

March 23, 2020

Dear colleague,

Please find enclosed a white-paper put together by our second-to-none Risk Management staff outlining current federal and state guidelines about the usage of telemedicine/telehealth modalities during the ongoing COVID-19 national health emergency.

This is a continuation of our efforts at your Mutual to provide you the most up-to-date material about best practices on the most important topics in the practice of medicine, which allows you, in turn, to continue providing high quality care to those you serve.

Please don't hesitate to reach out to us with any questions or concerns during these very uncertain and troubling times, and stay safe. We remain ***Physicians Insuring Physicians***.

Sincerely and with warm regards,



R. Austin Wallace, MD
Chair, President, &CEO

West Virginia Mutual Insurance Company

Covid-19 Outbreak Telehealth Resources

Issued: March 23, 2020

In an effort to assist our insured physicians with telehealth guidelines during the COVID-19 outbreak, West Virginia Mutual Insurance Company is providing several resources to help you stay abreast of federal and state guidelines. We support you, our physician owners in your efforts to continue to provide high quality care to your patients in a safe and effective manner during this time, and we understand that telehealth may be a modality of business continuity for many of you. The management and staff at WVMIC are available to you throughout this time of uncertainty, and we encourage you to reach out to us with any questions or concerns. Our contact information is listed below.

Please note, as with any changes in the professional services you provide, you are required to notify us prior to implementing such. Therefore, please keep in mind, if you plan to begin offering telehealth services to your patients other than the services you have provided in the past, please let your agent or us know.

We understand there may be feelings of urgency in being able to provide patients with telemedicine services, but it is very important that you remain aware of state and federal telemedicine guidelines. The following are some of the most recent guidelines related to telemedicine during the COVID-19 outbreak. Keep in mind, these guidelines continue to change almost daily as new information becomes available and new restrictions are imposed. It is your responsibility to keep abreast with applicable state and federal guidelines and recommendations and implement them accordingly.

Federal Resources

1. The U.S. Department of Health and Human Services and the Office for Civil Rights (OCR) publication, "Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency" last reviewed on March 19, 2020, can be found here: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>
 - This publication states, "OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency."
 - This publication also states, "A covered health care provider that wants to use audio or video communication to provide telehealth to patients during the COVID-19 nationwide public health crisis can use any non-public facing remote communication product that is available to communicate with patients."
 - A list of popular applications that allow for video chats that may be used are listed in this publication and include "...**Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype... Under this notice, however, Facebook Live, Twitch, TikTok, and similar video communications are public facing and should not be used in the**

provision of telehealth...” After the COVID-19 nationwide public health emergency is no longer in effect, the above-noted apps will no longer be allowed, and only “...HIPPA compliant vendors...” that “...will enter into HIPPA business associate agreements (BAAs)..” should be utilized for telehealth. These include: “**Skype for Business/Microsoft Teams, Updox, VSee, Zoom for Healthcare, Doxy.me, and Google G Suite Hangouts Meet...**” and are also obviously even better to use at the present.

- Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks and providers should enable all available encryption and privacy modes when using these applications.
2. As per the Centers for Medicare & Medicaid Services (CMS), President Trump has “broadened access to Medicare telehealth services” and expanded telehealth services on a temporary and emergency basis. This publication, dated March 17, 2020 can be found here: <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- For Medicare telehealth visits, “the provider must use an interactive audio and video telecommunications system that permits real-time communication between the provider’s distant site and the patient at home.”
 - “Distant site practitioners who are permitted to furnish and receive payment for covered telehealth services (subject to state law) can include physicians, nurse practitioners, physician assistants, nurse midwives, certified nurse anesthetists, clinical psychologists, clinical social workers, registered dietitians, and nutrition professionals.”
 - Patients are required to have an established relationship with a practitioner offering telehealth services that began prior to this public health emergency.
 - “To the extent the waiver (section 1135(g)(3)) requires that the patient have a prior established relationship with a particular practitioner, HHS will not conduct audits to ensure that such a prior relationship existed for claims submitted during this public health emergency.”
 - While providers “must generally travel to or be located in certain types of originating sites such as a physician office, a skilled nursing facility or hospital, for the duration of the public health emergency, Medicare will make payment for telehealth services furnished to beneficiaries in any healthcare facility and in their home.”
 - “HHS Office for Civil Rights will exercise enforcement discretion and waive penalties for HIPAA violations against health care providers that serve patients in good faith through everyday communications technologies during the COVID-19 nationwide public health emergency.”

1. The West Virginia Board of Medicine recently published guidance regarding telemedicine and states, “the Board encourages the use of telemedicine technologies, consistent with the standard of care.” They note, “For physicians who are evaluating and/or triaging COVID-19 patients, this emergency care falls within a statutory exception to the requirement for a face-to-face (in person or via video) initial encounter to establish a physician/patient relationship and may, consistent with the standard of care, occur through an audio-only encounter. All non-COVID-19 telemedicine practice **must** continue to comport with the requirement that a physician-patient relationship may not be established via audio-only. This publication, dated March 18, 2020 can be found on the WV Board of Medicine website or here: <https://wvbom.wv.gov/article.asp?id=74&action2=showArticle&ty=CTTS>
 - The Board of Medicine states, “Physician Assistants with an authorized Practice Agreement and/or active Practice Notification may practice via telemedicine, where appropriate and in collaboration with physicians, even if the PA’s Practice Agreement and/or Practice Notification does not specifically identify telemedicine as an authorized practice modality.”
 - Please note, as of March 20, 2020, the WV Board of Osteopathy has not released any particular guidelines regarding the scope of practice for Physician Assistants that are supervised by an Osteopathic Physician. We recommend checking the Board of Osteopathy’s website for updates or reach out to them directly should you have specific questions regarding your current Practice Agreements/Notifications. <https://www.wvbdosteo.org/> or wvbdosteo@wv.gov
2. A West Virginia statute (West Virginia House Bill 4463 Article 3. West Virginia Medical Practice Act. Section 30.3.13a. Telemedicine practice; requirements; exceptions; definitions; rule-making) was enacted in 2016 to provide guidelines for providers participating in the practice of telemedicine. These legislative guidelines can be found here: http://www.wvlegislature.gov/Bill_Text_HTML/2016_SESSIONS/RS/bills/HB4463%20SUB%20ENR.pdf
3. The West Virginia Department of Health and Human Resources COVID-19 webpage is: <https://dhhr.wv.gov/covid-19/pages/default.aspx> This page has several resources and should be checked routinely for updates.
 - COVID-19 Reporting Requirements include the necessity to report suspected or confirmed cases of COVID-19 within 24 hours to the local health department by phone, and follow-up with a written report. Local Health Departments by county can be found here: <https://dhhr.wv.gov/localhealth/pages/map.aspx>
 - The WVDHHR Person Under Investigation and Case Report Form can be found here: https://dhhr.wv.gov/COVID-19/documents/lhd/pui_case_form.pdf This must be completed and faxed to (304) 558-8736 for all suspected cases regardless of where the patient is tested.
 - Testing Criteria, as of March 17, 2020 can be found on the website under Providers, Criteria & Tools for Specimen Collection & Testing, or here: https://dhhr.wv.gov/COVID-19/documents/hcp/COVID19_testing_criteria.pdf

4. The West Virginia Board of Pharmacy's website contains information regarding their response to the Covid-19 outbreak. <https://www.wvbop.com/>
 - The state of West Virginia is currently under a declared State of Emergency for the Covid-19 pandemic. Due to prescribers writing prescriptions for the drugs chloroquine and hydroxychloroquine to their family, friends and coworkers in anticipation of Covid-19 related illness, this is leading to a shortage of the drugs. Although these are thought to potentially be helpful in the treatment of Covid-19, they are also used in the treatment of other conditions unrelated to Covid-19. As of 3/21/2020, Medication Limitations are effective for these drugs. These can be found here: <https://www.wvbop.com/article.asp?id=45>
5. Due to the WV Department of Motor Vehicles Regional Offices being closed, the "DMV is extending the expiration date of any driver's license, instructional permit, or vehicle registration with an expiration date in March or April of 2020 for three months from the date of the expiration on the face of the document." This is important for patients who are prescribed controlled substances, as "valid government-issued identification" is required. This is addressed in more detail here: <https://transportation.wv.gov/DMV/News/Pages/WV-DMV-regional-offices-to-close.aspx>

Other General COVID-19 Resources

The U.S. Centers for Disease Control and Prevention COVID-19 page can be found here:

<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>

- The CDC's Clinician Outreach and Communication Activity (COCA) has free webinars on COVID-19 that you can easily access. Their next webinar, "Underlying Medical Conditions and People at Higher Risk for Coronavirus Disease 2019 (COVID-19)" is on March 24, 2020. Login information can be found here: <https://emergency.cdc.gov/coca/calls/index.asp>
- Free Recordings of past COCA Webinars on the Coronavirus Disease including information for Long-term Care Facilities, Infection Prevention and Control and Information for Clinicians Caring for Children and Pregnant Women, are posted in the link above.

The American Medical Association's website offers various resources to physicians on Covid-19 including how to prevent, how to diagnose and how to treat. This website can be found here: <https://www.ama-assn.org/delivering-care/public-health/covid-19-2019-novel-coronavirus-resource-center-physicians>

They have issued a Code of Medical Ethics: Guidance in a pandemic, as well as opinions on protecting health care personnel during personal protective equipment shortages, which can be found here: <https://www.ama-assn.org/delivering-care/public-health/ama-code-medical-ethics-guidance-pandemic>.

We hope you have found this information helpful and resourceful. All of us at West Virginia Mutual Insurance Company are here to assist you in any way that we can, and we encourage you to continue to reach out to us with any questions or concerns you have.

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Disclaimer: This document is intended to serve as a general risk management resource during the COVID-19 outbreak and is not inclusive of all laws or regulations relating to this public health emergency. This information is also not intended to constitute legal advice or establish standard of care. The government and medical response to the outbreak is fluid and changes daily, therefore it necessary for you to monitor all applicable state and federal guidelines and recommendations for the most current information.