



“Teleservices for Treatment Providers”

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Objectives

- A brief overview of telehealth laws from federal and state levels
- Participants will identify types of HIPAA compliant technology that is needed to provide teleservices.
- The necessity of identifying and explaining COVID-19 HIPAA emergency compliance laws for healthcare organizations
- To identify types of technology that can be used during the COVID-19 Pandemic
- To identify and explain key administrative forms that is needed to provide TMH (e.g. Telemental Health Informed Consent Communication Addendum, Business Associates Agreement, and other clinical documentation, and etc.) services
- Video – “Telehealth Don’t and Do’s”
- Participants will identify key telehealth ethical codes and dilemmas that can impact client care and treatment/solution
- Documentation that is needed to implement an effective HIPAA telehealth program

Key Telehealth Definitions

1. Asynchronous store and forward - means the transmission of a client's information from an originating site to a licensee at a distant site without the presence of the client.
2. Synchronous interaction - means a real-time interaction between a client and a licensee located at a distant site.
3. Distant site - means a site or location from which services are delivered by a licensee/ Supervisor via a technology-assisted media.
4. Licensee - means a person licensed in the state of Georgia as a Professional Counselor, Social Worker or Marriage and Family Therapist, including Associate licensees. We are talking about associate and fully licensed staff.
5. Originating site - means a site where a client is located at the time TeleMental Health services are provided via technology-assisted media or where the asynchronous store and forward services originates.

Source: <http://rules.sos.ga.gov/GAC/135-11-.01>, March 2020

Georgia Composite Board Definition of Telemental Health

“Telemental Health – means the mode of delivering services via technology-assisted media, such as but not limited to, a telephone, video, internet, a smartphone, tablet, PC desktop system or other electronic means using appropriate encryption technology for electronic health information.

Encryption (Must be at least 128 bites to meet HIPAA standards) is the most effective way to achieve data security. To read an **encrypted** file, you must have access to a secret key or password that enables you to decrypt it. Unencrypted data is called plain text ; **encrypted** data is referred to as cipher text.

Telemental Health facilitates client self-management and support for clients and includes synchronous interactions and asynchronous store and forward transfers.”



Encrypt Data



Definition of Telehealth

According to the *U.S. Department of Health and Human Services, Health and Resources and Services Administration (HRSA), (2010-2016)* “Telehealth is *the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health, and health administration.*”

Telehealth” is now more commonly used as it describes the wide range of diagnosis and management, education, and other related fields of health care.



Types of Telemental Health Encrypted Technology

Telephone

Video

Internet

Smartphone

Tablet

PC desktop system

Other electronic devices

These technology devices must include appropriate encryption technology for electronic health information purposes.

Source: Safford handout, 2015

Levels of Communication Information

Face to Face	Video Conferencing	Phone	Text/Chat	Email
Sight	Sight	Sound	Text	Text
Sound Smell Synchronous	Sound, Synchronous	Synchronous	Asynchronous, Near, Immediate	Asynchronous, on- immediate
Body language	Body language	Tone, pitch		
facial	facial	volume		
expression	expression	pacing		
tone, pitch	tone, pitch	inflection		
volume, pacing	Volume, pacing, inflection			
inflection				



Georgia Telemental Health Laws and Trainings

Mental Health Professionals Rules You Need to know

Rule 135-11.01 Telemental Health definition:

This rule requires all licensees including associate level licensees to complete 6 hours of continuing education in any of the following content areas *“prior to delivery of clinical telemental health services.” “The continuing education hours may include but are not limited to the following, in the discretion of the board:*

Updated Georgia Composite Board telemental health training requirements was for the 2018 licensure renewal timeline. <http://rules.sos.ga.gov/qac/135-9>

Training for Licensee:

Internet use dependence and psychological problems Research in Telemental Health

Intake and Assessment

Delivery Methods

Termination

Risk Management

Business of Telemental Health

Theory Integration

Tele-supervision training (3 additional hours requirement)

Duties and Responsibilities of Clinicians

Rule 135-11.01 Telemental Health

1. Informed Consent - Prior to the delivery of TeleMental Health services by a licensee via technology-assisted media, the licensee at the distant site shall inform the client that TeleMental Health services via technology-assisted media will be used, and the licensee shall obtain verbal and written consent from the client for this use.

➤ The verbal and written consent shall be documented in the client's record. Consent must include disclosure of the use of any third party vendor such as a record keeping, billing service, or legal counsel.

2. Client Assessment - Careful assessment using assessment instruments referenced in Rule 135.-7-.05 as appropriate is required in order to determine whether an individual may be properly assessed and/or treated via TeleMental Health services through technology-assisted media.

➤ Clients who cannot be treated properly via TeleMental Health services should be treated in person, or else they should not be accepted as clients or, if already accepted, properly terminated with appropriate referrals.

3. Code of Ethics - The failure of a licensee to comply with these requirements shall constitute unprofessional conduct under the Code of Ethics as described in Board rule 135-7.
 - A licensee delivering health care services via TeleMental Health shall comply with all Code of Ethics requirements as described in Board rule 135-7.
4. Scope of Practice - This rule shall not be construed to alter the scope of practice of any licensee or authorize the delivery of services in a setting, or in a manner, not otherwise authorized by law.
5. Out-of-State Clients - Licensees who want to offer TeleMental Health services outside the state are advised to check with the state board in which the client resides for information about telemental health regulations outside of Georgia. Georgia licenses professionals may provide Telemental health services to Georgia residents who qualify for mental health and substance abuse services.
6. Georgia licensed mental health professionals do not have the authority to practice telemental health in states other than Georgia because of licensure requirements in other states.

Telemental Health Supervisor Rules and Responsibilities - Rule 135-11.01

Supervision Rules:

Training of the TeleMental Health Supervisor: Prior to the delivery of supervision via telemental health, the supervisor shall have obtained a minimum of nine (9) hours of continuing education.

The continuing education hours may include the same eight (8) categories identified under "Training for Licensee", rule section (b)(1)(i)(I-VIII) above, plus, must also include three (3) hours in the category of: Supervising TeleMental Health Therapy - understanding the key components necessary to supervise effective, and efficient delivery of telemental health therapy.

If the supervisor has taken the hours required in this section within the last 5 + years, those hours do not need to be repeated in order to meet requirements in this section.

Source: <http://rules.sos.ga.gov/GAC/135-11-.01>

Board rules 135-5 define the acceptable requirements for a Board recognized supervisor and supervision for the Counselor, Social Work, and Marriage and Family Therapy professions.

Supervisors and supervision must meet the requirements of the specialty found in the applicable section of Board rule 135-5 that define supervisor and supervision for the Counselor, Social Work, and Marriage and Family Therapy professions.

Informed Consent: Prior to the delivery of supervision via TeleMental Health, the supervisor at the distant site shall inform the supervisee that TeleMental Health will be used and obtain verbal and written consent from the supervisee for this use.

Business Associate Agreement Guidelines

The Business Associate Contracts implementation specifications state that a business associate contract must provide the business associate with:

“(A) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity;

(B) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it;

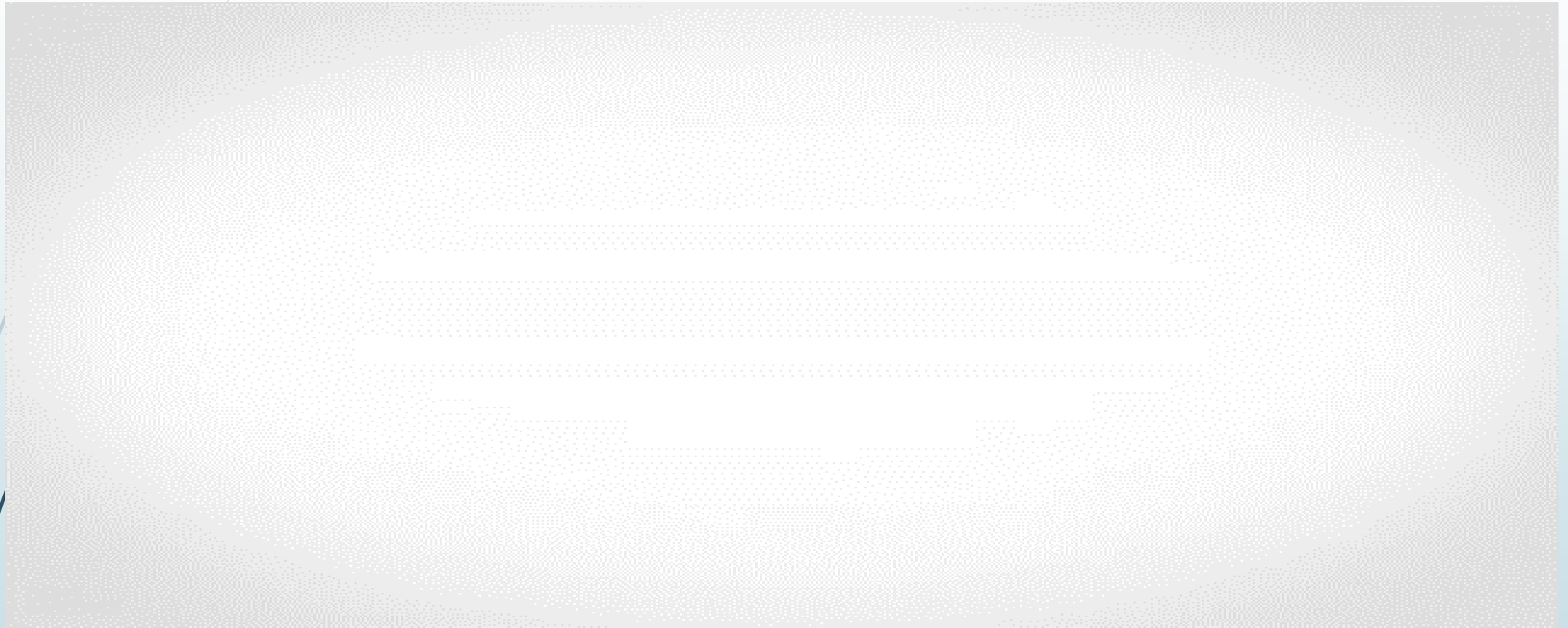
(C) Report to the covered entity any security incident of which it becomes aware;

(D) Authorize termination of the contract by the covered entity, if the covered entity determines that the business associate has violated a material term of the contract.”

Video- “Telemental Health Tips: Don’ts and Do’s”/ Discussion

Telemental Health Tips: Don'ts and Do's

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



Health Insurance Portability and Accountability ACT (HIPAA)

The Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) establishes, for the first time, a set of national standards for the protection of certain health information.

The U.S. Department of Health and Human Services (“HHS”) issued the Privacy Rule to implement the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The Privacy Rule standards address the use and disclosure of individuals’ health information—called “protected health information” by organizations subject to the Privacy Rule — called “covered entities,” as well as standards for individuals' privacy rights to understand and control how their health information is used.

Within HHS, the Office for Civil Rights (“OCR”) has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

Source: <http://www.hhs.gov/sites/default/files/privacysummary.pdf>

HIPAA Rules

Among other things, the HIPAA rules require:

Access control

Audit controls

Person or entity authentication

Transmission security

Business Associate access controls

Risk analysis

Workstation security

Device and media controls

Source: <https://www.hipaajournal.com/hipaa-compliance-checklist/>

The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, was signed into law on February 17, 2009, to promote the adoption and meaningful use of health information technology.

State statutes related to reporting responsibilities for suicidality, homicidality, and child and elder abuse must be followed according to state laws.

Statutes and guidelines related to clinical work with minors and multiple versus primary clients e.g. federal laws related to substance abuse and etc.



THE HITECH ACT (2010)

Because this legislation anticipated a massive expansion in the exchange of electronic protected health information (ePHI), the HITECH Act also widens the scope of privacy and security protections available under HIPAA; it increases the potential legal liability for non-compliance; and it provides for more enforcement.

Source: <http://www.hipaasurvivalguide.com/hitech-act-summary.php>



COVID-19 HIPAA Changes

The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, to do the following;

Protect the privacy and security of protected health information, namely the HIPAA Privacy, Security and Breach Notification Rules (the HIPAA Rules).

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

COVID-19 WORLD STATES

- **Common telehealth policy changes through Executive/Agency orders**
 - **Allowing home to be an eligible originating site**
 - **Allowing telephone to be used to provide services**
 - **Requiring health plans, managed care and private to cover telehealth services and offer parity**

COVID-19 HIPAA Changes

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public facing remote communication product that is available to communicate with patients.

OCR is exercising its enforcement discretion to not impose penalties for noncompliance with the HIPAA Rules in connection with the good faith provision of telehealth using such non-public facing audio or video communication products during the COVID-19 nationwide public health emergency.

This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.

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

COVID -19 Cont.

Under this Notice, covered health care providers may use popular applications to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency.

- Video chats,
- Apple FaceTime,
- Facebook Messenger video chat,
- Google Hangouts video,
- Zoom, or
- Skype

Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.

COVID 19 Unacceptable Video Applications

Under this Notice, however the following applications are not acceptable;

- Facebook Live,
- Twitch (a live video game website)
- TikTok (a short, bite-sized video app) and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers.

Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products

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

Vendors that represent that they provide HIPAA-compliant video communication products and that they will enter into a HIPAA BAA

Skype for Business / Microsoft Teams

Updox

VSee

Zoom / Zoom for Healthcare

Doxy.me

Google G Suite Hangouts Meet

Cisco Webex Meetings / Webex Teams

Amazon Chime

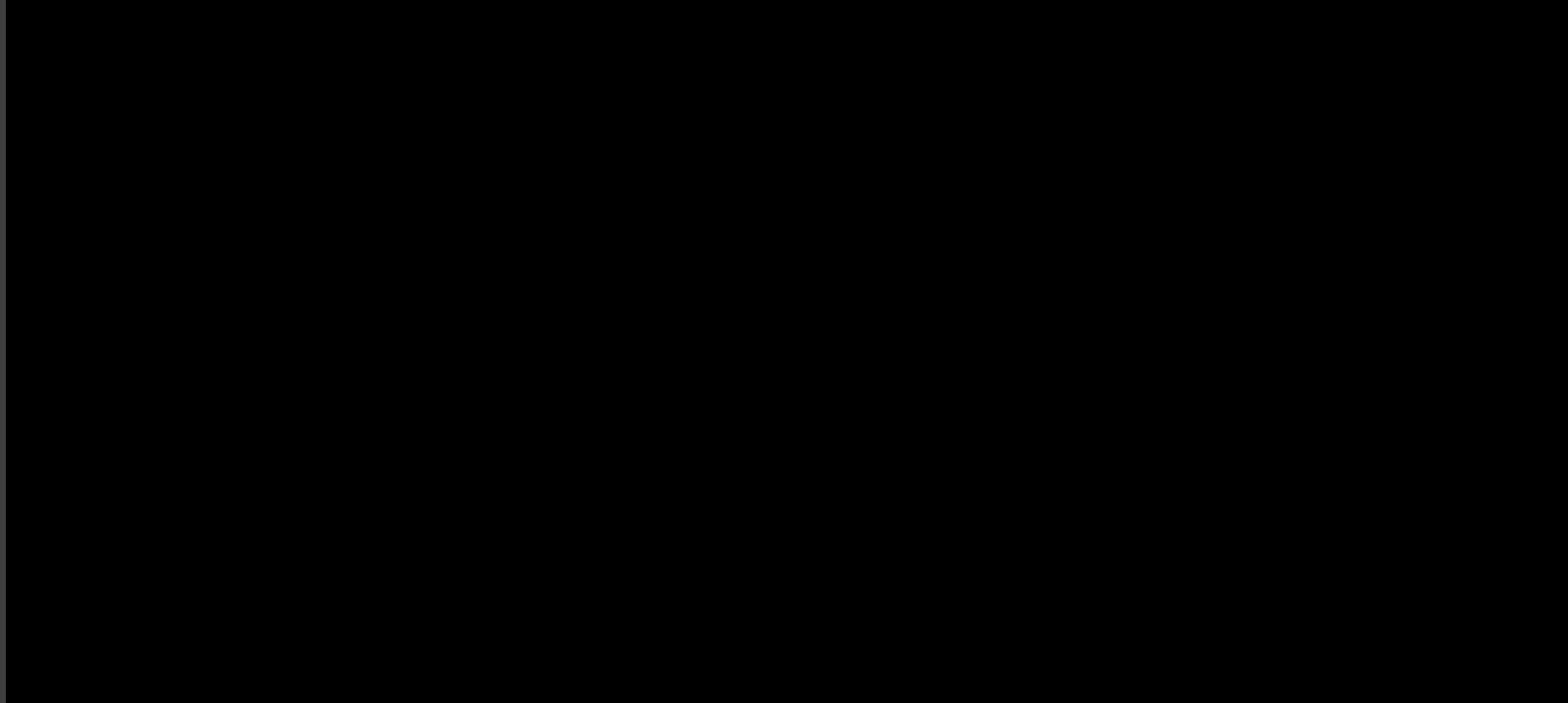
GoToMeeting

OCR has not reviewed these Vendors for HIPAA BAA compliance nor does it endorse them.

Video – “COVID-19 and HIPAA”

Video- “COVID-19 and HIPAA”

<https://www.youtube.com/watch?v=Mhn7RBQAytw>



Telemental Health Legal and Administrative Forms

Client Data

B. Release of Information

C. Client's Rights Form

D. Assessment forms

E. Informed Consent/Addendum information- The therapist must verify who the client is at all times. Establishing client identity is a key ethical issue.

F. Treatment Plan

G. Progress Notes (Mental status at each session)

H. Case Activity Record

I. Referral Record

J. Discharge Summary/Termination

Assessments Tools for TMH

■ Assessment Instrument Examples: licensed therapists must show evidence of assessment for TMH:

- Anxiety Scale
- Depression Scale
- Substance Abuse Screening
- PTSD Questionnaire
- Relationships Scale Suicide Assessment
- 1013 Involuntary hosp. (not via TMH)

Source: (Scroggs, 2016)

Complexities of Treatment

Theory Integration – therapists need to understand how to adapt counseling/therapy theory and effective in-person techniques to telemental health.

Online Therapy is not the same as Face-to-face counseling!

Generally, telehealth practices are subject to exactly the same federal and state regulations, codes of ethics, and professional guidelines that define the fiduciary relationship in face-to-face and office-based therapy. It falls within the same standard of care.

Acknowledgment of Limitations

Counselors inform clients about the inherent limits of confidentiality when using technology. Counselors urge clients to be aware of authorized and/or unauthorized access to information disclosed using this medium in the counseling process.

Source: <http://www.zurinstitute.com/ethicsoftelehealth.html>

Complexities and Treatment Cont.

Professional Boundaries in Distance Counseling

Counselors understand the necessity of maintaining a professional relationship with their clients. Counselors discuss and establish professional boundaries with clients regarding the appropriate use and/or application of technology and the limitations of its use within the counseling relationship (e.g., lack of confidentiality, times when not appropriate to use).

Communication Differences in Electronic Media

Counselors consider the differences between face-to-face and electronic communication (nonverbal and verbal cues) and how these may effect the counseling process. Counselors educate clients on how to prevent and address potential misunderstandings arising from the lack of visual cues and voice intonations when communicating electronically.

Source: <http://www.zurinstitute.com/ethicsoftelehealth.html>

Telemental Health Ethical Dilemmas

Ethical issue And references	Number of articles	Conclusion
Technology (9-16)	8	Advanced technology increased the significance of ethical issues.
Confidentiality and security (17-23)	7	Attention to ethical issues in telemedicine increased the significance of data security and confidentiality.
Doctor-patient relationship (24-29)	6	Use of telemedicine disrupted doctor-patient relationship which is an ethical issue.
Informed consent (30-36)	7	It is essential to provide the patient with sufficient information by submitting a form of informed consent.

Researched Articles Reviewed Findings

According to the articles found, generally speaking, ethical issues in telemedicine can be investigated from several aspects:

- technology,
- telephone,
- internet, server list (a computer program that allows for tele medicine service provision for a group of people through the net):
- email,
- doctor-patient relationship,

- data confidentiality and security,
- informed consent,
- patient's and family's satisfaction with telemedicine services.
- Source: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5723167/>
- Med Arch. 2017 Oct; 71(5): 351–355.
- doi: 10.5455/medarh.2017.71.351-355

HIPAA Compliant Technology

- Technology must meet encryption standards that has a minimum of 128 bites according to HIPAA laws.
- Must have business associates agreements.
- It is necessary to have individuals receiving treatment signed informed consents to provide telehealth services utilizing technology as a way of providing treatment.
- Also it is necessary to have signed informed consents from staff who are recipients of tele-supervision according to the Georgia Composite Board.
- It is necessary to adhere to all Composite Board, National Association of Social Workers, Licensed Professional Counseling Association, Licensed Marriage and Family Therapists Association, and other substance use disorders certifications codes of ethics.

- Adherence to Privacy and Confidentiality Federal Laws-42 CER part 2; 34 C.F.R. Part 99; regulations und Privacy and Confidentiality Federal Laws-42 CER part 2; 34 C.F.R. Part 99; regulations under HIPAA and HITECH laws.
- While the Department of Health and Human Services has given telehealth providers to waiver these rules because of the COVID 19 Emergency Pandemic, it is necessary for us as providers of services to work toward compliance of these stated HIPAA laws. We must keep our clients informed about these emergency plans and the potential violation of their private information.



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