



Telehealth

Law & Ethics, Technology, & Best Practices for Connecting with Your Clients

Lisa Wenninger (she/her), MBA, MA, APCC, NCC, BC-TMH
Board Certified TeleMental Health Provider

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5/13/23



This is not legal advice.

I will be discussing laws and regulations, and referencing vendors, but none of these are recommendations for how to run your practice. I am not a lawyer. This is informational only. Please verify the specific laws that apply to your practice and make your own business decisions accordingly.

TODAY'S PROGRAM

9:00 to 12:15. Break around the halfway point. Optional Q&A 12:15 till 12:30.

01

**HIPAA &
TELEHEALTH**

02

**TELEHEALTH ACROSS
STATE LINES**

03

**CA LAW:
TELEHEALTH
ASSESSMENT &
DISCLOSURES**

04

**CRISIS &
EMERGENCIES**

05

**APPLICATION:
ETHICAL CASE**

06

DOCUMENTATION

3

01

— WHY DO WE NEED THIS?

We've been doing this for three years already.
Why is telehealth training necessary?

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CODES OF ETHICS



ADDITIONAL RESOURCES THAT MAY BE HELPFUL:

American Association for Marriage and Family Therapy Online Therapy Guidelines
American Counseling Association Code of Ethics (2014): Distance Counseling, Technology, and Social Media
Association of Social Work Boards Technology and Social Work Regulations Resources
California Association of Marriage and Family Therapists Code of Ethics
National Association of Social Workers Code of Ethics
Telehealth: Virtual Service Delivery Updated Recommendations (National Association of School Psychologists)
Telehealth Resources for Health Care Providers (U.S. Department of Health and Human Services)
Telehealth Best Practice Guides for Providers (U.S. Department of Health and Human Services)
Guidelines for the Practice of Telepsychology (American Psychological Association)
HIPAA & Telehealth: A Stepwise Guide to Compliance (National Consortium of Telehealth Resource Centers)
HIPAA For Professionals (U.S. Department of Health and Human Services)

California Board of Behavioral Sciences. (2023). Are you going to provide telehealth services in California?

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CAMFT CODE OF ETHICS

"When utilizing Telehealth to provide services to clients/patients, marriage and family therapists **consider the welfare of the client/patient**, the **appropriateness and suitability of the modality** in meeting the client's/patient's needs, **make appropriate disclosures** to the client/patient regarding its use, exercise **reasonable care** when utilizing technology, and **remain current** with the relevant laws and regulations."

California Association of Marriage and Family Therapists. (2019). CAMFT Code of Ethics. <https://www.camft.org/Membership/About-Us/Association-Documents/Code-of-Ethics>

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NO, BUT REALLY – WHY DO WE NEED THIS?

CLINICAL & ETHICAL

Assessing the client Safety planning Crisis management

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NO, BUT REALLY – WHY DO WE NEED THIS?

LEGAL & ETHICAL

Failure to comply with California's telehealth laws comprises unprofessional conduct

16 CA ADC § 1815.5(f). Standards of Practice for Telehealth.

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Modes of Telehealth

SYNCHRONOUS

Telephone
Video
Real-time Chat



ASYNCHRONOUS

Email
Texting



*Caution: Very little research so far.
Recommendation: Use for scheduling only.*



HIPAA/HITECH & TELEHEALTH

Did you know?

Many security experts and HIPAA consultants recommend doing a HIPAA compliance review every year.

See Telehealth Practice Review Worksheet in handouts

QUICK REVIEW

HITECH: Requirements to notify in event of security breach

If you prove you acted in good faith in setting up your tech strategy, penalties may be waived

QUICK REVIEW

Main components of HIPAA

Privacy Rule: Governs who you can share PHI with

Security Rule: Governs how you manage PHI/ePHI

QUICK REVIEW

If you transmit claims data electronically – including giving superbills to clients, even if you don't accept insurance – you are a **Covered Entity**

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QUICK REVIEW

PHI – Protected Health Information

Individually identifiable information including demographics that is transmitted or stored in any form – electronic, paper, or verbal – and is related to:

- past, present, or future physical or mental health or condition of an individual
- provision of health care to an individual
- past, present, or future payment for the provision of health care to an individual (payment processors excepted)

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EXAMPLES OF PHI

counseling session start and stop times
the modalities and frequencies of treatment
medication prescription and monitoring
results of clinical tests
summaries of: diagnosis, functional status, treatment plan,
symptoms, prognosis, and progress to date

How is your clients' PHI secured and protected?

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What is your telehealth infrastructure?

By definition, telehealth is using
technology to provide therapy.

So, what technology are you using?

**Conduct an audit of your
tech**

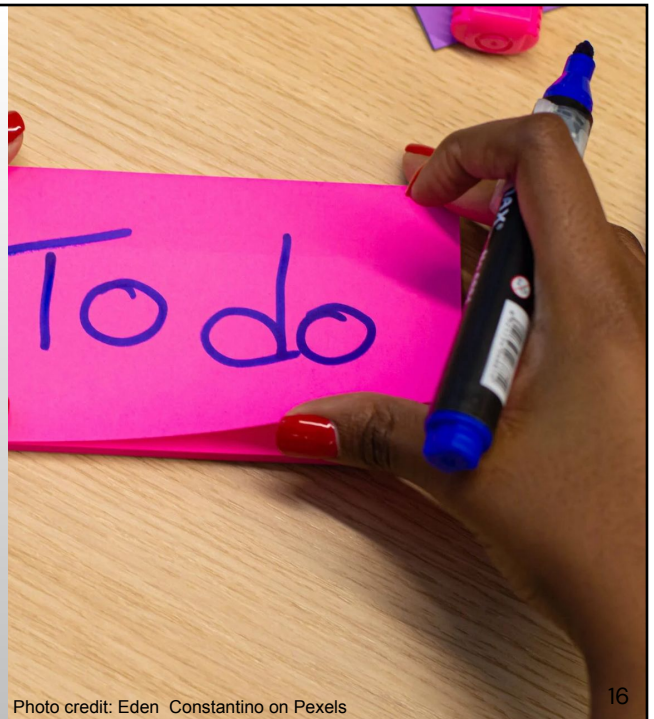


Photo credit: Eden Constantino on Pexels

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Conduct an audit of your tech

See Telehealth Practice Review Worksheet in handouts

What products and services are you using to provide telehealth? Examples:

Video – Zoom, doxy.me, SimplePractice, etc

Phone/Voicemail/Texting – RingRX, iPlum, Spruce, Signal, etc

Electronic Health Record (EHR) – SimplePractice, Sessions, TherapyNotes, etc

Payments* – IvyPay, Square, PayPal, etc

Email* – GMail, Outlook, Protonmail, Hush, etc

** Depending on usage, a BAA may not be literally required for these – but still recommended*

Not intended as a list
of recommendations

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Quick Review: Your responsibilities to protect PHI as a Covered Entity

COMPLYING WITH HIPAA SECURITY RULE

Administrative Safeguards

Policies such as appointing a Privacy Officer; deleting users who no longer need access to ePHI software

Physical Safeguards

Lock your files, secure your laptop

Technical Safeguards

Your and your vendors' technology choices: 2FA; secure backups; what's stored locally vs on the cloud, encryption; every user has own account; timeout forces logoff

Document your decisions

- Your reasons for choosing your tech & security setup matter at least as much as the tech itself.
- Some portions of your telehealth implementation *may* allow for less-secure options (email, payment processor).

You may still want to choose a more-secure option anyway.

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QUICK REVIEW

If you are a Covered Entity, your business and technology partners that handle or produce PHI need a **Business Associate Agreement**

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What is “HIPAA Compliant” anything?

If the vendor offers a BAA for the service, then they are assuring you that they have safeguards in place to protect the ePHI on their system.

Remember: As of Aug. 9, the telehealth services you use must be HIPAA compliant.

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HIPAA/HITECH & TELEHEALTH

Are payment processors
“Business Associates”?

Technically, no
BAA needed, per
Federal Register

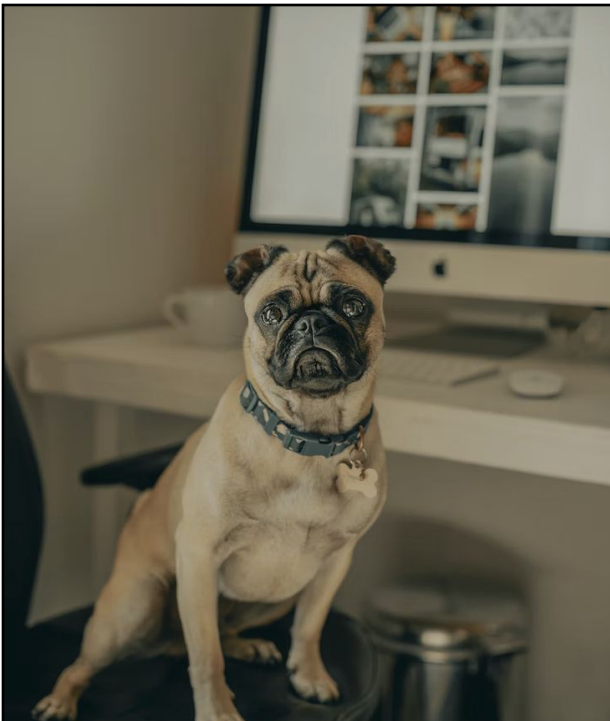
Best practice is still to
have one

Does this big company
I work with protect me?

- If you work for BetterHelp, TalkSpace, or another platform that pays you to do therapy for their customers, *or*
- If you use a billing intermediary like Alma or Headway...

**You still need to comply with
all state and federal laws**

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**Download
and save
all your
BAAs**

Photo credit: Clay Banks at Unsplash

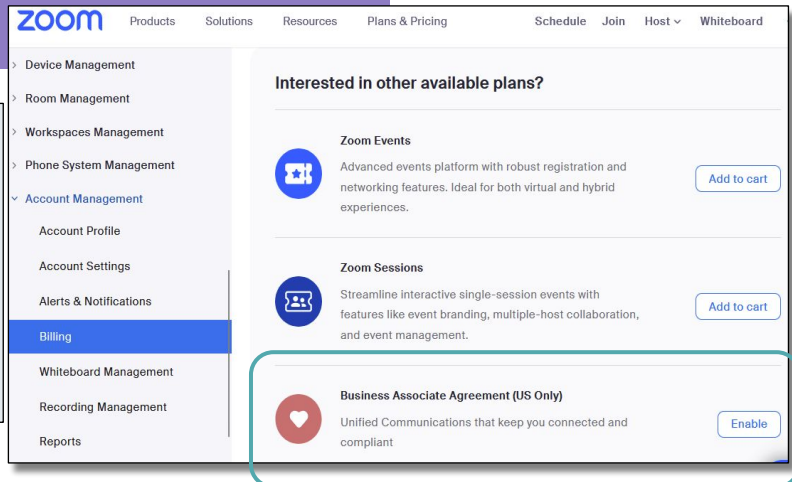
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Example

Zoom & HIPAA

Be sure the BAA is enabled

Go to *Admin* →
Account Management →
Billing, then scroll down to
Business Associate Agreement



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HIPAA/HITECH & TELEHEALTH

Common Privacy Leaks

- Other people using your computer
 - If your client uses the chat during your session, Zoom may download the chat with PHI to an unsecured location on your computer
- Bluetooth connection to a speaker elsewhere in the home – or to a car in the garage
- Alexa/Siri listening devices

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“HIPAA compliant email”

Treatment communications *to the client* by unsecured/unencrypted email are not in violation of the HIPAA Privacy Rule if you have consent.

Patients can even REQUEST communications via unsecure email.

U.S. Department of Health & Human Services. (2013). 570-Does HIPAA permit health care providers to use e-mail to discuss with their patients.
<https://www.hhs.gov/hipaa/for-professionals/faq/570/does-hipaa-permit-health-care-providers-to-use-email-to-discuss-health-issues-with-patients/index.html> 25

Email and HIPAA

You still need to protect ePHI (administrative, physical, technical).

Email is not secure. The transmission can be interrupted, and someone other than the client might get access to it on the client side.

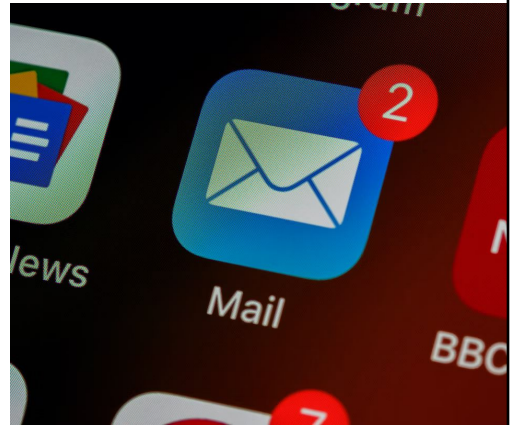
Consider following the example of your physician: They probably do not send you actual medical information in unsecured email.

BEST PRACTICE: USE OF EMAIL

Limit email only to scheduling

Be explicit in informed consent on how you use email

- Written/signed informed consent agreement
- Verbal informed consent (document in notes)



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BEST PRACTICE: USE OF EMAIL

What if the client emails you about their mental health?

- Call the client to discuss on the phone
- Or, limit your reply to suggestion to set up a session

For all email communications regardless of content:

Copy into your clinical notes

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CAUTION ON EMAIL

Therapy via email is telehealth.

If you engage in telehealth by email, additional administrative policy and technology security precautions for your practice are strongly advised.

Free Gmail is not HIPAA compliant.

GSuite/Google Workspace will give you a BAA.

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TELETHERAPY BY TELEPHONE

Q: Do you need to get a BAA with your telecomm carrier (e.g., AT&T, Verizon, etc.)

A: No. This is due to how the packets are transmitted; it is not PHI when it's bytes of data flowing over the phone lines.

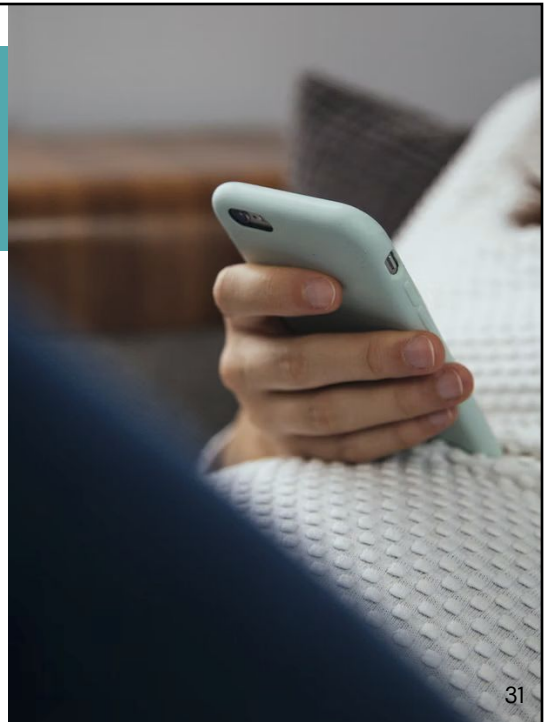
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Texting with Clients

Consider carefully.

If you do it: Get consent, limit to only logistics/scheduling, and use a healthcare-designed app.

- Spruce
- iPlum
- RingRx



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CAUTIONS WITH TEXTING

Any type of interventions/support offered via text could be considered a telehealth session.

Switch to phone instead.

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Telehealth via Text

1. Please research this modality before using
2. Use an end-to-end encrypted service like Signal
 - Both you and the client are communicating solely through the app
3. Still need to go through same steps: Confirm ID, confirm location, etc.
4. It's asynchronous: Need more robust safety plan with client

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Considerations for Texting

If you choose to communicate via text:

- Have it in your signed informed consent agreement, and discuss risks with client and get verbal consent (and document)
- Respond to a client's text – but avoid initiating communication with your client via text
 - You never know if someone else is looking over their shoulder or has possession of their phone
- Ask the client to confirm their identity with your agreed code word
 - Use a different code word for each client – this will help you avoid mixups

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Recommended if Texting

Do not text using your personal cell phone number. Using regular, unsecured SMS text messaging is almost definitely a HIPAA violation.

Get a second number using a secure app like iPlum, OhMD, RingRx, Spruce.

- Enable phone passcode security
- Turn off notifications that would show on the lock screen.

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Required if Texting

DOUBLE-CHECK THE NUMBER BEFORE YOU TEXT THEM.

Go slow. If you have to reach out to a client by text, never do so in a hurry.

Confirm their identity before sharing any actual information.

Being deliberate, with a process that you follow every time, makes use of texting more defensible.

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TELEHEALTH ACROSS STATE LINES



You go on a trip

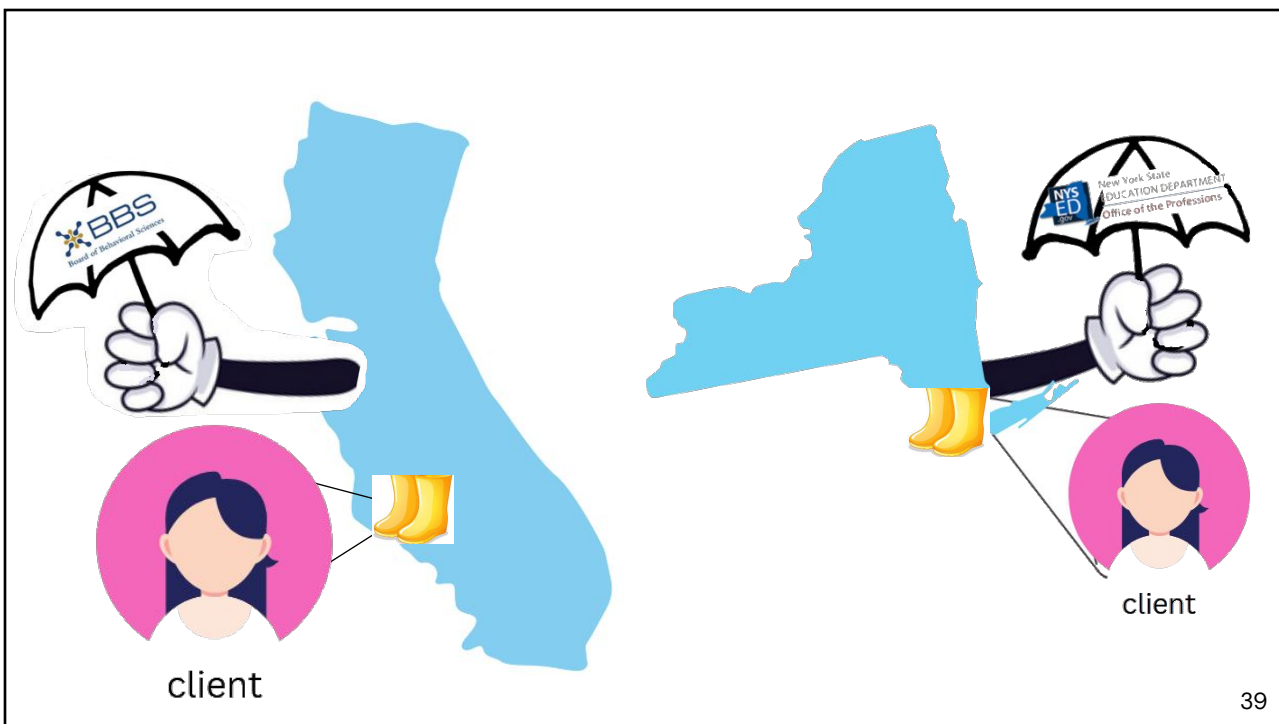
Telehealth with CA client OK

Client goes on a trip

Telehealth probably not OK

It's where the client's feet are.





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“A licensee or registrant of this state [California] may provide telehealth services to clients located in another jurisdiction only if the California licensee or registrant meets the requirements to lawfully provide services in that jurisdiction, and delivery of services via telehealth is allowed by that jurisdiction.”

16 CA ADC § 1815.5(e)

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Can I work with this client via telehealth?

THERAPIST REQUIREMENTS

License

Are you licensed in their jurisdiction?

Insurance

Will your carrier cover you when working with this client?

Assessment

Is telehealth appropriate for this client?

Client Preference

Does your client want telehealth?

CLIENT REQUIREMENTS

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Before accepting a client for telehealth

California-specific laws

1. Give your license type and number
2. Inform client of risks and limitations
3. Get specific consent for telehealth
4. Verify the client's identity
5. Get emergency contacts for the client
6. Compile list of emergency services local to the client



Document all of this in the notes

Assessment for telehealth

Is telehealth appropriate for this client?

1. Age, acuity, symptoms, dual dx, situation, cognitive impairment
 - Most presenting problems CAN be treated via telehealth
2. Access to technology including internet speed, reliable cell coverage
3. Client safety considerations (e.g., DV; closeted LGBTQ teen in hostile family)
4. Couples and families: Technology access and how they will join, confirm locations for licensure purposes

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Assessment for telehealth

Client preference

- If you are telehealth-only and do not offer in-person, inform the client at intake
- If you offer both in-person and telehealth, always give the client the option for either
- If you move from in-person to only telehealth, clients should be given the choice to transition to telehealth with you, or offered referrals to in-person practitioners

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Informed Consent: Risks and Limitations of Telehealth

1. Some modalities obviously don't work via telehealth
2. Technology failure or internet outage disrupting or preventing the session, including from weather, fire, rolling blackouts
3. Possibility of security breach
4. Client needs to tend to their own privacy and distractions – family members interrupting, etc
5. Constraints on communication, e.g., limited access to body language

Discussing telehealth risks with the client is required, however the actual content of this discussion is not dictated by the BBS. These are only suggestions for you to consider.

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Safety Practices

1. Verify client identity at intake
 - **Ask to see state-issued identification** on camera, or
 - Request this be submitted with your electronic intake paperwork

2. Set up a code word

Document in the notes



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Safety Practices

3. Get emergency contacts from client and explain how/when they would be used
 - Best Practice: Emergency contacts must be over 18, reachable, and ideally within 10 minutes of the client's location during the session

Document in the notes



(Nivin Williamson & Williamson, 2021)

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Safety Practices

4. Compile list of emergency services local to the client (e.g., phone numbers for Mobile Crisis Unit and nearest hospital to client)
 - Test/verify this information regularly – at least every six months

Document in the notes



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Additional ideas and recommendations

These are not required by the BBS but are considered best practice

1. Explain what level of tech support you offer, if any
 - If none, explain what they should do if they need it
 - Lack of some tech proficiency may mean they are not suitable for video telehealth, though you can consider telephone depending on other assessment factors
2. Provide your tech interruption protocol, e.g., “If our Zoom connection drops 3 times, I will call you. Please have your cell phone nearby.”

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Additional ideas and recommendations

3. Provide clients with written instructions for how to prepare for telehealth, including guidance on things like:
 - Be in a private location
 - No therapy while driving
 - Connect a few minutes early
 - What to do if cannot connect
 - Please dress as if we were meeting in person
 - Please don't eat in session
 - Be comfortable with a beverage, tissues, notepad and pen, please no alcohol or smoking during session

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At EVERY Telehealth Session

- Verify client name
- Get the address of the client's physical location
- Assess client is appropriate for telehealth based on current presentation including "consideration of the client's psychosocial situation"
- Obtain client consent for telehealth

**Document all of this in the notes
(yes, for every session)**



Cal. Admin. Code tit. 16, § 1815.5, 16 CA ADC § 1815.5. Standards of practice for telehealth.

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What makes a client
appropriate for
telehealth?

—ASSESSING SUITABILITY —

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Safety Planning – In Advance

For all telehealth clients

1. At intake, get emergency contact information from client and inquire about the relationship
2. Explain when you would need to contact this person
3. Verify with the client at least every six months if this info is still accurate
4. Gather phone numbers for emergency/crisis resources in the client's area
5. Test the phone numbers by calling them, and re-test every six months

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Basic In-Session Protocol for Glitches

1. Inform client during initial informed consent how tech issues are handled
2. Whenever there's a weather system in your area, remind the client
3. Respond to the glitches: "It seems like our connection is bad. If it happens two more times, we'll go to phone, so please have your cell phone nearby."

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Basic In-Session Protocol for Glitches

If video is choppy:

1. Stay connected on video
2. Both of you mute the audio on your computers
3. Call the client on your telephone for your voice (audio) connection

This lets you still see each other and benefit from visuals, while being able to talk with a clear line without jag/disruption

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Hi there -

Hopefully the storms this week won't impact you, but in case either you or I experience a power outage, here is the plan for therapy:

1. If my power or internet is out, I won't be on Zoom, and instead I will try calling you at the time of our appointment and we can do our session by telephone. Please have your phone nearby, charged, and powered on.
2. If your power or internet is out or you otherwise cannot join the Zoom, please email if possible to let me know in advance.
3. If your phone works and you want to do the session by phone, call me at the time of our appointment: xxx-xxx-xxxx If you don't join the Zoom by 5 minutes after, I will try calling you.
4. If we are unable to meet, I have appointments available this Friday instead.

Lisa

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Client Emergencies

Client in crisis, risk to self or others: How will you connect them with services?

1. You're seeing the client on video using computer: Keep client connected in video session on computer, while you call on your phone
2. Telephone therapy:
 - Put client on hold while you contact emergency services? Learn your phone's features of putting a call on hold to dial a second number
 - Hang up with client to call emergency services? Not advisable
3. Some therapists maintaining a second phone line for this purpose

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A Transcultural Integrative Model of Ethical Decision Making in Counseling (Garcia, Cartwright, Winston, & Borzuchowska, 2003)

1



Interpret the situation through awareness and fact-finding: Who is involved and how does their worldview affect them? Include examining one's own worldview and its influence.

- a) Enhancement of sensitivity and awareness
- b) Reflection to analyze whether a dilemma is involved
- c) Determination of major stakeholders
- d) Engagement in the fact-finding process

2



Formulate an ethical decision.

- a) Review the dilemma
- b) Determine relevant ethical codes, laws, ethical principles, institution policies, and procedures.
- c) Generate courses of action.
- d) Consider potential positive and negative consequences for each course of action.
- e) Consultation
- f) Select the best course of ethical action.

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3



Weigh competing, nonmoral values and affirm the course of action.

- a) Engage in reflective recognition and analysis of personal blind spots
- b) Consider contextual influences on values selection

4



Plan and execute the selected course of action.

- a) Develop a reasonable sequence of concrete actions
- b) Anticipate personal and contextual barriers and counter measures
- c) Implementation, documentation, and evaluation of the course of action

García, J. G., Cartwright, B., Winston, S. M., & Borzuchowska, B. (2003). A transcultural integrative model for ethical decision making in counseling. *Journal of Counseling and Development*, 81, 268–277.

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SUPERVISION

As of August 2022, supervision via “face-to-face” 2-way video (e.g., Zoom) is allowed in California for all trainees and associates in all practice types.

Supervision has never been allowed by telephone only in California.

DOCUMENTING TELEHEALTH SESSIONS

- Mode of telehealth
- Time client joined, time session started, time session ended
- Any disconnects including times
- Any switch to another mode including times
- If telephone, who called whom
- Verify identity
- Verify physical location
- Client consent to telehealth
- Client appropriate for telehealth



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Sample language for progress notes

Client joined zoom waiting room 11:50am. Therapist started session 12:00pm, confirmed client identity. Client gave address of 123 Main Street, Anywhere, CA. Appropriateness assessed for telehealth and consent obtained. Session ended 12:53pm.

Client did not log onto zoom for session.

6:06pm Therapist called client cell, client answered and apologized, said she had fallen asleep and would join zoom.

6:11pm Client joined zoom from home (address on file), identity confirmed, appropriateness confirmed for telehealth and consent obtained.

6:50pm session end

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10 Telehealth Provided in Patient's Home

Client is literally in their home

02 Telehealth Provided Other than in Patient's Home

Client is anywhere else (car, school, work, etc.)

U.S. Centers for Medicaid and Medicare. (2021). Place of service code set.
https://www.cms.gov/Medicare/Coding/place-of-service-codes/Place_of_Service_Code_Set

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Thanks!

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