

APRIL 2020

AUTHORS

JESSICA M. JONES

GEORGIA E. BAKER

What Higher Education Institutions Need to Know About Telehealth in Light of COVID-19

As COVID-19 continues to disrupt almost every industry, organizations must adjust swiftly to continue to serve their clients. This need to adjust is particularly acute for higher education institutions operating counseling and health centers.

With students displaced throughout the country, issues related to licensure and the practice of medicine across state lines are emerging as the use of telehealth becomes more prevalent. Colleges and universities risk having their employees jeopardize their licenses to continue serving the health care needs of students. Luckily, recent changes in state regulations regarding the use of telehealth have addressed many of these concerns.

Telehealth platforms have seen increasing utilization in recent years by colleges and universities that recognize the significant benefits telehealth can provide to their students. For example, telehealth allows students who may be uncomfortable visiting a health or counseling center in person, or who do not have the time or resources to commit to in-person treatment, to “visit” medical and mental health professionals in the privacy of their dorm or home. Additionally, telehealth is proving to be especially useful during times such as the COVID-19 pandemic. Since students are no longer able to receive in-person treatment, telehealth can be a viable alternative for continuation of treatment. Furthermore, some states also allow for a provider to initiate a new relationship with a patient via telehealth. Therefore, if a student is at home and needs counseling for the first time, they will be able to obtain services from their school provider even if they are no longer located in the same state.

While telehealth can be beneficial, providers should evaluate on a case-by-case basis whether telehealth is in the best interest of the student. Further, before affiliated providers can begin treating students located in a different state via telehealth, they must ensure that they are properly licensed. Every U.S. state has a medical practice act that regulates the practice of medicine and licensure within its borders and, unless a state creates a relevant licensure exception, a provider must be licensed in the state where the patient is located to legally treat the patient using telehealth. Providers who treat out-of-state students via telehealth without the appropriate state license risk liability for the unauthorized practice of medicine and could face civil penalties, criminal penalties, and disciplinary sanctions.

Fortunately, numerous states have relaxed or waived their licensure restrictions in response to the COVID-19 pandemic and permit providers licensed in any U.S. jurisdiction to temporarily treat students located in their state. For a list of states that have relaxed their telehealth restrictions in response to the COVID-19 pandemic, please see [Appendix A](#).

Even after obtaining a temporary or emergency license (where necessary), providers will need to carefully review the laws and regulations of the state where the student is located—and any applicable changes made in response to COVID-19—before beginning treatment. Specifically, providers should consider:

- State specific telehealth standards of care (typically, care provided via telehealth must meet the same standard of care as care provided in person);
- State specific mandatory reporting laws;
- Telehealth specific informed consent requirements (many states require that providers obtain the informed consent of students prior to rendering care via telehealth and such consent should be documented);

- Electronic prescribing restrictions;
- Telehealth-specific privacy and security laws;
- State laws regarding the emergency practice of medicine and the continuing treatment obligations of providers once a doctor-patient relationship has been established;
- Preparing a “safety plan” for students that need to be referred locally (for example, a provider should know, before treating a student, where to immediately refer the student if the provider develops reason to believe the student may be suicidal). Safety plans should document the student’s physical location, list local health resources available to the student, and include emergency contact information for the student;
- Issues related to malpractice coverage; and
- Whether providers are required to treat a patient in person before treating them via telehealth (some states, such as Delaware and Massachusetts, have waived this requirement in response to COVID-19).

While there is some uncertainty surrounding how long temporary licensure waivers will remain valid—and therefore how long providers can continue treating out-of-state students—most states have indicated that temporary licenses issued in response to COVID-19 will be valid at least until the current state of emergency ends. Providers who are concerned about cessation of treatment once the state of emergency ends should determine whether the state(s) where students are currently located have pre-existing temporary practice exceptions. For a list of states with temporary practice exceptions, please see [Appendix B](#).

The authors of this article are closely monitoring COVID-19-related telehealth developments. Please feel free to contact the authors or your regular Saul Ewing Arnstein & Lehr point of contact if you have questions about any of the topics covered in this article and how they can impact your delivery of telehealth services.

This alert was written by Jessica M. Jones and Georgia E. Baker, members of the Firm’s Higher Education Practice. Jessica can be reached at (302) 421-6817 or at Jessica.Jones@saul.com. Georgia can be reached at (215) 972-1086 or at Georgia.Baker@saul.com. This alert has been prepared for information purposes only.

Did you find this information useful? Please provide your feedback [here](#) and also let us know if there are other legal topics of interest to you.

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute “Attorney Advertising.”