

Worksite Centers, Telehealth Services and the COVID-19 Virus

Presented by:

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About Our Speaker



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Stephanie Eckerle devotes her practice to representing businesses in an array of healthcare matters. Within the healthcare industry, Ms. Eckerle focuses her practice on providing regulatory, compliance and corporate advice to physicians, practice groups, hospitals, pharmacies, on-site employer healthcare clinics and other healthcare institutions. She counsels these clients on an array of regulatory matters, including telemedicine issues, pharmaceutical matters, reimbursement issues, fraud and abuse issues and licensure matters. In addition, Ms. Eckerle counsels healthcare providers and health plans on HIPAA and state privacy laws, including the identification, investigation and remediation of breach incidents, compliance programs and health information technology issues. Within the healthcare arena, Ms. Eckerle also works with employers to implement health and wellness programs for their employees, which includes counseling on occupational health and wellness initiatives, worker's compensation issues and the implementation of on-site employer clinics.

Telemedicine: Overview of Issues During COVID-19

- Why Telemedicine?
- Federal Public Health Emergency Declarations
- State Licensure Waivers for Telemedicine
- Federal expansion of Telehealth Services
 - ❑ CMS/OIG – Medicare reimbursement, cost-sharing waivers and free services
 - ❑ IRS – Waiver of Deductibles
 - ❑ OCR – HIPAA
 - ❑ DEA – Controlled Substances
- Transitioning to Telemedicine
- Telemedicine Best Practices

Why Telemedicine? CDC Guidance

- ***Nurse advice lines***
- ***Telemedicine***
- Screen and manage both COVID-19 related issues and non-COVID issues via these tools
- Protects patients and health care workers
- Reduces influx of patients at healthcare facilities
- Reduces usage of PPE

CDC: Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings. <https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html>

CDC: Strategies for Optimizing the Supply of N95 Respirators: Conventional Capacity Strategies, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy/conventional-capacity-strategies.html>

Key Dates

- January 31, 2020: HHS Secretary Alex Azar declares a public health emergency, effective Jan. 27, 2020. <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>
- March 13, 2020: President Donald Trump declares a national emergency beginning March 1, 2020. <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>
- March 17, 2020 : CMS waives certain telehealth restrictions. <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>

Leveraging Telemedicine Nationally

- 50 States = 50 Different Laws
- The patient's location determines the applicable law.
- Ensure medical malpractice insurance covers telehealth practice.
- Examples of state waivers:
 - Licensure waivers allowing for out-of-state providers to practice
 - Waivers expanding type of services that can be provided via telemedicine
 - Waivers expanding communication technologies, such as audio only
 - Waivers allowing retired practitioners to practice
 - Waivers removing face-to-face meetings to establish physician-patient relationship
 - Waivers on prescribing controlled substances via telemedicine

Leveraging Telemedicine Nationally

- As of April 10th, 43 states have licensure waivers impacting telehealth.
- Federation of State Medical Boards:
 - COVID-19 Resource Page:
 - <https://www.fsmb.org/advocacy/covid-19/>
 - 50 State Survey of Waivers on Licensure (Updated almost daily):
 - <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>
 - 50 State Survey of Expedited Licensure for Inactive/Retired Licensees:
 - <https://www.fsmb.org/siteassets/advocacy/pdf/states-expediting-licensure-for-inactive-retired-licensees-in-response-to-covid19.pdf>

Waivers of Licensure Requirements: Indiana

- Indiana allows for a temporary license for out-of-state providers and other unlicensed professionals to provide health care services in Indiana.
- The person cannot be suspended or barred in other state and must hold an equivalent license.
- Must register with the Indiana Professional Licensing Agency.
- Telemedicine can be provided via telephone.

PLA Website: <https://secure.in.gov/pla/4096.htm>

Executive Order 20-13: <https://www.in.gov/gov/files/Executive%20Order%2020-13%20Medical%20Surge.pdf>

Waivers of Licensure Requirements: Tennessee

- A health professional that is not licensed in Tennessee can apply for an emergency license to assist in the medical response to COVID-19, including treating routine or other medical conditions.
- The license only authorizes medical practice in Tennessee until May 18, 2020.

Tennessee Executive Order 15: <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee15.pdf>

Tennessee Emergency Application:
<https://www.tn.gov/content/dam/tn/health/documents/cedep/novel-coronavirus/Boards-Executive-Order-Form.pdf>

Medicare: Changes to Telemedicine During Public Health Emergency

- **Medicare Telemedicine Health Care Provider Fact Sheet, March 17, 2020:** <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- **Additional Background: Sweeping Regulatory Changes to Help U.S. Healthcare System Address COVID-19 Patient Surge, March 30, 2020:** <https://www.cms.gov/newsroom/fact-sheets/additional-backgroundsweeping-regulatory-changes-help-us-healthcare-system-address-covid-19-patient>
- **HHS OIG Policy Statement on Waiver of Cost Sharing Obligations for Medicare Beneficiaries:** <https://oig.hhs.gov/fraud/docs/alertsandbulletins/2020/policy-telehealth-2020.pdf>

IRS Guidance: COVID-19 Testing and Treatment

- HDHPs can waive deductibles or charge below the deductible requirement for COVID-19 testing and treatment
- An individual covered by an HDHP will not be disqualified from being an individual eligible to make tax-favored contributions to a health savings account under Section 223(c)(1) of the Code
- Removes barriers to testing and treatment for COVID-19
- <https://www.irs.gov/pub/irs-drop/n-20-15.pdf>

HIPAA: Office for Civil Rights

OCR will not impose penalties for noncompliance with certain HIPAA Rules in connection with the “***good faith provision***” of ***telehealth*** during the COVID-19 nationwide public health emergency.

- Applies to telehealth provided for any reason
- Applies to health care providers only

<https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>

HIPAA: Office for Civil Rights

Bad faith provision of telehealth includes:

- Fraud, identity theft, invasion of privacy
- Further use of PHI learned during a telehealth encounter that are not permitted by HIPAA (e.g., sale of data)
- Violations of state licensing laws or ethical standards
- Use of public facing remote communication products

HIPAA: Office for Civil Rights

- Permitted Technology - Vendors representing that they are HIPAA compliant:
 - ✓ Updox
 - ✓ Vsee
 - ✓ Zoom for Healthcare
 - ✓ Doxy.me
 - ✓ Google G Suite Hangouts Meet
 - ✓ Cisco Webex Meetings
 - ✓ Amazon Chime
 - ✓ GoToMeeting
 - ✓ Spruce Health Care Messenger

HIPAA: Office for Civil Rights

- Permitted Technology - Non-public communication technology, including:
 - ✓ Apple FaceTime
 - ✓ Facebook Messenger video chat
 - ✓ Google Hangouts video
 - ✓ Whatsapp video chat
 - ✓ Skype
 - ✓ Certain Texting Applications: (Signal, Jabber, Facebook Messenger, Google Hangouts, Whatsapp, or iMessage)
- Prohibited Technology:
 - ✗ Facebook Live, Twitch, TikTok, and similar video communication applications.

HIPAA: Office for Civil Rights

Best Practices for Telemedicine:

- Sign a business associate agreement with telehealth platform
- Notify patients that third-party applications potentially introduce privacy risks
- Enable encryption and privacy modes when using such applications
- Have providers use private locations when providing telehealth
- Inform patients they should be in a private location when receiving telehealth unless there are exigent circumstances or patient consent is provided
- If a private setting is not available, use lowered voices, avoid speakerphone, recommend that the patient moves away from others when discussing PHI

HIPAA: Informing the Employer of COVID-19 Patients or Exposure

- A HIPAA compliant patient authorization is always best.
 - Ensure that authorization complies HIPAA and state law
 - Ensure that authorization specifically allows PHI to be released to employer
 - Consider expiration date of authorization when relying on authorization for return to work issues
- Health care providers *may* be able to rely on 45 CFR 164.512(b)(v) *only if* all requirements are met.
 - Health care provided at the direction of the employer
 - Health care provided for medical surveillance of the workplace or work-related illness or injury
 - PHI disclosed consist of only findings related to medical surveillance of work-related illness or injury
 - Proper notice given to patient regarding disclosure to employer
- Consider other state and federal reporting requirements
 - <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

Federal Law: Controlled Substances Prescribing via Telemedicine

- During the public health emergency and beginning March 23, 2020, DEA-registered practitioners may prescribe controlled substances via telemedicine to patients in states in which they are not registered with the DEA.
- Practitioners are not required to apply for this exception from DEA regulations.
- Subject to all terms of DEA Letter dated March 25, 2020
[https://www.deadiversion.usdoj.gov/GDP/\(DEA-DC-018\)\(DEA067\)%20DEA%20state%20reciprocity%20\(final\)\(Signed\).pdf](https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-018)(DEA067)%20DEA%20state%20reciprocity%20(final)(Signed).pdf)

Federal Law: Controlled Substances Prescribing via Telemedicine

During the public health emergency, practitioners can prescribe controlled substances through telemedicine without a prior in-person visit when:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an ***audio-visual***, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable Federal and State law.

DEA COVID-19 Information Page: <https://www.deadiversion.usdoj.gov/coronavirus.html>

Transitioning to Telemedicine

- Identify whether the contract with your provider/employer allows for telemedicine.
 - Do you need a contract amendment?
- Identify whether you need a nurse triage line *and* a telemedicine platform.
- Identify if walk-ins are allowed at clinic at all or if telemedicine is only available option at clinic.
 - If only option, have a plan for where patients are referred when they need in-person services.
- Identify what services can be provided via telemedicine?
 - Consider all types of services, including primary care, occupational health and workers' compensation services.
 - Consider licensure waivers in your state allow that allow for expanded services to be performed via telemedicine (e.g., physical therapy in Indiana)?
 - Consider providing EAP and mental health services via telemedicine.
 - Consider providing wellness, fitness and nutritional services online.

Transitioning to Telemedicine

- Identify the telemedicine platform that your employees can utilize.
 - Consider those employees/patients that may only have telephones and not audio-visual capabilities.
 - See HHS OCR guidance for allowable platforms.
- Identify any licensure requirements or waivers of licensure requirements.
- Identify staff to provide the telemedicine.
 - Staff can provide telemedicine from home if private room.
 - Staff should ensure they are trained on best practices for telemedicine.
- Create a plan for how telemedicine encounters will be scheduled and billed.
- Identify if telemedicine is only available to those on health plan or expanded to all employees and dependents during public health emergency.
 - Again, does this necessitate a contract amendment with the employer?

Transitioning to Telemedicine

- Create a plan for emergent situations involving both COVID-19 and non-COVID issues.
- Create a plan for identifying those that have been exposed or have symptoms of COVID-19 via telemedicine?
 - What happens after they have been identified?
 - What are the recommendations to the patients?
 - Are testing sites identified?
 - Who does the clinic staff need to notify?
- Consider utilizing telemedicine for managing return to work issues.
- Create a communication plan for patients and employees.
 - Telemedicine is the best option
 - Clear directions on hours of availability, scheduling, wait times, etc.
 - Clear directions on any forms to be filled out in advance of telemedicine encounter
- What happens when the public health emergency is over (especially if requiring on licensure waivers)?

Telemedicine: Best Practices

- Identify patient name, identity and location at beginning of encounter
- Identify practitioner and practitioner credentials at beginning of encounter
- Always obtain patient consent for telehealth service, even if obtained verbally
- Maintain medical record for telemedicine encounter
- Integrate medical record from telemedicine encounter with EMR
- Understand and discuss medical history and diagnosis
- Follow CDC guidelines as it relates to COVID-19 issues
- Follow federal and state laws as it relates to prescribing (and understand waivers related to controlled substances at the federal and state level)
- Provide a follow-up summary of the encounter to the patient
- Notify primary care provider or other specialist of necessary follow-ups to ensure continuity of care when needed or required

Questions?



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For additional COVID-19 Updates, visit
[https://www.kriegdevault.com/info/coronavirus-covid--resource-center.](https://www.kriegdevault.com/info/coronavirus-covid--resource-center)

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The contents of this presentation should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your situation and specific legal questions you have.