



National Association of Social Workers
NASW California Chapter Online CE Program
www.socialworkweb.com

Telehealth: California Social Work Response to the COVID-19 Pandemic

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I. Introduction to Telehealth Practices

A. Introduction

In response to the COVID-19 national health emergency, many organizations and private practices are switching, however temporarily, to the use of telehealth as a primary means of delivering behavioral health services. For many practitioners, the current challenge is to provide ethically sound, legally compliant, and clinically effective interventions at a distance. For this reason, the NASW California Chapter is offering information related to telehealth services, in the form of both this publication and two online continuing education courses.

The information in this publication was developed for California social workers who are beginning to implement telehealth services to meet the needs of their clients and communities during the COVID-19 pandemic. The content incorporates information regarding legal and ethical standards and guidelines, along with resources and information specific to the current COVID-19 health emergency. Even though the information focuses on telehealth, the principles presented are relevant to social services provided via technologically based communications as well.

NASW-CA Chapter Online CE Program

The information in this publication is also offered as an online continuing education (CE) course, in addition to a longer, more detailed online course for California LCSWs and LMFTs. Details can be found at <https://www.socialworkweb.com/#/s/telehealthandtelementalhealth>. For questions, email support@naswca.org.

Important Clarifications

- Although much of the content in this publication and the two online courses references laws specific to California, these laws are based on principles that serve as the basis for similar laws in other states. Additionally, telehealth practice across state lines requires familiarity with laws in the client’s jurisdiction as well as laws in the practitioner’s jurisdiction. In cases where the laws of two such jurisdictions appear to be in conflict, legal advice must be obtained.
- None of the information presented in this course or in the resources listed constitutes legal advice. NASW recommends that practitioners seek legal advice from legal experts before making decisions.
- The response to the COVID-19 pandemic is ongoing and will continue to evolve, making it impossible to provide all relevant information and regulations in any one course or publication. NASW is working as quickly as possible to develop training and resources for social workers and behavioral health practitioners that support them in assisting clients and communities while ensuring everyone’s safety.

- To stay abreast of NASW's ongoing efforts related to COVID-19 pandemic response, visit the following websites:

NASW National Website

<https://www.socialworkers.org/Practice/Infectious-Diseases/Coronavirus>

NASW-CA Chapter Website

<https://www.naswca.org/page/covid-19-resources>

Select Another NASW State Chapter

<https://www.socialworkers.org/About/Chapters>

B. Author Biography

In coordination with the NASW-CA Chapter, Dr. Stan Taubman, LCSW, PhD, wrote the information for this publication and also the content for the two continuing education (CE) courses related to telehealth. Dr. Taubman served as director of Alameda County Medi-Cal Behavioral Health Plan. He has provided clinical services in various settings, including mental health, health care, child welfare, and private practice. Dr. Taubman served on the faculties of the University of California, Los Angeles Neuropsychiatric Institute; the University of Southern California; San Diego State University; and most recently the University of California, Berkeley. He is the author of the Berkeley Training Associates Treatment Plan Library (for electronic health record systems), as well as having published numerous journal articles related to both clinical and administrative issues. Dr. Taubman is the author of the book *Ending the Struggle Against Yourself*.

C. Copyright Information

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D. California Board of Behavioral Sciences (BBS) Information Regarding Telehealth

Information regarding "telehealth" can be accessed on the California BBS website. Under the "Telehealth" link, visitors will find information regarding comprehensive requirements, applicable laws, considerations for clients in and outside of California, confidentiality, inform and consent requirements, and consumer tips.

BBS Telehealth Information

<http://www.bbs.ca.gov/consumers/info.html>

E. BBS Statement on Coronavirus Disease and Telehealth

On March 12, 2020, the BBS posted the "Statement on Coronavirus Disease 2019 (COVID-19) and Telehealth" on the website. This statement references California law and ethical obligations.

Statement on Coronavirus Disease 2019 (COVID-19) and Telehealth

https://bbs.ca.gov/pdf/coronavirus_statement.pdf

Important Clarifications

- This BBS publication states: "All licensees, registered associates, and trainees utilizing telehealth need to take care to use HIPAA compliant tools." This *does not* necessarily mean that each practitioner must make this technically complex evaluation independently,

but it does mean that each practitioner must seek assurance from a credible source within their organization to confirm that HIPAA standards are met.

- The BBS publication also details regulations pertaining to clinical supervision of associates (ASWs, AMFTs, and APCCs) through videoconferencing, but excludes some settings, as explained in the following excerpt:

If the associate is working in a governmental entity, school, college, university, or an institution that is nonprofit and charitable, the required weekly direct supervisor contact may be via two-way, real-time videoconferencing. If the associate is working in a setting other than the types listed above, the law requires the supervisor contact to be in person.

According to the BBS, "Under the current law, the Board *does not* have the authority to waive any supervision requirements, even temporarily (March 2020). The only method to waive these requirements is through an Executive Order from the Governor."

Consequently, NASW is working with other professional associations to advocate for an Executive Order that would allow videoconferencing to provide clinical supervision in all settings during the critical period of the pandemic.

F. California Business and Professions Code Section 2290.5: Telehealth Law

It is recommended that social workers read the California Telehealth Law, which applies to all health care services, including behavioral health services.

California Business and Professions Code (BPC) Section 2290.5

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2290.5.&lawCode=BPC

Important Clarification

The definitions of key telehealth terminology such as "originating site," "distant site," and "synchronous interaction" are listed in subsection (a) of BPC Section 2290.5, followed by these provisions:

- (b) Before the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.*
- (d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct ...*
- (f) All laws regarding the confidentiality of health care information and a patient's rights to the patient's medical information shall apply to telehealth interactions.*
- (g) All laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice that apply to a health care provider under the health care provider's license shall apply to that health care provider while providing telehealth services.*

G. California Code of Regulations Section 1815.5: Standards of Practice for Telehealth

It is also important that social workers access the California Code of Regulations (CCR) Section 1815.5, which addresses standards of practice for telehealth.

California Code of Regulations: Standards of Practice for Telehealth

[https://govt.westlaw.com/calregs/Document/I586A000922974EA6A84F0657D0FC3563?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I586A000922974EA6A84F0657D0FC3563?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

Important Clarification

Subsection d(2) of CCR Section 1815.5 states: "Assess whether the client is appropriate for telehealth including, but not limited to, consideration of the client's psychosocial situation." It is possible that virtually all individuals can benefit from telehealth communications of one kind or another. Telehealth can be used to communicate factual information such as referral information, teach skills, and even engage a client in a process of psychotherapeutic change. The most important consideration is to assess whether the client is appropriate for the kind of telehealth service that is being offered. Likewise, it is incumbent on the practitioner to establish goals and objectives for the telehealth service that are realistic and appropriate to the parameters of telehealth communications, as well as the capacities and needs of the client.

H. Legal and Ethical Standards for Telehealth

The primary issue underlying most standards for telehealth practices is that all legal and ethical standards relevant to in-person services must also be applied to telehealth services.

Clinicians must adhere to the standards detailed in state mental health laws and their professional code of ethics. When engaged in telehealth services, licensed psychotherapists may not engage in practices that are beyond their legal scope of practice for the standard face-to-face service delivery. Therapists are limited to providing services that are within their legal scope of practice and scope of competence—just as in any other physical setting.

For practitioners who live outside of California, or who serve clients who live outside of California, it is important to check with the state's licensing board regarding any changes to regulations or laws during the COVID-19 pandemic and to become very familiar with relevant local laws regarding telehealth.

I. Recommended Resources

The following resources are recommended for additional standards and guidelines related to telehealth services:

NASW, ASWB, CSWE, and CSWA Standards for Technology

https://www.socialworkers.org/includes/newIncludes/homepage/PRA-BRO-33617.TechStandards_FINAL_POSTING.pdf

NASW Legal Issue of the Month: Social Workers and Skype (Part 1)

<https://www.socialworkweb.com/cfs/files/filestore/aXhXrpzEpDtuHakAc/NASWLegalIssueSWandSkypePart1.pdf>

U.S. Department of Health and Human Services (HHS) Announcement of Enforcement Discretion for Telehealth Remote Communications

https://www.bbs.ca.gov/pdf/bbs_stmt_hhs_telehealth.pdf

YouTube Video: How-to Provide Telehealth Services During the COVID-19 Crisis (31:36 minutes)
<https://www.youtube.com/watch?v=KPYQmO-3mgE>

II. Ethical Standards Related to Telehealth—Competence

Professional ethical standards regarding competence are critical to the use of electronic communication in clinical practice. Excerpts from the NASW *Code of Ethics* are presented here as they relate to competency and telehealth (<https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>).

A. NASW Code of Ethics: Competence

1.04 Competence

- (a) Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.*
- (b) Social workers should provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those interventions or techniques.*
- (c) When generally recognized standards do not exist with respect to an emerging area of practice, social workers should exercise careful judgment and take responsible steps (including appropriate education, research, training, consultation, and supervision) to ensure the competence of their work and to protect clients from harm.*

B. Competence and Technology Consultations

Very few master's degree programs in social work currently include sufficient content to prepare practitioners to manage the various security risks and clinical implications of telehealth practices without postgraduate specialized training and the use of one or more technology consultants. The critical question readers should be asking is, "How technologically competent does a therapist need to be in order to meet the relevant ethical and legal requirements of telehealth practice?"

In answering this question, consider that telehealth practice involves the practitioner's duty to perform the following:

- Make an adequate decision regarding the clinical appropriateness of telehealth services for a particular client.
- Provide information regarding potential risks and benefits required for informed consent, as related to telehealth.
- Protect the client's confidentiality, in addition to informing clients about privacy practices and limitations to confidentiality, as related to telehealth.
- Assure that the security logistics of the telehealth communication arrangements are sufficient to meet privacy and confidentiality requirements.
- Make an adequate treatment planning decision regarding the goals and objectives suitable for a particular client when utilizing telehealth practices.

- Establish clear and functional emergency protocols, including a plan for managing a threat of harm to self and/or others with the client residing in a distant location.

An individual practitioner does not need to have specialized expertise in all aspects of telehealth in order to engage in telehealth practice, but it is essential that each practitioner identify and have access to relevant consultation as needed.

III. Legal and Ethical Standards Related to Telehealth—Informed Consent

Professional ethical standards regarding informed consent are clearly relevant to the use of electronic media in clinical practice. Several excerpts from the NASW *Code of Ethics* are presented relating to informed consent (<https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>).

A. NASW Code of Ethics: Informed Consent

1.03 Informed Consent

(a) Social workers should provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use clear and understandable language to inform clients of the purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Social workers should provide clients with an opportunity to ask questions.

The following is specific to the use of electronic communication:

(e) Social workers who provide services via electronic media (such as computer, telephone, radio, and television) should inform recipients of the limitations and risks associated with such services.

B. California Telehealth Law and Client Consent

The ethical standards listed are consistent with the general legal requirements for telehealth practice. The current (2020) version of the California law regarding telehealth for health care providers, including clinical social workers, states the following:

California Business & Professions Code Section 2290.5 (b): Before the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

C. The Potential Benefits and Risks of Utilizing Telehealth Services

Telehealth services are relatively inexpensive for some types of services, such as screening and follow-up care, especially when compared with the cost of transportation, the cost of facilities for in-person therapy sessions, and so on. Telehealth services are also relatively inexpensive when provided in a sufficiently high volume to offset the cost of infrastructure, such as technological equipment, technical consultation, technical staffing, and establishing networking relationships with resources at the originating site.

These concerns are of interest from an administrative perspective. However, informed consent requires clients to be aware of the ways in which telehealth services can assist in achieving their goals. The client's consent to treatment, or any other procedure, cannot be considered "informed" unless the client has been made aware of risks and limitations of the services, as well as the potential benefits.

Telehealth services are generally promoted as having the following potential benefits:

- Telehealth services can be provided without risk of infection between therapist and client, or between the client and others present in a health care facility.
- Telehealth services are available to clients living in rural areas and those who are homebound by a disability or illness.
- Telehealth services can encourage self-expression in some clients who may feel inhibited in face-to-face encounters.
- Telehealth services can encourage initial help-seeking by individuals who prefer the anonymity of distant communication.
- Telehealth services can provide a means of communication 24 hours a day, seven days a week.

Equally important to recognize and address are the potential risks and limitations:

- It is important to note that such benefits may be of little concern to a client in crisis who is seeking therapy and/or social support services.
- Issues related to cost may be of concern for low-income clients whose services are not covered by a third-party payer or involve a high co-payment, although many of these costs are waived during the COVID-19 crisis.
- Although telehealth communications may encourage self-expression among some clients who feel inhibited in face-to-face encounters, such individuals might not necessarily be aware of this quality in themselves.
- Although electronic communications can be sent by a client 24 hours a day, seven days a week, it is unlikely that there will be a therapist available during this same time frame. Availability of electronic communications will be of little concern to a client who is seeking synchronous interactions with a therapist.
- Some clients who have substantial anxiety and ambivalence about revealing or exploring difficult issues may use the less personal aspects of telehealth as a way of avoiding their anxiety and ambivalence.

Important Clarification

Readers should keep in mind that if a client rejects telehealth services because of its limitations or for any other reason, the client needs to be informed, in an individually specific way, about the risks of rejecting services. This is a requirement established in case law such as *Truman vs. Thomas* (1989) and *Rains vs. Superior Court* (1984). These cases established that a behavioral health professional must disclose the material risks and/or potential consequences of failing to undergo a recommended procedure.

D. Potential Clinical Consequences of Utilizing Telehealth Practices

While the benefits of telehealth are emphasized in material promoting its use, commentaries on the disadvantages of telehealth are likely to raise issues of a more clinical nature. These issues are more likely to be of concern to potential clients *prior* to giving informed consent to services. The list below is not exhaustive, but briefly summarizes some of the major clinical issues related to telehealth practice.

Impact on Confidentiality

Confidentiality can be violated by hackers with the technological expertise to penetrate firewalls and other security software. It has been difficult for software security professionals to anticipate potential moves by hackers. Security developments generally occur after a period of unprotected exposure. For example, there have been documented cases of hackers obtaining lists of email contacts and sending spam under a professional's name and email address. Consequently, it is important to consult with an expert and ensure safety measures are in place to avoid a breach.

Impact on Self-Expression

Concerns about the technological limitations to confidentiality could lead to constraints on self-expression or guarded revelation of clinically significant information about sensitive issues, such as law violations, substance use, sexual interests or practices, or any past behavior about which the client feels guilty or ashamed.

Impact on Clinical Observations

Therapists may be less likely to observe the kinds of nonverbal communications commonly recognized during in-person sessions, which may be relevant to addressing emotional tone or covert communications. Also, clients may present differently on camera than they do during in-person sessions. For example, one study found a tendency for clients to be more courteous or meticulous about their appearance under telehealth conditions. Observation of client characteristics is an essential feature of the clinical interview, especially with regard to client assessment. Consider the familiar examples listed here:

- Scars
- A clenched fist
- Intermittent tremors, tics, or twitches
- A restless foot
- A blush in response to a comment considered to be embarrassing
- The quality of a client's eye contact (is it the same as camera contact?)
- A small welling up of a tear at the base of the eye
- A wink
- Dirt under a client's fingernails
- Brown tar residue on a client's fingernails
- The focus of a client's attention to the physical presence of the therapist
- The feel of a client's grasp when shaking hands
- Smells indicating use of alcohol, or the quality of a person's hygiene

Although some of these qualities, such as the last two, are only directly observable during an in-person interview, others can be captured in a telehealth interview if the equipment, software, and transmission are of high quality.

Effect on Reliability Issues

As compared with in-person services, telehealth services are more likely to be interrupted because of technical problems related to computer crashes, power outages, incompatibility of computer systems, or absence of computer consultants or technical support staff.

Potential Inconsistency over the Course of Therapy

Telehealth is considered to be inappropriate for use with high-risk clients. This implies that a client whose risk level changes over time would be expected to shift from telehealth sessions to in-person sessions. This change is likely to impact the therapeutic relationship and efforts to develop a sense of the “therapeutic container.”

Unknown Clinical Effects

After decades of research focused on psychotherapy processes and outcomes, mental health professionals are now just beginning to understand the factors associated with effective and efficient practice involving in-person sessions. Research into telehealth practices, however, is relatively new. Given the many unknown effects of telehealth practices, it is important that therapists carefully examine and evaluate the following questions:

- How does the context of telehealth influence the client’s perceptions of the therapist’s personal qualities?
- What is the optimal length of a telehealth therapy session?
- Which therapy methods are the most and least suitable for use in telehealth?
- How do a client’s ethnicity, socioeconomic class, educational level, gender, religious orientation, country of origin, and other cultural factors influence the effectiveness and efficiency of services delivered via telehealth practices?
- Which types of client goals and objectives are most effectively achieved using telehealth communications, and which are most effectively achieved using in-person sessions?
- What are the interaction effects between a client’s demographic factors such as culture, educational level, and developmental stage in relation to telehealth communication?

E. Additional Client-Specific Factors

Additional client-specific factors that need to be considered include the following. Practitioners need to keep in mind that it is best to present a generic list of potential benefits and risks in an informed consent form. However, client-specific issues such as the following may be presented verbally and documented in a progress note:

- Clients who are in a manic or hypomanic episode, those who are hypervigilant, and those with any other conditions involving easy distractibility may find a variety of distractions in the hardware, facility arrangements, or technical concerns related to telehealth communications.
- Paranoid clients may be concerned about who else is in the room—off camera—with the service provider. During the process of obtaining informed consent, they may also have exaggerated concerns about security and privacy.
- Clients with generalized anxiety are likely to find many concerns (to which free-floating anxiety may become attached) related to telehealth communications.

- The expectations of clients who tend to idealize or exaggerate the importance of the therapist may be heightened by the technical equipment and (potential) support staff involved in telehealth services. These clients may encounter feelings of frustration and disappointment when the anticipated “magic” isn’t forthcoming.
- Clients who experience rejection sensitivity may wonder why they are “kept at a distance” through telehealth communications, while other clients (specific to the therapist or in their experience) receive in-person sessions.

F. Special Population Issues

According to the American Telemedicine Association, important factors associated with special populations include, but are not limited to, the following (<https://www.americantelemed.org/>):

Regarding the Elderly

- *Sensory deficits, especially visual and auditory, can impair their ability to successfully interact over a videoconference connection.*
- *Elderly individuals are the least likely to be familiar with new technology.*
- *With dementia as an added factor, it can theoretically be a challenge to assure that the interaction with the service provider is understood to be real rather than just a figure on a television or a hallucinatory experience.*

Regarding Youth

- *Because youth are evolving their interpersonal sensitivities and skills, but do not have access to the usual nuances of interpersonal relatedness, the teletherapist must devise ways to engage youth.*
- *Ongoing treatment of unstable youth may only be possible in a community with a comprehensive system of care that can provide appropriate wraparound services.*
- *In general, teletherapists may attempt to engage in therapy with adolescents and older children with good verbal skills who are not aggressive, severely oppositional, or otherwise dysregulated.*

Regarding the Incarcerated

- *Because detained persons are a vulnerable population, teleproviders should be confident that incarcerated patients are referred for videoconferencing evaluation appropriately rather than solely to avoid costs.*

G. Video: Telemental Health Tips: Don’ts and Do’s (5:31 minutes)

A high-speed internet connection is required to view web-based videos, and, for optimal sound, headphones are recommended. Employers often block access to YouTube.com and other sites.

Telemental Health Tips: Don’ts and Do’s (5:31 minutes)

<https://www.youtube.com/watch?v=K4unpA1Se5I>

H. Informed Consent Sample Forms

The Center for Ethical Practice (provides sample handouts of informed consent)

<https://centerforethicalpractice.org/ethical-legal-resources/practice-resources/sample-handouts/>

NASW Legal Issue of the Month Article (March 2020) Telemental Health (provides a sample informed consent form)

<https://www.naswca.org/resource/resmgr/files/TelementalHealthFINAL.pdf>

IV. Legal and Ethical Standards Related to Telehealth—Privacy and Confidentiality

Psychotherapists are generally familiar with fundamental legal and ethical principles of privacy and confidentiality. However, special attention is necessary when applying these principles within the context of telehealth practices. For example, California telehealth law states the following: *“All laws regarding the confidentiality of health care information and a patient’s rights to his or her medical information shall apply to telehealth interactions.”*

Consequently, behavioral health practitioners face the challenge of finding ways to ensure the same degree of legally mandated confidentiality (and information access) when utilizing electronic communications as when sitting across from a client in a private office. As made clear by frequent news stories about hackers accessing individuals’ private information, telehealth practices involve inherent risks to confidentiality. Several examples of professional codes of ethics related to confidentiality are provided to assist the practitioner in preventing this type of breach.

A. NASW Code of Ethics: Privacy and Confidentiality

1.07 Privacy and Confidentiality

- (i) *Social workers should not discuss confidential information in any setting unless privacy can be ensured. Social workers should not discuss confidential information in public or semipublic areas such as hallways, waiting rooms, elevators, and restaurants.*

The ability to ensure privacy of a telehealth arrangement requires therapists to be familiar with the security logistics of their personal communication devices (e.g., computer), the communication device(s) used by the client, and the medium over which the communications are being transmitted (e.g., internet, cell phone). Ensuring privacy also requires that therapists be informed regarding aspects of these security logistics that may change over time, such as technological advances, software updates, and so on.

NASW Code of Ethics Standards (l) and (m) explicitly address ensuring the privacy of electronically stored or transmitted information about the client:

- (l) *Social workers should protect the confidentiality of clients’ written and electronic records and other sensitive information. Social workers should take reasonable steps to ensure that clients’ records are stored in a secure location and that clients’ records are not available to others who are not authorized to have access.*
- (m) *Social workers should take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology. Disclosure of identifying information should be avoided whenever possible.*

Compliance with these standards requires therapists to be familiar with the security logistics of their information storage devices (e.g., computer, hard disk, flash drives) and to have readily available access to a software security consultant.

B. Ensuring Security Measures

Ensuring the security of telehealth communications and storage mediums requires the service provider (therapist) to address a variety of technological issues. A practitioner using a health care organization's technological services should confirm that the services have been designed to address the following:

- **Encryption:** A method of encoding data in which information can be retrieved and decoded only by the person or computer system authorized to access it.
- **Firewalls:** A feature that blocks unauthorized communications between one's computer network and external networks.
- **Secure Passwords or Codes:** The creation of safe passwords (passphrases) to protect accounts.
- **Virus and Malware Protection:** The use of the most current and reliable applications to protect against ever-evolving viruses and malware. (The term "malware" is defined as "software that is intended to damage or disable computers and computer systems.")
- **Secure Storage and Backup:** The assurance that all records are kept secure, including any recorded sessions.

Clients must also be informed regarding the security implications detailed here, because they apply equally to the clients' devices. For example, therapists should educate clients about the potential for patient information and data to be inadvertently stored and provide guidance on how best to protect privacy against such risks. Such information may not be as essential for clients using computer systems located in a health care facility, but it is essential when clients are using personal computers for telehealth communications.

C. HIPAA Standards and Telehealth

Perhaps the most thorough set of laws and regulations related to storage, safeguarding, and disposal of client records is provided by the Health Insurance Portability and Accountability Act (HIPAA). HIPAA standards affect all telehealth practices, whether or not a service provider is "a covered entity." Therapists employed in an organization should confirm that the organization is compliant with HIPAA standards, because not all organizations have taken care to become compliant.

The following information is from the US Department of Health and Human Services, Enforcement Highlights (www.hhs.gov/ocr/privacy/hipaa/enforcement/highlights/index.html) website:

From the compliance date to the present, the compliance issues investigated are compiled cumulatively, in order of frequency:

- *Impermissible uses and disclosures of protected health information.*
- *Lack of safeguards of protected health information.*
- *Lack of patient access to their protected health information.*

- *Lack of administrative safeguards of electronic protected health information.*
- *Use or disclosure of more than the minimum necessary protected health information.*

V. Issues Related to Agency-Based Practice and Private Practice

A. Agency-Based Practice

The daunting array of legal and security requirements for telehealth communications suggests that it is most likely to be conducted within the context of an agency-based practice. Agencies and organizations generally have a greater capacity to provide the necessary technical equipment, computer access, and software consultation, along with access to legal counsel, than independent practitioners in private practice.

Even when providing telehealth within an agency, and even when using telehealth during a national public health emergency, clinicians must consider and carefully evaluate the clinical implications of their telehealth practice. In fact, clinicians have an ethical responsibility to ensure that those who develop an agency's telehealth policies and procedures are aware of the clinical implications.

The NASW *Code of Ethics* addresses commitments to employers in the following standard:

3.09 Commitments to Employers

- (b) Social workers should work to improve employing agencies' policies and procedures and the efficiency and effectiveness of their services.*
- (d) Social workers should not allow an employing organization's policies, procedures, regulations, or administrative orders to interfere with their ethical practice of social work. Social workers should take reasonable steps to ensure that their employing organizations' practices are consistent with the NASW Code of Ethics.*

These standards are expressed as ethical commitments to employers, but they also indirectly fulfill the practitioner's ethical responsibilities to clients who are directly affected by agencies' policies and procedures.

B. Private Practice: Notification of Enforcement Discretion (COVID-19)

In March 2020, the United States Department of Health and Human Services, Office of Civil Rights (OCR) issued a "Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency," which can be accessed at <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>.

This notification states that "OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency. This notification is effective immediately."

The OCR notification also lists several vendors of telehealth software services "that represent that they provide HIPAA-compliant video communication products and that they will enter into a HIPAA Business Associate Agreement." These services can be used in a private practice and also may be of use in an agency setting that does not have the capacity to develop its own technological support for telehealth. The list includes the following resources:

- *Skype for Business / Microsoft Teams*
- *Updox*
- *VSee*
- *Zoom for Healthcare*
- *Doxy.me*
- *Google G Suite Hangouts Meet*
- *Cisco Webex Meetings / Webex Teams*
- *Amazon Chime*
- *GoToMeeting*

Note: OCR has not reviewed the BAAs offered by these vendors, and this list does not constitute an endorsement, certification, or recommendation of specific technology, software, applications, or products. There may be other technology vendors that offer HIPAA-compliant video communication products that will enter into a HIPAA BAA with a covered entity. Further, OCR does not endorse any of the applications that allow for video chats listed above.

Important Note

Many self-help organizations such as Alcoholics Anonymous (AA), Narcotics Anonymous (NA), Al-Anon, and other 12-step groups are using resources such as these during the COVID-19 public health emergency. Therefore, referrals to such programs may continue to be appropriate. Social workers should confirm and encourage the continued availability of self-help programs and other socially supportive services in their local communities.

C. Payment for Telehealth Services

Readers can find more about payment for telehealth services using the following resources:

- CMS Medicare Telemedicine Health Care Provider Fact Sheet
<https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- Insurance Coverage for Phone and Video Sessions in Response to COVID-19, Barbara Griswold, LMFT
<https://navigatingtheinsurancemaze.com/telehealthpolicies/>

VI. Guidelines and Procedures for Telehealth Practice

A. American Telemedicine Association (ATA) Telehealth Practice Guidelines

ATA has set forth telehealth practice guidelines that are essential for enhancing the clinician's ability to observe these types of nonverbal clinical features. In addition to technological issues, the ATA guidelines also address a telehealth system's capacity to address clinical issues such as the following:

- Ensure the ability of the clinician and client to control the remote camera to pan, tilt, and zoom, thereby allowing the clinician and client to change the direction of their gaze during clinical interviews, just as they might do during in-person sessions.

- Display pictures, diagrams, or objects that would have been handed from the therapist to client, or vice versa, during an in-person session.
- Record sessions, or aspects of sessions, that might be useful for video self-confrontation or video feedback to a client who is learning a new skill.

The ATA website can be accessed at <https://www.americantelemed.org/>. Most guidelines and resources on this website are available to members only.

B. 50 Practical Procedures for Telehealth Practice

In an effort to create one document that provides an overview of practical procedures for clinicians interested in telehealth practice, the author of this course derived the following 50 practical tips from several sources, including the *ATA Practice Guidelines for Video-Based Online Mental Health Services*, the *NASW and ASWB Standards for Technology and Social Work Practice*, and professional association codes of ethics.

The 50 practical procedural tips summarized by the author are divided into the following categories:

- Addressing Legal and Ethical Issues
- Addressing Technological Factors
- Becoming Part of a Service Network
- Getting Started with a New Client
- Establishing Ongoing Consultation and Training

Important Clarifications

- Some of these standards address technological issues regarding security logistics that may be outside the personal scope of competence of many social workers. An individual practitioner does not need to have specialized expertise in all aspects of telehealth in order to engage in telehealth practice, but it is essential that each practitioner identify and have access to relevant consultation as needed. For example, confidentiality can be violated by hackers with the technological expertise to penetrate firewalls and other security software. Consequently, it is important to consult with an expert and ensure that the software being used for telehealth includes safety measures to avoid a breach.
- The information provided in this document does not constitute legal advice. NASW and the instructor highly recommend that practitioners consult with an attorney experienced in mental health law prior to making decisions affecting their practice.

50 Practical Procedures for Telemental Health

Addressing Legal and Ethical Issues

1. The client is entitled to all of the same rights to confidentiality, privacy, service coordination, and quality of care as any client receiving in-person services.
2. Determine whether telehealth practices are within the clinician's scope of competence according to the standards of the profession.
3. Be familiar with laws relevant to clinical practices in the jurisdiction where the client is receiving services, especially laws regarding involuntary hospitalization, duty to notify, and

mandated reporting. If the client resides in another state, it is important to develop relationships with behavioral health practitioners in that state in case of emergency or other crisis situations.

4. Because clients may be in a position to record sessions (when using personal computers), clinicians should discuss policies regarding the client's recording and/or sharing portions of this information with third parties or the general public.
5. Prior to starting any provision of telehealth services, it is critical to contact the appropriate licensing board and review their practice standards. Also, contact the licensing board within the appropriate jurisdiction (related to the client's location) to determine whether the proposed services are, in fact, subject to the board's jurisdiction and what, if any, restrictions and requirements apply. These may include local rules regarding the following:
 - Clinical record contents
 - Clinical record storage and retention
 - Certification or licensure of the service provider
 - Local protective reporting laws
 - Client access to records
 - Unprofessional conduct
6. Maintain records for each client that comply with the prevailing standard of care and contain all of the information required, including assessments, diagnoses, proposed treatment, and how crisis issues were managed. In addition, include the following:
 - The information provided to the client regarding risks and benefits of telehealth communication
 - The fact that the session was conducted via telehealth communication
 - The identities of individuals—other than the therapist and client—who were present at the originating site and the distant site

Addressing Technological Factors

7. Use telehealth applications that have been vetted with the appropriate verification, confidentiality, and security parameters.
8. Do not use video software platforms that include social media functions, which notify users when anyone on a contact list logs on. Disable any functionality providing for a free video chat platform or the capability to create a video "chat room" that allows others to enter at will.
9. Use only professional grade or high-quality cameras and audio equipment at both the originating site and the distant site. (*This means that the client, if at home, must have a high-quality camera installed on the computer.*)
10. Ensure that the clinician's personal computer or mobile device has the latest security features including, but not limited to, the following: operating system security patches, antivirus software, and personal firewall.
 - Be sure that the information systems consultant has the ability to evaluate the need for, and adequacy of, such features at the distant site (therapist location).

- Additionally, ensure the client has the ability to evaluate the need for and adequacy of such features at the originating site—if that site is not located in a formal health care facility.
11. Have a backup plan in place (for example, switching to a telephone conversation) in the event of a technology breakdown that disrupts a session. Ensure that the client is aware of the plan prior to commencing treatment and is regularly reminded of the plan.
 12. For maximal flexibility in viewing one another, use cameras that allow for pan, tilt, and zoom options at both the originating and distant site environments. If possible, use screen-in-screen options, also known as picture-in-picture (PIP).
 13. Use a bandwidth of 384 kbps or higher in each direction.
 14. Use a service with a minimum resolution of 640 x 360 at 30 frames per second.
 15. It is advisable to pretest each session to ensure that the connection has sufficient quality to support the session.
 16. Whenever possible, use wired connections (e.g., Ethernet), which tend to be more reliable than wireless connections.

Addressing Privacy-Related Technological Factors

17. Utilize software that blocks caller ID upon request.
18. Use point-to-point encryption that meets recognized standards (Federal Information Processing Standard [FIP] 140-2). Point-to-point encryption limits the “readability” of data sent from one telehealth site to another telehealth site, thus limiting the possibility of unauthorized interception during the transmission from one site to the other.
19. Stay current and be familiar with the available technologies regarding computer and mobile device security, and educate clients about issues and their potential impact on the client.
20. Ensure that access to any client contact information stored on mobile devices is adequately restricted by a password (passphrase) or equivalent security feature. If available, use multifactor authentication.
21. Utilize an inactivity time-out function that requires a passphrase or re-authentication to access the device, after a time-out threshold of no more than 15 minutes.
22. Do not allow unauthorized persons to access sensitive information stored on the device, or use the device to access sensitive applications or network resources. For example, maintain possession of mobile devices in an uncontrolled environment, such as when traveling.
23. Utilize devices that give the clinician the capability of remotely disabling or wiping the mobile device in the event it is lost or stolen.
24. Do not use videoconference software that allows multiple concurrent sessions to be opened by a single user.
25. Should a second session attempt to be opened, the system should either log off from the first session or block the second session from being opened.

26. Session logs stored in third-party locations (i.e., not on clients' or providers' access device) must be secure. Access to these session logs should be granted only to authorized users.
27. Ensure safe backup of protected health information on secure data storage locations. (Cloud services do not meet compliance standards.)
28. If any videoconference transmission data is stored, intentionally or otherwise, on the client's or clinician's computer hard drive, the clinician should use whole disk encryption to meet the FIPS standard that ensures security and privacy. It is also important to utilize pre-boot authentication (a way of requiring a password or other authorized access identification before a computer user can read anything from the hard drive).

Becoming Part of a Service Network

29. If the originating site is a health care facility, or other public facility, with dedicated staff present, staff should become familiar with the facility's emergency procedures. If the facility does not have such procedures in place, coordinate with the facility to establish basic procedures. The basic procedures may include establishing relationships with the following:
 - Local emergency resources, including resources for transporting clients to the emergency facility
 - A nearby hospital emergency room capable of managing psychiatric emergencies
 - Client's family/support person(s)
30. Become familiar with local professional resources such as the city, county, state, provincial, or other regional professional associations, in case a local referral is needed for adjunctive or follow-up services.
31. Become familiar with any limitations the client has in terms of self-transporting and/or access to transportation. Develop strategies for effective transportation prior to starting treatment for clients in settings without immediately available staff.
32. Become familiar with the distance between the originating site and local emergency resources, as well as local emergency response times. Such information can inform the clinician's decisions regarding appropriate actions in an emergency.
 - Acquire telephone numbers for local resources and have this information readily available at each session.
 - Determine the currency of information about the client's location, support system, and emergency management protocols at the beginning of each session.
33. If the client is receiving medication services via telehealth, encourage the client to also have an active relationship with a prescribing professional in their physical vicinity.
34. Maintain familiarity with mores, conditions, and events in the client's local community that are relevant to understanding the client's experience of language, ethnicity, race, age, gender, sexual orientation, geographical location, and socioeconomic and other cultural issues, as well as local prejudices and discrimination practices.

Getting Started with a New Client

35. Verify the client's identity and, if the originating site is a health care institution, verify the identities of professionals at the host site.
36. Verify the client's contact information, such as telephone, address, and email address. Also verify such information for any professionals who might be working with the client at the originating site.
37. Provide the client with the clinician's qualifications, license information (or registration number), and where the client can verify this information. This information is generally available to clients of in-person services who can observe a practitioner's license posted on the wall.
38. Confirm and document the location where the client is receiving the telehealth services. If required in order to determine the appropriate payment for services or licensing board jurisdiction, inform the client of the clinician's general (not necessarily specific) location.
39. Discuss the clinician's availability for phone or electronic contact between sessions, and the conditions under which such contact is appropriate. Provide a specific time frame for expected response between session contacts.
40. Discuss how emergency management should be handled between sessions.
41. Assess the client's appropriateness for telehealth services, especially if the originating site will be in the client's home, rather than a formal health care or social service setting. In this case, consider the following qualities of the client:
 - Organizational and cognitive ability to take an active and cooperative role in the treatment process
 - Ability to maintain the appropriate computer settings
 - Ability to establish and maintain a space that is private from family members and others
 - Ability to effectively cooperate with safety management procedures, if the need for these should arise (consider the client's history of cooperation with other health care professionals)
 - Expectations regarding telehealth
 - Level of comfort with home-based care, if the originating site is not a health care facility
 - General levels of competence with technology and comfort with telehealth technology
 - Available support system
 - Level of clinical risk
 - Potential for intermittent episodes that may render telehealth services appropriate at times, but inappropriate at other times
42. Provide a thorough informed consent that addresses all issues normally addressed for in-person services, including but not limited to the following:
 - The structure and timing of services
 - Recordkeeping

- Scheduling
 - Privacy
 - Potential benefits
 - Potential risks
 - Emergency contact protocol
 - Confidentiality
 - Mandatory reporting
 - Fees and billing procedures
 - Termination protocol
43. Ensure a thorough informed consent that addresses issues specific to telehealth services, including but not limited to the following:
- The need for encryption
 - The potential for technical failure
 - Confidentiality and the limits to confidentiality in electronic communication
 - An agreed-upon emergency plan, particularly for clients in settings without clinical staff immediately available
 - The manner in which client-specific information will be electronically documented and stored
 - Procedures for coordination of care with other professionals
 - Expectations for contact between sessions
 - Expectations for the presence of others at the originating site, especially if that site is somewhere other than a formal health care facility
 - Expectations for the physical environment of the originating site, especially if that site is other than a formal health care facility (for example, clinical discussions cannot be overheard by others; seating is on a secure and stable platform to avoid random movement; and camera placement is at eye elevation with the entire face being clearly visible to the camera)
 - Conditions under which telehealth services may be terminated and a referral made to in-person care
44. Acknowledge that optimal clinical management of telehealth services depends on coordination of care with other members of a multidisciplinary treatment team, especially because contact with professionals near the originating site may be essential if an emergency arises.
- Determine whether the client has privacy concerns about release of clinical information to other health care professionals providing services.
 - Arrange for appropriate and regular private communication with other professionals involved in the client's care.
 - Develop collaborative relationships with local community professionals, such as a client's local primary care provider, especially if the originating site is not a health care facility.

45. If the originating site is not a formal health care facility, and especially if the client presents with significant clinical risk, request contact information for a “client support person”—that is, a family or community member who could be called upon for support in the case of an emergency. This individual should be someone who is able to assist in evaluating the nature of an emergency and initiating contact with 911. If such a need arises, this individual should discuss with local emergency personnel whether or not he or she should personally transport the client.
46. Taking all of the potential issues and challenges into account, the HIPAA Notice of Privacy Practices may need to be much more extensive when utilizing telemental health than when providing in-person service to clients.

Establishing Ongoing Consultation and Training

47. Establish a relationship with a technology consultant familiar with telehealth practices, and consult with this professional as needed.
48. Establish a relationship with a risk management attorney familiar with telehealth and other behavioral health practices, and consult with this professional as needed.
49. Participate in professional association forums and continuing education opportunities, and remain familiar with emerging professional standards regarding telehealth practices.
50. Collaborate with professional peers to remain aware of the community standard of practice for telehealth services.

VII. Conclusion

Telehealth technologies are rapidly becoming a routine component of social services and behavioral health care service delivery worldwide. Fascination with the power of technology and the expansive prospect of providing services to clients living anywhere in California, or anywhere in the nation, is sure to grip the attention of many clinicians. This enthusiasm can be of great benefit to clients, if it is tempered with the discipline upon which any professional practice builds its credibility.

Hopefully, social workers and behavioral health care professionals will implement telehealth practices in a manner that adheres to existing—and emerging—legal and ethical standards. As practitioners study, utilize, and evaluate telehealth practices, it is critical that their knowledge and skills are built on a foundation of collaboration with colleagues, consultation with specialists, and the utilization of high-quality equipment and software applications. The welfare of clients, the community, and the profession depend on it.

VIII. Additional Resources

In addition to those cited in the content, the following resources may be helpful.

A. Publications

Association of Social Work Boards (ASWB) International Task Force, Model Regulatory Standards for Technology and Social Work Practice
<https://www.aswb.org/wp-content/uploads/2015/03/ASWB-Model-Regulatory-Standards-for-Technology-and-Social-Work-Practice.pdf>

APA and ATA: Best Practices in Videoconferencing-Based Telemental Health (April 2018)

<https://www.socialworkweb.com/cfs/files/filestore/HpK5aFp4CGeu6S2d6/APA-ATA-Best-Practices-in-Videoconferencing-Based-Telemental-Health.pdf>

B. Websites

Centers for Disease Control and Prevention (CDC) COVID-19 Information and Resources
<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Substance Abuse and Mental Health Services Administration (SAMHSA) COVID-19 Information and Resources
<https://www.samhsa.gov>

C. Videos

SAMHSA Video: Telebehavioral Health—What Every Provider Needs to Know (61 minutes)
<https://www.youtube.com/watch?v=efIKAUCjKEE>

Telehealth at the USC Suzanne Dworak-Peck School of Social Work (5 minutes)
<https://www.youtube.com/watch?v=cEwpP-d7ZF4>