Frequently Asked Questions: Practicing During COVID-19

1. What is the best way to document informed consent for telehealth sessions?
   - It is important to have a telehealth-specific informed consent, in addition to your standard informed consent. Prudent practice is to document the verbal informed consent process with a signed consent form. The sample form on The Trust site (https://parma.trustinsurance.com/Resource-Center/Document-Library) is a good place to start, but this document must be adapted for your particular practice and should add or amend information in keeping with state-specific requirements.

2. Is a discussion with the client about informed consent for phone and video sessions sufficient as long as it is documented in the progress notes?
   - From a risk management perspective, it is clearly preferable to have a signed form. If the clinician does not have it in writing and the client later claims they never agreed to it, contemporaneous documentation in the progress notes may be helpful, but it does not afford the same level of protection that a signed informed consent document does.
   - If it is initially necessary to forego a written document due to the emergency situation, one option is to go ahead with the verbal consent process (that is well documented in progress notes) and follow-up with a written document that is then signed by the client and returned to the clinician as soon as possible.
   - In any case, if the clinician chooses to forego the signed consent form, reviewing each of the aspects of the telepsychology consent document mentioned above is essential, as is clearly documenting in the medical record that the form was reviewed in full and the patient agreed to its contents.

3. Is a signed informed consent form necessary, or is it ok if the client responds that they agree in an email or verbally, and this is documented in the chart?
   - Please see the above responses.

4. Is a clinician required to use a video platform that advertises itself as HIPAA-compliant and provides a BAA? Or is any platform with well-documented end-to-end encryption sufficient (e.g., FaceTime, Google Duo, Skype)?
   - As of today (3/19/2020), the Office of Civil Rights (OCR) issued a statement that they will not impose penalties for providers’ use of non-HIPAA compliant platforms during the COVID-19 national emergency period. As such, providers may use any non-public facing remote communication product (including popular applications that allow for video chats, such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype) to provide telehealth without risk that OCR might seek to impose a penalty for non-compliance with the HIPAA Rules (https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html)
• However, from a risk management perspective it is still a good idea to use a HIPAA compliant platform with a company that will sign a Business Associate Agreement (BAA), as non-compliant platforms pose significant security risks and some insurance companies may not reimburse for telehealth provided on unsecure platforms. Examples of vendors that represent themselves as providing HIPAA compliant audio/video platforms and are willing to enter into a HIPAA BAA include: Skype for Business, Updox, VSee, Zoom for Healthcare, Doxy.me, and Google G Suite Hangouts Meet.
• If you choose to use a non-compliant platform, you should inform your clients of such and make use of as many privacy controls as the non-compliant system will allow. Also be aware that the requirement and enforcement of HIPAA compliant platforms will presumably be reinstated after the national emergency has passed, and if you are using a non-compliant platform at that time, you will likely need to upgrade it.
• Public facing applications (e.g., Facebook Live, Twitch, TikTok) should NOT be used.

5. Is there any specific telepsychology training that is required in order for telehealth to be covered under our professional liability (malpractice) insurance policy?
• The Trust Sponsored Professional Liability insurance policy covers psychological and other associated professional services, including such services as telehealth, provided the insured is in compliance with the appropriate state practice rules or regulations. All other policy terms and conditions apply.
• While there is currently no specific requirement for a certain number of or kind of telepsychology courses by The Trust for coverage, we certainly recommend proper training and education to ensure protection of you and your clients. As we all know, the practice of psychology includes adherence to legal and ethical regulations and standards, which includes competency in all areas of one’s practice. In telepsychology, competency includes technical competency and knowledge and practice of the telepsychology guidelines, at a minimum.

6. Will telephone-only sessions be reimbursed by insurance?
• While many insurance companies (including Medicare) have not been reimbursing for telephone-only sessions, some companies are making allowances for such during the emergency period. In addition, some states (e.g., NY, MA) have approved waivers that require insurers to cover telephone-only sessions. If you are not in a state that has issued a waiver, it is prudent to contact the insurance companies directly and inquire regarding their coverage of telephone-only sessions.