

## **Telemental Health**

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Telemental health is the practice of delivering clinical health care services via technology assisted media or other electronic means between a practitioner and a client who are located in two different locations. Treatment is considered to take place where the client is. With telemental health, social workers must make sure they are practicing legally and ethically; following state licensure regulations; and adhering to state and federal practice guidelines and payer contract agreements.

Before providing telemental health services, social workers should check:

1. State licensing board of the social worker;
2. State licensing board where the client is;
3. Malpractice insurance/professional liability insurance carrier (e.g., [ASI](#)); and
4. Payor (private insurance/Medicaid/Medicare)

The general rule regarding the provision of telemental health services is that providers must meet any licensure requirements of the jurisdiction where they are licensed **and** any licensure requirements of the jurisdiction where the patient is physically located. If state law and licensing boards are silent on this issue, then social workers have not been expressly granted the authority to provide telemental health services in that jurisdiction. Social workers can check the regulations in their jurisdiction for general information on the provision of telemental health services with [a 50 state telemental health survey](#)<sup>1</sup> that focuses specifically on the remote delivery of behavioral health care services. This 2017 survey is updated through 2019 via a [free app](#) available on Android and iOS.<sup>2</sup>

However, in light of the COVID-19 public health emergency, some states (e.g., Massachusetts, Iowa, Indiana) are temporarily suspending some of their regulatory provisions for telemental health requirements. Check with your state to find out if any changes have been made to those regulation at <https://www.aswb.org/regulatory-provisions>.

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<sup>1</sup> Epstein Becker Green's 2017 50-State Survey may be found at <https://www.ebglaw.com/content/uploads/2017/10/EPSTEIN-BECKER-GREEN-2017-APPENDIX-50-STATE-TELEMENTAL-HEALTH-SURVEY.pdf>.

<sup>2</sup> The update app may be downloaded at <https://www.ebglaw.com/telemental-health-laws-app/>.

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## **Telemental Health Informed Consent**

It is important to obtain informed consent for telemental health to address many issues, including but not limited to the risks associated with telemental health, exceptions to confidentiality, what to do if there are technical difficulties, interruption of service, and what to do in case of an emergency. Asking clients to review and sign a [telemental health informed consent form](#) is a requirement in many states and may be a condition of reimbursement (e.g., Medicaid) in some states. Even if it is not a requirement in your jurisdiction, NASW recommends obtaining [telemental health informed consent](#) from your clients as a best practice.

## **Video Conferencing Platform**

Normally, all video conferencing platforms used for telemental health are required to be HIPAA compliant, and their companies are required to sign a [Business Associate Agreement \(BAA\)](#). Although NASW does not endorse any particular vendor, here is a list of vendors that claim they provide HIPAA-compliant video conferencing and will enter into a BAA: Skype for Business; Updox; VSee; Zoom for Healthcare; Doxy.me; TheraPlatform; and Google G Suite Hangouts Meet.

However, in light of the COVID-19 public health emergency, the Office of Civil Rights has agreed not to enforce these technical requirements for the duration of the emergency.<sup>1</sup> This means that providers subject to HIPAA Rules may provide telemental health services through platforms, such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, that may not fully comply with the requirements of HIPAA Rules, and without a BAA. Social workers should enable all available encryption and privacy modes when using those applications and notify clients of the potential privacy risks associated with those third-party applications.

Please Note: Under this OCR notice, however, Facebook Live, Twitch, TikTok, and similar video communication applications that are public facing, should not be used in the provision of telehealth by covered health care providers.

## **Professional Liability Coverage**

Social workers should confirm that their malpractice insurance carrier covers the provision of telemental health services. For example, [NASW Assurance Services](#) (ASI) professional liability policy provides coverage for telemental health as long as it is an accepted practice conducted according to the social worker's state regulations, state licensing board requirements, and HIPAA privacy standards.

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## **Privacy/Confidentiality**

Remember that privacy and confidentiality rules still apply to telemental health. All laws regarding the confidentiality of protected health information and a patient's right to their medical information applies to telehealth interactions.

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<sup>1</sup><https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

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