AMERICAN PSYCHIATRIC ASSOCIATION

< Blog

Telepsychiatry and COVID-19

Update on Telehealth Restrictions in Response to COVID-19

Updated March 17, 2020

On March 6, 2020, the Coronavirus Preparedness and Response Supplemental Appropriations Act was signed into law. This statute gives the Secretary of Health and Human Services (HHS) the authority to waive geographic and originating site Medicare telehealth reimbursement restrictions for mental health services overall, during certain emergency periods.

CMS released guidance on March 17, 2020, that NOW allows patients to be seen via live videoconferencing *in their homes*, without having to travel to a qualifying "originating site" for Medicare telehealth encounters, regardless of geographic location. See below for *new* HIPAA information related to telehealth.

When conducting a telemedicine encounter, you will use the same CPT codes as if the encounter were in-person, but with the Place of Service (POS) code 02 to indicate the care was provided via telemedicine. Also note that some private payers may ask for modifier 95, which indicates a telemedicine encounter, as well. Click here to read the release from the Center for Medicare and Medicaid Services (CMS), which provides detailed Fact Sheets and FAQs about what constitutes a telehealth encounter for reimbursement purposes.

What You Can Do

If you are considering transitioning patients to telepsychiatry in place of in-person appointments, the APA's Telepsychiatry Toolkit is a good place to start. The Toolkit contains 60+ individualized pages with guidance on topics related to telepsychiatry, such as clinical considerations, administrative and technical requirements for software issues, and reimbursement

For those looking to get started right away, the APA and the American Telemedicine Association co-published a guide for doing so, which can be accessed here: Best Practices in Videoconferencing-Based Telemental Health.

Getting Started: Technical Specifications

Telemedicine is the use of live videoconferencing to facilitate a patient encounter. For Medicare, Medicaid, and most private insurers, this does not include telephone alone; an encounter must be live video and audio paired together.

For the duration of this emergency declaration, HHS has indicated that it will waive HIPAA penalties for using non-HIPAA compliant videoconferencing software, allowing for popular solutions, such as Skype (basic) and FaceTime to be used to conduct telehealth sessions via video. The Office of Civil Rights has also released further guidance about this.

If you are concerned about being HIPAA compliant and are seeking a more permanent telehealth solution, note that you will need to sign a Business Associate Agreement (BAA) with any software company you partner with. Not all videoconferencing companies will do so (for instance Apple's FaceTime will not, and thus is not HIPAA-compliant for the long-term). Based on anecdotal member feedback provided to the APA, members have signed BAA's with, and are using Zoom for Healthcare, MegaMeeting Telemedicine, VSee, and doxy.me. Again, while APA is not endorsing nor explicitly recommending these solutions for your practice, they are a good place to start when researching what will work for your own practice needs.

Physicians providing telepsychiatry services will need a license in the state in which the patient is located at the time services are provided. **Note that many governors are declaring states of emergency and different State Boards of Medicine are responding to the crisis by changing their rules on an individual basis. APA is actively monitoring state-level activities and will disseminate information as soon as we have definitive guidance for our members in those states.**

But What about Telephone Calls?

Reimbursement issue aside, there is wide variability of interpretations about whether standalone phone calls are HIPAA-compliant. All of this, of course, depends on how the telephone system you're using, whether a traditional landline, mobile device, Voice over Internet Protocol (VoIP—i.e., a phone that uses the internet to make calls), or the use of a third party phone call system embedded in a mobile application, handles Protected Health Information (PHI) under HIPAA. There is no quick and easy answer for this question. **Note that the emergency declaration appears only to apply to true telehealth encounters (e.g., live video/audio teleconferencing) and not phone calls without video.**

Finally, CMS is also allowing for patient-initiated "brief check-ins" via telephone, which last around 5 – 10 minutes. Again, for additional information on what constitutes one of these check-ins, see CMS' Fact Sheet around COVID and telehealth.

The APA recommends you contact your malpractice carrier before engaging with a patient over the phone without video (e.g., not true telemedicine) to gauge their official, legal position.

Electronic Prescribing of Controlled Substances via Telemedicine

The Ryan Haight Act requires that a provider conduct an initial, in-person examination of a patient—thus establishing a doctor-patient relationship—before electronically prescribing a controlled substance. **As of March 17, 2020, the DEA has indicated that this requirement has been suspended for the duration of the emergency declaration.**

Contacting Third Party Payers and Medicaid Directors

Given the increased need for telemedicine and telephone encounters with patients, the APA would like to help you to advocate for these services to be covered by private insurance and Medicaid for when patients are unable to come into the office for their regular appointments. You can use this sample letter to send to the private insurers and Medicaid Directors that provide coverage to your patients. Please let APA know if you receive a response.

If you have additional questions about any of the above issues, APA members may contact the Practice Management Help Line.

Free Webinar

How to Address COVID-19 Across Inpatient, Residential and other Non-Ambulatory Care Settings

Wednesday, April 1, 2020
2:00 - 3:00 p.m. EDT
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