Telemental Health Best Practices: Do's and Don'ts to Developing a Thriving Service

NORTHWEST REGIONAL TELEHEALTH RESOURCE CENTER

Marlene M. Maheu, Ph.D.
www.Telehealth.Org
Disclaimer

• WHO I AM: I am a licensed psychologist, not an attorney, physician, marketing or information technology (IT) professional.

• MY GOALS: TMHI webinars are educational only. I will outline the issues and alert you to what's happening in a way to help think through the issues, manage your risk and your clients or patients. However, no warranty, guarantee, or representation is made as to the accuracy or sufficiency of the information contained in my presentation for your specific circumstance. I assume no responsibility in connection with your choices.

• YOUR PART: Get fully trained to be “competent.” Seek written approval from your legal, regulatory, ethical and malpractice bodies before offering any online services or programs to consumers. Have your informed, trusted, local, clinical and legal consultants review all written responses from the authorities for their full significance.
We are retooling
Learning Objectives

• Describe how to develop a legal and ethical service over state lines with videoconferencing
• Outline at least two reasons that Skype has been identified as inappropriate for behavioral care by the NASW and APA
• Name where to go to get the names and web addresses to over sixty HIPAA-compliant alternatives to Skype
• Explain why a standard informed consent document is inadequate for telemental health
• Describe at least two multicultural issues of relevance to distance counseling
• Name at least three steps for managing risk associated with mandated reporting, suicide and homicide
• List at least five evidence-based models for successful distance counseling practice
TMHI’s Online Clinical Practice Management (OCPM) Roadmap

1. Training
2. Referrals
3. Patient Education
4. Legalities
5. Assessment
6. Direct Care
7. Reimbursement
Over 75% of Mayo Clinic telephone survey respondents stated they’d be interested in being seen online for healthcare (September, 2014)
<table>
<thead>
<tr>
<th>Rank</th>
<th>Primary Diagnosis</th>
<th>Medicare</th>
<th>Medicaid</th>
<th>Commercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Pneumonia</td>
<td>18.3%</td>
<td>13.3%</td>
<td>9.6%</td>
</tr>
<tr>
<td>2</td>
<td>Mood Disorders</td>
<td>20.2%</td>
<td>17.2%</td>
<td>10.2%</td>
</tr>
<tr>
<td>3</td>
<td>Osteoarthritis</td>
<td>5.4%</td>
<td>6.0%</td>
<td>3.1%</td>
</tr>
<tr>
<td>4</td>
<td>Congestive Heart Failure</td>
<td>25.3%</td>
<td>29.8%</td>
<td>19.7%</td>
</tr>
<tr>
<td>5</td>
<td>Cardiac Dysrhythmias</td>
<td>16.6%</td>
<td>18.5%</td>
<td>9.2%</td>
</tr>
<tr>
<td>6</td>
<td>Septicemia (except in labor)</td>
<td>22.0%</td>
<td>23.7%</td>
<td>15.7%</td>
</tr>
<tr>
<td>7</td>
<td>Coronary Atherosclerosis</td>
<td>15.3%</td>
<td>17.4%</td>
<td>9.0%</td>
</tr>
<tr>
<td>8</td>
<td>Childbirth Trauma</td>
<td>0.0%</td>
<td>0.8%</td>
<td>0.6%</td>
</tr>
<tr>
<td>9</td>
<td>COPD &amp; Bronchiectasis</td>
<td>21.9%</td>
<td>25.0%</td>
<td>14.4%</td>
</tr>
<tr>
<td>10</td>
<td>Nonspecific Chest Pain</td>
<td>12.8%</td>
<td>14.8%</td>
<td>5.0%</td>
</tr>
<tr>
<td>All</td>
<td></td>
<td>15.8%</td>
<td>16.7%</td>
<td>9.6%</td>
</tr>
</tbody>
</table>

Source: hcupnet.ahrq.gov
Benefits of Telemental Health &

Goals of HCR

1. Increase access
2. Decrease costs
3. Deliver improved care
Size of Evidence Base

- More than 3500 references exist
- Free list of 1000+ searchable telemental health references: www.telehealth.org/bibliography
Recent Supporting Research

• Godleski, Darkins & Peters reported in April of 2012 that hospital utilization in psychiatric populations at the Veterans Administration were decreased by an average of 25% since the use of telehealth. It is worthy of note, however, that:
  – This study focused on clinic-based, high-speed videoconferencing and did not include any home telehealth encounters. Mental health patients were referred for telecare by clinicians. Typically, telemental health services were provided remotely at community-based outpatient clinics by mental health providers of all disciplines located at larger parent VA hospital facilities.
Recent Supporting Research

Backhaus and colleagues (May, 2012) reported in their abstract of a meta-analysis that:

- **821 potential articles were identified, and 65 were selected for inclusion.**
- **The results indicate that VCP is feasible, has been used in a variety of therapeutic formats and with diverse populations, is generally associated with good user satisfaction, and is found to have similar clinical outcomes to traditional face-to-face psychotherapy.**

-- Videoconferencing psychotherapy: A systematic review. Backhaus, Autumn; Agha, Zia; Maglione, Melissa L.; Repp, Andrea; Ross, Bridgett; Zuest, Danielle; Rice-Thorp, Natalie M.; Lohr, James; Thorp, Steven R. Psychological Services, Vol 9(2), May 2012, 111-131. doi: 10.1037/a0027924
Online Norm vs. Traditional Telemental Health

Traditional Online Therapy
- Mostly Email & Chat
- Anonymity
- Accept self-referral online
- Disclaim Responsibility w/ Website Disclaimers
- No Clear Channels for Mandated Reporting
- No Patient Records

Traditional Telemental Health
- Video
- Verify clients/patients
- Rely on referrals from clinical offices
- Use informed consent processes/documentation
- Engage in mandated reporting
- Document as required by law

2014
All Existing Legal & Ethical Rules Apply
Relevant Professional Association Standards & Guidelines

♦ American Psychological Association (2013). Guidelines for the Practice of Telepsychology
Telemental Health Standards & Guidelines

American Psychological Association. (2010). Ethical principles of psychologists and code of conduct
British Psychological Society. (2009). The Provision of Psychological Services via the Internet and Other Non-direct Means
New Zealand Psychological Psychologists Board (2011). Psychology services delivered via the internet and other electronic media

http://telehealth.org/ethical-statements
Multicultural Issues & Diversity
# Multicultural / Multilingual Issues

<table>
<thead>
<tr>
<th>Issue</th>
<th>How to measure?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Global nature of the Internet – worldwide audiences</td>
<td>• Search online for various instruments that might be valid for your population</td>
</tr>
<tr>
<td>• Multicultural issues are quite visible in the document, but English as a second language issue are not mentioned</td>
<td>• Look for English proficiency tests</td>
</tr>
<tr>
<td>• Rarely mentioned anywhere</td>
<td>– Free</td>
</tr>
<tr>
<td></td>
<td>– Easy to take</td>
</tr>
<tr>
<td></td>
<td>– Get to know the norms</td>
</tr>
<tr>
<td></td>
<td>• Spoken English is different from written English</td>
</tr>
</tbody>
</table>
OCPM: Online Clinical Practice Management Roadmap

APA & ATA Guideline Summary Checklist
Behavioral Telehealth Best Practices Checklist
Derived from APA & ATA Guidelines, 2013
Marlene M. Maheu, Ph.D. & Massimo Agnoletti, Ph.D.

This best practices and documentation checklist is derived from a TeleMental Health Institute review of 2013 American Psychological Association and American Telemedicine Association’s Guidelines.*

<table>
<thead>
<tr>
<th>2013 APA &amp; ATAGuideline Similarities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both documents do not purport to establish binding legal standards and defer to clinical judgment in any specific circumstance</td>
</tr>
<tr>
<td>Both documents recommend:</td>
</tr>
<tr>
<td>- Adherence to local, state (licensing laws, interjurisdictional practice, mandatory reporting), federal laws (e.g. HIPAA and HITECH), ethical codes of profession</td>
</tr>
<tr>
<td>- Competency of practitioner (adequate professional and technical knowledge and skills, etc.)</td>
</tr>
<tr>
<td>- Competency of client/patient (e.g., appropriateness for telepractice services, technical competencies, cooperation)</td>
</tr>
<tr>
<td>- Informed consent</td>
</tr>
<tr>
<td>- Careful and ongoing assessment</td>
</tr>
<tr>
<td>- Emergency planning</td>
</tr>
<tr>
<td>- Privacy, security and confidentiality and risk management</td>
</tr>
<tr>
<td>- Documentation</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2013 APA &amp; ATA Guideline Differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>APA Written for Psychologists</td>
</tr>
<tr>
<td>Global perspective</td>
</tr>
<tr>
<td>Scope is email, telephone, social networking and video teleconferencing (requires broad principles)</td>
</tr>
</tbody>
</table>
Privacy & Confidentiality

- Privacy & Confidentiality
  - Understand your technology (email, texting, video) and its clinical repercussions related to privacy and technology
Inter-jurisdictional Practice

Licensing Boards that may assert jurisdiction:

- The one in your state(s) of licensure
- The one in the client/patient’s state of location at time of call
- Both

Safest Practice:

- Provide services only where licensed
- Require client/patient to attest to his or her location on every call
# Telehealth 50-State Review

<table>
<thead>
<tr>
<th>State</th>
<th>Psychologist Telehealth Provision</th>
<th>General Telehealth Provision</th>
<th>Other Notable Activities</th>
<th>Temporary / Guest License Availability</th>
<th>Penalties for Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>UTAH</td>
<td>No</td>
<td>Yes (U.A.C. R432-100-32)</td>
<td><strong>Establishes rules governing reimbursement policies when telemedicine health care services are provided to patients (Utah Code Ann. §84-13-12)</strong></td>
<td>from the time the application is approved. - Licensed out-of-state practitioner must be supervised by a licensed Texas psychologist.</td>
<td>3rd Degree Felony (Utah Code Ann. §58-81-501) - Possible fine up to $5000 dollars AND/OR - Possible imprisonment up to 5 years</td>
</tr>
<tr>
<td>VERMONT</td>
<td>Yes (26 V.S.A §3016)</td>
<td>No</td>
<td>See the Vermont Board of Psychological Examiners website for disclosure requirements (per Rule 2-10) for psychologists who provide services via the Internet.</td>
<td>Yes (CVR 04:030-270) - Licensed out-of-state practitioner may practice for no more than 10 days or 20 hours in any 12-month period</td>
<td>General Misdemeanor (3 V.S.A. §127; 28 V.S.A. §9002) - Possible fine up to $5000 dollars AND/OR - Possible imprisonment up to 1 year</td>
</tr>
</tbody>
</table>

**Disclaimer:** This document does not constitute legal advice and should not be relied upon, as it is not routinely updated and was prepared with information from other sources, whose accuracy was not independently verified by APA. APA strongly encourages the reader to independently verify the information contained herein and/or consult with independent legal counsel if the reader intends to use or otherwise rely on such information. Because the law and related information continually change and because APA relied on other sources to compile information contained herein, APA cannot guarantee the completeness, currency or accuracy of this document.
How can you legally practice over state lines?
Legally Practicing Over State Lines

1. Look at professional code for state/country
2. Do not be dissuaded by telephone responses
3. Get information related to “temporary license”
4. Apply and pay state fees for temporary license
5. Take exam if needed
6. Maintain CEs or CMEs
7. Inform your malpractice carrier
8. Be in touch with regulatory associations
Mandated Reporting

Behavioral professionals are mandated reporters

• Duty to Report
  – Child abuse
  – Elder Abuse
  – Spousal Abuse

• Duty to Warn
  – Tarasoff
Informed Consent
Informed Consent

- Represents a “meeting of the minds”
  - Information is influenced by many factors, including
    - Client/Patient’s capacity for absorbing information
    - Time limits
    - Clinician’s schedule
  - Subject matter is often complex and technical
  - Clinician thinks she is speaking English
  - Client/Patient may be under stress (or may assert so later)
  - Mental illness
- Document only serves as important evidence
Specific Informed Consent Processes and Documentation
TMHI Informed Consent Documentation Basics

• Date
• Diagnosis
• Outline of intervention
• Risks and benefits of each technology used
• Risks and benefits of competing approaches
  • Including no service
TMHI Informed Consent Documentation Basics

- Emergency Resources and Plan including names and contact information for local, trusted person(s) to be contacted at the discretion of the clinician
- Document advantages and disadvantages of using technology
- Document evidence-base supporting counseling plan
- Document client preferences re: technology
TMHI Informed Consent Documentation Basics

• Confidentiality and limits thereof as related to mandated reporting (suicide, homicide, abuse)
• Fees, if any
• Statements* similar to:
  • My questions have been answered to my satisfaction in language I understand
  • As of the time of my signing, all blanks have been filled in
• Document method & procedures for data storage
• Document adherence to local and distant regulations

* Obtain full legal review with a local telehealth attorney prior to using any TMHI sample wording with clients either verbally or in your informed consent document.
Some risks may not yet be unknown*
No physical exam*
Identify both the clinician’s & client’s/patient’s physical location
Statements* such as: Professional will rely on information provided by the client/patient and by any on-site practitioners or other sources
Potential problems could arise with electronic transmission in telepractice:
• distortion, delays, interceptions, interruptions
Document all communications with client (written, audio, video or verbal)

* Obtain full legal review with a local telehealth attorney prior to using any TMHI sample wording with clients either verbally or in your informed consent document.
TMHI Informed Consent Documentation Basics

• Discuss the purpose of remote contact
• Inform clients of who will have access to their email address, phone number, or any other contact information
• Inform the client of who else might contact the client on your behalf
• Discuss multi-cultural and diversity issues
TMHI Informed Consent Documentation Basics

• Describe the specific roles of any consultant or local referring practitioner and who will have ultimate authority over the client’s treatment

• Discuss whether client information will be stored in a computerized database

• Provide written procedures for various types of follow-up when client does not appear for remote consultation
  – Time limit for non-response before collateral person will be contacted if professional is concerned
TMHI Informed Consent Documentation Basics

• Describe how deficiencies electronic equipment could possibly cause interference with diagnosis or treatment

• Make provision for non-receipt of email, delayed receipt, problems with servers, or unannounced changes in the schedule of email communications

• Mention how easily human error could lead to incorrectly delivered messages or other unforeseen events
Emergencies

Have a plan.

- Discuss carefully
- Write plan in your informed consent document
- Develop prior relationships with local community:
  - Physician
  - Family
  - School personnel
  - Other leaders (AA, religious?)
  - Emergency response team
  - Know community resources (hospitals, drug/alcohol treatment facilities, etc.)
  - Know your local collaborators

Know who and when to call for local assistance.

- Inform client of when you will contact local leaders, what you will tell them.
- Cover your termination procedure (i.e., “I will make 2 telephone calls, leave you 2 messages, send you a letter in surface mail with a copy to your physician.”)
American Telemedicine Association

• A patient site assessment shall be undertaken, including obtaining information on local regulations & emergency resources, and identification of potential local collaborators to help with emergencies

• Emergency protocols shall be created with clear explanation of roles & responsibilities in emergencies
• Determine outside emergency coverage
• Establish guidelines for determining at what point other staff and resources should be recruited to help manage emergencies

• Be familiar with local civil commitment regulations and have arrangements where possible to work with local staff to initiate/assist with civil commitments
OCPM: Online Clinical Practice Management

Telemental Health: HIPAA, HITECH & Your State Law
Three HIPAA Rules:

- Transmission
- Security
- Privacy
Business Associates and HITECH

- All Business Associates in health care must sign an agreement stating their adherence to HIPAA standards
  - Business Associate’s Agreement (BAA)
- Penalties imposed by
  - HITECH ACT
- Enforced by the Office for Civil Rights
Skype?
HIPAA requires an “audit trail” and “breach notification tools,’ which Skype doesn’t provide.
Telepsychiatry: The Perils of Using Skype

By Marlene M. Maheu, PhD and Joseph McMenamin, MD, JD

First released in 2003, Skype offers free, worldwide video access to any patient with an Internet connection, either by mobile device or desktop computer. What it does not offer, however, is a means of communication clearly suitable for clinical services—especially in mental health. According to estimates reported by groups such as the Institute for Healthcare Consumerism, telehealth is poised to grow by 55% in 2013 alone, and 6-fold by 2017.1,2 Wisely or otherwise, some of this growth will likely occur via Skype. Thus, it is prudent to consider the issues.

The Health Insurance Portability and Accountability Act
Ordinarily, neither federal nor state law is designed to regulate specific proprietary entities such as Skype and its competitors. Video-chat platforms were developed for marketing to the general consumer, and not for health care. The Health Insurance Portability and Accountability Act (HIPAA) holds professionals responsible for conducting their own internal risk assessments regarding their chosen technologies. Before using any equipment, the professional should require documentation that explicitly promises "HIPAA compliance" or "HIPAA compatibility." One could take further comfort in a designation of Federal Information Processing Standard (FIPS) certification, a standard that may meet and exceed HPAA standards.3

HIPAA requires the use of equipment that allows for audit trails. According to the American Health Information Management Association, audit trails allow breaches to be traced.4 Like other proprietary platforms, Skype makes it impossible to conduct approved security audits via audit trails. Skype itself is not...
FaceTime is HIPAA compliant and encrypted, could change the way physicians and patients communicate

Healthcare communications is rapidly changing – patients now routinely email their physicians, physicians connect with each other via mobile-based professional networks, and more. The introduction of Apple’s FaceTime video chat sparked excitement and discussion in the healthcare community about its possible use in telemedicine. However, many were wary about associated patient privacy issues and HIPAA compliance.

It seems that this question has now been answered. According to Apple, calls made via FaceTime can be HIPAA-compliant with the appropriate security configuration. The news that this ubiquitous, free communications platform meets these rigorous standards has potentially wide implications for how patients, physicians, and others in healthcare communicate.

To be fair, it's not quite as simple as just opening FaceTime and calling your patient. Specifically, the WPA2 Enterprise configuration provides an extra level of authentication when establishing a wireless connection. WEP does not provide the appropriate level of security, and WPA and WPA2 personal settings are questionable. FaceTime calls are fully encrypted as well.
Video Teleconferencing Companies Claiming “HIPAA Compliance”

As you probably know, companies offering “encryption” such as Skype are often not secure enough to meet all HIPAA standards. Welcome to the TMHI list of video teleconferencing companies claiming HIPAA-compliance, or what is more precisely known as “HIPAA-compatibility.”

The page below also shows you some companies which offer you a signed “Business Associate Agreement,” and the price range for services, if their price range was publicly visible on their website.

You may also want to consider taking a video-training course to be sure you have mastered needed competencies related to legal, ethical and clinical issues associated with video, as evidenced by completion of approved courses of professional training before using technology.

<table>
<thead>
<tr>
<th>Title</th>
<th>HIPAA Compatibility or Business Associate Agreement</th>
<th>Cost per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access Psychiatry</td>
<td>Business Associate Agreement</td>
<td></td>
</tr>
<tr>
<td>AMD Global Telemedicine</td>
<td>Company claims HIPAA compliance</td>
<td></td>
</tr>
</tbody>
</table>

www.telehealth.org/video
Evidence-based practice models for working from home or office.
① Nursing Homes
Employee Assistance Programs (EAPs)
③ Rural Hospitals
④ Schools
⑤ Specialty Schools, Residential Treatment, Hospitals
Private Companies Serving Consumers Online*

- Register for employment with these companies here:
  
  WWW.PROVIDER PANEL.COM
9. Correct Facilities
Military & Veteran’s Administration
OCPM: Online Clinical Practice Management Roadmap

Step 1: Training
Step 2: Referrals
Step 3: Patient Education
Step 4: Legalities
Step 5: Assessment
Step 6: Direct Care
Step 7: Reimbursement
Reimbursement

- Medicare & Medicaid already pay for VTC. Many 3rd party carriers do, too.
  - Require HIPAA compliance
  - Designated sites
  - Rural areas
  - Not to the home yet, but such reimbursement is coming soon – new bill by Senator Mike Thompson is being proposed now
Questions?

Marlene M. Maheu, Ph.D.
TeleMental Health Institute, Inc.
Phone: 619-255-2788
Email: mmaheu@telehealth.ORG