



# Behavioral Healthcare: Telehealth Insurance & Risk Management During COVID-19

The impacts of COVID-19 have changed the way we approach much of life, including how Americans receive healthcare. Social distancing, intended to “flatten the curve” and prevent further spread of the coronavirus, has dramatically expanded the use of telemedicine in the area of behavioral healthcare.<sup>1</sup> It has become vital to engage with patients by telephone or video conference, especially as many patients experience increased anxiety or stress during the pandemic. Continuing to manage mental health needs is important to prevent mental health decline and potential consequences such as suicide attempts, emergency department visits, or hospitalizations during a pandemic that is already putting a strain on available healthcare resources. Because in-person appointments risk the transmission of COVID-19 and require use of personal protective equipment already in short supply, telehealth has come to the forefront as a valuable alternative.<sup>6</sup>

## BENEFITS OF TELEHEALTH FOR BEHAVIORAL HEALTH PATIENTS

Even before COVID-19 presented new challenges in providing mental healthcare, significant barriers to accessing behavioral healthcare services, such as inadequate funding, workforce distribution issues, and lack of specialty services, already existed across the U.S. In 2016, more than 50% of the 44.7 million U.S. adults diagnosed with mental illness, did not receive mental health services. In addition, only 18% of the estimated

## Guest Contributor



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An expert in the areas of personal injury, nursing malpractice, and medical malpractice, Ron has been recognized nationwide for his guidance enabling healthcare providers to provide safe, high-quality care. He is published in the Florida Bar Journal and has been a featured speaker in many risk management video and audio presentations.

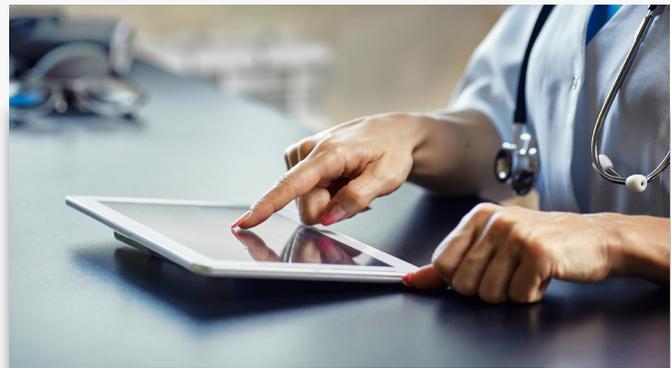
21 million in need of substance use disorder (SUD) treatment, received it. These issues, combined with those presented by the pandemic, demand innovative ways to provide behavioral healthcare and reduce treatment gaps.<sup>2</sup> Telemedicine helps by providing greater convenience. Providers and patients need only what most Americans already have at home anyway - a computer or smartphone with webcam and high-speed internet access. Telehealth also connects patients who live in rural or remote areas, those that have difficulty arranging childcare, or patients who are unable to miss work or schedule large blocks of time for regular therapy sessions.<sup>5</sup>

Research also shows that telehealth results in fewer no-show appointments. Patients are less likely to miss or cancel when they can join the appointment from anywhere. Telemedicine company MDLIVE, reports that their virtual mental health program has a no-show rate of only 3.5%, which is significantly lower than the industry average of 30-40%. Not only can providers more regularly treat behavioral health patients via telehealth, they can also expand to reach new clients outside the local area, leveraging virtual platforms to focus on how care is delivered through timely assessments, trend monitoring, and progress evaluations over time.<sup>5</sup> Research also indicates that psychotherapy provided using telehealth is just as effective in reducing anxiety, depression, and pain when compared with traditional in-person visits, and without notable adverse effects.<sup>6</sup>

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Some mental healthcare providers report that up to 85% of mental health visits are now taking place via secure telephone or video calls.<sup>1</sup>

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## TELEHEALTH REQUIRES EFFECTIVE RISK MANAGEMENT

While striving to help as many as possible through telemedicine, it's important that behavioral healthcare providers address possible risks in the course of implementing, expanding, and sustaining telehealth programs. Similar to more traditional medical practices, telehealth services come with liability risks. The main claim drivers when it comes to behavioral healthcare center around sexual misconduct, medical malpractice in the treatment of suicidal or violent patients, and employment practices. Providers should find that their professional liability insurance policies usually cover telehealth exposures, but it's wise to contact your broker or carrier to advise that you're venturing into the telehealth space and confirm coverage.

Many of the risks associated with telehealth are documenting, gathering, or protecting personal health information. Documentation protocols should be established and strictly followed so that all pertinent encounter details are included, such as the patient's treatment response, who participated in the session, technology used or mode of service delivery, any technical problems, as well as all patient-related electronic communications.<sup>8</sup> In order to protect patients, telehealth providers also need to assess how patient data is gathered, transferred, and maintained to identify any potential privacy concerns. This means ensuring that data collected through smart devices isn't accessible by third parties, enabling multi-factor authentication on devices, and safely storing videos or images. It's also important to establish protocols that ensure only authorized personnel has access to personal health information, including providing HIPPA information to patients and training providers how to safeguard sensitive information.<sup>3</sup>

Telemedicine also often requires that providers obtain additional information critical for providing care appropriate to the level of risk presented by each specific patient. One of the main challenges around effectively utilizing telehealth is gathering the same amount of information that is usually available when caring for a patient face-to-face. Unfortunately, the information provided by a patient is often not entirely reliable, requiring that providers piece together a more accurate picture by obtaining additional information from diverse sources such as family members, spouses, prior care providers, or hospital records.

Telehealth can make it more difficult to obtain a written Release of Information that enables providers to gather information from different sources. While there have always been exceptions to HIPAA that enable healthcare providers to access information from other providers without patient consent for treatment purposes, many providers and facilities are unaware of, or misunderstand such provisions, incorrectly assuming that they're unable to provide the records. Healthcare organizations and providers should ensure they fully understand all applicable HIPAA and consent regulations in order to appropriately share information, facilitating the provision of care in good faith.

Making the most of telehealth opportunities also requires balancing the need for critical healthcare information against privacy concerns and the ability to build a strong therapeutic relationship. COVID-19 has made it more challenging to speak with telehealth patients without others present. It's generally assumed that the patient doesn't mind disclosure of information to another in the same room. However, social distancing is creating less privacy in homes, and it may be that the patient is uncomfortable having others present, making it more important that providers make it a point to ask about and confirm a patient's comfort level.

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2019 research revealed that 79% of those surveyed found telemedicine more convenient and 83% agreed the care provided was as good or better than care provided in-person.<sup>4</sup>

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## IMPACT OF CHANGING REGULATIONS

Telehealth risks are also impacted by federal and state regulations, which have changed rapidly in response to the pandemic in order to increase the availability of mental health services. Before the pandemic, many states restricted a patient's physical location when receiving telehealth service. Patients were required to be within a set distance from the provider or located within a healthcare facility. Other states restricted the kinds of technology used when providing telehealth services, such as mandating use of synchronous technology. The Coronavirus Preparedness and Response Supplemental Appropriations Act 2020 effective as of March 17, 2020, eases some of the telehealth restrictions in place for Medicare patients, allowing patients to receive services using their own telephone at home.<sup>6</sup>

Many states also require telehealth providers to obtain verbal or written patient consent prior to use of telehealth services. This generally includes a discussion about the technology utilized and a summary of privacy and security considerations.<sup>3</sup> However, the Department of Health and Human Services Office for Civil Rights (HHS OCR) has published a guidance temporarily allowing the use of some communication platforms not strictly "HIPAA compliant" if utilized in "good faith" through commonly available communications technologies, such as FaceTime or Skype, during the pandemic.<sup>6</sup> In addition, while physicians are generally required to complete an in-person examination prior to prescribing medication via telehealth, the Drug Enforcement Agency (DEA) has suspended the federal Ryan

Haight Act due to declaration of a nationwide public health emergency, facilitating the use of telehealth to provide medication-assisted treatment.<sup>6</sup> It's unclear how long the exceptions to general telehealth regulations will continue; however, they are intended to endure during the life of the COVID-19 national public health emergency initially declared as of January 31, 2020.<sup>7</sup>

## BOTTOM LINE

This is an unprecedented time for telemedicine and especially for the field of behavioral healthcare.<sup>1</sup> Technology is playing a vital role in ensuring behavioral health patients continue to receive needed routine care by bridging the gap between providers and patients and removing barriers such as geographic location, need for transportation, and inconvenience.<sup>5</sup>

While seeking to help as many patients as possible via telemedicine, providers should strive to mitigate risks by safeguarding the efficacy and privacy of telehealth encounters in compliance with HIPAA as well as any state laws regulating the privacy and security of health information. Assessing how patient data is collected, transmitted, and stored is also vital in identifying potential exposures.<sup>3</sup> Answering the following questions can help providers shape communication and documentation practices that reduce risk and lay a solid foundation to stand on should a future claim arise:

- ◆ Does the insured use telephone or video conferencing, or both?
- ◆ Is the technology or software in use HIPAA compliant?
- ◆ Do providers accurately disclose confidentiality risks of telehealth and obtain informed consent? If so, how is consent documented?
- ◆ Are providers licensed in the state where the patient is physically located or is a state waiver in effect?
- ◆ Does the insured provide appropriate telehealth training for employees?

Telehealth is here to stay, and it's growing exponentially across all healthcare sectors.<sup>4</sup> Research shows that 20% of physicians currently use telemedicine, and 61% of those who don't currently utilize it expect to begin engaging telehealth tools by 2022.<sup>8</sup> Telemedicine is a booming business, and by 2025 it is expected to exceed \$64.1 billion in the U.S. marketplace.<sup>4</sup> CRC Group leverages strong partnerships with insurance carriers and risk consultants able to provide productive guidance around client exposures as telemedicine programs continue to expand and evolve. Agents with any questions about coverage for telehealth services should contact their CRC Group Producer.

## Contributor

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## Negley Associates

Over the last 50 years, Negley Associates - a division of CRC Group - has built a solid reputation as a leading insurance provider for the behavioral healthcare, addiction, and social service industries. Negley strives to meet the unique needs of behavioral healthcare providers by bringing together world-class insurance experts to create a broad spectrum of customized insurance coverage options. Combining deep industry knowledge, unmatched underwriting expertise, excellent claim services, and top-quality risk management programs ensures that each client benefits from the most comprehensive insurance programs available in today's market. Negley also offers the industry's first Individualized Risk Management Program (IRMP) at no additional cost to policyholders, expertly guiding insureds through an innovative risk reduction plan that empowers them to focus time and energy where it is needed most - delivering top-quality care to clients. Visit us at [jjnegley.com](http://jjnegley.com)

## ENDNOTES

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