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# Telemental Health: Legal Considerations for Social Workers

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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.

- Download the Telemental Health Chart (*PDF*)
- Download the Telemental Informed Consent Form (*PDF*)
- Download the Spanish Telemental Informed Consent Form (*PDF*)
- PDF version of this page

## 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 (*PDF*) 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 .

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 the ASWB's regulatory provisions webpage .

## 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. 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.

## 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.

## Telemental Health Chart

	HIPAA	Licensure	Medicare*
<b>Before COVID-19</b>	All vendors must be HIPAA compliant; video conferencing companies must sign business associate agreement (BAA)	Must be licensed where the social worker is located <b>AND</b> where the client is located; not all states authorize the use of telemental health.	Medicare coverage and payment of telehealth services provided on a <b>limited</b> basis
<b>During COVID-19</b>	OCR will not impose penalties for noncompliance with certain HIPAA Rules	Temporary suspension of social work licensure regulations for telemental health in certain states	Recently passed legislation eased some Medicare telehealth restrictions
	No risk of HIPAA sanctions/penalties for lack of BAA	The other state, where the client is located, also needs to allow the provision of telemental health services	Section 1135 waiver allows for Medicare coverage and payment of telehealth services on a <b>broader</b> basis (i.e. audio only telehealth)
	Permits use of non-public facing video conferencing apps (i.e. Skype, Facetime, Messenger)	Check with professional liability company for coverage of telemental health services	Section 1135 allows for waiver of telehealth provider licensure regulations for Medicaid/Medicare reimbursement

Prohibits use of public-facing video conferencing apps (i.e. Facebook Live, TikTok)

Check with payor for reimbursement of telemental health services

Section 1135 waivers do NOT override state regulations

The regulatory changes made during COVID-19 are temporary unless otherwise noted.

## HIPAA

The HIPAA rule relaxations specifically address the enforcement of HIPAA requirements related to the types of platforms used for video-conferencing and the need to enter a Business Associate Agreement (BAA) with the platform provider. The rule relaxations of HIPAA enforcement apply to **all** HIPAA-covered entities, even if they are not Medicare/Medicaid providers.

## CMS\*

Applies to Medicare/Medicaid/CHIP providers. CMS, through section 1135 waivers, expanded telehealth coverage that was tightly restricted. Prior to COVID-19, patients were required to connect from a health facility that had approved video conferencing technology. During COVID-19, patients can connect from home via video on a smartphone or other digital device. The section 1135 waivers will end upon termination of the public health emergency, including any extensions.

## Licensure

Check to find out if regulatory provisions for telemental health have been temporarily suspended in your state at ASWB's Regulatory provisions webpage.

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## HIPAA Help for Social Workers

› Privacy Rule

› Breach Notification Rule

➤ Practice Updates

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➤ Federal Government Resources

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➤ Legal Issue of the Month: HIPAA

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## COVID-19: 8 Ethical Considerations for Social Workers

What should social workers do to prepare for the impact of this pandemic?

[Read Ethics 8 Tips](#)

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