



# Risk Management in Telemental Health

Sara Smucker Barnwell, PhD

Tuesday, June 16, 2020

# 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**

Your presenter

Sara Smucker Barnwell, PhD

Licensed clinical psychologist in WA

VA Telemental Health Team

APA Telepsychology Guidelines

CESATE fellow

Unapologetic telehealth evangelist

# Learning objectives

Documentation

Technologies you use

Common threats

Interjurisdictional practice

Insurance

# Class structure

Didactic lecture

Live Q &A at section breaks

Video demonstrations

Submitted questions [nwattctelehealth@gmail.com](mailto:nwattctelehealth@gmail.com)

Live Q & A

# 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



# 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

# Conflicts



Provides telehealth training



Known telehealth evangelist





# Agenda: Risk management

Review

Documentation to manage risk

Managing support technologies

Common privacy, confidentiality, security risks

Practice across jurisdiction

Insurance

Coronavirus considerations

# The balance

Brief review

Deep dives

Your questions answered

On demand prior classes





# Definitions and examples

(Abbreviated!)



# Operational definitions

Telemental Health (TMH):

The provision of any mental health service using telecommunication technologies

Synonymous with videoconferencing... but today we expand!

# 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

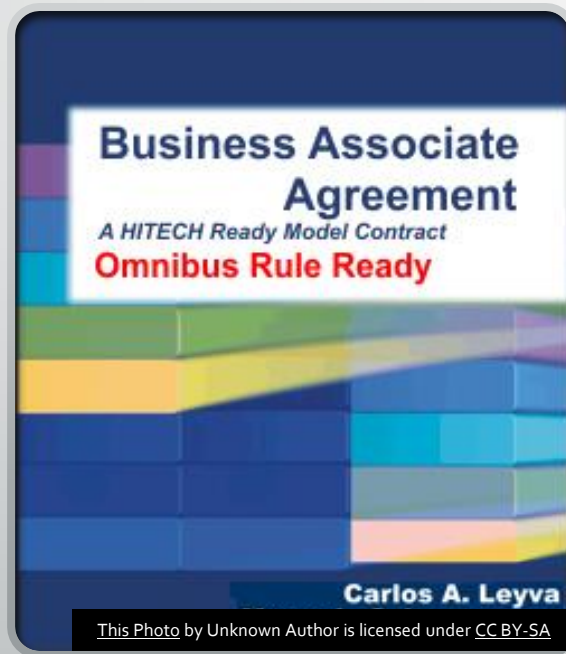
HIPAA Privacy Rule

HIPAA Security Rule

# 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

# 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.

# 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





# Security

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

How patient data is protected



# A brief synopsis

Once more with feeling!

# Videoconferencing appointments



USE A PRODUCT DESIGNED  
FOR HEALTHCARE, BAA



INFORMED CONSENT,  
EMERGENCY PLAN



DOCUMENT

# Videoconferencing appointment



ASSESS  
APPROPRIATENESS



CHECK JURISDICTIONAL  
RULES

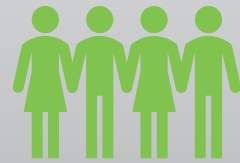


PREPARE YOUR OFFICE

# Videoconferencing appointment



Determine what services  
you provide



What population you  
serve



Documentation transfer,  
communication, payment



# Office location (existential)

Review physical office recommendations

Where is your office?

Communicating this to your clients

Let it ring



# Documentation

# Documentation

Best practice for risk management

Documenting \*why\* we make thoughtful decision

Helpful when presenting to licensure boards





Appropriateness assessment



Informed consent (telehealth consent, return to in-person)



Emergency plan

Documentation



Emails



Telephone calls



Notations to indicate session occurs over telehealth

Documentation

# Assessment

## Telehealth Appropriateness Assessment

Delivering psychological services through remote technology provides the opportunity to reach clients who might not otherwise receive care. However, not every client will be appropriate for telehealth services. The questions below provide guidance regarding clinical and technical factors that you may wish to consider before committing to deliver telehealth care.

### Clinical Assessment

1. What is the patient's age?
  - a. If a minor, how will you gather the parent's consent?
2. Is the client currently in crisis?
3. In the past 12 weeks, have they had thoughts, intention or plans to hurt themselves?
  - a. About hurting someone else?
4. Have they ever been hospitalized for emotional health reasons?
  - a. When?
  - b. What happened?
5. Explain that telehealth services typically serve in non-crises. Explain manner in which telehealth providers support patients who later develop crises, but may need to supplement care with in-person meetings or transfer care.
6. Is this issue related to an accident or legal action that is pending?
  - a. Are they seeking an assessment related to legal action?
7. Are they hoping to use insurance to pay for your visit?
  - a. Who is their insurance carrier?
  - b. Are you/ they familiar with your mental health benefits?
  - c. With the insurance carrier's policy regarding telehealth?
  - d. Will you or the client contact insurance to discuss the telehealth policy?
8. Why are they seeking telehealth care vs. in-person care?
  - a. Is in-person care available in their community?
9. Are they available to meet in person with the provider now or in the future?
10. How do you plan to verify the client's identity?
11. In what state does the client intend to receive care?
  - a. Does the client intend to travel often while receiving remote care?

### Technical Assessment

1. Do they have access to a private space in their home?
2. Is it relatively soundproof? How easily can conversation be overheard?
  - a. Explain to the client the critical importance of keeping this space secure and confidential during appointments
3. Do they have access to a computer or mobile device?
  - a. What kind (e.g., desktop, laptop, tablet)?
  - b. How old is it (< 7 years old)?

# 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 are not required to identify a support person, but this individual 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 Only:

Local Emergency Dispatch:

ROI signed for Support Person:

Patient apprised of plan:

Date:



Technologies you use



## Technology in practice

Specifics v. generalities

Accountability

Investment in products and  
companies v. becoming the expert



# Videoconferencing review

Product designed for healthcare (non-public facing option)

BAA

Features (self view, multicaller, screenshare)

Record yourself



# Other telehealth technologies

Telephone (landline or mobile device)


Email

Fax



# Telemedicine progresses





# Telephone, mobile, VoIP

How Stuff Works



# Telephone: Landline

60% of American homes have landline

HIPAA privacy does not prohibit

Bill as PHI document

# Telephone: Landline

Security concerns differ

- Fewer concerns regarding user location

- Fewer interactions with recording/ transcription

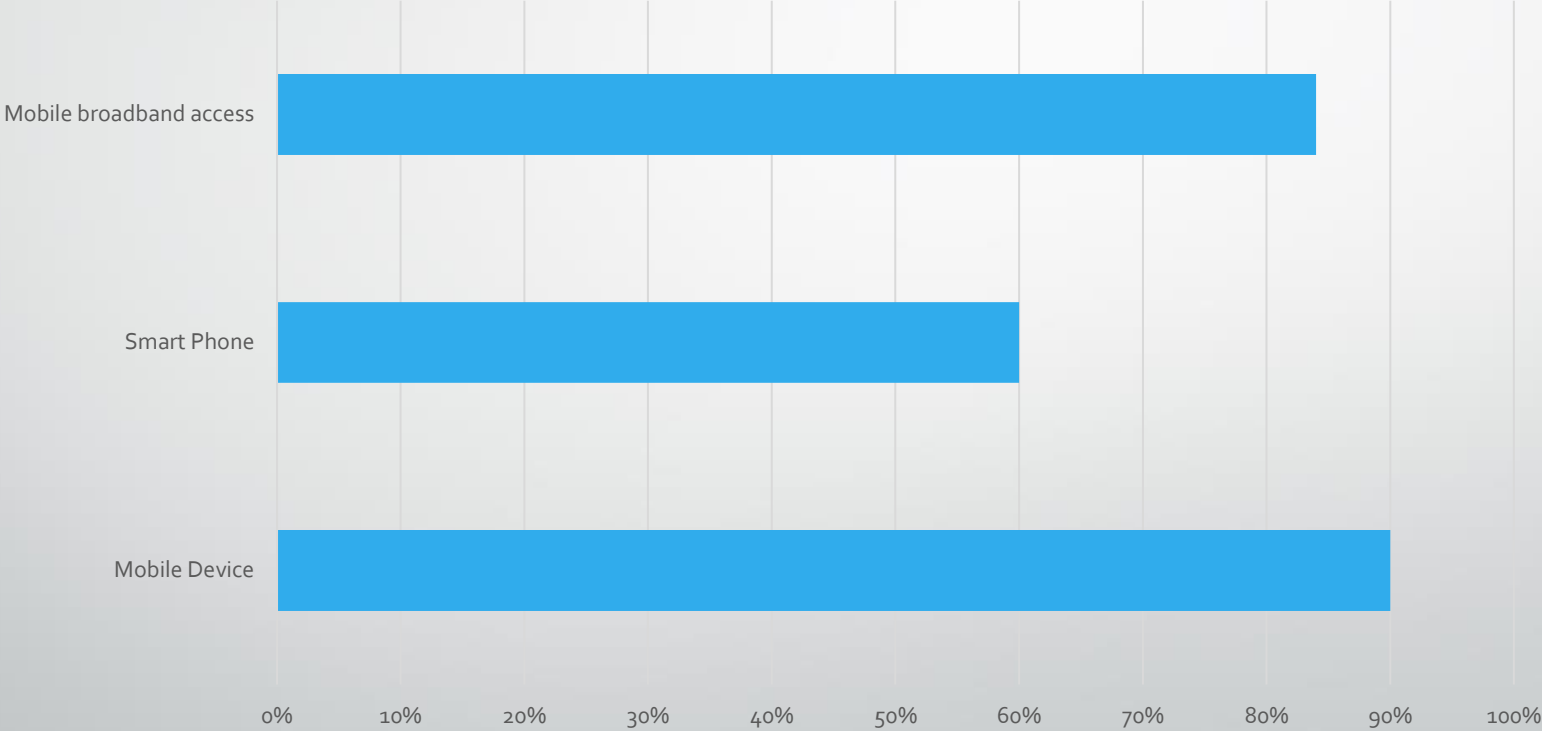
- Not invulnerable to interception

# Comparing technologies: Standard use

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

# Mobile devices

US Mobile Access



# 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)

# Mobile devices







# Mobile devices

Voice and video

Privacy

Volume, location, points of interception

Recording

# Mobile devices



PASSWORD  
PROTECTION



DATA STORAGE  
(LOCAL VS. ONLINE)



LOCK DEVICES



# Mobile devices

Analysis of data

Online interactions, location

NSA (Snowden v. loud talking)

Capabilities vs. what is being done



# Behavioral health apps



# Comparing technologies: Standard use

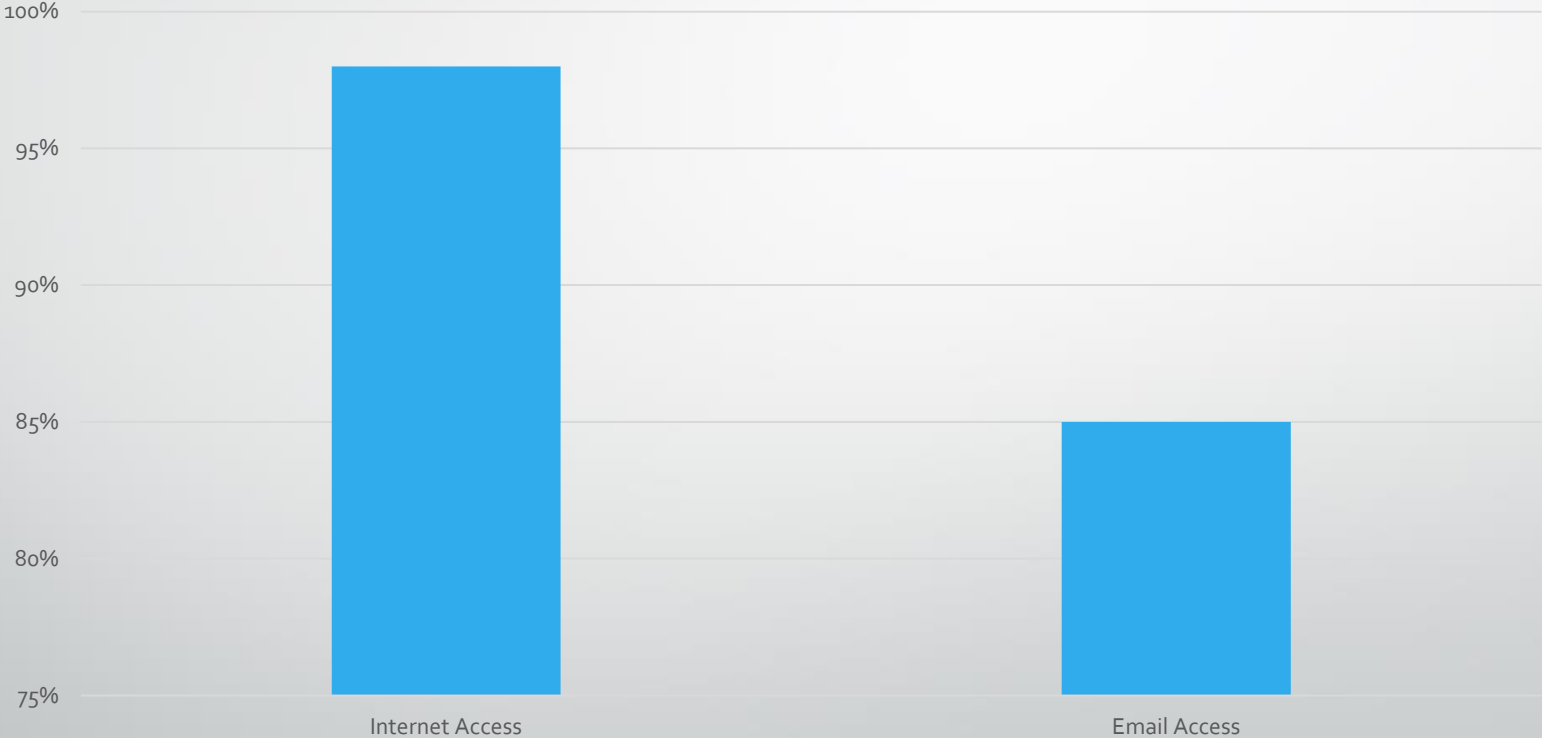
	Admin	Clinical	Info Security	Privacy	Confidentiality
Landline	Yes	Yes	Few problems reported	Moderate problems	Few problems reported
Mobile Device	Yes	Yes	More problems	Significant problems	Moderate problems



Email

# Email

US Internet and Email Access







# Email

How are you using email

Communicating with/about patients

What content communicated

Administrative, billing, clinical content

OCR/ DHHS announcements

# Email

What kind of email

Free, publicly available vs. encrypted email

Consider investment in a product that offers encryption

Products integrated with EHR

# 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
Email	Yes	No	Significant problems	Significant problems	Significant problems



# 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



# 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

# 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

# Signature

- IMPORTANT NOTICE: This email transmission and any attachments are intended for the use of only the individual or entity to which it is addressed. It may contain information that is privileged, confidential or exempt from disclosure under applicable federal or state laws. If the reader of this transmission is not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please delete the message and notify me immediately by email: [sarasmuckerbarnwellphd@gmail.com](mailto:sarasmuckerbarnwellphd@gmail.com) or by telephone: 253-642-7113.

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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



# New applications



Increasing applications examine asynchronous therapeutic communication

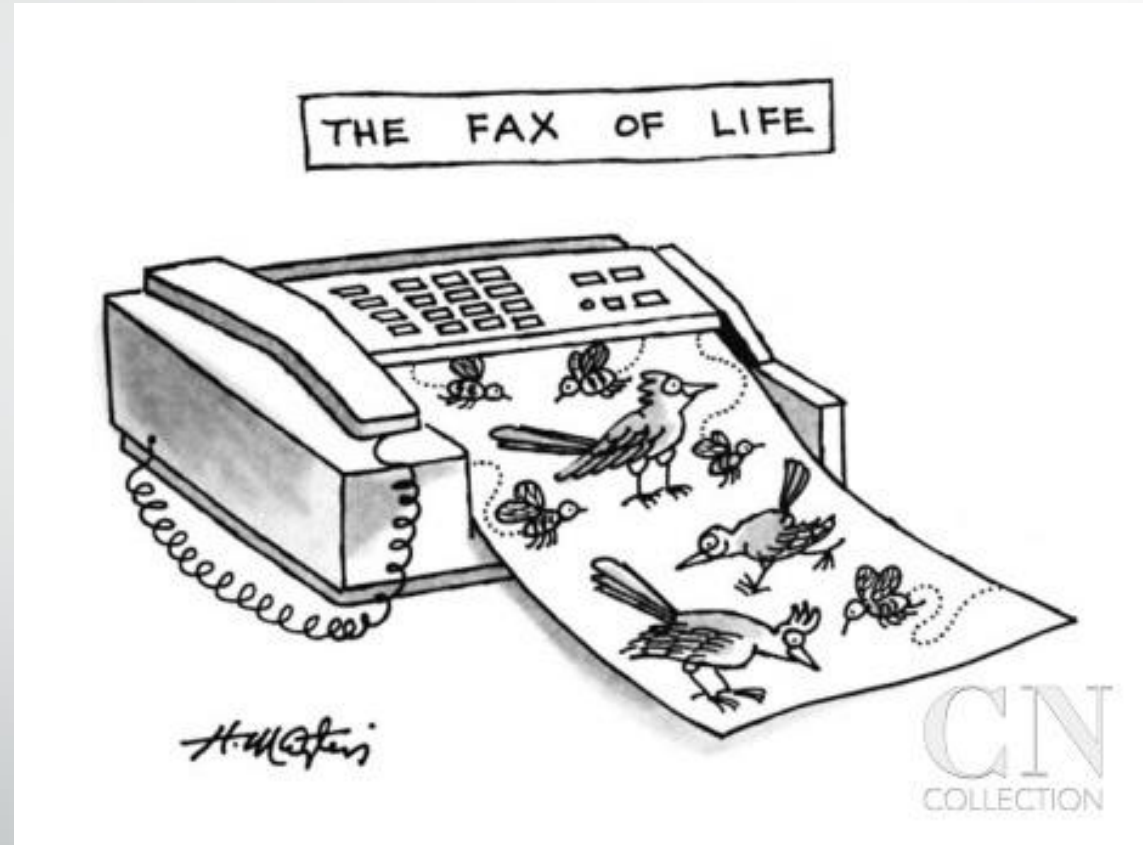
Coaching, primary care, therapy

Research emerging



FACSIMILE

# Fax of life



# 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

# 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*



# Fax take away

Understand what technology your fax uses (phone, Internet)

Consider where you place your fax machine

Consider where the information goes



## Fax to do

Determine what kind of fax you have

Keep the hardware safe

Purge the logs, if possible



# Common threats to security, privacy and confidentiality

Phasers on Stun



# Security, privacy and confidentiality

Technology brings unique opportunities

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

Providers are not engineers



# Challenges (aka favorite anecdotes)



CONFIDENTIALITY BREECH:  
SMARTPHONE BILL



PRIVACY BREECH:  
STAFF FB POST



SECURITY BREECH: VIRUS  
EMAILS ALL CLIENTS



# Social media and online presence



# Social media

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



# Online presence

Personal and professional information available online

Client information available online

Keep it separate

Don't Google

# Caveat user





# Online presence

Websites comply to HIPAA requirements

Consider whether you will search client information

Do not forward client communications



# Online presence

Limit easily accessible personal information online

Maximize privacy settings on social media

Mind your Tweets



# 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.

# Authenticating identity





Jurisdictional/ regulatory issues



# Laws & regulation

Minimum requirements for practice

Technology emerging integration into law

Most providers are NOT lawyers

This is changing quickly



# 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)



# 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



# 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

# 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



# IJP



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



# Common myths

30 day permissions

All mandated reporting the same

Always maintain services



# 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



# Considerations

Why are you crossing jurisdictional boundaries

Is the client aware of risks, conflicts, reporting authorities

Signed informed consent



# 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.

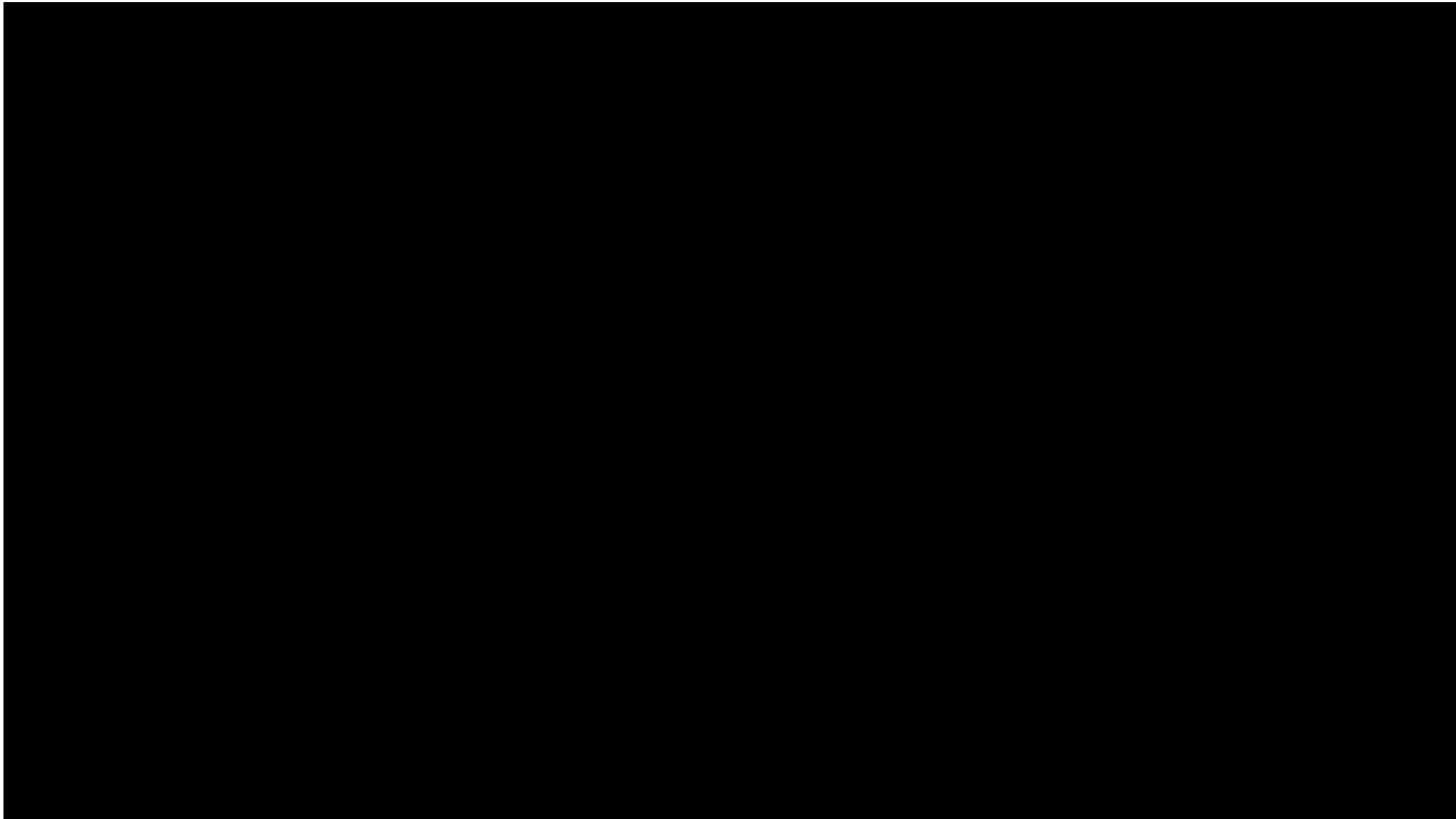
# When it goes amiss

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





# International practice

Does patient location regulate services

How would your malpractice and Board treat a claim or complaint

Public protection

Risk and benefit





# Vignette: Dr. Dre

Client stable following relapse

Moving internationally

Wants to maintain services



# Considerations

Client history

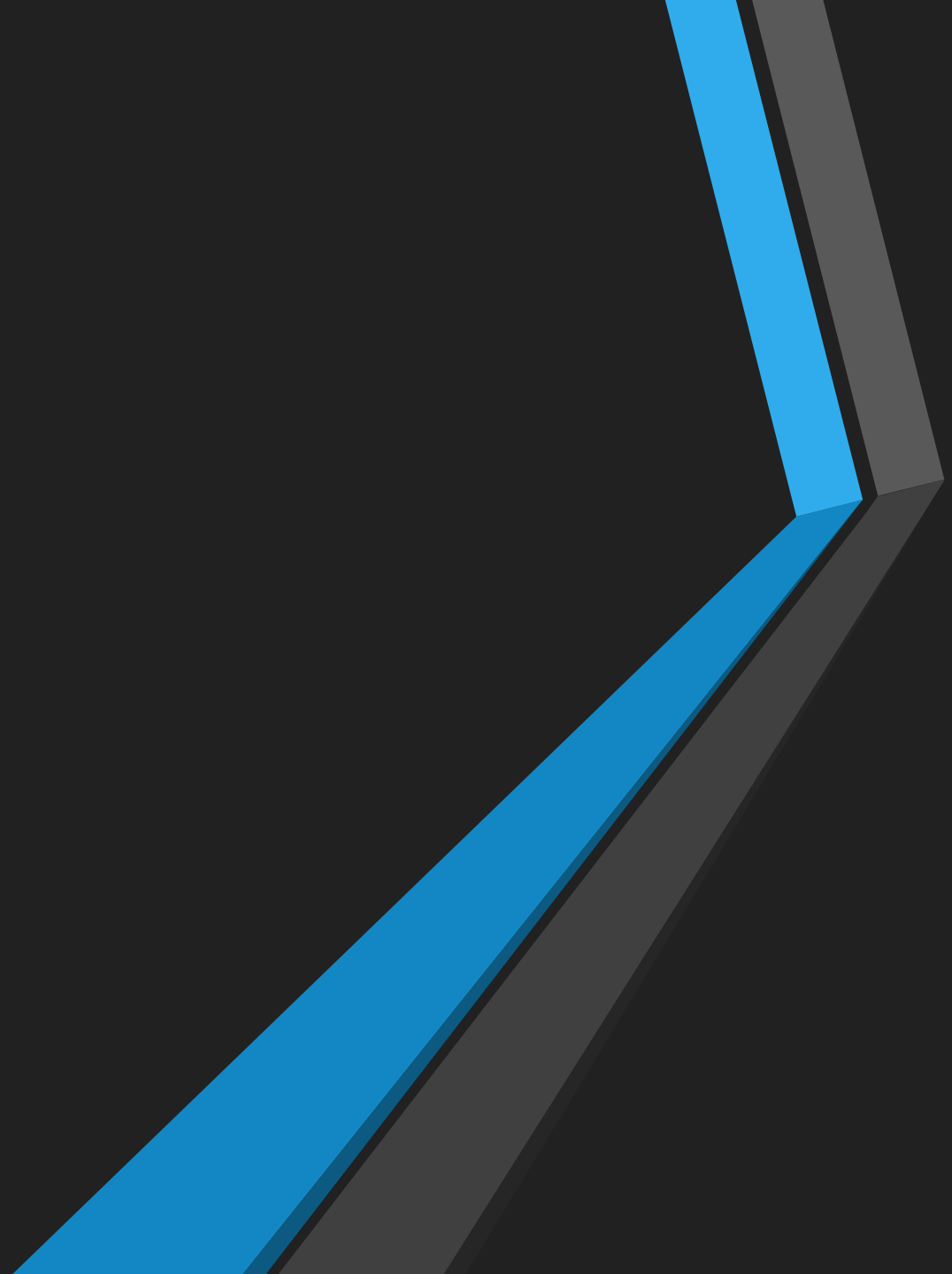
Agreed upon plan

Where moving

Consult with insurance/ attorney

Documentation

Live Q & A





# Insurance Reimbursement

Observing the Prime Directive

# Fees and billing



DETERMINE FEES



DOCUMENT



TELEHEALTH  
SURCHARGE

# Insurance



Private pay v. insurance



Rules of your jurisdiction  
(coverage, parity)



Always check with individual  
carrier



## Billing

Rapidly developing legislation  
on coverage, parity

Rules of your jurisdiction

Expiration date of executive  
orders

# 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)



# Billing

Service code as usual

90791, 90837, 90834 as examples

Telephone codes: 98967/ 98968

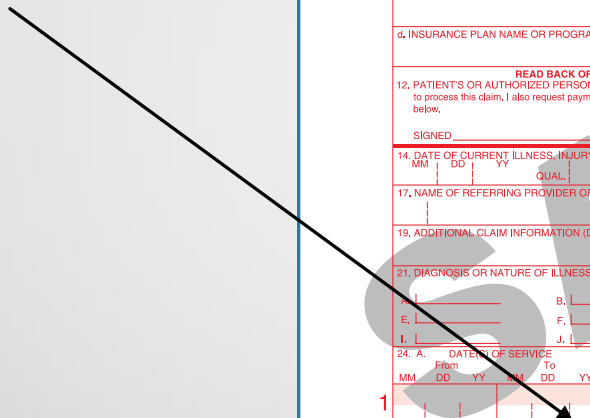


### HEALTH INSURANCE CLAIM FORM

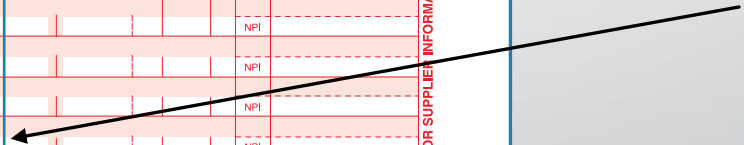
APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

PICA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>										PICA <input type="checkbox"/> <input type="checkbox"/>							
1. MEDICARE <input type="checkbox"/> (Medicare#)	MEDICAID <input type="checkbox"/> (Medicaid#)	TRICARE <input type="checkbox"/> (ID#; DoD#)	CHAMPVA <input type="checkbox"/> (Member ID#)	GROUP HEALTH PLAN <input type="checkbox"/> (ID#)	FECA DEK LUNG <input type="checkbox"/> (ID#)	OTHER <input type="checkbox"/>	1a. INSURED'S I.D. NUMBER (For Program in Item 1)										
2. PATIENT'S NAME (Last Name, First Name, Middle Initial)						3. PATIENT'S BIRTH DATE MM   DD   YY		SEX M <input type="checkbox"/> F <input type="checkbox"/>		4. INSURED'S NAME (Last Name, First Name, Middle Initial)							
5. PATIENT'S ADDRESS (No., Street)						6. PATIENT RELATIONSHIP TO INSURED Self <input type="checkbox"/> Spouse <input type="checkbox"/> Child <input type="checkbox"/> Other <input type="checkbox"/>				7. INSURED'S ADDRESS (No., Street)							
CITY			STATE			8. RESERVED FOR NUCC USE				CITY			STATE				
ZIP CODE			TELEPHONE (Include Area Code) ( )			ZIP CODE				TELEPHONE (Include Area Code) ( )							
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)						10. IS PATIENT'S CONDITION RELATED TO:				11. INSURED'S POLICY GROUP OR FECA NUMBER							
a. OTHER INSURED'S POLICY OR GROUP NUMBER						a. EMPLOYMENT? (Current or Previous) <input type="checkbox"/> YES <input type="checkbox"/> NO				a. INSURED'S DATE OF BIRTH MM   DD   YY				SEX M <input type="checkbox"/> F <input type="checkbox"/>			
b. RESERVED FOR NUCC USE						b. AUTO ACCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO				b. OTHER CLAIM ID (Designated by NUCC)							
c. RESERVED FOR NUCC USE						c. OTHER ACCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO				c. INSURANCE PLAN NAME OR PROGRAM NAME							
d. INSURANCE PLAN NAME OR PROGRAM NAME						10d. CLAIM CODES (Designated by NUCC)				d. IS THERE ANOTHER HEALTH BENEFIT PLAN? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>If yes, complete items 9, 9a, and 9d.</i>							
<b>READ BACK OF FORM BEFORE COMPLETING &amp; SIGNING THIS FORM.</b>																	
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE (I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.)										13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE (I authorize payment of medical benefits to the undersigned physician or supplier for services described below.)							
SIGNED _____						DATE _____				SIGNED _____							
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) MM   DD   YY						15. OTHER DATE QUAL. MM   DD   YY				16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM   DD   YY TO MM   DD   YY							
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE						17a. _____				18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM   DD   YY TO MM   DD   YY							
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)						17b. NPI _____				20. OUTSIDE LAB? \$ CHARGES <input type="checkbox"/> YES <input type="checkbox"/> NO							
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Relate A-C to service line below (24E))						ICD Ind. _____				22. RESUBMISSION CODE _____ ORIGINAL REF. NO. _____							
A. _____ B. _____ C. _____ D. _____										23. PRIOR AUTHORIZATION NUMBER _____							
E. _____ F. _____ G. _____ H. _____																	
I. _____ J. _____ K. _____																	
24. A. DATE(S) OF SERVICE From MM   DD   YY To MM   DD   YY		B. PLACE OF SERVICE	C. EMG	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain units or circumstances) CPT/HCPCS		E. DIAGNOSIS POINTER	F. \$ CHARGES	G. DAYS OR UNITS	H. EPSON Form #	I. ID. QUAL.	J. RENDERING PROVIDER ID. #						
1										NPI							
2										NPI							
3										NPI							
4										NPI							
5										NPI							
6										NPI							
25. FEDERAL TAX I.D. NUMBER			SSN EIN <input type="checkbox"/> <input type="checkbox"/>	26. PATIENT'S ACCOUNT NO.			27. ASSIGNMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		28. TOTAL CHARGE \$		29. AMOUNT PAID \$		30. Rsvd for NUCC Use				
31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)						32. SERVICE FACILITY LOCATION INFORMATION				33. BILLING PROVIDER INFO & PH # ( )							
SIGNED _____						a. NPI _____				b. _____		a. NPI _____				b. _____	

Place of service



Modifier codes





# What is next

Expiration of executive orders

Termination, ethical abandonment

Informed consent



# Vignette: Dr. Octagon

Client in early sobriety

Initiates therapy in jurisdiction with temporary insurance permissions

Finances are a factor



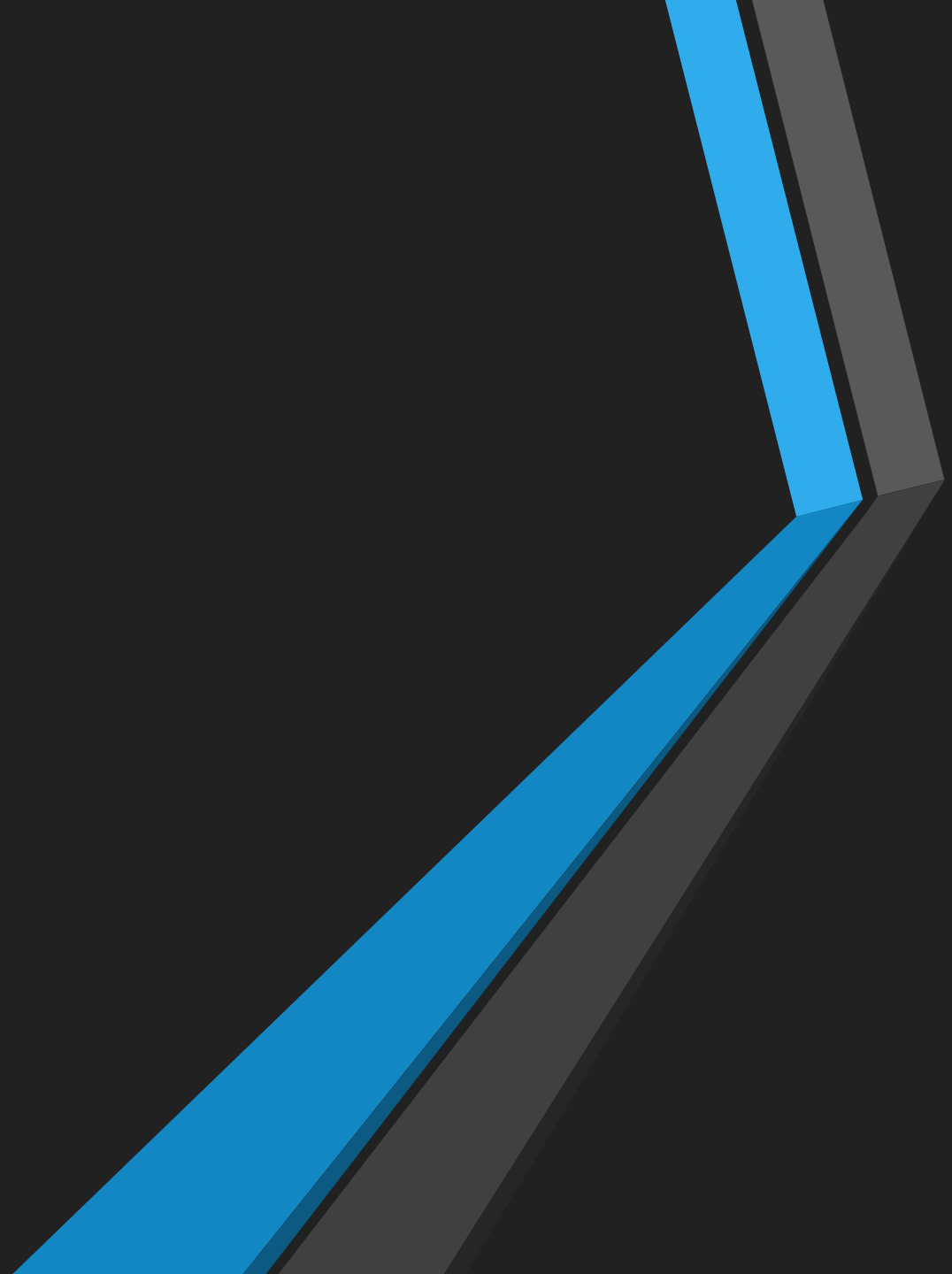
# Considerations

When order expires

How long client served

Treatment planning

Live Q & A





# Coronavirus considerations



# The fishbowl

Perception that telehealth under greater scrutiny

Document reasoning

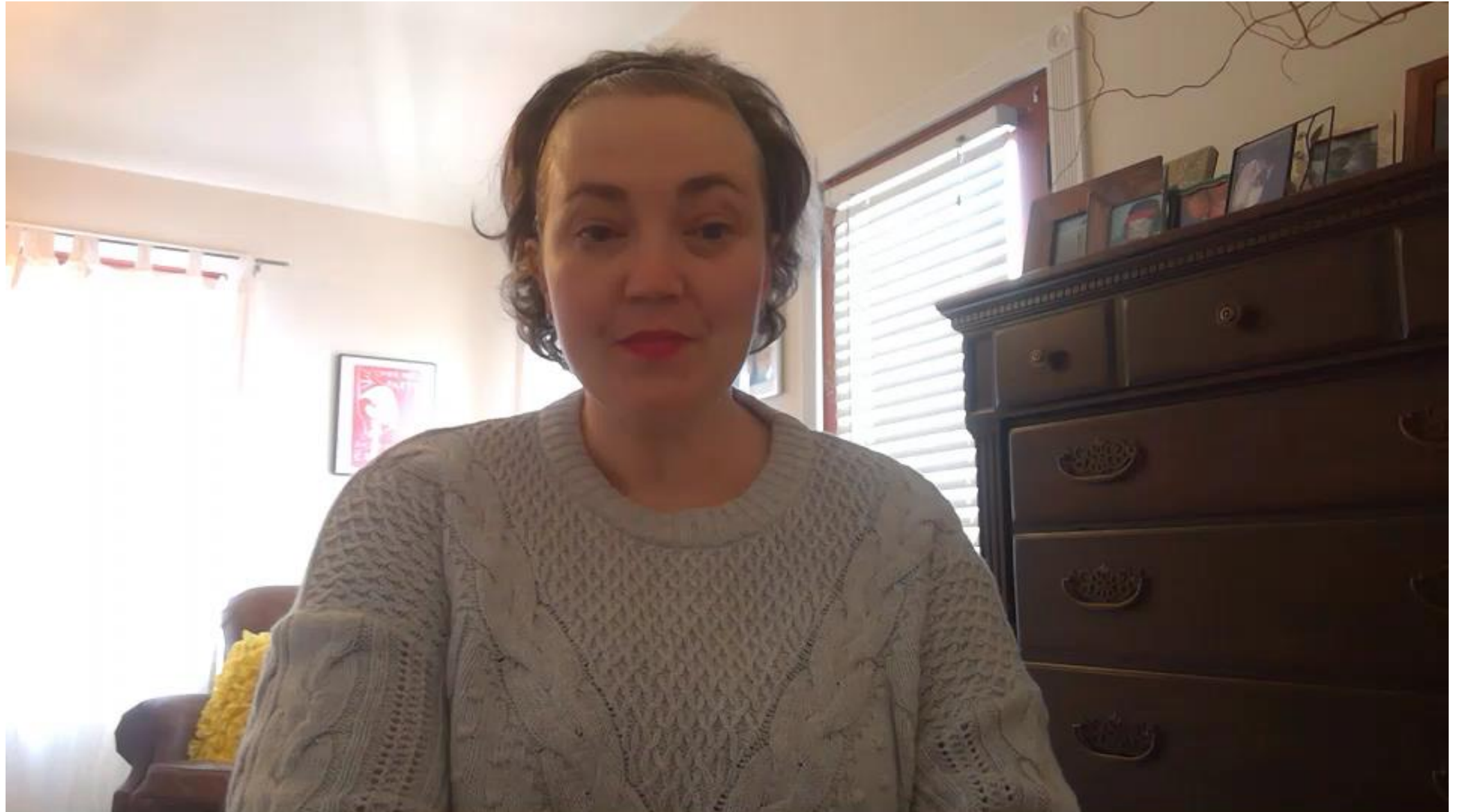
COVID legitimizes, opens to greater issues





# That's a good question

Previously submitted questions



Phone  
emergency  
over state  
lines

Jurisdiction

Licensure

Conflict resolved

911 v. local dispatch

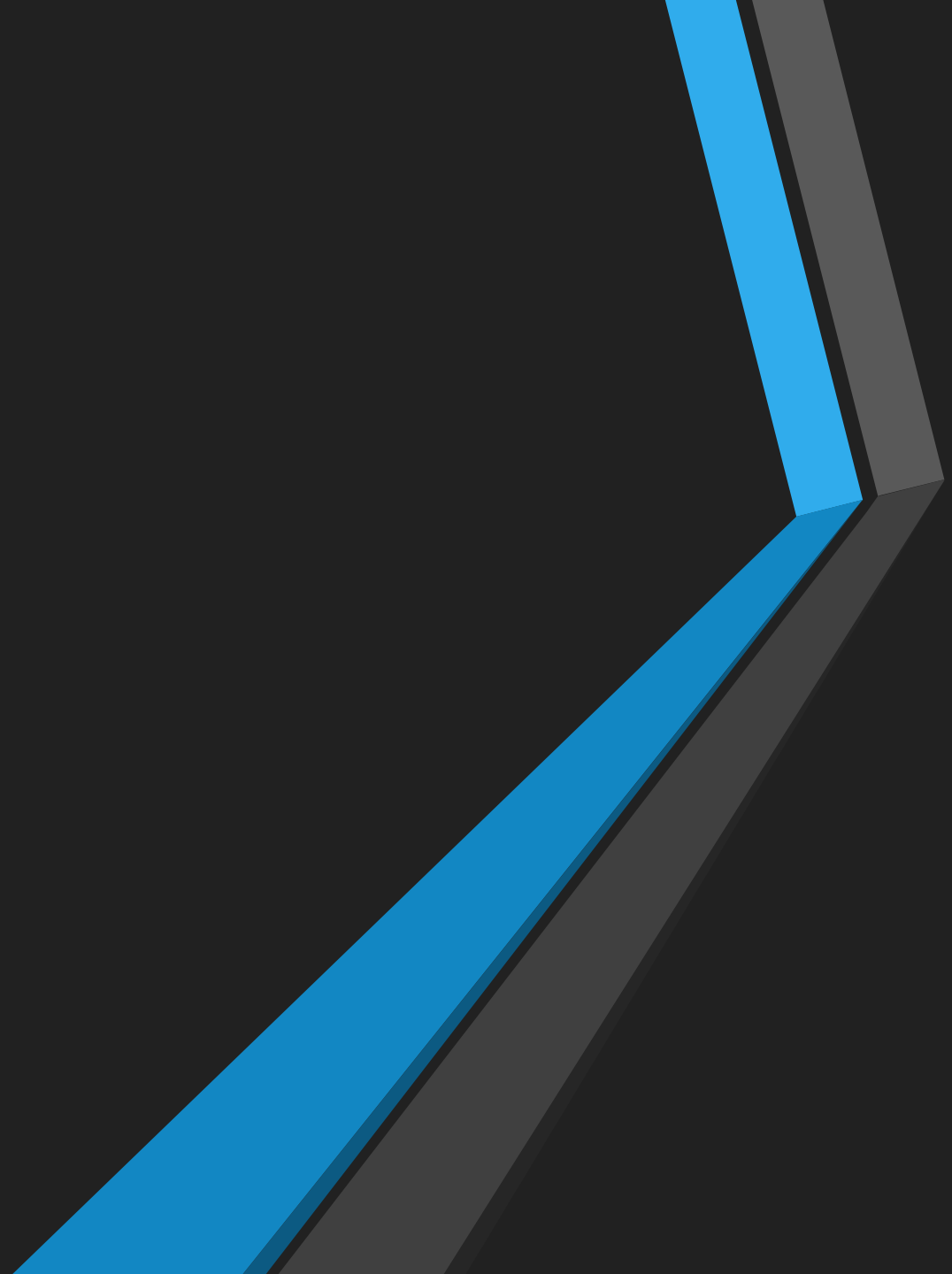
# Youth and risk management

Informed consent

Your jurisdiction

Privacy, consent, help

Live Q & A



Thank you!

Sara Smucker Barnwell

[nwattctelehealth@gmail.com](mailto:nwattctelehealth@gmail.com)

