

A NOTE FROM PRMS

HOW WE'RE HELPING YOU NAVIGATE COVID-19

HELPING YOU NAVIGATE UNCHARTED TERRITORY

During this unprecedented time facing a global health crisis, PRMS has you covered – with more than just your medical professional liability insurance.

As experts in our field, we're sharing the latest risk management alerts, frequently updated FAQs, telepsychiatry resources, and more as it relates to COVID-19. Find this information on our website at: [PRMS.com/FAQs](https://www.prms.com/FAQs)





NOTE: We are operating in uncharted territory and there are very few clear answers currently. This is a very fluid situation and the risk management recommendations below may change. This document will be updated on our FAQ page (www.PRMS.com/FAQ), and should be checked regularly. Nothing presented here is legal advice.

While we do not know exactly what will happen next in terms of the country re-emerging from the COVID-19 Public Health Emergency (PHE), psychiatrists should be prepared to address at least the following issues:

1. RE-OPENING YOUR PSYCHIATRIC OFFICE

In addition to your local community guidelines, review guidelines and best practices from the AMA, MGMA (Medical Group Management Association), CMS, and others.

Tip: Links to these resources are in our FAQs.

2. FOR PATIENTS THAT REMAINED LOCAL, DETERMINE WHETHER THEY NEED TO BE SEEN IN-PERSON, REMOTELY, OR A COMBINATION OF BOTH

This determination should be based on your assessment of the patients' clinical needs, not on the patients' preference for telepsychiatry.

3. FOR PATIENTS CURRENTLY OUT-OF-STATE, DETERMINE IF THEY HAVE IMMINENT PLANS TO RETURN TO YOUR AREA

Manage patient expectations – let them know that the rules may be changing soon and you may not be allowed by law to continue to treat remotely.

4. TRACK STATE LICENSURE WAIVERS IN YOUR PATIENTS' STATES

They may expire on specific dates, or be extended, or withdrawn at any point.

Tip: PRMS will continue to track these licensure waivers in our FAQs.

5. ONCE LICENSURE WAIVERS HAVE EXPIRED IN STATES WHERE YOUR PATIENTS ARE LOCATED, DETERMINE WHAT IS NEEDED TO CONTINUE TO TREAT YOUR PATIENT VIA TELEMEDICINE

States may require full licensure, a telemedicine registration, or there may be no requirements other than licensure in your own state to treat existing patients. PRMS will help our insureds find this information.

6. IF AFTER THE WAIVER ENDS, YOU ARE ALLOWED TO CONTINUE TO SEE THE OUT-OF-STATE PATIENT, DETERMINE AND FOLLOW THAT STATE'S STANDARD TELEMEDICINE RULES THAT WILL LIKELY BE BACK IN EFFECT

States can have laws addressing requirements for in-

person visits, informed consent, documentation, etc. If your patient's state does not have such laws, follow the telemedicine guidelines developed by the Federation of State Medical Boards.

PRMS will help our insureds find this state information.

7. IF AFTER THE WAIVER ENDS, YOU ARE NOT ABLE TO CONTINUE TREATING THE OUT-OF-STATE PATIENT (I.E. FULL LICENSURE IS REQUIRED), TERMINATE TREATMENT

Although this should be done quickly, do not abandon your patient– consider giving 30 days' notice.

8. IF AFTER THE WAIVER ENDS YOU WANT TO CONTINUE TREATING YOUR PATIENT REMOTELY AND HAVE DETERMINED THAT YOU ARE IN COMPLIANCE WITH LICENSING REQUIREMENTS, ENSURE YOU ARE ALSO IN COMPLIANCE WITH THE PATIENT'S STATE'S PRESCRIBING LAWS

There may be specific state laws, particularly for controlled substances.

You should also register with and use, to the extent possible, the state prescribing drug monitoring program.

9. IF YOU ARE PRESCRIBING CONTROLLED SUBSTANCES FOR OUT-OF-STATE PATIENTS, BE ALERT TO WHEN HHS DECLARES THE END TO THE PHE

The current PHE declaration has been extended 90 days from January 21st. It can be revoked earlier, or extended.

Tip: PRMS will be tracking this in our FAQs.

When the PHE ends, two currently suspended federal requirements for prescribing controlled substances will likely go back into effect.

First, the requirement that there be an in-person visit prior to prescribing controlled substances will likely go back into effect. It is unclear whether the DEA will require those who began treating patients during the PHE to have an in-person visit after the PHE expires in order to continue prescribing controlled substances to these patients.

Second, the requirement to have a federal DEA registration in the patient's state (as well as in your state) will likely go back into effect.

10. WHEN THE PHE ENDS, EXPECT HHS TO REINSTATE THE REQUIREMENT THAT TELEMEDICINE MUST BE CONDUCTED VIA A HIPAA-COMPLIANT PLATFORM

This generally means that you will need a Business Associate Agreement (BAA) from the vendor.

For additional information, see our Telepsychiatry Checklist at PRMS.com/FAQ

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CORONAVIRUS **RISK ALERT** #1

Proactive Preparation, Not Panic

An Update by Donna Vanderpool, MBA, JD

Director of Risk Management, PRMS

March 6, 2020

General Issues to Consider

As with any potential emergency situation, a little planning can go a long way.

Should you need to close your office (due to the coronavirus or other type of emergency), think about how this will be communicated to patients.

- Do you have current contact information for your patients?
- Can you leave an outgoing voicemail message for patients that includes alternate contact information for you?

Also, if the office is closed, consider whether you will have access to medical records and if not, how you might compensate for this situation such as contacting the patient's pharmacy or your state's prescription monitoring program for current prescription information.

Remote Treatment

In the event it is necessary to close your office, here are some risk management reminders about ways in which to provide remote treatment to patients.

If you are not currently using telepsychiatry, you may find it easiest to communicate with your patients via telephone.

Should you choose to treat patients via telemedicine, the platform you use should be HIPAA compliant. Specifically, if any protected health information (PHI) is stored by the platform, regardless of length of time, the vendor must provide you with a Business Associate Agreement (BAA) promising to protect your patients' information. Note that free Skype is not HIPAA compliant, as Microsoft will not provide a BAA.

If your patient lives in a different state from you:

- Remember you are deemed to be treating your patient where he/she is physically located at the time of treatment. If you don't happen to be licensed in that state, there are potential licensure issues that should be considered – particularly if the ongoing office closure results in your need to communicate with the patient over an extended period of time. If that occurs, we recommend that you contact the patient's state licensing board to see if in this limited, emergency situation, you can treat your current patient remotely in that state without a license.
- If you will be prescribing controlled substances remember, because you generally need a DEA registration in the patient's state to prescribe controlled substances, patients may not be able to receive necessary medications from their local pharmacies if they reside outside of your practice state.

If you are considering seeing new patients remotely, remember that under current federal law, you generally need to have one in-person visit prior to prescribing controlled substances.

We hope you find this information useful! As always, please contact us with any questions or concerns.



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CORONAVIRUS **RISK ALERT** #2

An Update by Donna Vanderpool, MBA, JD
Director of Risk Management, PRMS

March 12, 2020

General Office Procedures

Patient notifications: Consider contacting all patients prior to their appointments and ask that they not come into the office under the following circumstances:

- If they are symptomatic – fever, cough, runny nose, difficulty breathing
- If they believe they may have been exposed to coronavirus
- If they (or perhaps also family members) have recently traveled to certain countries – China, Iran, South Korea, Italy, Japan, Hong Kong

Make certain that this is also told to new patients scheduling their first appointments. Patients should be told that those with apparent symptoms will not be allowed in the office.

In the office: Post a sign (with the information described above) on the door to your office and perhaps inside as well. If available, have disinfecting wipes and hand sanitizer available. Wiping down of surfaces should be done frequently.

Remote access to information: As mentioned in our first alert, ensure you have the ability to access patients in the event your office closes, and patients can access you.

Be Alert for Phishing

Unfortunately criminals have already seen the coronavirus as an opportunity to breach systems' security to access patient information. To manage the risks associated with an increase in phishing activity, keep these points in mind:

- Be wary of emails with coronavirus in the subject line, unless it is from a known sender
- Consider ignoring coronavirus emails from

unknown senders and seeking information directly from the CDC website or WHO website.

- Be aware that there is a large amount of "internet click bait" on websites offering information or fake articles about the coronavirus.

More on Telepsychiatry

We support the use of telepsychiatry, particularly for current continuity of care when in-person visits are inappropriate. Unfortunately, we do not know the extent to which, if any, the regulators will relax the significant regulatory issues related to telemedicine. For an overall view of the standard requirements, please see the attached "Telepsychiatry Checklist."

One issue worth repeating here is the need to have a HIPAA-compliant telemedicine platform. A vendor that stores your patient information, for any period of time, needs to provide you with a Business Association Agreement (BAA), promising to protect the confidentiality and security of your patient information. You should avoid using social video-conferencing, such as free Skype, since Microsoft will not provide a BAA. Similarly, some vendors that charge a fee may not provide a BAA with the lowest-price plan. For example, you have to pay more to Zoom to get a BAA.

Consider looking for telemedicine-specific platforms. While we cannot endorse or recommend specific platforms, we do know that there are several reasonably priced telemedicine platforms, and some even have a free plan for solo practitioners (that does include a BAA). Two that we are aware of – but are not endorsing or recommending – are:

- VSeeⁱ
- Doxy.meⁱⁱ

There are likely others out there. When considering a free service, knowing that free is not a sustainable

business model, you may want to ask the vendor what the catch is. For example, are they selling aggregated data?

Educational Resources and Guidelines

The ACCME has compiled various education resources that can be accessed hereⁱⁱⁱ.

In terms of guidelines, the ones we are currently aware of address medical offices that are seeing and treating patients with suspected coronavirus. The CDC has compiled various resources, including^{iv}:

- Information for healthcare professionals
- Information for keeping workplaces safe

Employer Issues

You may have employment questions. Many of the questions you and your employees may be asking are covered by the law firm of McDermott, Will & Emory's list of questions and answers from the employers perspective^v.

This resource may be a good starting point; specific employment questions may need to be answered by your practice's attorney.

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- I. www.vsee.com/pricing
 - II. www.doxy.me/pricing
 - III. <https://www.accme.org/coronavirus-resources>
 - IV. <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
 - V. www.mwe.com/insights/coronavirus-faqs-for-us-employers/#should-we-take-additional-precautions-if-so-what-proactive-steps-can-and-should-we-take-to-keep-our-workplace-healthy-and-safe



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PRACTICING TELEPSYCHIATRY?

As the practice of psychiatry intersects more with technology through the use of telemedicine, you can count on PRMS® to protect your practice. Our psychiatric professional liability policy includes coverage for telepsychiatry at no additional cost, as well as many other preeminent program benefits including:

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- A Risk Management Consultation Service helpline which allows you to speak directly with our knowledgeable team about all of your telepsychiatry-related questions (and all other topics)
- Access to hundreds of risk management resources from our in-house team of experts



JUSTIN POPE, JD
ASSOCIATE RISK MANAGER



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CORONAVIRUS **RISK ALERT** #3

An Update by Donna Vanderpool, MBA, JD
Director of Risk Management, PRMS

March 20, 2020

We wanted to make sure you were aware of several important changes and updates that have come in just in the past few days:

1. Our Telepsychiatry Checklistⁱ has been updated to reflect several governmental changes to the standard / pre-coronavirus rules and expectations.
2. The Office for Civil Rights (OCR)ⁱⁱ, the agency responsible for HIPAA enforcement, has exercised "its enforcement discretion and will waive potential penalties against health care providers that serve patients through everyday communication technologies during the COVID-19 nationwide public health emergency. This exercise of discretion applies to widely available communication apps, such as FaceTime or Skype, when used in good faith for any telehealth treatment or diagnostic purpose, regardless of whether the telehealth service is directly related to COVID-19."
3. The DEA has issued a statementⁱⁱⁱ confirming the public health emergency declaration exception to the required one in-person visit prior to prescribing controlled substances under the Controlled Substances Act, as amended by the Ryan Haight Act.
4. The federal government has relaxed several requirements^{iv} related to the provision of telemedicine services to federal health program beneficiaries, such as Medicare and Medicaid patients. But these federal waivers relate to government payment only – state law still controls whether a license is required to treat patients in that state.
5. In terms of state licensure waivers, there has been some movement. HOWEVER, of those states issuing licensure waivers to out of state physicians, most have significant limitations, such as only if treating hospitalized patients. For more information, this article from the law firm of Foley & Lardner may be helpful^v.
6. OCR has forwarded advice on defending against coronavirus-related cyber scams^{vi}.

I. <https://www.prms.com/media/2337/telepsychiatry-checklist-3-19-20.pdf>

II. <https://www.hhs.gov/about/news/2020/03/17/ocr-announces-notification-of-enforcement-discretion-for-telehealth-remote-communications-during-the-covid-19.html>

III. <https://www.dea/diversion.usdoj.gov/>

IV. <https://www.phe.gov/emergency/news/healthactions/section1135/Pages/covid19-13March20.aspx>

V. www.foley.com/en/insights/publications/2020/03/covid-19-states-waive-licensing-requirements

VI. <https://www.us-cert.gov/hcas/current-activity/2020/03/06/defending-against-covid-19-cyber-scams>



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CORONAVIRUS RISK ALERT #4

An Update by Donna Vanderpool, MBA, JD
Director of Risk Management, PRMS

April 6, 2020

We wanted to make sure you were aware of all of the various resources related to telepsychiatry and COVID-19:

From the federal government:

The **DEA** has issued a statementⁱ confirming the public health emergency declaration exception to the required one in-person visit prior to prescribing controlled substances under the Controlled Substances Act, as amended by the Ryan Haight Act. They have also temporarily waivedⁱⁱ the requirement to have a DEA registration in the patient's state.

The **FDA** has issued guidanceⁱⁱⁱ related to REMS requirements, such as required lab monitoring that cannot be done by home-bound patients.

OCR has issued several HIPAA-related resources:

- The Office for Civil Rights (OCR)^{iv}, the agency responsible for HIPAA enforcement, has exercised "its enforcement discretion and will waive potential penalties against health care providers that serve patients through everyday communication technologies during the COVID-19 nationwide public health emergency. This exercise of discretion applies to widely available communication apps, such as FaceTime or Skype, when used in good faith for any telehealth treatment or diagnostic purpose, regardless of whether the telehealth service is directly related to COVID-19."
- Telemedicine FAQs^v
- Information sharing^{vi}
- Coronavirus-related cyber scams^{vii}
- OCR posted on its Privacy and Security listserves an alert about reports of someone posing as an OCR investigator contacting providers by telephone seeking patient information.^{viii}

SAMHSA has put out various resources including:

- Coronavirus Resource page^x
- Guidance on disclosures under the medical necessity exception^x

CMS has relaxed several requirements^{xi} for the provision of and payment for telemedicine services to federal healthcare program beneficiaries, such as Medicare patients.

From professional organizations:

From the **ASAM**:

- General information^{xii} on treating addiction during this pandemic
- Specific recommendations^{xiii}, including for adjusting drug testing protocols

From the **AMA**:

- Quick Guide to Telemedicine^{xiv}
- Helping Private Practices^{xv} Navigate Non-Essential Care During COVID-19

From the **APA**:

- Coronavirus Resources^{xvi}
- Practice Guidance^{xvii}

- I. <https://www.deadiversion.usdoj.gov/>
- II. [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)
- III. <https://www.fda.gov/media/136317/download>
- IV. <https://www.hhs.gov/about/news/2020/03/17/ocr-announces-notification-of-enforcement-discretion-for-telehealth-remote-communications-during-the-covid-19.html>
- V. <https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf>
- VI. <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>
- VII. <https://www.us-cert.gov/ncas/current-activity/2020/03/06/defending-against-covid-19-cyber-scams>
- VIII. <https://list.nih.gov/cgi-bin/wa.exe?A1=ind2004&L=OCR-PRIVACY-LIST>
- IX. <https://www.samhsa.gov/coronavirus>
- X. <https://www.samhsa.gov/sites/default/files/covid-19-42-cfr-part-2-guidance-03192020.pdf>
- XI. <https://www.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>
- XII. <https://www.asam.org/>
- XIII. <https://www.asam.org/Quality-Science/covid-19-coronavirus/adjusting-drug-testing-protocols>
- XIV. <https://www.ama-assn.org/practice-management/digital/ama-quick-guide-telemedicine-practice>
- XV. <https://www.ama-assn.org/delivering-care/public-health/helping-private-practices-navigate-non-essential-care-during-covid-19>
- XVI. <https://www.psychiatry.org/psychiatrists/covid-19-coronavirus>
- XVII. <https://www.psychiatry.org/psychiatrists/covid-19-coronavirus/practice-guidance-for-covid-19>



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