



*Christian & Barton's
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present*

Navigating the Virtual Behavioral Health Delivery Maze

From the Beginning...

First Telemental Health

- Provided over telephone
- First true telemental health—1964
Nebraska Psychiatric Institute and
Norfolk State Hospital closed-circuit
television transmission for psychiatric
consultations

Telemental Health Defined

- Telemental Health is a subset of telehealth that uses technology to provide mental health services from a distance.
- Telemental Health includes terms such as tele-psychiatry, tele-psychology and tele-behavioral health.

Categories of Telemental Health

Delivery is broken down between two categories:

- **Synchronous** is real time, interactive, two-way communications and
- **Asynchronous** is the transmission of medical information that is not real time, to a distant site for review later, such as store and forward.

Evidence-based Telemental Health

- Organizations such as the American Telemedicine Association have produced evidence-based best practices for telemental health since 2009. State boards of medicine have also produced guidance, generally geared towards telehealth globally.
- Important to consider for purposes of “standard of care.”

Commercialization of Telemental Health

- Telehealth and telemental health, in particular, have evolved from the experimental days of the 1960s to a multitude of commercial ventures today. Commercial companies now provide telemental health on a national basis.

- Medical boards
- Virginia Board of Medicine telehealth guidelines
- Ryan Haight Act

- Telehealth growth tied to reimbursement
- Medicare offers limited reimbursement
- Medicaid pays for telehealth
- Virginia Code §38.2-3418.16

- Intended to target internet pharmacies
 - Prohibited online prescribing of controlled substances without in-person examination
- Created a challenge for telemedicine and prescriptions

Then COVID Hit...

- DEA publishes updated FAQ
 - Exceptions to in-person examination requirement include public health emergency
- Effective March 16, 2020 – public health emergency remains in effect:
 - No in-person medical evaluation required if:
 - Rx for legitimate medical purpose in usual course
 - Telemedicine conducted via audio-visual, real-time, 2-way
 - Practitioner acting in accordance with federal & state laws (VA law still also applies)

Virginia Laws - Online Prescribing

- Virginia law still applies
 - Prescribing via telemedicine is permitted when there is a bona fide practitioner-patient relationship
 - Can be established via telemedicine, in person examination not required
 - 7 conditions required by statute
 - Va. Code 54.1-3303

CMS Flexibilities Provided

- Medicare allows beneficiaries in all areas to receive services in any setting (including at home!)
 - And all areas of the U.S., not just rural settings
- Reimbursement for diagnosis and treatment for most behavioral health services

CMS Flexibilities Provided

- Requirement for HIPAA-compliant audio visual communication tech relaxed; no risk of penalties



The Commonwealth Added Flexibilities Too

- In 2019, language was added to the Code of Virginia to mandate Medicaid cover telemedicine services
- Confidentiality and security requirements remain
- Providers reimbursed at same rate as the analogous service provided face-to-face

The Commonwealth Added Flexibilities Too

- Relaxed requirement that provider staff must be with patient at originating site to bill DMAS for originating site facility fee
- Telemedicine in home is permissible, but no site fee is paid
- DMAS allows audio-only, or telephonic connections in addition to audio-visual connections
 - CMS allowing this for many Medicare behavioral health services as well

Contracting Considerations

- CSBs can choose to provide telemental health or contract with providers to provide telemental health to clients of the CSBs
- If contracting for these services, must keep a few things in mind

Contracting Considerations

- Provider must be appropriate
 - Credentialed with the CSB
 - Require current Virginia license
 - Check exclusions list
 - Check work history and education
 - Require malpractice insurance

Other Contractual Considerations

- Technology requirements
 - Minimum connectivity requirements/platform use
 - Who pays for that?
- Availability and scheduling
- Confidentiality
 - HIPAA/42 CFR Part 2
 - Especially important for telemental health

Other Contractual Considerations

- Billing arrangement
 - Fraud and abuse considerations
 - Safe harbor rules
- Complying with DMAS requirements
- Flexibility for changes in the law

Taking Care in Providing Care

- Ensuring that the standard of care is met when providing services
 - Board of Medicine:
 - <https://www.dhp.virginia.gov/medicine/guidelines/85-12.pdf>
 - Board of Social Work:
 - <https://www.dhp.virginia.gov/social/guidelines/140-3.pdf>
 - Board of Psychology:
 - https://www.dhp.virginia.gov/psychology/psychology_guidelines.htm

Taking Care in Providing Care

- Staff training for provision of telehealth services
 - Don't just wing it!
- Make sure staff have proper training in telemental health
- Develop policies and procedures for delivery of telemental health services

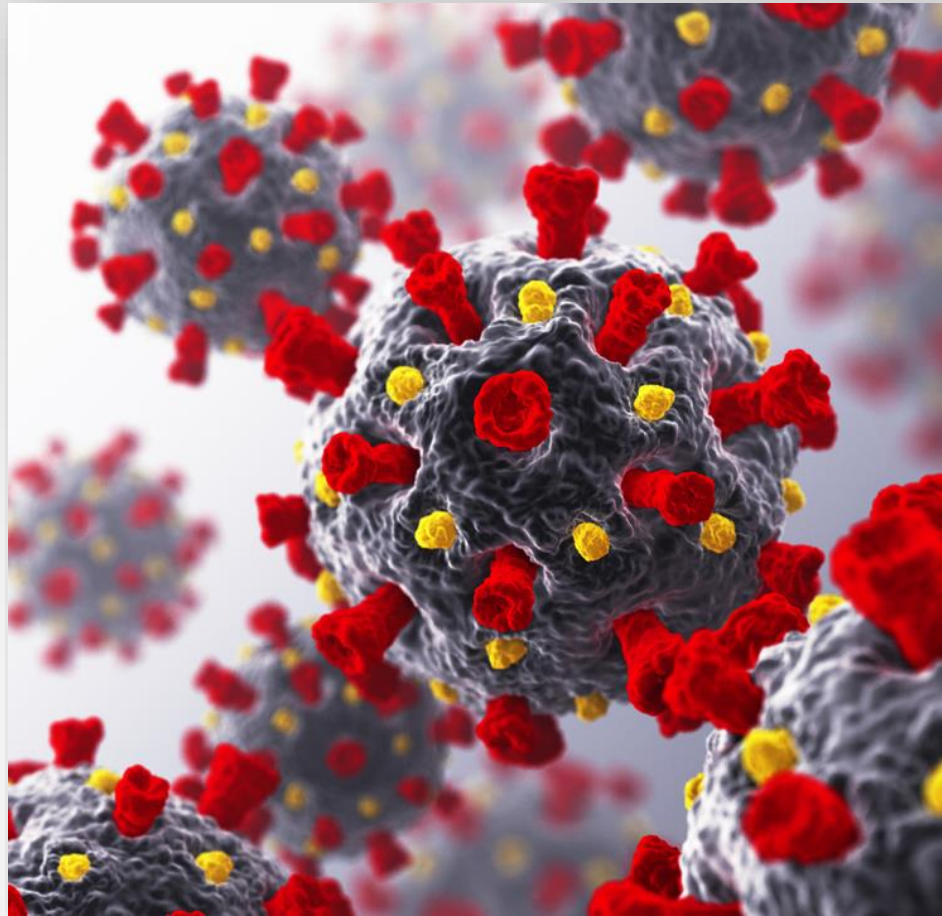
Documentation Required

- Support medical necessity for telehealth
- Confirm patient is in Virginia
- Verify patient location
- Note provider location
- Note encounter conducted via telemedicine

Documentation Required

- Indicate start/stop time
- Note patient consent
- Identify providers, family member or individuals present during service
- Ensure patients sign HIPAA notices, electronically if needed

Are the Changes Here to Stay?



Benefits	Limitations
Continued medical care and referrals for COVID-symptomatic patients	Patient privacy concerns when addressing sensitive subjects
Continued access to care for chronic health conditions	Interstate licensure challenges
An alternative to in-patient care	Cultural acceptance for telehealth visits by patients and providers
Ease of follow up	Liability risks (cybersecurity) and malpractice coverage

Short-term Observations

- COVID created urgent need
- CMS changes encourage telehealth visits
- Widespread consumer satisfaction
- Federal funding appropriated to help provide telehealth services during pandemic

- Opioid Pain Management Guide recommends telehealth care for opioid addiction
 - ✓ Gain insight into home setting
 - ✓ Patients are comfortable
 - ✓ Patient travel not necessary

- Telehealth is here to stay
- Investors are interested
- Telehealth needs to be integrated with existing tech platforms
- Properly address cybersecurity concerns

- Licensure
- Patient confidentiality and HIPAA
- Fraud and abuse and Stark laws
- Concerns related to payment for medical equipment and software
- State prescribing and DEA concerns

- Informed consent
- Fee-splitting law
- Mental health parity laws

Thank You



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ATTORNEYS AT LAW

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If a legal issue should arise, please retain the assistance of competent legal counsel.



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