AMERICAN PSYCHOANALYTIC ASSOCIATION

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A Note about Regulatory and Insurance Issues

(Prepared 3/24 for the COVID-19 Advisory Team by Gennifer Lane Briggs and Todd Essig)

As we are all converting to full-time remote practices we are starting to use various virtual platforms, many of us for the first time. APsaA's COVID-19 Advisory Team has some suggestions for the regulatory and insurance issues we now face.

Below is a short list of things to consider as you begin your forced telehealth practice. Keep in mind information regarding regulations, insurance, and waivers during this difficult time are changing, sometimes on a daily basis. Furthermore, regulations about insurance and practice often differ depending on discipline and state of license. It is unlikely that we will be able to keep accurate and up to date information for the 3 major disciplines across all 50 states and the federal government. We are urging you to seek information and guidance from the different state organizations that represent your discipline and from your malpractice and/or business insurance carriers

Our team is here for you to point you in the right direction when a right direction emerges from this chaos. Together we can work to ensure that you and your patients are protected.

HIPAA compatible platforms: The most important parts of HIPAA compliance is obtaining a BAA (Business Associate Agreement) with the platform you are using. Some popular options are Zoom (not the free version, but the paid one which provides a BAA), doxy.me, which provides a free BAA for single practitioners, or telecounseling through your website, with platforms such as TherapySites or Simple Practice .

Are HIPAA compatible platforms necessary? Safe is always best. Many have heard that Office of Civil Rights at HHS has announced they "will waive potential penalties for HIPAA violations against health care providers that serve patients through everyday communications technologies during the COVID-19 nationwide public health emergency." That would make, for example, FaceTime into acceptable alternative. But that is only for Medicare and Medicaid. Private

insurance companies are still requiring the use of HIPAA compatible platforms if your practice is a covered entity. Also, remember that a waiver of penalties for HIPAA violations is not the same thing as waiving confidentiality requirements. We still must do everything we can do to protect patient confidentiality. If you have questions about the confidentiality of the platform then do not use it. For up to date information on Medicaid, Medicare, and COVID-19 and HIPAA go to https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html

Liability and License issues: If you have any concerns you should contact your malpractice insurance directly to see whether your policy covers tele(mental)health. We also recommend contacting your state's license entity (usually departments of state or health or education) to make sure you are following your state's guidelines.

Informed Consent: Making sure your patients understand and agree with the change to an all remote practice. Real informed consent is a clinical responsibility to be managed in a manner consistent with how you practice. There are also regulatory requirements for informed consent paperwork. Here is a link to something prepared by the American Psychological Association to help you create an informed consent form for you practice if you decide you need one — https://www.apa.org/practice/programs/dmhi/research-information/informed-consent-checklist

EHR (Electronic Health Records): Some websites do offer the option of EHR that can be signed electronically. Forms are sent from a secure email to your patient, who electronically signs them and forwards them back to you.

Insurance issues: This is an understandable area of significant anxiety. We are not immune to the economic threats the COVID-19 crisis presents. Plus, to be blunt, it's a chaotic mess right now. There is no one-size-fits-all advice. There is tremendous confusion and chaos making it impossible to share clear advice other than encouraging you to contact insurance companies directly for specific guidance in this area.

There are CPT code modifiers for telehealth visits. But no standard way of using them. Some companies require using as place of service 02 instead of 11. Others requires appending a 95 after the CPT code. Others require both. And for some insurance companies the need for a separate code has been waived. Some insurance companies, like BCBS, will only reimburse telehealth for those clinicians who are using their specific, proprietary platforms. But those platforms are closed to new participants. Other companies have policies requiring video but reps tell practitioners that the phone is acceptable. A useful strategy if clinically

reasonable is to have your patient contact their insurance company to get approval for telehealth visits by letting the company know continuity of care is “imperative” (that term is important). If they get insurance through their employer a similar call to HR can help. In other words, there is tremendous confusion and chaos making it impossible to share clear advice other than encouraging you to contact insurance companies directly for specific guidance in this area.

We will continue to curate the tsunami of information and misinformation about regulatory and insurance issues. Please let us know if you have concerns that we as a committee could help with. Write to our “maildrop address” of covid19-questions@apsa.org with your resources, questions and concerns.

And remember, the way we will get through this crisis is together.