headphones with a microphone) is recommended for improved sound quality. If you have a laptop, your webcam is embedded into your laptop. A headset is also recommended for laptops for improved sound quality.