

LEGAL UPDATES

PUBLISHED: MARCH 22, 2020

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# Counseling During Campus Closure: Telehealth and Licensure

Many students rely on campus counseling centers for the provision of therapy. In the wake of campus closures, colleges and universities are asking whether their counselors may provide telehealth (also known as teletherapy) to students, and in what circumstances?

Two key issues are in play: (1) the ability to provide telehealth services and (2) the ability to provide services in states in which counselors are not licensed. Officials are working to ease requirements around both to ensure patients receive treatment.

## Telehealth

Telehealth is the use of audio/video platforms or other telecommunications technologies to provide long-distance health care, including therapy. Individual states have their own licensing requirements and specific rules regarding telehealth services. In-state telehealth services are often governed differently than interstate services. For example, in Missouri, a college counselor may provide teletherapy to an in-state student, so long as the counselor continues to follow the guidelines of her professional code of ethics. Colleges and universities should refer to state law and their states' psychology governing board to determine whether teletherapy is generally allowed.

## Practicing across state lines

Whether a counselor is permitted to provide teletherapy across state lines is a trickier question. In some states, out-of-state providers can provide telehealth for a short period of time by statute; in others, an application to a governing body must be made (and in even others, it is generally not permitted).

A new interjurisdictional pact around the practice of psychology across state lines is being implemented in approximately a dozen states but is not yet

operational. The rules governing this pact are in the process of being finalized, and there is no indication as to when it may go into effect.

### **Impact of emergency declarations on teletherapy**

States are moving quickly on these issues. The Federation of State Medical Boards has published a list of states waiving certain licensure requirements (as of March 20). Additionally, Vice President Pence announced that the Department of Health and Human Services would issue a regulation permitting medical professionals to practice across state lines. It is unclear whether such regulation would address interstate telehealth.

### **What this means for you**

Absent clear guidance on your institution's authority to provide teletherapy services in a jurisdiction, campus counseling centers should consider whether other resources may be available to a student in their home community, and whether continued counseling is necessary for the student's health and safety.

If providing telehealth, consider:

Requiring students sign consent forms for the provision of teletherapy which expressly address insurance and privacy issues.

Having students check with their insurance providers teletherapy coverage. At least 37 states require insurance companies to cover telehealth services and in-person services equally. Many states require Medicaid and Medicare to cover telehealth, and actions taken by the federal and state governments are expanding coverage.

Ensuring that your liability insurance permits the provision of teletherapy in these circumstances and determining the scope of such coverage (e.g., does an insurer require treaters to use certain platforms).

Regarding privacy, college counselors must be compliant with HIPAA, including in the provision of teletherapy. Certain audio/video communication platforms advertise themselves as HIPAA-compliant; others may not comply. Insurance companies may require that telehealth be provided using a certain platform. However, the Department of Health and Human Services' Office for Civil Rights announced it will not impose penalties for noncompliance with HIPAA requirements for the good-faith provision of telehealth, in light of the national emergency.

State and federal response to the current pandemic is rapidly evolving. Continue to ensure compliance.

## **Contact us**

Husch Blackwell continues to monitor the evolving situation and its implications for our clients. Should you have any questions, please do not hesitate to contact Anne Cartwright or your Husch Blackwell attorney.

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, retailing, and supply chain management, among others.