



## FAQs – Practicing During COVID-19 (4/30/2020)

### Interstate Practice

**Q1:** What are the actual risks of extending telepsychology services to someone who has been displaced to a different state by the COVID-19 pandemic?

**A1:** State licensing boards take the position that a telepsychology session takes place where the client is located, and, thus, a psychologist who is providing those services, if he/she doesn't comply with the temporary practice law of that state, is practicing illegally. However, there are state and federal court cases that affirm that a state cannot assert jurisdiction over someone whose only state contact is extending needed clinical services to a client who resides there. Furthermore, bringing a criminal proceeding against a psychologist in this situation would involve so much expense and administrative difficulty that it has never happened to our knowledge. In this time of crisis, it is our belief that if a psychologist has a good documented justification for doing this, and follows the APA-telepsychology guidelines, the risk of any negative disciplinary action is microscopic.

**Q2:** If I am doing telepsychology with a patient who is in another state where I am not licensed, am I covered for malpractice?

**A2:** The Trust policy covers you for professional liability regardless of the location of your practice. You can practice across state lines consistent with the temporary practice regulations for the practice of psychology in that state. However, if the regulations of that state do not allow you to practice there, this arguably constitutes a crime, and insurance policies are not allowed to respond to allegations of criminal misconduct. Please always check the temporary practice provisions of the state where your patient is located to make sure that you are not violating the law.

**Q3:** Are there problems with using telepsychology to treat a patient who lives in another country?

**A3:** No. Many countries do not even license the practice of psychology and, for those that do, you have very little risk if you practice telepsychology across a national border. This is because, while the practice is arguably a violation of that country's laws, they would have to extradite you to that country to prosecute you for unlicensed practice there, an extremely unlikely event.

**Q4:** Can I offer a support group to healthcare providers, free of charge, in a different state from where I'm licensed?

**A4:** This arguably still constitutes the practice of psychology. The fact that you will not be charging a fee has nothing to do with whether you are violating another state's licensing regulations. Please see the answer to "Q1" above.

**Q5:** If I am not accepting insurance, am I allowed to see patients who are staying in a different state during this time?

**A5:** The fact that you're not taking insurance does not change the licensing requirements of a neighboring state. If you are practicing telepsychology from one state to another, you still have to meet the temporary practice requirements (if they exist) of the state within which your patient resides. Even if you are accepting insurance, you should be aware that most insurance companies may not be willing to pay for interstate services. If they are not considered covered services, you may bill the client privately without violating your contract with the third-party payor.

### **Liability**

**Q6:** Will The Trust cover me for remote interviews and assessments?

**A6:** You are insured for conduct that is consistent with the practice of psychology. Your mode of practice does not alter the coverage. Consequently, during the COVID-19 pandemic, you would be insured for remote interviews and assessments that are consistent with the standards of practice. Please be aware that the standards for remote assessment are evolving, and you should take great care to maintain the instrument's validity and reliability if you are attempting to do remote assessment. A link to The Trust's sample informed consent for telepsychology services can be found at <https://parma.trustinsurance.com/Resource-Center/Document-Library>.

### **Informed Consent**

**Q7:** Where do I find a sample informed consent for telepsychology?

**A7:** The Trust's sample informed consent for telepsychology services can be found at <https://parma.trustinsurance.com/Resource-Center/Document-Library>.

**Q8:** Do I need to get a client to sign my informed consent?

**A8:** The Trust recommends that you always get your informed consent form signed by your client. There are a number of ways to do this remotely. You could observe your client signing the form and have it mailed to you, or you could have the client send you a photo of the signed form from their cell phone. You also could use software that will give you a signature guarantee and transmit that signed form to you. Another approach is to have the client type on the informed consent that their typed name on the document represents an electronic signature. If it is simply impossible for your client to sign the form, please make sure that your records reflect that you reviewed the form with the client and that they agreed to the conditions of the informed consent form. Your records should also reflect the reason why getting a signed form or a copy of the signed form was not possible.

**Q9:** If I already have a signed informed consent from a person I was treating in my office, do I need a special informed consent for telepsychology purposes?

**A9:** Yes! The informed consent for telepsychology is a specialized form designed to address a number of issues that are unique to the delivery of telepsychology services.

**Q10:** Do you recommend a consent addendum to take progress notes outside your normal office and transport them back to your office?

**A10:** There is no regulation that states that you must take or keep notes specifically in your office. What is required is that you make and keep adequate notes of your interactions with your patients and maintain them consistent with the law (e.g., observing confidentiality and retention)

**Q11:** Can a patient verbally consent to the telepsychology consent form and then sign when we are in person?

**A11:** Please see the answer to "Q8" above. There are many easy ways to get a signed informed consent at the outset of treatment. We would not recommend getting a signature after you have been in treatment already.

**Q12:** I am doing some telepsychology and my patients signed an informed consent. When I connected with one patient they were travelling in a car. Because the consent says they will be in their home, should I have taken the session or rescheduled?

**A12:** Part of the informed consent agreement is that the patient agrees to allow these sessions in a secure environment. Doing therapy elsewhere, for example, conducting therapy when another individual is present, can impact claims of privilege. If the patient is not in such an environment, we would suggest you postpone the session until that patient is in a secure environment consistent with the informed consent agreement. However, if you decide that it is clinically justified to make a one-time exception, that is an acceptable alternative, but you should keep a record of the rationale for this exception.

**Q13:** How do you recommend getting paperwork back from clients that is HIPAA compliant besides by mail?

**A13:** Please see the answer to "Q8" above. Transmitting a photograph of a signed informed consent form from your patient to you does not require HIPAA compliance and is a conduit exception to HIPAA security requirements so long as the entity/device transmitting the document does not retain a copy.

**Q14:** Is emailing paperwork HIPAA compliant?

**A14:** Yes.

**Q15:** Do you recommended mailing out the informed consent ASAP?

**A15:** You can mail or email the form to your client. Please see the answer to "Q8" above. You should secure a signed informed consent form prior to beginning teletherapy.

## **Billing**

**Q16:** Are all insurances paying for telepsychology sessions? Are phone sessions covered now?

**A16:** To find out if a specific carrier will cover specific services, you need to call that carrier and get the information directly from the insurance company itself. In addition, they can tell you how they want the billing done for either video or telephone sessions. When you obtain this information from the insurance company, please keep a record of the name of the person with whom you have spoken.

**Q17:** Can we do telepsychology out of our house and bill modifier 11?

**A17:** It depends. You can use this modifier if you are billing out of your house if your house is where you have your office. In fact, many psychologists use part of their house for face-to-face services and use traditional billing codes for reimbursement. To submit telepsychology services claims from a house that is not your office, use Place of Service (POS) 02-Telehealth to indicate you furnished the billed service as a professional telepsychology service from a distant site.

**Q18:** If the patient you are providing services to is not using insurance, should you use 95 as a modifier?

**A18:** It depends. If you are giving your patient a superbill that they are going to submit for reimbursement, the answer is "Yes." However, if this is just to provide your patient with a receipt for services this is unnecessary, but you can do it if you choose. Remember, the new CPT modifier for "synchronous telemedicine" services is "95." As a coding example, when psychotherapy is delivered via telemedicine, append the appropriate CPT code with modifier 95, and be sure to indicate the originating place of service code: 02 from a distant site and 11 for services delivered from your office. It is always important to check with the insurance company to ensure you are complying with their guidelines.

## **Assessment**

**Q19:** Can I do psychological assessments virtually?

**A19:** It depends. As long as you maintain an instrument's validity and reliability, the answer would be "Yes." But there are circumstances where special care must be taken to make sure that you are doing so, like proctored administration of the instrument if you cannot be present, or tests that require you to administer parts of it. The best way to find out if you can use a test instrument virtually is to contact the company that distributes the test and ask them. However, there are circumstances where virtual administration of a test instrument is likely to be very difficult, such as with forensic assessments and neuropsychological assessments. Remember, you must be able to assert that the results of the test, no matter how it was administered, are both valid and reliable.

**Q20:** Can I do forensic and neuropsychological assessments virtually?

**A20:** It depends. See the answer to "Q19" above. These are very specialized assessments, the results of which could be impacted by incentives that are vastly different from those found in clinical assessments. They also require a substantial amount of structure that may not be possible in a virtual administration. This area is evolving, and it would be best to monitor the test publisher regarding suggested ways to do virtual administration. For example, Pearson provides a video on how to administer the MMPI virtually.

**Q21:** Neuropsychological testing must be done in person - can we continue to see people for that?

**A21:** No. At this time, person-to-person contact is not advised. Until the standards for appropriate virtual administration have been established, it is best to postpone anything other than emergent assessments. Under those circumstances, it would be important to include in your informed consent a statement regarding how virtual administration of test instruments might impact the instrument's reliability and validity.

## **New Patients**

**Q22:** Is it okay to see new patients via telepsychology?

**A22:** Yes, so long as they are in the same jurisdiction as you and otherwise appropriate for telepsychology. Accepting new out-of-state clients presents a greater risk because it would allow a claim by the state in which you were attempting to do business. We recommend that you check a state's temporary practice guidelines and schedule a consult before you accept such a case.

**Q23:** Are there additional screening questions we should cover when doing telepsychology intakes?

**A23:** It is very important that you use an informed consent that is written to cover the special nature of telepsychology and that you answer any questions that your client might have about it.

**Q24:** What considerations should I think about before taking on new patients virtually?

**A24:** Please see the answer to "Q22" above. It is unwise to take on new patients who live in another state without meeting the temporary practice requirements of that jurisdiction.

## **Medicare**

**Q25:** If the state regulations for reimbursement for telepsychology differ from Medicare's, which takes priority for provider payment? (e.g., Colorado permits telephone sessions for 90834 at present, but Medicare doesn't.)

**A25:** Medicare is a Federal Program that operates independently from state regulations that might conflict with its policies. The states cannot dictate the reimbursement conditions for Medicare. Medicaid, however, is regulated by the states.

**Q26:** Medicare is now saying we can provide telepsychology and get covered. However, they are dictating that you have to use video platforms, and they will not cover audio-only sessions. The problem with this is that my Medicare patients are the least likely to have the technology to be able to do video counseling. Is there anything I can do to get around this?

**A26:** To obtain reimbursement from Medicare, you are going to have to comply with its requirements, which exclude the delivery of services by telephone alone. Efforts are underway to persuade Medicare to change the rule for just this reason.

## **Emergencies**

**Q27:** What kind of plan should I have in place in the event a patient becomes suicidal during a telepsychology session?

**A27:** We advise that all of this be clear to the therapist and patient prior to beginning therapy and should be in the informed consent that the patient signs. An appropriate emergency plan is one of the requirements of the APA telepsychology guidelines and the plan should be thoroughly reviewed and discussed with the patient. Components of this plan would include, but not be limited to: obtaining complete information about the patient's name, address, contact information (including back-up contact numbers and consent to call individuals in an emergency); identifying resources in the location of the patient for possible emergency services/care and hospitalization procedures; and determining the exact location of the patient at the beginning of each call.

**Q28:** What are the telepsychology issues related to treating adult clients who have suicidality or physical abuse going on?

**A28:** Your obligations to both the care of your patients and compliance with the law are not changed through the introduction of telepsychology. You need to establish how you will manage emergency care at the outset of the use of telepsychology strategies.

### **COVID-19 Regulations**

**Q29:** What steps would you suggest outpatient providers take once the stay-at-home orders are lifted? (e.g., Taking people's temperatures? Wearing masks: me and/or client?)

**A29:** We suggest that you go to the Center for Disease Control and Prevention's website and read their posting entitled, "Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019" at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

**Q30:** Do we have any risk of violation if we refuse to go into the jails right now to do forensic evaluations?

**A30:** It depends. If you are contracted to provide those services, refusing to do them could be seen as a violation of that contract and it could have employment consequences. If you really are in conflict with your employer about not wanting to do evaluations in the jail, we suggest you contact a local attorney to see if there is a way to avoid being in breach of contract if you refuse. If you are not contracted, you have the right to refuse a service that you do not want to provide.