Risk Management in Telemental Health

Sara Smucker Barnwell, PhD

Tuesday, June 16, 2020

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Telehealth Learning Series: Tuesdays, 5-7 PM

May 12: Introduction to Telemental Health

May 19: Preparing your office for Telemental Health

May 26: Client selection, intake, and assessment in Telemental Health

June 2: Clinical engagement in Telemental Health

June 9: Emergencies, disruptions and pitfalls in Telemental Health

June 16: Risk Management in Telemental Health

Register @ NWATTC website

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Your presenter

Sara Smucker Barnwell, PhD

Licensed clinical psychologist in WA

VA Telemental Health Team

APA Telepsychology Guidelines

CESATE fellow

Unapologetic telehealth evangelist

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Learning objectives

- Documentation
- Technologies you use
- Common threats
- Interjurisdictional practice
- Insurance

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Class structure

Didactic lecture
    Live Q &A at section breaks
Video demonstrations
Submitted questions **nwattctelehealth@gmail.com**
Live Q & A

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Disclaimers

During a technology presentation, technology will fail

Offer best practice recommendations based on clinical work, literature review and regulatory experience

Identifying personal best practices and guidance in developing area

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Disclaimers

Always review state regulations

Consult with your own legal counsel

Consult with your risk management coverage

I do not provide legal advice nor clinical advice

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Conflicts

Provides telehealth training

Known telehealth evangelist

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Agenda: Risk management

Review

Documentation to manage risk

Managing support technologies

Common privacy, confidentiality, security risks

Practice across jurisdiction

Insurance

Coronavirus considerations

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The balance

Brief review
Deep dives
Your questions answered
On demand prior classes

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Definitions and examples

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Operational definitions

Telemental Health (TMH):
The provision of any mental health service using telecommunication technologies

Synonymous with videoconferencing… but today we expand!

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HIPAA

Health Information Portability and Accountability Act (HIPAA):

Federal law (*Pub.L. 104-191, 100 Stat. 1936, enacted August 21, 1996*) that aims to make it easier for people to keep health insurance, protect the confidentiality and security of healthcare information and help the healthcare industry control administrative costs

HIPAA Privacy Rule

HIPAA Security Rule

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Protected Health Information (PHI)/ ePHI

- Names
- Full-face photographic images
- Geographical subdivisions smaller than state
- All dates (birth, death, discharge)
- Phone/ fax numbers
- Electronic mail addresses
- Social Security numbers
- Medical record numbers
- Health plan beneficiary numbers
- Account Numbers

- Certificate/license numbers
- Vehicle identifiers and serial numbers, including license plate numbers
- Device/ serial numbers
- Web Universal Resource Locators (URLs)
- Internet Protocol (IP) address
- Biometric identifiers, including finger and voice prints
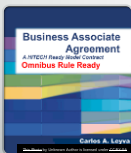- Any other unique ID numbers, code, or characteristic

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Business Associates Agreement (BAA)

Contract between HIPAA covered entity and HIPAA Business Associate (BA) that is used to protect personal health information (PHI) in accordance with HIPAA guidelines.

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Confidentiality vs. privacy

Privacy: "The condition or state of being free from public attention to intrusion into or interference with one's acts or decisions."

Patient treatment is not public information

Confidentiality: "Means the principle that data or information is not made available or disclosed to unauthorized persons or processes."

Patient data is not released without their permission

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Security

Security: "Administrative, physical, and technical safeguards related to information software system"

How patient data is protected

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A brief synopsis
Once more with feeling!

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Videoconferencing appointments

USE A PRODUCT DESIGNED FOR HEALTHCARE, BAA

INFORMED CONSENT, EMERGENCY PLAN

DOCUMENT

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Videoconferencing appointment

ASSESS APPROPRIATENESS

CHECK JURISDICTIONAL RULES

PREPARE YOUR OFFICE

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Videoconferencing appointment

Determine what services you provide

What population you serve

Documentation transfer, communication, payment

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Office location (existential)

Review physical office recommendations
Where is your office?
    Communicating this to your clients
Let it ring

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Documentation

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Documentation

Best practice for risk management
Documenting *why* we make thoughtful decision
Helpful when presenting to licensure boards

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Documentation

- Appropriateness assessment
- Informed consent (telehealth consent, return to in-person)
- Emergency plan

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Documentation

- Emails
- Telephone calls
- Notations to indicate session occurs over telehealth

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Assessment

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Emergency Plan

Emergency Plan Template

Client Name: _____

Address: _____

Telephone Number: _____

Alternate Number: _____

A support person is someone who is aware that you are in therapy. This person is accessible to you (nearby, willing to help) during your videoconferencing therapy session. You do not need to identify a support person, but this person could help in case of emergency. You will need to sign a release of information to allow me to contact this person.

Support Person Name: _____
Support Person Telephone Number: _____

I give my consent for my provider to contact my support person. I understand that this means that my provider may disclose private and confidential information in doing so. _____ [Initial]

Usual Emergency Plan
In case of behavioral/medical emergency, the provider will contact local emergency dispatch. This may mean that the paramedics, mental health professionals or local police would come to the client's home to ensure that the client is well. If appropriate, the provider will also contact your support person.

In case of videoconferencing failure, the provider will contact the client using the telephone. In case of telephone failure (and without safety concern), the provider would use email.

Client Signature _____ Date: _____

_____
Printed Name

Office Info
Local Emergency Dispatch:
Bill signed for Support Person:
Patient apprised of plan:
Date:

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Technologies you use

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Technology in practice

Specifics v. generalities

Accountability

Investment in products and companies v. becoming the expert

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Videoconferencing review

Product designed for healthcare (non-public facing option)
BAA
Features (self view, multicaller, screenshare)
Record yourself

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Other telehealth technologies

Telephone (landline or mobile device)
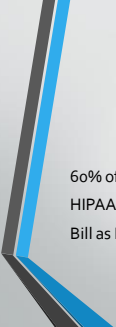Email
Fax

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Telemedicine progresses

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Telephone, mobile, VoIP

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Telephone: Landline

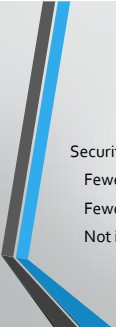60% of American homes have landline
HIPAA privacy does not prohibit
Bill as PHI document

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Telephone: Landline

Security concerns differ
Fewer concerns regarding user location
Fewer interactions with recording/ transcription
Not invulnerable to interception

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Comparing technologies: Standard use

	Admin	Clinical	Info Security	Privacy	Confidentiality
Landline	Yes	Yes	Few problems reported	Moderate problems	Few problems reported

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Mobile devices

US Mobile Access
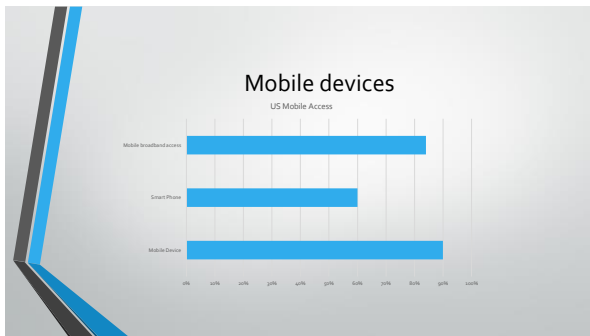
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Mobile devices

Increasingly used by general public
 Socialization, decision-making, information seeking online
Independent of therapy, behavioral emphasis
Complement to therapy (PTSD Coach, PE Coach)

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Mobile devices

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Mobile devices

Voice and video
Privacy
    Volume, location, points of interception
Recording

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Mobile devices

PASSWORD
PROTECTION

DATA STORAGE
(LOCAL VS. ONLINE)

LOCK DEVICES
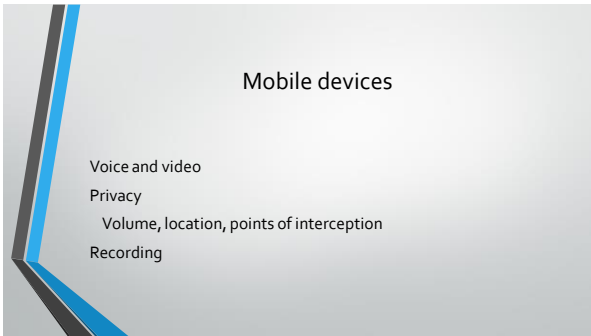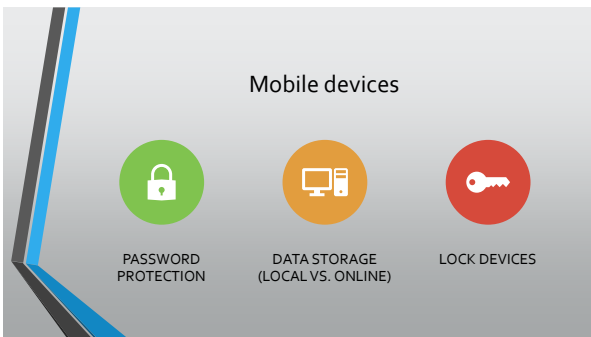
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Mobile devices

Analysis of data
Online interactions, location
NSA (Snowden v. loud talking)
Capabilities vs. what is being done

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Behavioral health apps

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Comparing technologies: Standard use

	Admin	Clinical	Info Security	Privacy	Confidentiality
Landline	Yes	Yes	Few problems reported	Moderate problems	Few problems reported
Mobile Device	Yes	Yes	More problems	Significant problems	Moderate problems

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Email

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Email

US Internet and Email Access
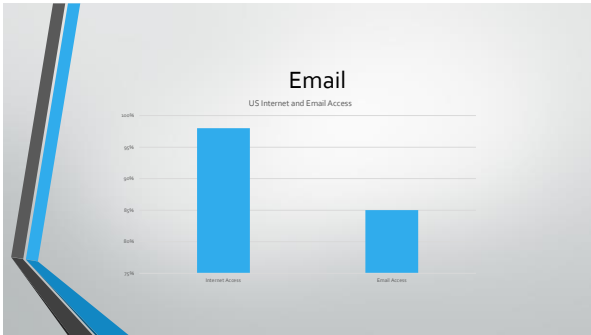
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Email

How are you using email
  Communicating with/about patients
What content communicated
  Administrative, billing, clinical content
OCR/ DHHS announcements

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Email

What kind of email
  Free, publicly available vs. encrypted email
Consider investment in a product that offers encryption
Products integrated with EHR

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Comparing technologies: Standard use

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Mobile Device	Yes	Yes	More problems	Significant problems	Moderate problems
Email	Yes	No	Significant problems	Significant problems	Significant problems

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Email take aways

Email is not secure
 Consider encrypted email option
Decide what email product you will use
 Apprise patients of risks in informed consent

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Email take aways

Determine what content you will communicate over email
 Be prepared to have these assumptions violated
Response to information that triggers mandated reporting

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Email to do

Decide if you want to email with clients/ what information
Make an email account for clients only
 Consider if you want it on your mobile device
Add a notice regarding information security to your email signature

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Signature

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Email to do

Clearly communicate in informed consent

How you will manage different use

How you will manage information/ mandated reporting

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New applications

"What do you mean, we don't communicate? I sent you an email on Monday."

Increasing applications examine asynchronous therapeutic communication

Coaching, primary care, therapy

Research emerging

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FACSIMILE

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Fax of life

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Fax machines

Commonly available
  Traditional v. Internet enabled
Maintains records of everything sent/received
Hardware logs may require manual clearance
Fax use of telephone line vs. internet
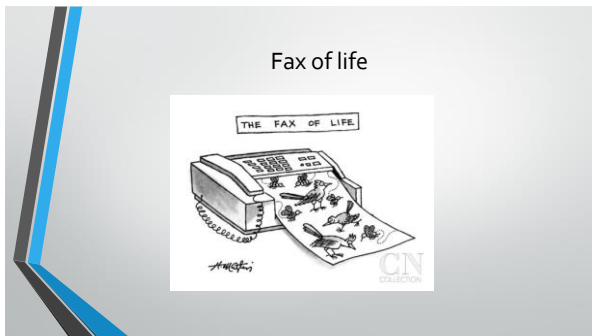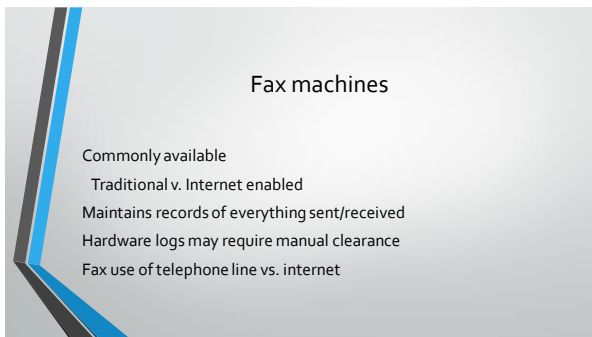
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Comparing technologies

	Admin	Clinical	Info Security	Privacy	Confidentiality
Landline	Yes	Yes	Few problems reported	Moderate problems	Few problems reported
Mobile Device	Yes	Yes	More problems	Significant problems	Moderate problems
Email	Yes	No	Significant problems	Significant problems	Significant problems
Fax	Yes	Yes	Few reported problems*	Few reported problems*	Few reported problems*

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Fax take away

Understand what technology your fax uses (phone, Internet)

Consider where you place your fax machine

Consider where the information goes

62

Fax to do

Determine what kind of fax you have

Keep the hardware safe

Purge the logs, if possible

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Common threats to security, privacy and confidentiality

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Security, privacy and confidentiality

Technology brings unique opportunities

Difficult to speak to all technologies due to significant differences between them

Providers are not engineers

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Challenges (aka favorite anecdotes)

CONFIDENTIALITY BREECH: SMARTPHONE BILL

PRIVACY BREECH: STAFF FB POST

SECURITY BREECH: VIRUS EMAILS ALL CLIENTS

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Social media and online presence

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Social media

Some providers elect to use to advertise
Differentiating personal and professional
Cognizance of connections

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Online presence

Personal and professional information available online
Client information available online
Keep it separate
Don't Google

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Caveat user

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Online presence

Websites comply to HIPAA requirements
Consider whether you will search client information
Do not forward client communications

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Online presence

Limit easily accessible personal information online
Maximize privacy settings on social media
Mind your Tweets

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Client role

Capture informed consent (written or online)
Recruit clients as advocates for own privacy
  Use technology properly
  Secure WiFi, when appropriate
  Use dedicated, password protected profiles and accounts
  No forwarding, recording, etc.

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Authenticating identity

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Jurisdictional/ regulatory issues

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Laws & regulation

Minimum requirements for practice
Technology emerging integration into law
Most providers are NOT lawyers
This is changing quickly

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Laws & regulation

Be mindful that jurisdictions DIFFER
Consult best practice guidelines
Consider your employment setting policies and procedures
Consider that federal laws may apply (i.e., HIPAA, HITECH)

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What is interjurisdictional telehealth

Providing care outside your licensure jurisdiction via technology
   Provider is in a non-licensed jurisdiction
   Client travel outside licensed jurisdiction
Not exclusive to telehealth
States vary, change in response to COVID

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What is interjurisdictional practice

Travel to school across state border

Videoconferencing from to client outside jurisdiction

Telephone call from office to client in bordering state

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Interjurisdictional requirements

Currently there is no federal licensing law

Nurses have a compact

Physicians are required to get licensed where practice/prescribe

Drivers licenses are a compact and 11 states are not signed on yet

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IJP

"As long as there's nothing wrong with me, I'll be getting back to Jupiter."

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Common myths

30 day permissions
All mandated reporting the same
Always maintain services

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Considerations

COVID
What are the laws of practice in the other jurisdiction
 Do these laws conflict with your home jurisdiction
Does the other jurisdiction permit the use of technology

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Considerations

Why are you crossing jurisdictional boundaries
Is the client aware of risks, conflicts, reporting authorities
Signed informed consent

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Resolving conflicts

Clear, documented resolutions, even when licensed in both jurisdictions

Other professional practice considerations

Consider age of consent for services, records retention requirements, duty to warn, mandated reporting, etc.

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When it goes amiss

Always confirm location at initiation of all calls (video, telephone)

Determine your policy in advance, document in informed consent

Do not deliver routine care interjurisdictionally

Emergencies

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International practice

Does patient location regulate services
How would your malpractice and Board treat a claim or complaint
Public protection
Risk and benefit

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Vignette: Dr. Dre

Client stable following relapse
Moving internationally
Wants to maintain services

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Considerations

Client history
Agreed upon plan
Where moving
Consult with insurance/ attorney
Documentation

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Live Q & A

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Insurance Reimbursement

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Fees and billing

DETERMINE FEES   DOCUMENT   TELEHEALTH SURCHARGE
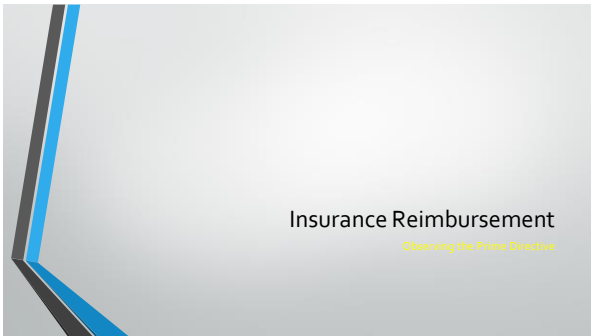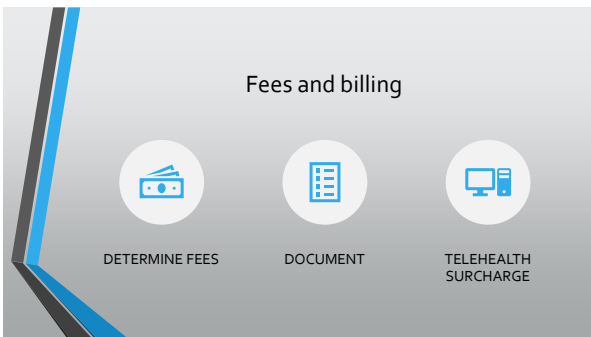
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Insurance

💵	Private pay v. insurance
👷	Rules of your jurisdiction (coverage, parity)
🚚	Always check with individual carrier

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Billing

Rapidly developing legislation on coverage, parity

Rules of your jurisdiction

Expiration date of executive orders

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Billing

Updates to billing codes for synchronous videoconferencing into the home

Place of service code 02 (old code: 11)

Modifier code 95 (old code: GT)

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Billing

Service code as usual

   90791, 90837, 90834 as examples

Telephone codes: 98967/ 98968

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Place of service

Modifier codes

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What is next

Expiration of executive orders

Termination, ethical abandonment

Informed consent

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Vignette: Dr. Octagon

Client in early sobriety

Initiates therapy in jurisdiction with temporary insurance permissions

Finances are a factor

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Considerations

When order expires

How long client served

Treatment planning

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Live Q & A

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Coronavirus considerations

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The fishbowl

Perception that telehealth under greater scrutiny
Document reasoning
COVID legitimizes, opens to greater issues

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That's a good question
Previously submitted questions
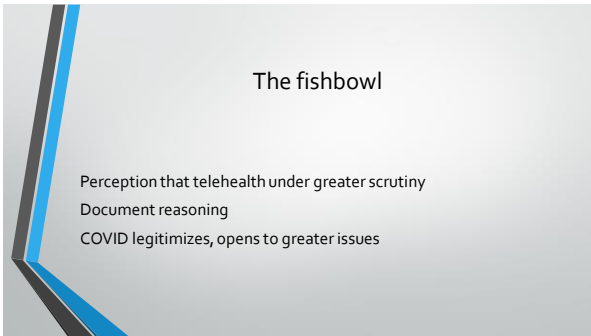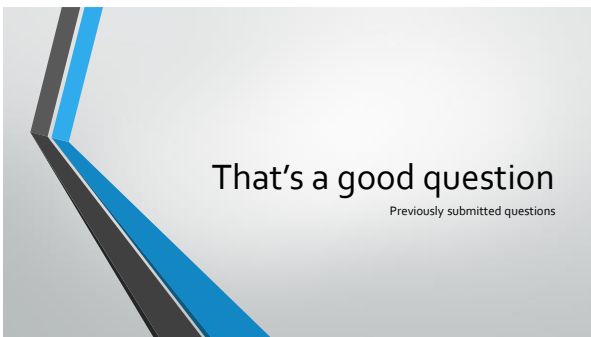
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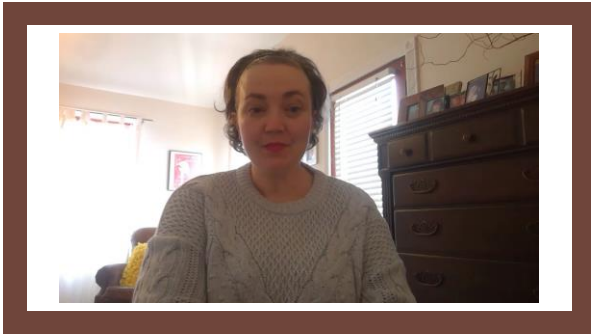
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Phone emergency over state lines

- Jurisdiction
- Licensure
- Conflict resolved
- 911 v. local dispatch

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Youth and risk management

- Informed consent
- Your jurisdiction
- Privacy, consent, help

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Live Q & A

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Thank you!

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